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ORDER, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (AUGUST 5, 2024)

NOT RECOMMENDED FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GARY ROBINSON,

Plaintiff-Appellant,

v.

JERRY N. HIGGINS, ET AL.,

Defendants-Appellees.

No. 23-5933

On Appeal from the United States District Court for the Western District of Kentucky

Before: GRIFFIN, LARSEN, and NALBANDIAN, Circuit Judges.

ORDER

Gary Robinson, proceeding pro se, appeals a district court's judgment dismissing his civil rights action filed under 42 U.S.C. § 1983 and the Tucker Act, 28 U.S.C. § 1491(a)(1). This case has been referred to a panel of the court that, upon examination, unanimously

agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). As discussed below, we affirm.

Foreclosure proceedings against Robinson were brought in Kentucky state court based on a delinquent property tax lien. Attorney Jerry N. Higgins represented a lienholder in the action, and Jefferson County Circuit Judge Mary Shaw was assigned to the case. Judge Shaw in turn referred the action to Master Commissioner Carole C. Schneider for a judicial sale of the property. Following the sale, the court ordered distribution of the proceeds. The Kentucky Court of Appeals dismissed Robinson's appeal, and the Kentucky Supreme Court denied review.

Robinson filed a complaint in federal court regarding the foreclosure and simultaneously moved for discovery under Federal Rule of Civil Procedure 26 and to amend the complaint. Soon thereafter, he filed an amended complaint against Higgins, Judge Shaw, the Commonwealth of Kentucky, and Master Commissioner Schneider on the ground that his civil rights had been violated during the foreclosure proceedings. Robinson requested money damages, the return of his real estate, and other injunctive relief. The defendants moved to dismiss his complaint.

After construing Robinson's action as asserting that the defendants deprived him of due process during the foreclosure proceedings, the district court dismissed the complaint for failure to state a claim for the reasons that follow. *See* Fed. R. Civ. P. 12(b)(6). First, the Tucker Act did not create substantive rights. Second, Robinson's claims were barred by the *Rooker-*

Feldman[1] doctrine to the extent that he challenged the foreclosure judgment itself. Third, Higgins was not a state actor for purposes of § 1983. Fourth, Judge Shaw had judicial immunity from suit, and Master Commissioner Schneider had quasi-judicial immunity from suit. And last, the Commonwealth had immunity under the Eleventh Amendment. The court denied Robinson's motion for discovery because his action was not exempt from initial disclosures under Rule 26(a)(1)(B) and he had given no justification for early discovery. The court also denied his motion to amend the complaint as moot because he complied with Rule 15(a).

On appeal, Robinson argues, among other things, that (1) the defendants were acting under color of state law, (2) Judge Shaw is not entitled to judicial immunity because she acted without jurisdiction by presiding over a dispute between him as a State citizen and Higgins as an alleged foreign agent, (3) Master Commissioner Schneider is not a real judge but an administrative judge who committed misconduct by making an unauthorized legal determination, (4) the foreclosure proceedings violated his right to due process and the foreclosure court lacked jurisdiction, and (5) the district court denied his discovery motion because discovery would have uncovered prejudice and bias.

As an initial matter, we decline to consider claims that Robinson raised only in his original complaint. When he did not reassert them in his amended complaint, the claims ceased to be part of the action below

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[1] *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

and therefore may not be considered here. *See B & H Med., L.L.C. v. ABP Admin., Inc.*, 526 F.3d 257, 267 n.8 (6th Cir. 2008); *see also 111 Debt Acquisition Holdings, LLC v. Six Ventures Ltd.*, 413 F. App'x 824, 831 (6th Cir. 2011). Next, we note that Robinson does not challenge the dismissal of his claim under the Tucker Act. Because he has abandoned the claim, we decline to review it. *See Ogbonna-McGruder v. Austin Peay State Univ.*, 91 F.4th 833, 843 (6th Cir. 2024), *cert. denied* ___ U.S. ___, 2024 WL 3089575 (U.S. June 24, 2024) (No. 23-1238). We also decline to consider any new claims that he seeks to raise on appeal. Issues that were not raised in the district court are forfeited, and no exceptional circumstance exists that merits our consideration of such claims for the first time on appeal. *See Cash-Darling v. Recycling Equip., Inc.*, 62 F.4th 969, 975 (6th Cir. 2023).

We review de novo a district court's judgment dismissing claims under Rule 12(b)(6). *Wesley v. Campbell*, 779 F.3d 421, 428 (6th Cir. 2015). We also review a dismissal on absolute immunity grounds de novo. *Hughes v. Duncan*, 93 F.4th 374, 378 (6th Cir. 2024). We "may affirm a decision of the district court for any reason supported by the record, including on grounds different from those on which the district court relied." *Stein v. Regions Morgan Keegan Select High Income Fund, Inc.*, 821 F.3d 780, 786 (6th Cir. 2016).

We agree with the district court that attorney Higgins was subject to dismissal because he was not a state actor for purposes of § 1983. Section 1983 permits a plaintiff to pursue a cause of action for a violation of the Constitution or other federal laws, if that violation was "caused by a person acting under

the color of state law," *i.e.*, a state actor. *Doe v. Miami Univ.*, 882 F.3d 579, 595 (6th Cir. 2018) (quoting *Heyne v. Metro. Nashville Pub. Sch.*, 655 F.3d 556, 562 (6th Cir. 2011)); *see also King v. Taylor*, 694 F.3d 650, 661 (6th Cir. 2012). An attorney, despite being an officer of the court, is not a de facto state actor for purposes of § 1983. *See Polk Cnty. v. Dodson*, 454 U.S. 312, 318 (1981); *Otworth v. Vanderploeg*, 61 F. App'x 163, 165-66 (6th Cir. 2003). State action by a private actor "may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001) (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974)); *see Brent v. Wayne Cnty. Dep't of Hum. Servs.*, 901 F.3d 656, 676 (6th Cir. 2018). Although Robinson attempts to argue otherwise, his complaint does not establish a close nexus, but instead describes commonplace interactions between private individuals, a corporate debt collector, attorneys, and judicial officers.

The remaining defendants were properly dismissed for other reasons. As the district court concluded, Judge Shaw was entitled to absolute immunity. With limited exceptions, a judge performing judicial functions is absolutely immune from civil suit for monetary damages. *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991) (per curiam); *Johnson v. Turner*, 125 F.3d 324, 333 (6th Cir. 1997). "[W]hether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Stump v.*

Sparkman, 435 U.S. 349, 362 (1978). Immunity does not apply when the judge acts in a nonjudicial capacity or "in the complete absence of all jurisdiction." *Mireles*, 502 U.S. at 12. Robinson's contention that Judge Shaw acted without jurisdiction because attorneys are foreign agents is frivolous.

Similarly, Master Commissioner Schneider was entitled to quasi-judicial immunity. Courts have granted "absolute immunity to officials whose duties are functionally comparable to those of a judge," such as administrative law judges, when safeguards exist to minimize the need for a private damages action if unconstitutional conduct occurs. *Hughes*, 93 F.4th at 378–79 (citing *Butz v. Economou*, 438 U.S. 478, 514 (1978)). Safeguards include the right to appeal. *Id.* at 379. In Kentucky, a master commissioner's powers are comparable to those of a judge and include the power to conduct a hearing, require the production of evidence and rule on its admissibility, and examine witnesses. *See* Ky. R. Civ. P. 53.03. Moreover, Master Commissioner Schneider's decision was subject to appeal. *See* Ky. Rev. Stat. § 91.504.

Robinson may not obtain his requested equitable relief from Judge Shaw and Master Commissioner Schneider because he had an adequate remedy at law to redress errors in his forfeiture proceedings by appeals through the state court system and his right to petition for review by the United States Supreme Court. *See Wilson v. Schnettler*, 365 U.S. 381, 385 (1961); *Sibley v. Lando*, 437 F.3d 1067, 1073-74 (11th Cir. 2005); *Basey v. United States*, No. 23-6000, 2024 WL 2130564, at *3 (6th Cir. Apr. 17, 2024).

We need not consider whether the Commonwealth is entitled to immunity under the Eleventh Amendment

because Robinson does not contest the matter. Finally, our determination that none of the defendants is subject to suit moots any need to consider Robinson's due process claim from his amended complaint and the district court's denial of his motion for discovery.

For these reasons, we AFFIRM the district court's judgment.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Clerk

JUDGMENT, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (AUGUST 5, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GARY ROBINSON,

Plaintiff-Appellant,

v.

JERRY N. HIGGINS, ET AL.,

Defendants-Appellees.

No. 23-5933

On Appeal from the United States District Court for the Western District of Kentucky at Louisville.

Before: GRIFFIN, LARSEN, and NALBANDIAN, Circuit Judges.

JUDGMENT

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Clerk

**MEMORANDUM AND ORDER,
U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
(SEPTEMBER 26, 2023)**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

GARY ROBINSON,

Plaintiff,

v.

JERRY N. HIGGINS, ET AL.,

Defendants.

Civil Action No. 3:23-cv-09-DJH

Before: David J. HALE, U.S. District Court Judge.

MEMORANDUM AND ORDER

Gary Robinson brought this pro se § 1983 action against various defendants based on Jefferson Circuit Court foreclosure proceedings that resulted in a judgment and order of sale of Robinson's property in 2019. (Docket No. 7, PageID.206-209) The defendants move to dismiss. (D.N. 9; D.N. 10; D.N. 12) Also pending are motions by Robinson for discovery (D.N. 2); to amend the complaint (D.N. 3); and to strike one

of the motions to dismiss (D.N. 11). After careful consideration, and for the reasons explained below, the Court will grant the motions to dismiss, deny the motion for discovery and motion to strike, and deny as moot the motion to amend.

I.

The Court "takes the facts only from the complaint, accepting them as true as [it] must do in reviewing a 12(b)(6) motion." *Siefert v. Hamilton Cnty.*, 951 F.3d 753, 757 (6th Cir. 2020) (citing Fed. R. Civ. P. 12(b)(6)). But "mere conclusory statements[] do not suffice," and the Court need not accept such statements as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court also takes judicial notice of the state proceedings that gave rise to Robinson's claims.[1]

This case arises out of foreclosure proceedings that were initiated against Robinson in Jefferson County Circuit Court on January 24, 2017. (D.N. 7, PageID.206; D.N. 9-4, PageID.258) In the summer of 2019, the court referred the matter to a master commissioner. (D.N. 9-4, PageID.262; D.N. 7, PageID.206) After the master commissioner submitted her report,

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[1] It is well established that federal courts may take judicial notice of state-court proceedings without converting a motion to dismiss to a motion for summary judgment. *See, e.g., Knowlton v. Godair*, No. 5:22-CV-148-BJB, 2023 WL 3166176, at *3 (W.D. Ky. Apr. 28, 2023) ("Courts may take judicial notice of public records, such as the charging document in the state criminal proceedings Plaintiff's federal claim rests on."); *Rigney v. Hesen*, No. 3:12-CV-541-R, 2013 WL 3475449, at *1 n.2 (W.D. Ky. July 10, 2013) (taking judicial notice of documents filed in state proceedings in deciding motion to dismiss); *Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980) (taking judicial notice of state court record).

the court entered the foreclosure judgment and order of sale on October 3, 2019. (D.N. 9-4, PageID.262) The sale was completed in September 2020. *(Id.,* PageID. 264-65)

Robinson asserts claims under 42 U.S.C. § 1983 against (1) Jerry Higgins, attorney for the plaintiff Tax Ease Lien Servicing, LLC in the state action; (2) the Commonwealth of Kentucky; (3) Mary Shaw, the judge who presided over the foreclosure proceeding; and (4) Carole Schneider, the master commissioner. (D.N. 7, PageID.201-04) He seeks relief from the foreclosure judgment and sale of his home.[2] *(Id.,* PageID .206-09) Robinson appears to allege that the defendants deprived him of his due-process rights during the foreclosure proceedings: the complaint cites procedural defects including Robinson's inability to have a hearing during the COVID-19 pandemic, the court's failure to respond to Robinson's motions, and Schneider's mistreatment of Robinson on a conference call on January 7, 2021, which Shaw then ended without letting Robinson speak. *(Id.,* PageID.206)

Robinson moved for discovery (D.N. 2) and to amend the complaint (D.N. 3) when he filed the original complaint. After Robinson amended his complaint (D.N. 7), Defendant Higgins moved to remand or, alternatively, dismiss the complaint. (D.N. 9) The Commonwealth next moved to dismiss the claims against it (D.N. 10), as did Schneider and Shaw (D.N. 12). The

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[2] Robinson also cites the Tucker Act as a basis for his claims. The Tucker Act is not a source of substantive rights and serves only to waive the sovereign immunity of the United States against certain claims. *United States v. Navajo Nation,* 556 U.S. 287, 290 (2009).

Court will address Robinson's motions first before turning to the defendants' motions to dismiss.

II.

Robinson moved to amend the complaint on the same day that he filed the original complaint, correctly citing his ability to amend as a matter of right under Federal Rule of Civil Procedure 15(a).[3] (D.N. 3) He then filed an amended complaint within 21 days and before any responsive pleading had been filed. (D.N. 7) As Robinson complied with the requirements of Rule 15(a), the amendment was effective without leave of court. *See* Fed. R. Civ. P. 15(a)(1). Robinson's motion to amend will therefore be denied as moot.

Robinson also filed a motion for discovery under Rule 26 with his original complaint. (D.N. 2) Parties may not seek discovery prior to the Rule 26(f) conference unless the proceeding is exempt from initial disclosures or the Court orders early discovery. Fed. R. Civ. P. 26(d). As this action is not exempt from initial disclosures under Rule 26(a)(1)(B) and Robinson gave no justification for early discovery, the motion for discovery will be denied.

Finally, Robinson moves to strike the Commonwealth's motion to dismiss. (D.N. 11) The Federal Rules allow motions to strike the contents of pleadings, not motions of an opposing party. Fed. R. Civ. P. 12(f);

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[3] Rule 15(a)(1) reads "A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1).

Gamboa v. Ford Motor Co., No. 18-10106, 2019 WL 4039979, at *2 (E.D. Mich. Aug. 27, 2019) ("A motion to strike is the incorrect vehicle for overcoming Defendants' Motions. Courts can only strike pleadings, which are limited to the materials listed in Fed. R. Civ. P. 7(a)"). Robinson's motion primarily addresses the Commonwealth's argument that it is immune from suit under the Eleventh Amendment. (D.N. 11, PageID.351-52) The filing is thus better understood as Robinson's response to the Commonwealth's motion.[4] The Court will therefore deny the motion to strike but consider Robinson's arguments in analyzing the Commonwealth's motion to dismiss.

III.

Each defendant moves to dismiss the amended complaint. The Court addresses each motion in turn.[5]

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[4] The Commonwealth appears to agree and replied to Robinson's filing accordingly. (D.N. 14)

[5] All three motions to dismiss argue that the amended complaint violates the Rooker-Feldman doctrine by seeking this Court's review of the state-court foreclosure judgment. (D.N. 9-1, PageID. 238-39; D.N. 10, PageID.334-35; D.N. 12, PageID.449) To the extent that Robinson's claims are based on the foreclosure judgment itself, the Rooker-Feldman doctrine bars the Court from reviewing those claims. *See Rose v. Oakland Cnty. Treasurer,* No. 21-2626, 2023 WL 2823972, at *8 (6th Cir. Apr. 7, 2023) (applying Rooker-Feldman to bar plaintiff's challenge to foreclosure judgment but not claims for just compensation in foreclosure sale). The Court does not decide which claims violate the Rooker-Feldman doctrine because each motion presents other compelling grounds for dismissal.

B. Higgins's Motion to Remand or Dismiss

Defendant Higgins moves to either remand or dismiss the complaint. (D.N. 9) The motion to remand is based entirely on the original complaint and attachments to that complaint. (D.N. 9-1, PageID.232-33) Since Robinson amended his complaint as a matter of right pursuant to Rule 15(a) (D.N. 3; D.N. 7), the request to remand it is moot. The alternative motion to dismiss, however, raises a valid ground for dismissal: that the complaint fails to allege that Higgins acted under the color of state law.[6] (D.N. 9-1, PageID.236-39)

Plaintiffs may only sue under § 1983 to remedy constitutional violations by persons acting "under the color of the law of 'any State or Territory.'" *District of Columbia v. Carter,* 409 U.S. 418, 424 (1973) (quoting 42 U.S.C. § 1983). Robinson alleges that Higgins acted to foreclose on his property as "representative of the plaintiff' in the state-court proceedings or as the "real plaintiff in the case." (D.N. 7, PageID.206) These allegations are insufficient because "private counsel do not act under color of state law." *Walker v. Hume,* 817 F.2d 757 (6th Cir. 1987) (citing *McCord v. Bailey,*

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[6] Higgins also challenges the sufficiency of service of process, as do Schneider and Shaw, and argues that Robinson's § 1983 claims are barred by the statute of limitations. (D.N. 9-1, PageID.234-36, 38; D.N. 12, PageID.450-51) Because the statute of limitations is an affirmative defense, "a motion under Rule 12(b)(6), which considers only the allegations in the complaint, is generally an inappropriate vehicle for dismissing a claim based upon the statute of limitations." *Cataldo v. US. Steel Corp.,* 676 F.3d 542, 547 (6th Cir. 2012). As there are adequate grounds for dismissing Robinson's claims, the Court need not reach the issue of service of process or decide whether this is one of the rare cases where dismissal under 12(b)(6) based on the statute of limitations is appropriate.

636 F.2d 606, 613 (D.C. Cir. 1980)). Neither opposing parties nor their counsel act under color of state law by engaging in state-court litigation. *See Smith v. Hilltop Basic Res., Inc.*, 99 F. App'x 644, 648-49 (6th Cir. 2004). Robinson does not allege that Higgins acted under color of state law, and his claim against Higgins therefore fails.

C. The Commonwealth's Motion to Dismiss

The Commonwealth moves to dismiss the claims against it under the Eleventh Amendment (D.N. 10, PageID.333-34). The Eleventh Amendment, as interpreted by the Supreme Court, grants each state immunity from "the suit of an individual without its consent." *Seminole Tribe of Fla. v. Fla., 517 U.S.* 44, 54 (1996); *see also Hans v. Louisiana,* 134 U.S. 1, 10-11 (1890) (extending Eleventh Amendment immunity to suits against a state by its own citizens). Robinson argues that the Fourteenth Amendment may have modified the Eleventh to permit suits against states. (D.N. 11, PageID.351) Although there are exceptions to the Eleventh Amendment, § 1983 is not one of them. *See Quern v. Jordan,* 440 U.S. 332, 342-43 (1979). Nothing before the Court indicates that the Commonwealth has consented to this suit, and the Commonwealth is therefore immune from Robinson's claims.

D. Schneider and Shaw's Motion to Dismiss

Schneider and Shaw move to dismiss based on judicial immunity.[7] Judges are immune from suits for

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[7] The Court does not reach Schneider and Shaw's arguments about service of process, the sufficiency of the factual allegations in the complaint, or their immunity in their official capacity under the

money damages, with two narrow exceptions for actions taken outside of the judge's judicial capacity and actions taken in the complete absence of jurisdiction. *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991). Absolute judicial immunity extends to quasi-judicial officers who "perform[] tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." *Bush v. Rauch,* 38 F.3d 842, 847 (6th Cir. 1994); *see also Forrester v. White,* 484 U.S. 219, 225-26 (1988) (stating that the purpose of quasi-judicial-officer immunity is to "free[] the judicial process of harassment and intimidation."). In Kentucky, master commissioners are empowered to conduct hearings, order the production of evidence, rule on the admissibility of evidence, and examine parties under oath, all in the service of preparing reports for the state judge overseeing the case. Ky. R. Civ. P. 53.03. Master commissioners therefore perform many judicial functions as the arm of the state-court judges who refer cases to them and are clear examples of quasi-judicial officers. *See Bush,* 38 F.3d at 847. Because Robinson has sued Shaw for her role as the judge overseeing the foreclosure proceeding and Schneider for her actions as master commissioner in the same proceeding (D.N. 7, PageID.206), both Shaw and Schneider enjoy absolute judicial immunity from that suit. *See Mireles,* 502 U.S. at 11-12; *Bush,* 38 F.3d at 847.

Eleventh Amendment. (D.N. 12-1, PageID.448; D.N. 12-1, PageID. 450) Robinson for his part argues that state officials cannot invoke the Eleventh Amendment to avoid § 1983 liability. (D.N. 11, PageID.351 (citing *Scheuer v. Rhodes,* 416 U.S. 232, 237 (1974))

IV.

For the reasons set forth above, and the Court being otherwise sufficiently advised, it is hereby

ORDERED as follows:

(1) Robinson's motion for discovery (D.N. 2) is DENIED.

(2) Robinson's motion to amend the complaint (D.N. 3) is DENIED as moot.

(3) Higgins's motion to dismiss (D.N. 9) is GRANTED.

(4) The Commonwealth's motion to dismiss (D.N. 10) is GRANTED.

(5) Robinson's motion to strike the Commonwealth's motion to dismiss (D.N. 11) is DENIED.

(6) Schneider and Shaw's motion to dismiss (D.N. 12) is GRANTED.

(7) All claims having been resolved, this matter is DISMISSED and STRICKEN from the Court's docket.

September 26, 2023

/s/ David J. Hale
U.S. District Court Judge

ORDER DISMISSING APPEAL, KENTUCKY COURT OF APPEALS (NOVEMBER 28, 2022)

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

GARY ROBINSON,

Appellant,

v.

JERRY N. HIGGINS,

Appellees.

No. 2022-CA-0970-MR

Appeal from Jefferson Circuit Court Honorable Jessica E. Green, Judge Action No. 22-CI-001147

Before: CLAYTON, Chief Judge., GOODWINE and McNEILL, Judges.

ORDER DISMISSING APPEAL

On August 8, 2022, Appellant Gary Robinson appealed from a July 22, 2022, order of the Jefferson Circuit Court that dismissed. Robinson's claims against Appellee Jerry N. Higgins and Defendant Brad Lammi who was not named in the notice of appeal. The order entered on July 22, 2022, contained a handwritten notation, stating "[t]his is a final and appealable order."

Notably, the order failed to certify that "there was no just cause for delay" as required by CR[1] 54.02.

On August 17, 2022, the Court directed Robinson to show cause why the appeal should not be dismissed as interlocutory and for failure to bring all required parties before the Court. Thereafter, on August 30th, Higgins filed a motion to dismiss, arguing the appeal is from an interlocutory order and fails to name all the appellees.

On September 6th and 7th, Robinson filed a motion to amend and add parties to appeal, a motion to strike Higgins' motion to dismiss, and a motion for discovery. However, this Court need not address those motions because it holds that its appellate jurisdiction has not been invoked over the order entered on July 22, 2022.

"It is fundamental that a court must have jurisdiction before it has authority to decide a case." *Wilson v. Russell,* 162 S.W.3d 911, 913 (Ky. 2005). "Our rules require that there be a final order or judgment from which an appeal is taken." *Id.* (footnote omitted). Generally, this Court lacks jurisdiction to hear an appeal from an interlocutory order unless the appeal falls under a recognized exception. *See, e.g.,* KRS[2] 22A.020(1)-(2); CR 54.01; *see also Cassetty v. Commonwealth,* 495 S.W.3d 129, 131 (Ky. 2016); *Breathitt Cty. Bd. of Educ. v. Prater,* 292 S.W.3d 883, 886 (Ky. 2009).

In the absence of a recognized exception, CR 54.01 limits "appealable judgment[s]" to "final order[s] adju-

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[1] Kentucky Rules of Civil Procedure.

[2] Kentucky Revised Statutes.

dicating all the rights of all the parties in an action or proceeding[.]" Hence, if an order does not adjudicate all the rights of all the parties, then it is not final under CR 54.01 and does not invoke this Court's appellate jurisdiction.

Nevertheless, in an action involving multiple claims or multiple parties, CR 54.02(1) grants the circuit court the discretion to act as a "dispatcher" and certify otherwise interlocutory orders as final and appealable upon a determination there is no just cause for delay. *See Watson v. Best Fin. Serv., Inc.*, 245 S.W.3d 722, 726 (Ky. 2008) (citing CR 54.02) ("If the trial court grants a final judgment upon one or more but less than all of the claims or parties, that decision remains interlocutory unless the trial court makes a separate determination that 'there is no just reason for delay.' And the trial court's judgment shall recite such determination and shall recite that the judgment is final.") (footnotes omitted).

The circuit court's order or judgment must contain both recitations to invoke CR 54.02(1): (1) the decision is final, and (2) there is no just cause for delay. Without both recitations from the circuit court, this Court will not conduct an appellate review. *See Peters v. Bd. of Ed. of Hardin Cty.*, 378 S.W.2d 638, 639 (Ky. 1964) ("In the absence of the recitations required by [CR 54.02], in the order or judgment, an adjudication of one or more claims, but less than all the claims in an action, will not be entertained on appeal by the Court of Appeals.").

Therefore, we hold that the order entered on July 22, 2022, is interlocutory. This order is not final under CR 54.01; *i.e.*, it does not adjudicate all the rights of all the parties because claims against other parties

remain before the circuit court. The order also does not fall under a recognized exception to the general finality rule; nor does it contain the necessary recitations to invoke finality under CR 54.02. Because the order of July 22, 2022, is not final, the circuit court retains its discretion to modify the omission of the necessary finality language, and it may do so upon entry of this Order dismissing the appeal and re-establishing the circuit court's jurisdiction of this claim.

Having reviewed the record and being otherwise sufficiently advised, IT IS HEREBY ORDERED that Higgins' motion to dismiss the appeal as interlocutory is GRANTED. The above-styled appeal shall be, and hereby is, DISMISSED; provided, however, nothing herein shall preclude Appellant from filing a timely notice of appeal upon the entry of a final and appealable order or judgment.

IT IS FURTHER ORDERED that all other pending motions are DENIED AS MOOT.

ENTERED: Nov 28 2022

/s/ Pamela R. Goodwine
Judge, Court of Appeals

OPINION AND ORDER, JEFFERSON CIRCUIT COURT DIVISION NINE (JULY 22, 2022)

JEFFERSON CIRCUIT COURT DIVISION NINE (9)

GARY ROBINSON,

Plaintiff,

v.

JERRY N. HIGGINS, ET AL.,

Defendants.

No. 22-CI-001147

Before: Hon. Jessica E. GREEN, Judge, Jefferson Circuit Court.

OPINION AND ORDER

The above-captioned suit came before the Court on July 12, 2022, for a hearing on separate Motions to Dismiss filed by Defendant, Brad Lammi ("Lammi"), and Defendant, Jerry N. Higgins ("Higgins"), as well as various Motions filed by Plaintiff *Pro Se,* Gary Robinson ("Plaintiff"). Present at the hearing were Plaintiff, Hon. Alyssa Cochran on behalf of Higgins, and Hon. Max Schweiger on behalf of Lammi. Based upon the argument of counsel, the memoranda of record, as well as all applicable case, statutory, and procedural law, and being otherwise sufficiently advised, the Court DENIES Plaintiff's various Motions

and GRANTS the Motions to Dismiss of both Lammi and Higgins.

BACKGROUND

Two filings by Plaintiff actually initiated this action in early March 2022: (1) a "Jurisdictional Challenge With Affidavit"[1]; and (2) a pleading styled "2.5 Million Dollar (or the Max State Court Will Allow in Damages) Lawsuit for Violation of the Administrative Procedures . . . impertinent or scandalous matter." Ruling on a motion to strike is left to the trial court's discretion and upset on appeal only for an abuse of the same. *See Goldsmith v. Bennett-Goldsmith,* 227 S.W.3d 459, 461 (Ky. App. 2007).

As for a motion brought pursuant to CR 12.02(f), a defense may be made by such motion for "failure to state a claim upon which relief can be granted." In reviewing a motion to dismiss for failure to state a claim, "the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true." *Littleton v. Plybon,* 395 S.W.3d 505, 507 (Ky. App. 2012). A trial court "should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Edmonson County v. French,* 394 S.W.3d 410,

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[1] Whether the "Jurisdictional Challenge With Affidavit" should be part of this particular case file is seriously in doubt. The pleading itself contains Case No. 17-CI-400112, which corresponds with the Division 5 foreclosure suit discussed in more detail below. Just the same, for purposes of thoroughness, the Court will discuss it briefly when addressing Higgins' Motion to Dismiss given that Higgins is the sole Defendant appearing in the caption thereof.

413 (Ky. App. 2013); *see also Bagby v. Koch,* 98 S.W.3d 521, 522 (Ky. App. 2003). Further, "the question [before the trial court] is purely a matter of law." *D.F. Bailey, Inc. v. GRW Engineers Inc.,* 350 S.W.3d 818 (Ky. App. 2011).

When it comes to reviewing a complaint on a motion to dismiss for the sufficiency of the allegations therein, CR 8.01(1) requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief. . . ." *Id* The main objective of a pleading that purports to state a claim is "to give the opposing party fair notice of [said claim's] essential nature." *Rose v. Ackerson,* 374 S.W.3d 339, 343 (Ky. App. 2012) (quoting *Cincinnati, Newport & Covington Transp. Co. v. Fischer,* 357 S.W.2d 870, 872 (Ky. 1962)).

I. Plaintiff's Various Pending Motions Are Not Well-Taken

The Court will first take up Plaintiff's various Motions styled as follows: (1) a "Motion to Strike Dismissal" filed April 22, 2022; (2) a "Motion to Strike Dismissal" filed May 6, 2022; and (3) "Defendant's Motion to Moot All Pleadings Filed By the Attorneys' Until the Attorney's Prove Subject Matter Jurisdiction on the Court Record," which was also submitted May 6, 2022.

A. [ ]

B. The "2.5 Million Dollar" Suit

As for his "2.5 Million Dollar" pleading, Plaintiff purports to state three claims against Higgins therein pursuant to the following federal legislation: (1) the

Administrative Procedure Act ("APA") (5 U.S.C. § 551, *et seq.*); (2) the Foreign Agent Registration Act ("FARA") (22 U.S.C. § 611, *et seq.*); and (3) the Fair Debt Collection Practices Act ("FDCPA") (15 U.S.C. § 1692, *et seq.*).

1. Plaintiffs APA Claim

Plaintiff's grievance under the APA appears to be that Division Five's Judge Mary Shaw dismissed his "jurisdictional challenge . . . without forcing the attorneys to prove jurisdiction." Suit, at p. 2. Importantly, there is a noticeable absence of factual allegations leveled directly at Higgins.

The APA, by federal statute, deals with the judicial review of actions taken by an "agency" of "the Government of the United States." *See* 5 U.S.C. § 551(1), § 551(13), § 702. There is no allegation by Plaintiff that he seeks review of the conduct of a *federal* agency, and there was no action by a *federal* agency in the context of the Foreclosure Action. Accordingly, as regards Plaintiff's APA claim, Higgins' Motion to Dismiss will be GRANTED.

2. Plaintiffs FARA Claim

In connection with his FARA cause of action, Plaintiff advances conclusory allegations (1) that Higgins is a "foreign agent," and (2) that he has failed to register as such. *See* Suit, at pp. 3-4, 7. The Suit goes no further in fleshing out how or why these alleged facts relate to the Foreclosure Action, nor does it demonstrate how or why, if proven, these averments would . . . No. 17-CI-400112 (Jefferson Circuit Court, Division Five). Relying on what this Court considers persuasive federal case law, property taxes should *not*

be considered "debts" for purposes of the FDCPA. *See Beggs v. Rossi,* 145 F.3d 511, 512 (2d Cir. 1998) (cited with favor in *Boyd v. J.E. Robert Co., Inc.,* 765 F.3d 123, 126 (2d Cir. 2014)). The Second Circuit in *Beggs* concluded that, because the personal property taxes at issue were levied automatically, there was no consumer "transaction" of the type contemplated by the FDCPA (*i.e.*, the consumer did not incur any "debt" as the direct result of engaging in the purchase of a service or a good). *See Beggs,* at 512. State and county taxes are automatically assessed in Kentucky, and a failure to pay same results in a lien attaching to the property. *See generally* KRS Chapter 134. Accordingly, the reasoning in *Beggs* as to the absence of a consumer "transaction" (and thus the absence of an actionable "debt" under the FDCPA) applies here, meaning Higgins' Motion to Dismiss will be GRANTED as to this particular claim as well.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs two Motions to Strike and his separate "Motion to Moot" are DENIED, that Lammi's Motion to Dismiss is GRANTED, and that Higgins' Motion to Dismiss is GRANTED in its entirety.

This is a final and appealable Order.

SO ORDERED.

/s/ Jessica E. Green
Judge, Jefferson Circuit Court

MASTER COMMISSIONER'S REPORT (OCTOBER 30, 2020)

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL.,

Defendants.

Case No. 17CI400112

MASTER COMMISSIONER'S REPORT

The matter is before the Master Commissioner for review and recommendation regarding the Exceptions to Sale filed by Defendant Gary Robinson. pro se, on September 2, 2020. Defendant's tendered Order requests that the August 27, 2020 judicial sale he set aside and that he be permitted to redeem the subject property located at 653 South 20th Street, Louisville, KY 40203. For his exceptions. Defendant includes multiple reasons why he believes the judicial sale and the judgment and order of sale should be set aside. Therefore, Defendant is attempting to challenge the final judgment and order of sale as opposed to objecting to the judicial sale process and the sale report.

RELEVANT FACTS

This action for foreclosure was filed by Plaintiff, Tax Ease Lien Servicing, LLC on January 24, 2017 as the owner of the Certificate of Delinquency for unpaid ad valorem taxes for the 2007 tax year. Defendant, Gary Robinson was personally served with the Plaintiff's Complaint on February 11, 2017. On March 16, 2017. Plaintiff's counsel tendered a Notice of Filing of Answer, which attached a letter signed by Gary B. Robinson, Sr., dated February 21, 2017. wherein Mr. Robinson did not dispute the debt but refused to offer payment.

The Defendant/Counterclaimant/Cross-Claimant. Kentucky Tax Lien Fund, LLC (hereinafter KTLF) filed its Answer, Counterclaim and Cross-Claim on February 22, 2017 as the owner of the Certificate of Delinquency for unpaid ad valorem taxes for the 2009 tax year. Defendant, Gary Robinson was constructively served with KTLF's Answer, Counterclaim and Cross-Claim after service via Sheriff was unsuccessful. The Report of the Warning Order Attorney was filed on July 1, 2019. Thereafter, KTLF moved for Judgment and Order of Sale. No Response to the motion for judgment was filed by Defendant, and the Judgment and Order of Sale was entered October 3, 2019. The subject property was scheduled for Commissioner's Sale on November 22, 2019, however, the sale was withdrawn due to the Chapter 13 Bankruptcy filing by Defendant prior to sale.

On December 5, 2019, Jan R. Waddell. Sr., counsel for Defendant, filed a Motion to Set Aside and Void the Judgment and Order of Sale. However, since Defendant had sought bankruptcy protection in the U.S. Bankruptcy Court for the Western District of

Kentucky, the Defendant's motion filed in Jefferson Circuit Court was remanded without review as set forth in the Master Commissioner's Report filed December 26, 2019.

FINDINGS

Your Commissioner has reviewed the record and the Defendant's previously filed Motion to Set Aside and Void the Judgment and Order of Sale together with the Response to the motion filed by KTLF by Jerry N. Higgins on December 13, 2019, and finds the objections in the Response are well taken. The motion is factually inaccurate as it largely challenges the claims of the Plaintiff rather than the judgment secured by KTLF. The record reflects KTLF properly served the Defendant with notice of its claims and the challenge by Defendant is without merit. Defendant was served with a copy of KTLFs Motion for Judgment and Order of Sale, and the Defendant did not file a response. Defendant was served with a copy of the Master Commissioner's Report filed September 19, 2019 recommending Judgment and Order of Sale for KTLF, and the Defendant did not file an objection. Accordingly, Judgment and Order of Sale was entered, and the matter was referred for judicial sale. The Response filed by KTLF also provides that prior to filing for Bankruptcy protection the Defendant contacted KTLF and was provided with the payoff amount needed to satisfy KTLF, and, thereby, stop the foreclosure action. The matter was rescheduled by KTLF for judicial sale, and the subject property was sold at Commissioner's Sale on August 27. 2020, with the Sale Report filed on September 1. 2020.

CONCLUSION

Your Commissioner finds the Defendant's request for relief from the Judgment and Order of Sale is not justified by the record, and the Defendant has failed to claim a defect in the conduct of the judicial sale. Defendant cannot allege he was denied due process in this 2017 foreclosure action. Defendant's failure to meaningfully engage in the foreclosure process and take steps to resolve the action does to translate into shortcoming in the foreclosure process or defects in the sale. The subject property was sold to a third party at judicial sale, there is no Right of Redemption pursuant to KRS 426.530, and the sale is ready to be confirmed.

RECOMMENDATION: If no objections are filed within the period prescribed by CR 53.05, do not sign the Order tendered by Defendant.

Respectfully submitted,

Carole C. Schneider
Master Commissioner

By: /s/ Carole C. Schneider
M.C.
10/30/2020

Commissioner's fee: NONE
NO. 17CI400112

[. . .]

MASTER COMMISSIONER'S DEED

THIS DEED made between MID SOUTH CAPITAL PARTNERS, LP AS ASSIGNEE OF TAX EASE LIEN SERVICING, LLC; GARY ROBINSON; 1ST UNITED LABOR FEDERAL CREDIT UNION; CAPITAL ONE BANK (USA), NA; KENTUCKY TAX LIEN FUND, LLC; LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT; COMMONWEALTH OF KENTUCKY, DIVISION OF UNEMPLOYMENT INSURANCE;, Grantors, and

CHRISTOPHER B. HERNDON, 3401 Bank Street, Louisville, KY 40212, Grantee, all by CAROLE C. SCHNEIDER, MASTER COMMISSIONER of the Jefferson Circuit Court. Glassworks Building, 815 W. Market Street, Suite 503, Louisville, Kentucky 40202.

WHEREAS the Jefferson Circuit Court, Division 5, on 10/3/2019, rendered a judgment in the action styled 17CI400112 TAX EASE LIEN SERVICING, LLC V. GARY ROBINSON, ET AL., ordering the sale of the following described property situated in Jefferson County, Kentucky:

> Beginning at a point in the East line of Twentieth Street, 128 feet North from the North line of Broadway as measured along the East line of Twentieth Street; thence North 28 feet along the East of Twentieth Street; and extending back Eastwardly from Twentieth Street between parallel lines running at right angles to Twentieth Street to the West line of Lot No. 1, as shown on the plat of Voss Subdivision of record in Deed

Book 452, Page 639, in the Office of the Clerk of the Jefferson County Court, Kentucky, said line being also the East line of Lot No. 4 of the Subdivision between Ray and Deerings; the South line of said lot or parcel of property being 102.57 feet in length and the North line of said lot being 103.21 feet in length, being the lot marked "Lot No 5" on the blue print marked "Exhibit Survey" filed with the plaintiff trustee's amended and supple mental petition in Action No. 291-024 in the Jefferson Circuit Court.

Being the same property conveyed to Gary Robinson, by Deed dated January 4, 2006, of record in Deed Book 8796, Page 51, in the Office of the Clerk of Jefferson County, Kentucky.

Pursuant to the order, the Master Commissioner sold the above property on 8/27/2020 and three business days later reported the sale to CHRISTOPHER B. HERNDON at the sum of $25,000.00. The purchaser has complied with the terms of sale. The Court has confirmed the report of sale and ordered the Master Commissioner to convey said property as hereinafter set out.

NOW, THEREFORE, THIS DEED FURTHER WITNESSETH, that the Grantors, by the Master Commissioner, for and in consideration of the premises, and for the further consideration of said sum of $25,000.00, paid or credited by the Grantee as aforesaid, have granted, bargained, and sold, and by these presents do grant, bargain, sell, release, confirm and convey unto said Grantee the property hereinbefore described, together with the appurtenances thereon,

in fee simple, free and clear of all liens, encumbrances and interest of the parties hereto, except sold subject to: A) Easements, restrictions and stipulations of record; B) Any matters which would be disclosed by an accurate survey or inspection of the property: and C) Any current assessments for public improvements levied against the property.

Master Commissioner Carole C. Schneider prepared this Deed and states that the consideration reflected in this Deed is the full consideration paid for the property and meets the requirements of KRS Chapter 382.

IN TESTIMONY WHEREOF, Master Commissioner. Carole C. Schneider, for and on behalf of the parties, has hereunto set her name this day.

Deed and Consideration Certificate
EXAMINED AND APPROVED

/s/ Mary Shaw
Judge

CAROLE C. SCHNEIDER
Master Commissioner
Jefferson Circuit Court

/s/ Carole C. Schneider

No: 17CI400112

Commonwealth of Kentucky)
)
Jefferson Circuit Court)

The foregoing instrument was acknowledged before me this 3rd day of November, 2020, by Carole C. Schneider, Master Commissioner, of behalf of all parties herein.

[SEAL not legible]

Said Deed, being examined and approved by the Judge, is ordered to be certified by the Clerk of the Jefferson County Court for record, which is hereby done.

ATTEST:

/s/ David L. Nicholson
Clerk
Jefferson Circuit Court

[signature not legible]
Date: 11-9-2024

ORDER DENYING MOTION TO VOID OR SET ASIDE JUDICIAL SALE, JEFFERSON CIRCUIT COURT DIVISION NINE (SEPTEMBER 2, 2020)

JEFFERSON CIRCUIT COURT DIVISION NINE (9)

GARY ROBINSON,

Plaintiff,

v.

JERRY N. HIGGINS, ET AL.,

Defendants.

No. 22-CI-001147

Before: Hon. Jessica E. GREEN, Judge, Jefferson Circuit Court.

ORDER

The Court being sufficiently advised, hear by order that the August 27, 2020 Judicial sale of 17-CI-400112 be Void or Set Aside and Defendant Gary Robinson be allowed to redeem his property at 653 South 20 Street, Louisville, Kentucky 40203 in compliance with KRS 134.546, 134.549(3) and CR 60.2 to remove ET, AL. from Defendant's name

Order

Motion is Denied. The Check find and from Δ Gary Robinson Shall be returned to this.

/s/ Mary Shaw
Judge

Entered in Court

David L. Nicholson
Clerk
Nov 23 2020

By: {signature not legible}
Deputy Clerk

Jefferson Circuit Court
Commissioner's Office

Jefferson Circuit Court
Master Commissioner's Office
Glassworks Building
815 West Market Street. Sute 503
Louisville, KY 40202
Office: 502-574-5934
www.jeffcomm.org

12/1/2020

Gary Robinson
653 South 20th Street
Louisville. KY 40203

Re: 17CI400112-Jefferson Cir. Ct. Div. 5
Tax Ease Lien Servicing v. Gary Robinson

Pursuant the Order entered by the Honorable Mary Shaw on 11/23/2020. I am returning to you Park Community Credit Union cashier's check number 0000768740 in the amount of $12,476.23. together with a copy of the entered Order.

/s/ Carole C. Schneider
Master Commissioner

CCS/
Enclosures attached

AFFIDAVIT OF GARY ROBINSON
(NOVEMBER 18, 2020)

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON,

Defendant.

No. 22-CI-001147

Before: Mary SHAW, Judge.

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON,

Defendant.

No. 17CI400112

Before: Hon. MARY SHAW, Judge.

Comes the Affiant, Gary Robinson, after being duly sworn and states as follows:

1. That the affiant, Gary Robinson, is Defendant in the above style case.
2. That the Defendant is heir to his mother's estate of the property in case No. 17CI400112 and resided therein for more than 30 years in the Russell Neighborhood.
3. I have maintained the property, invested in over Twenty Thousand Dollars ($20,000.00) In substantial improvements.
4. I have had financial downturns in the pass which caused delinquencies in the payment of Taxes. All such pass delinquencies were paid in full.
5. The back taxes I had paid was intended to be inclusive of the delinquent taxes described in case No. 17CI400112
6. The amount KTLF quoted me, I contested, not the debt, but the amount of taxes due and payable.
7. I decided to seek legal counsel who advised filing chapter 13 bankruptcy To stop November 22, 2020 sale.
8. I sought second council who advised "I'll make them set it aside".
9. Then Covid 19 hit leaving no contact or communications with legal councils.

10. I am still trying to keep my job but I ran out of time to find out who I owed and how much was needed to be paid
11. The subject property was sold again August 27,2020
12 I ask the County Court Clerk to allow me to pay the cost so I could redeem my property. And the Clerk refuse to give a pay-off price.
13. All this was done before confirmation by motion for hearing.
14. KRS 124.549 AND Civil Rule 60.2 should allow the court to redeem my Property.
15. Since the Commissioner did not allow me a hearing to provide facts and demonstrate my ability to pay the amount KTLF entered in the order of distribution.
16. I filed the exceptions within 10 days after the Commissioner's report as received by me.
17. The commissioner had judge to sign the confirmation before the required 10 days required for exceptions to be filed which denied me due process to redeem my real property.
18. The purchaser will not be prejudiced by any of the allowed statues and rules

Further, the Affiant sayeth naught.

/s/ Gary Robinson

State of Kentucky
County of Jefferson

The Affiant herein, Gary Robinson, subscribed and sworn before me, this 18th day of November, 2020

DEFENDANTS EXCEPTIONS TO SALE
(SEPTEMBER 9, 2020)

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL., PRO. SE.,

Defendants.

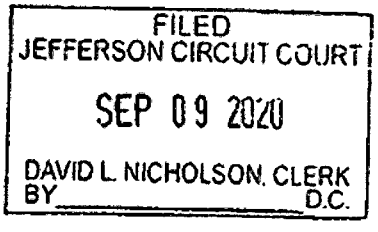
No. 17CI400112

NOTICE

Please Take Notice That The Foregoing Exception/ Motions has been filed for hearing upon master commissioner/court orders as they may please

Exceptions/Motion

Order



JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL., PRO. SE.,

Defendant.

No. 17-CI-400112

DEFENDANTS EXCEPTIONS TO SALE

Now comes the defendant PRO. SE. Gary Robinson and pursuant to Kentucky Law And Respectfully moves this honorable court to set aside and void this courts order for judgment and sale of the Defendant Gary Robinson. Real Property located at 653 South 20th Street Louisville, Kentucky 40203 that was enacted on or about October 3, 2019.

This Sale was held August 27, 2020. A purchaser was obtain.

1. The Defendant was ineffectively assisted by his councils
2. The Defendant lives in this property.
3. The Defendant works an essential job.
4. The Covid 19 Virus prevented him from adequately defending.
5. The Defendant still holds title

6. The Commissioner should comply with KRS 124.549, CR53
7. The Purchaser has not received a deed or taken possession
8. The Motion to set sell aside was never rule on
9. The Defendant council never informed him of any ruling to further his defense.
10. The Defendant never received notice of sale actual or constructive of complaint filed.
11. The Defendant stands with the ware with all to pay the county clerk the amount of judgment in compliance with KRS 426.575
12. The Defendant prays for the court in the name of equitable redemption to void or set aside this sale and any other ruling due the defendant.
13. All These issues should be given a full hearing showing finding facts and conclusion of Law.

Respectfully Submitted

Gary Robinson PRO SE
Defendant

The Instrument Prepared By:

/s/ Gary Robinson
Gary Robinson PRO. SE.
653 South 20th Street
Louisville, Kentucky

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL., PRO. SE.,

Defendant.

No. 17CI400112

ORDER

The court being sufficiently advised, hear by orders that the August 27, 2020 judicial sale of 17CI400112

Be Void Or Set Aside and Defendant Gary Robinson Be Allowed To Redeem His Property at 653 South 20th Street Louisville, Kentucky 40203

[. . .]

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL., PRO. SE.,

Defendants.

No. 17CI400112

NOTICE

Please Take Notice That The Foregoing Exception/ Motions has been filed for Hearing upon master commissioner/court orders as they may please

Exceptions/Motion

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL.,

Defendants.

No. 17CI400112

MASTER COMMISSIONER'S REPORT

Supplement to objections to the Commissioner's Report recommending confirmation of Sale

MOTION

Memorandum of authority and particulars of commissioners Report to confirm Sale

1 Comes the Defendant, Gary Robinson, Pro se, Defendant in the above style case in compliance with CR 15.1 and exceptions to the Master Commissioners Report in Case No. 17C400112.

2 Objections to confirmation pleadings clearly shows all reason for not confirming sale, Objections to the sales process, and the report, in keeping with CR 53 and Administrative Procedures of The Court of Justice Part IV.

Commissioners of the Circuit Court, Section 3, requiring hearing for orders produced and tendered to

have findings of facts and conclusions of laws to which non have been produced

3 Without such compliance with the Administrative rules, Defendant who plead for Hearings to establish facts for consideration to apply justice are denied their due process rights.

4 The hand-picked relevant facts omitted from the report clearly gives sufficient reason Not to confirm the sale.

5 The Court is statutorily required to administer and follow all rules, laws and statues That apply to carryout due process and justice in a non prejudiced manner.

6 To allow confirmation defeats the legislative intent to give Certificate of delinquent owners their damages (relief) without being unjust to Defendant pursuant to KRS 134.546.

7 To allow confirmation violates KRS 134.546 and KRS 134.549.

8 The Defendant submits certified funds that the judgement calls for and distribution pleadings require.

9. The Defendant demands relief pursuant to KRS 134.546 and KRS 134.549

ANALYSIS

The records show that the deed has not been delivered and the report confirmation would allow an arbitrary unsound legal discretionary view that does not consider all the circumstances with due regard to the rights of all concerned pursuant to KRS 134.546 and KRS 134.549.

CONCLUSION FROM LEGAL MEMORANDUM AND PARTICULARS

The Commissioner is in control of sufficient funds to comply with KRS 134 420 and any and all relevant rules that gives relief to all parties involved because of redemption rights are personal rights KRS 426.540 George vs Cone 91 SW, 557-77. Denial is in violation of Defendant's due process rights.

Respectfully submitted

/s/ Gary Robinson
Gary Robinson, Pro se,
Defendant

Prepared by

/s/ Gary Robinson
Gary Robinson, Pro se
633 South 20 st. Louisville. Ky. 40203

PLAINTIFF MOTION TO CONFIRM SALE (SEPTEMBER 14, 2020)

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL.,

Defendants.

Case No. 17-CI-400112

Before: Hon. MARY SHAW, Judge.

NOTICE

Please take notice that the undersigned makes the following Motion in the above referenced action and tenders the Order of Distribution attached hereto. Said Motion stands automatically referred to the Master Commissioner pursuant to JRP 506B

MOTION TO CONFIRM SALE AND FOR ORDER OF DISTRIBUTION OF SALE PROCEEDS TO ALL PARTIES SO ENTITLED

Comes Cross-Plaintiff. Kentucky Tax Lien Fund. LLC ("KTLF"). by counsel, and moves this Honorable Court to Confirm the sale of the property subject to this action and to enter the Order of Distribution tendered herewith. All amounts claimed by the movant

in its total are authorized pursuant to KRS Ch. 134 (including but not limited to KRS 134.420 and KRS 134452) and KRS 411.195. In addition, KTLF collected and presents to the Court for review amounts owed to other parties herein who may be entitled to take from sale proceeds currently in the hands of the Master Commissioner. An affidavit evidencing KTLF's attorney fees and costs expended herein is attached hereto as Exhibit A. An Affidavit evidencing KTLF's Pre-litigation attorney fees and costs expended herein is attached hereto as Exhibit B. An Order of Distribution, based on the authority cited above. payoffs collected from others herein that are entitled to take from sale proceeds and the Affidavit attached hereto, is tendered herewith. Attached is documentation of amounts owed to other *ad valorem* tax lien holders herein as Exhibit C.

JRP 604 CERTIFICATE

This is to certify that the money sought to be withdrawn does not represent the proceeds of sale of property for reinvestment, and further that the funds in the hands of the Master Commissioner of the Jefferson Circuit Court, have not been, and are not now, subject to any attachment or garnishment served on the Master Commissioner of this Court, in any action pending in this, or any other Court; Further, pursuant to the terms of the judgment entered herein, no other party except for those who hold liens for unpaid *ad valorem* taxes which are of equal dignity to those of KTLF, hold any lien superior herein to the lien asserted for collection by KTLF.

CR 4.11 BOND

Seeing that this action involves constructively served parties and less than One (1) year has passed since the entry of judgment, a properly executed CR 4.11 Bond has been tendered to this Court by the Cross-Plaintiff, KTLF.

Respectfully submitted,

/s/ Jerry N. Higgins
Jerry N. Higgins, MSSW, JD
Law Office of Jerry N. Higgins. PLLC
3426 Paoli Pike
Floyds Knobs, IN 47119
Phone: 502-625-3065
Facsimile: 812-542-1595
jnh@jerryhigginslaw.com
Counsel for Kentucky Tax Lien Fund, LLC

CIVIL SUMMONS
(MARCH 6, 2022)

JEFFERSON County
Random Judge Assignment Report

Court: Circuit Court

Requestor: SAMANTHA_FOGEL

Reference/Case Number: 22-ci-001147

This Case has been Assigned to: 9 Division

Judge McDonald-Burkman 630423

Control Date/Time 03/07/2022 12:52:40PM

AOC-105 Doc. Code: CI
Rev. 1-07
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
CR 4.02; CR Official Form 1
Case No. 22CI01147

CIVIL SUMMONS

Gary Robinson

vs.

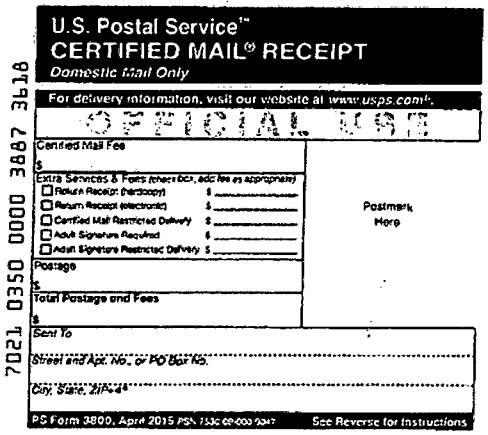
Law Office of Jerry N. Higgins

THE COMMONWEALTH OF KENTUCKY
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a legal action has been filed against you in this Court demanding relief as shown on the document delivered to you with this Summons. Unless a written defense is made by you or by an attorney on your behalf within 20 days following the day this paper is delivered to you. judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties delivered to you with this summons.

Date: Mar 07 2022.



AOC-104 Doc. Code: CCCS
Rev. 9-21
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
Case No. 22CI01147

CIVIL CASE COVER SHEET

Plaintiff/Petitioner or
In RE/IN THE INTEREST OF Gary Robinson

Defendant/Respondent, if applicable Jerry Higgins

☑ Check here if YOU DO NOT HAVE AN ATTORNEY and are REPRESENTING YOURSELF (a Self-Represented (Pro Se) Litigant)

Nature of the Case

Real Property

Property Rights (PR)

JEFFERSON CIRCUIT COURT DIVISION NINE (9)

In Care of: Gary Robinson
1935 W. Broadway Street
Louisville, KY 40203
22CI01147

3/6/2022

Bobbie Holsclaw
Jefferson County Clerks Office
PO Box 33033
Louisville, KY 40232

"NOTICE OF CLAIM FOR PROPERTY TAX LAWSUIT"

I'm serving my "Notice of Claim" for violation of my Constitutional Rights pursuant to 18 U.S.C Sec. 241, and Sec. 2414 Conspiracy against Rights, and Racketeering Statutes (R.I.C.O.)), and for Conspiracy against rights for unlawful property tax collections, racketeering, violation of the IRS Code, and unlawfully re-classifying my property for the sole purpose of taxation. There is no law that requires Private Owners to Record their private property deeds in the county recorder's office. The recorder of records office has a "good Faith" obligation to explain "full disclosure" and serve written notice in advance, of the legal incapacities and disabilities which were about to befall the plaintiff by recordation, See: U.C.C. 1-203, and 1-201 (25,26,27).

A personal property tax on a free sovereign, private individual must be Constitutional, and applied as the Constitution regulates it. Any other means of collecting property taxes outside of the constitution

makes the tax collection void in law. Direct taxes must be "apportioned among the several states which may be included within this Union". [*See* Article I, Section 2, Clause 3 and Article 1, Section 9, Clause 4.] These include taxes directly upon people or personal property. " . . . all duties, imposts and excises [indirect taxes], shall be uniform throughout the United States". [*See* Article 1, Section 8, Clause 1.]

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading . . . Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities. If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately." *U.S. v. Tweel*, 550 F.2d 297, 299. *See also U.S. v. Prudden*, 424 F.2d 1021, 1032; *Carmine v. Bowen*, 64 A. 932.

The Constitution of the United States of America and Case law shows that since capitation (taxes and taxes on personal private property must be apportioned among the States in accordance with the United States Constitution, my personal private property tax is NOT being legally apportioned among the States (or State of Kentucky) by Jefferson County, therefore, is an unlawful tax. I demand to have the deed to my property removed from your records and returned to me. I demand to have all information (pertaining to my property being unlawfully taxed) removed from the record of agencies related to code enforcement or tax collection. I also demand that any public or State, debts attached to my property be discharged. I'm

demanding these issues be addresses within 30-days, to avoid the tiling of my lawsuit for 5.5-million in Federal Court. I will also file a freedom of information request demanding copies of all of the records pertaining to my property being unlawfully re-classified for the sole purpose of taxation.

Please Be Advised!

/s/ Gary Robinson

TAX EASE LIEN SERVICING, LLC, "Plaintiff",

v

GARY ROBINSON "Defendant(s)"

File Number 2021-sc-0268
Case Number 17CI400112

JERRY N. HIGGINS
Attorney for alleged "Plaintiff"

NOTICE, not a motion

Addressed to JERRY N. HIGGINS,
Law Office of Jerry N. Higgins, PLLC
3426 Paoli Pike
Floyds Knobs, IN 4 7119

JURISDICTIONAL CHALLENGE WITH AFFIDAVIT

Gary Robinson by limited appearance to this matter in this court of record with clean hands, without prejudice and with all rights reserved including UCC 1-308 in dealing with this court, in pro per, sui juris (NOT PRO SE), have not seen any evidence that proves how this court got its jurisdiction.

Gary Robinson, has the right to challenge the jurisdiction of any court that attempts to force compliance with its deceptive practices, procedures, rules, and word-smithing at any time, and this right has been upheld by numerous decisions by the Supreme Court of the United States. Once jurisdiction has been challenged, it is the mandatory obligation of the opposing party to prove the basis of the court having jurisdiction to proceed in the matter before it, and until that has been put on the Record of the court, the court can proceed no further.

Further, the Supreme Court of the United States has ruled that jurisdiction can be challenged at any time even as much as 15 (fifteen) years after a judgment has been entered. Decisions of the Supreme Court of the United States are *mandatory requirement to be complied with by all courts,* state and federal and leave those courts no discretion as to whether or not to comply. The following Supreme Court cases set out the mandatory requirements that must be complied with.

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo v. US,* 505 F2d 1026.

"Where there is no jurisdiction over the subject matter, there is no discretion to ignore that lack of jurisdiction." *Joyce v. US,* 474 F2d 215.

"Generally, a plaintiffs allegations of jurisdiction are sufficient, but when they are questioned, as in this case, the burden is on the plaintiff to prove jurisdiction." *Rosemond v. Lambert,* 469 F2d 416.

"Judgment rendered by court which did not have jurisdiction to hear cause is void ab initio." *In Re Application of Wyatt,* 300 P. 132; *Re Cavitt,* 118 P2d 846. "It is elementary that the first question which must be determined by the trial court in every case is that of jurisdiction." *Clary v. Hoagland,* 6 Cal.685; *Dillon v. Dillon,* 45 Cal. App. 191,187 P. 27.

The response from the Party/Petitioner/Plaintiff asserting proper jurisdiction throughout this case must be made on a point by point basis for all the moving Party/Petitioner/Plaintiff actions, filings and

motions are true and correct in relation to the proper State laws, codes, rules, regulations, statutes used to conduct this case that proper jurisdiction was always maintained from the record including the incomplete summons.

"A departure by a court from those recognized and established requirements of law, however close the apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is as much an "excess of jurisdiction" as where there exists an inceptive lack of power." *Wuest v. Wuest,* 53 Cal. App. 2d 339,127P.2d 934.

"A court has no jurisdiction to determine its own jurisdiction for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles,* 171 P2d; 331 US 549, 91 L.Ed. 1666, 67 S. Ct. 1409.

"Where there is no jurisdiction there is no judge; the proceeding is as nothing. Such has been the law from the days of the Marshalsea." 10 Coke 68; also *Bradley v. Fisher,* 13 Wall 335, 351." *Manning v. Ketcham,* 58 F.2d 948.

"A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter any authority exercised is a usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible." *Bradley v. Fisher,* 13 Wall 335, 351, 352.

"Plaintiffs bear the burden of establishing subject matter jurisdiction." *KNAPP MEDICAL CENTER, et al. v. Eric D. HARGAN,* 875 F.3d 1125, (2017).

"Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered." *McNutt v. GMAC,* 298 US 178. Emphasis added. The origins of this doctrine of law may be found in Maxfield's *Lessee v. Levy*, 4 US 308.

In a very recent decision, the Supreme Court unequivocally stated in *James v. City of Boise Idaho,* 136 S. Ct. 685 (2016):

"It is this Court's responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law." *Nitro-Lift Technologies, L.L.C. v. Howard,* 568 U.S. ___, ___, 133 S. Ct. 500, 503, 184 L.Ed.2d 328 (2012) (*per curiam*) (quoting *Rivers v. Roadway Express, Inc.,* 511 U.S. 298, 312, 114 S. Ct. 1510, 128 L.Ed.2d 274 (1994) (internal quotation marks omitted)). And for good reason. As Justice Story explained 200 years ago, if state courts were permitted to disregard this Court's rulings on federal law, "the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable." *Martin v. Hunter's Lessee,* 1 Wheat. 304, 348, 4 L.Ed. 97 (1816)."

The court also said:

"The Idaho Supreme Court, like any other state or federal court, is bound by this Court's interpretation of federal law" [emphasis added] 3

Gary Robinson at this time makes that challenge and demands that the Jefferson Circuit Court Division 5 order the so-called Plaintiff in this case provide direct evidence and proof on the Record that the Jefferson County Circuit Court Division 5 *is* a judicial power court which was created by the Constitution for the State of Kentucky and operates in compliance with all of the provisions of the Constitution for the United States of America.

The Court would lack jurisdiction being that there is evidence to support the improperly contrived subject matter by proper legislative process; and the Eleventh Amendment of the United States Constitution removed all "judicial power" in law, equity, treaties, contract law and the right of the State to bring suit against the People, therefore the " alleged Defendant" now challenge jurisdiction for the record.

Standing must also be proven to show jurisdiction. In order to file a case in court, litigants must have "standing" to sue. To have standing, Supreme Court doctrine requires that parties have an "injury in fact." This injury must be specific and concrete-rather the speculative and abstract. Standing requires the violation of a legal right that causes damage. "A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984)

All orders or judgments issued by a judge in a court of limited jurisdiction must contain the findings of the court showing that the court has subject-matter jurisdiction, not allegations that the court has jurisdiction.

Any explanations to the above-mentioned matters MUST be done on a point by point basis with verified facts that are referenced in law, Legislative acts, Federal and/or State constitutions. The response from the Party/Petitioner/Plaintiff asserting proper jurisdiction must be sworn to under the penalties of perjury of the United States of America that response is true and correct, certified by notarization, and must be able to be understood by any reasonable man/woman should understand.

Pleadings of this Party SHALL NOT BE dismissed for lack of form or failure of process. All the pleadings are as any reasonable man/woman would understand, and in support of that claim I submit the following:

> *"And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts or the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with*

his demurrer as the cause thereof And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe. (a)" *Judiciary Act of September 24th, 1789,* Section 342, FIRST CONGRESS, Sess. 1, ch. 20,1789.

AFFIDAVIT

State of Kentucky)
) ss.
county of Jefferson)

TO ALL TO WHOM THESE PRESENTS SHALL COME

I, the Affiant, who goes by the appellation, Gary Robinson, a man, a man standing as an Inhabitant on Jefferson the county, Kentucky the land, non-territorial to the United States and therefore without the United States, being of sound mind, and over the age of twenty-one, reserving all rights, being unschooled in law, and who has no BAR attorney, is without an attorney, and having never been re-presented by an attorney, and not waiving assistance of counsel, knowingly and willingly Declares and Duly affirms, in accordance with laws in and for the State of Kentucky, in good faith, with no intention of delaying, nor obstructing, and with full intent for preserving and promoting the public confidence in the integrity and

impartiality of the government and the judiciary, that the following statements and facts, are true and correct of Affiant's own first-hand knowledge, understanding, and belief, do solemnly declare, and depose and say:

1. That I, Gary Robinson, declare that I am competent to state to the matters set forth herein; and
2. That I, Gary Robinson, declare that I have personal knowledge of the facts stated herein; and
3. That I Gary Robinson, declare the original contract was altered, and stolen.
4. That I Gary Robinson, declare there was an addition to the agreement with the following items that are not showing on the contract filed in this case.
    a) The intent of the agreement was the original party who funded the alleged loan per the bookkeeping entries is to be repaid the money,
    b) The bank or financial institution involved in the alleged loan will follow GAAP,
    c) the lender or financial institution involved in the alleged loan will purchase the promissory note from the borrower,
    d) the borrower does not provide any money, money equivalent, credit, funds or capital or thing of value that a bank or financial institution will use to give value to a check or similar instrument,

e) the borrower is to repay the loan in the same species of money or credit that the bank or financial institution used to fund the loan per GAAP.

f) the original written agreement gives full disclosure of all material facts.

5. That I, Gary Robinson, declares the original contract will show the bank agreed that I could repay using another IOU-promissory note payable in the same species of money, money equivalent or credit or funds or capital that the bank or financial institution used per GAAP to fund the loan.

6. That I Gary Robinson, declare damages because the note was altered and stolen.

7. That I, Gary Robinson, declare that my signature cannot testify that the bank lent me the bank's money to purchase the browser's promissory note.

8. That I Gary Robinson, declare the plaintiff failed to provide the court adequate assurance of due performance.

9. That I Gary Robinson, declare the bank did not give me a deposit slip in violation of 12 USCA Sec 1813

10. That I, Gary Robinson, declare if the court does not have on record what the bookkeeping entries are, the attorney cannot prove they performed under the agreement and funded the loan to the me.

11. That I, Gary Robinson, declare that all the facts stated herein are true, correct, and certain, admissible as evidence, and if called upon as a witness I will testify to their veracity; and

12. That I, Gary Robinson, declare that I am not now, nor have I been in the past 10 years, federal employee, or federal personnel; and

13. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISION 5 COUNTY, KENTUYCKY, or any/all aliases of this name, is not a lower federal district court limited in jurisdiction to only those areas which are federal enclaves, and I believe that no contrary evidence exists; and

14. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY, KENTUCKY or any/all aliases of this name, is not without *in personam* jurisdiction over Gary Robinson, one of the People of Kentucky, and I believe that no contrary evidence exists; and

15. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISON 5 OF JEFFERSON COUNTY KENTUCKY, or any/all aliases of this name, does not have the ability to obtain jurisdiction over one of the People of Kentucky, the

property of one of the People of Kentucky, and I believe that no contrary evidence exists; and

16. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY KENTUCKY, or any/all aliases of this name, is not limited in authority to only administrative power over the artificial entity/legal person, Gary Robinson, and I believe that no contrary evidence exists; and

17. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY KENTUCKY, or any/all aliases of this name, is riot an administrative power only court, which is masquerading as a judicial power court, which was created by the LEGISLATURE OF STATE OF KENTUCKY, and I believe that no contrary evidence exists; and

18. That I Gary Robinson, declare that I am not in receipt of any evidence or other material facts that judicial power courts, the Jefferson Circuit Court Division 5 Of Jefferson County is not created only by the Constitution for the State of Kentucky, and I believe that no contrary evidence exists; and

19. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the LEGISLATURE OF STATE OF KENTUCKY is not powerless to create

judicial power courts, and I believe that no contrary evidence exists; and

20. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY KENTUCKY, or any/all aliases of this name, is not an administrative power only court created for commercial purposes by the LEGISLATURE OF STATE OF KENTUCKY, acting as an instrumentality of the United States, and I believe that no contrary evidence exists; and

21. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY KENTUCKY, or any/all aliases of this name, is not an administrative power only court forcing compliance with its Orders by use of armed mercenary police actions, and I believe that no contrary evidence exists; and

22. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY KENTUCKY, or any/all aliases, is not by the actions of said court directly violating the rights held by the People under the Constitution for the State of Kentucky, through said court's use of deceptive practices, procedures, rules, and word-smithing, and I believe that no contrary evidence exists; and

23. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that there is any person holding themselves out as a judge for the JEFFERSON CIRCUIT COUNTY DIVISION 5 OF JEFFERSON COUNTY KENTUCKY, who has not taken the proper oath for a state judicial officer, which is required to be taken by Act of Congress, as set out at 1 Stat. 23, which reads:

> "SEC. 1. *Be it enacted by the Senate and [House of] Representatives of the United States of America in Congress assembled,* That the oath or affirmation required by the sixth article of the Constitution of the United States, shall be administered in the form following, to wit: "I, *A.* B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States."
>
> SEC. 3. *And be it further enacted,* That the members of the several State legislatures, at the next sessions of the said legislatures, respectively, and all executive and judicial officers of the several States, who have been heretofore chosen or appointed, or who shall be chosen or appointed before the first day of August next, and who shall then be in office shall within one month thereafter, take the same oath or affirmation, except where they shall have taken it before; which may be administered by any person authorized by the law of the State, in

which such office shall be Holden, to administer oaths." [Emphasis added] and I believe that no contrary evidence exists; and

24. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that the JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY KENTUCKY, or any/all aliases of this name, is not committing unlawful acts by claiming authority beyond its jurisdiction when it orders to pay fines of the People of Kentucky state, and I believe that no contrary evidence exists; and

25. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that when the KENTUCKY ATTORNEY GENERAL'S OFFICE/JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY, KENTUCKY, or any/all aliases of this name, refuses to rebut this Affidavit, point by point on the Court Record, that said Court is not committing intentional and malicious violations of civil rights against the Gary Robinson, one of the People of Kentucky, and I believe that no contrary evidence exists; and

26. That I, Gary Robinson, declare that I am not in receipt of any evidence or other material facts that there does not exist a clear absence of all jurisdiction in the JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY, KENTUCKY and I believe that no contrary evidence exists.

27. That I Gary Robinson declare the Official Code or Statute of Kentucky Annotated used to foreclose against me are unnamed and missing the 3 elements necessary to be considered a valid law.

28. That I Gary Robinson declare the codes/ statutes show no signs of authority on their face as recorded in the Official Code or Statute of Kentucky Annotated.

29. That I Gary Robinson declare the Constitution and the Supreme Court of Kentucky asserted that a statute/codes must have an enacting clause.

30. That I Gary Robinson declare the Constitution stated that "The enacting clause is that portion of a code or statute which gives it jurisdictional identity and constitutional authenticity." *Joiner v. State.*

31. That I Gary Robinson declare without an enacting clause, the laws referenced in the complaints have no official evidence that they are from an authority to which the I am is subject to or required obey.

FURTHER AFFIANT SAITH NOT.

I declare under the penalty of bearing false witness before God and Men as recognized under the laws in and for The State of Kentucky, the Laws of the United States of America and the Law of Nations, acting with sincere intent and full standing in law, do herewith certify and state that the foregoing contents are true, correct, complete, certain, admissible as evidence, and not intended to mislead anyone, and that Gary Robinson executes this document in accordance with Gary Robinson's best knowledge and understanding without dishonor, without recourse; with All rights reserved, without prejudice.

As done this 6th day of March in the year 2022, under penalty of perjury under the laws of the United States of America.

L.S. /s/ Gary Robinson
By: Gary Robinson

Duly sworn this 1st day of March, 3/6/2022

STATE OF KENTUCKY)
) JURAT
COUNTY OF JEFFERSON)

Before me the undersigned, a Notary acting within and for the County of Jefferson and State of Kentucky on this 6th day of March, 3/6/2022, personally appeared and known to me – OR – proved to me on the basis of satisfactory evidence to be the person whose names is subscribed to the within instrument, to be the identical Man, Gary Robinson, who being duly sworn, declared the above to be true, correct, and not meant to mislead, to the best of his firsthand knowledge, understanding, and belief, by his free will and voluntary act and deed by his signature on the foregoing document, executed the within instrument.

Given under my hand and seal this 7th day of March, 3/6/2022.

/s/ Cynthia B. Baker
Notary Signature
[SEAL]

/s/ Cynthia B. Baker
Printed Notary Name

My commission expires

Cynthia B. Baker
Notary Public State at Large KY
My commission Expires March 13, 2022
ID: #595583

CONCLUSION with DIRECTIVE

WHEREFORE, Gary Robinson, having duly challenged the jurisdiction and claim of judicial power of JEFFERSON CIRCUIT COURT DIVISION 5 OF JEFFERSON COUNTY, KENTUCKY does now demand and direct said Court to order the Plaintiff in said cause to prove on the Record of this instant case that the Declarations of Gary Robinson are invalid and to prove that this Court was created by the Constitution for the State of Kentucky holding judicial power. And that the judges who have presided over this case prove by certified archival documents that they had on file the required oath set forth by Act of Congress as 1 Stat. 23 before they issued the orders, which said judges claim to have judicial power to issue and to have enforced by any law enforcement agency. Gary Robinson serves Administrative/Judicial Notice on this Court, that unless and until the above Affidavit is rebutted in its entirety, point by point, it stands as the Law of this instant case. Pursuant to *Melo v. US,* this Court must, once jurisdiction has been challenged, as it now has been, halt all further proceedings and stay all Orders/Writs that this Court has issued. Further, this Court shall issue an Order to the Plaintiff to prove jurisdiction on the Record of this case and rebut the above Affidavit, point by point, within 10 days of the filing of this Challenge of

Jurisdiction. Should this Court refuse to issue such order to the Plaintiff, this Court admits on the Record of this case that all orders which have been issued by any alleged judge of this Court in this instant case are VOID, not merely voidable. And, should this Court refuse to issue an order declaring all Orders in this case VOID, that such refusal or silence is a Tacit admission that the Court is intentionally and maliciously violating the unalienable civil rights of, Gary Robinson one of the People of Kentucky; and further, this Court, as a result of its Tacit admission agrees, that a Civil Rights complaint, against all perpetrators of the violations, would be an appropriate action.

Approve as to form

/s/ Gary Robinson
By: Gary Robinson

VERIFICATION

I, Gary Robinson, a Kentucky State Citizen and one of the People of Kentucky, makes this Verification based on personal knowledge of matters set forth herein and appearing without waiving any rights or remedies, being competent in mind and body to testify, do hereby declare, verify and affirm that the facts stated herein are true, correct, and complete in all material fact, not misrepresented based on my own knowledge to the best of my current information, knowledge and belief under the penalty of perjury of the laws of the United States of America and the laws

of Kentucky, and is admissible as evidence in a court of law or equity, except as to those matters that are therein made upon information and belief, and as to those claims or facts, I believe them to be true and admissible as evidence, and if called upon as a witness, I will testify as to the veracity of my statements.

Entered this 6th day of March, 3/6/2022.

L.S. Gary Robinson
Gary Robinson

/s/ Cynthia B. Baker
Notary Signature
[SEAL]

/s/ Cynthia B. Baker
Printed Notary Name

My commission expires

Cynthia B. Baker
Notary Public State at Large KY
My commission Expires March 13, 2022
ID: #595583

{certificate of services excluded}

**AMENDED NOTICE OF APPEAL,
KENTUCKY COURT OF APPEALS
(AUGUST 5, 2022)**

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL.,

Defendants.

No. 17-CI-400112

Before: Hon. MARY SHAW, Judge.

ENTRY OF APPEARANCE

The undersigned, Zachary L. Taylor with the law firm Taylor Couch PLLC, hereby enters his appearance on behalf of Defendant, Gary Robinson.

Respectfully submitted,

TAYLOR COUCH PLLC

/s/ Zachary L. Taylor
ZACHARY L. TAYLOR (KBA 92702)
130 Saint Matthews Avenue, Suite 301
Louisville, Kentucky 40207
Phone | Fax: (502) 822-2500
ztaylor@taylorcouchlaw.com

{certificate of services excluded}

JEFFERSON CIRCUIT COURT DIVISION FIVE (5)

TAX EASE LIEN SERVICING, LLC,

Plaintiff,

v.

GARY ROBINSON, ET AL.,

Defendants.

No. 17-CI-400112

Before: Hon. MARY SHAW, Judge.

AMENDED NOTICE OF APPEAL

The Defendant, Gary Robinson, by counsel, hereby amends his notice of appeal. The original notice of appeal was filed hereon on December 2, 2020, and is amended as follows:

The Defendant, Gary Robinson, by counsel, hereby appeals from the Judgment and Order of Sale entered hereon on October 3, 2019, the Order Referring Case to Master Commissioner for Judicial Sale entered herein on April 8, 2020, the Order Confirming Sale entered hereon on November 9, 2020, the Order of Distribution entered herein on November 9, 2020, and the Order Denying entered herein on November 23, 2020. Copies of these orders are included herewith.

The name of the appellant is Gary Robinson, represented by the undersigned counsel. The names of the appellees are: Plaintiff Tax Ease Lien Servicing, LLC, represented by Brady J. Lighthall; Defendant

Kentucky Tax Lien Fund, LLC, represented by Jerry N. Higgins; Mid Southern Capital Partners, LP, represented by Jud Patterson; and Christopher B. Herndon, *pro se*. The addresses of the appellees and/or their attorneys are listed in the certificate of service below.

Respectfully submitted,

TAYLOR COUCH PLLC

/s/ Zachary L. Taylor

ZACHARY L. TAYLOR (KBA 92702)
130 Saint Matthews Avenue, Suite 301
Louisville, Kentucky 40207
Phone | Fax: (502) 822-2500
ztaylor@taylorcouchlaw.com

{certificate of services excluded}

KATIE MORGAN, Clerk

FAX:
(502)573-6795
OFFICE OF THE CLERK OF
THE COURT OF APPEALS
360 Democrat Drive
FRANKFORT, KENTUCKY 40601-9229

GARY ROBINSON,

Plaintiff,

v.

JERRY N. HIGGINS, ET AL.,

Defendant.

APPEAL FROM JEFFERSON CIRCUIT COURT
DIVISION NINE HONORABLE JESSICA E.
GREEN, JUDGE ACTION NO. 22-CI-001147

COMES NOW, Gary Robinson, proceeding *in propria persona,* and I have reserved my rights under the UCC 1-308, formally 1-207, and demand the statutes used in this court be construed in harmony with Common Law. The code is complimentary to the common law, which remains in force, except where displaced by the code. A statute should be construed in harmony with the common law unless there is a clear legislative intent to abrogate the common law. The code was written as not to abolish the common law entirely. I was not involved with an international

maritime contract, so in good faith, I deny that such a contract exists, and demand the court proceed under Common Law Jurisdiction. I'm only aware of two jurisdiction the court can operate under as per the Constitution, and those jurisdictions are Common Law, and Admiralty Jurisdiction. If the court chooses to proceed under Admiralty Jurisdiction, I will need the court to inform me where I can find the rules of procedures for admiralty jurisdiction for my review, to avoid a violation of my due process, which will result in a civil claim against the court for obstruction of the administration of justice.

Plaintiff, files his civil lawsuit for violation of Constitutional Rights pursuant to 18 U.S.C. Sec. 241, and Sec. 2414 Conspiracy against Rights, and Racketeering Statutes (R.I.C.O.) and states: Plaintiff is suing the county recorder of deeds office, and the State of Kentucky, for Conspiracy against rights for unlawful property tax collections, racketeering, violation of the IRS Code, and unlawfully re-classifying plaintiff property for the sole purpose of taxation. There is no law that requires Private Owners to Record their private property deeds, in the county recorder's office. These crimes are in Federal Subject Matter Jurisdiction by way of Acts of Congress, such as the Civil Rights Act 1866, the Sherman Antitrust Act, and the Internal Revenue Code, titles 15-18-26-of U.S. Code.

The recorder of records office has a "good Faith" obligation to explain "full disclosure" and serve written notice in advance, of the legal incapacities and disabilities which were about to befall the plaintiff by recordation, See: U.C.C. 1-203, and 1-201 (25,26,27). Plaintiff's real property was re-classified, without permission, for the sole purpose of taxation. This is

the firm basis for this lawsuit. A personal property tax on a free sovereign, private individual must be Constitutional, and applied as the Constitution regulates it. Any other means of collecting property taxes outside of the constitution makes the tax collection void in law. Plaintiff has the right to know why he is being taxed, and to know that it is a legal taxation which represents their interests. The unlawful collection of property taxes is not only immoral and unethical, but also criminal and a violation of the plaintiffs civil rights. Most every tax sale of property occurs without ANY Due Process . . . that is, there has been no court hearing, no judgment, no adjudication of all facts, and no consideration given for the actual laws regarding the tax in the first place. "If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." Journals of the Continental Congress. 26 October, 1774A©1789. Journals 1:105A©13. All government officials and agencies, including all State legislatures, are bound by the Constitution and must NOT create any de facto laws which counter the Constitution.

I. The Parties:

1.1. This action concerns certain real property, of which, Plaintiff, Gary Robinson, an individual residing in the State of Kentucky, County of Jefferson, and is the purchaser of the real property, located at 653 South 20th Street, and claims an equitable and beneficial right of title to the real property described herein at all times relevant from and after January 7, 2006 Jefferson County Kentucky Register of Deeds

office located at Louisville Metro Hall, 527 W. Jefferson Street, KY 40202 on the 2nd floor (room 204).

II. The Constitution and Taxes:

2.1 There are only two kinds of taxes-direct and indirect. Direct taxes are prohibited by the Constitution-not once but twice.

2.2 Direct taxes are taxes on that which you already own, and there may be no direct taxes under any circumstances short of a state of war, and then only if the taxes are equally apportioned among the Union states.

2.3 The other type of tax is the indirect tax. Indirect taxes are taxes on a particular activity or taxes levied at the point of purchase. If you do not want to pay the tax, don't engage in the taxed activity or don't purchase the taxed item.

2.4 The law (Constitution) says, "We the People" grant to government, permission to exist to regulate commerce with the State government corporation, providing within these restrictive terms, "nor shall private property be taken for public use (zoning, building permit, license, taxes, etc.) without just compensation." (Bill of Rights, Amendment Article V) "No person shall . . . nor shall any person . . . nor be deprived of life, liberty, or property, without due process of law. Purchase, or condemnation for public use and compensation with just consideration of value therefore.

2.5 "This Constitution, and the laws of the United States which shall be made in pursuance thereof; shall be the supreme law of the land; and the judges in every state shall be bound thereby . . . The Senators and Representatives and members of the State

legislature, and all executive and judicial officers of the United States and the several States, shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

2.6 The Constitution of the United States of America, Article VI, Cl 2, 3. "The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution." *Reid v. Covert* 354 US 1, 1957.

III. Any Laws Created By Government Which Are Repugnant To The Constitution Carry No Force of Law And Are Void:

3.1 "The general rule is that an unconstitutional statute, though having the form and name of law, is no law, but is wholly void and ineffective for any purpose, since its unconstitutionality dates from the time of its enactment . . . In legal contemplation, it is as inoperative as if it had never been passed . . . Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it . . . A void act cannot be legally consistent with a valid one.

3.2 An unconstitutional law cannot operate to supersede any existing law.

3.3 Indeed insofar as a statute runs counter to the fundamental law of the land, (the Constitution JTM) it is superseded thereby.

3.4 No one is bound to obey an unconstitutional law and no courts are bound to enforce it." *Bonnett v.*

Vallier, 116 N.W. 885, 136 Wis. 193 (1908); *NORTON v. SHELBY COUNTY*, 118 U.S. 425 (1886). *See also Bonnett v. Vallier*, 136 Wis 193, 200; 116 NW 885, 887 (1908); *State ex rel Ballard v. Goodland*, 159 Wis 393, 395; 150 NW 488, 489 (1915); *State ex rel Kleist v. Donald*, 164 Wis 545, 552-553; 160 NW 1067, 1070 (1917); *State ex rel Martin v. Zimmerman*, 233 Wis 16, 21; 288 NW 454, 457 (1939); *State ex rel Commissioners of Public Lands v. Anderson*, 56 Wis 2d 666, 672; 203 NW2d 84, 87 (1973); and *Butzlaffer v. Van Der Geest & Sons, Inc, Wis*, 115 Wis 2d 539; 340 NW2d 742, 744-745 (1983).

3.5 "Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void;" and the courts, as well as other departments, are bound by that instrument." *Marbury v. Madison*, 5 US 1803 (2 Cranch) 137, 170?180, and *NORTON v. SHELBY COUNTY*, 118 U.S. 425.

3.6 "When an act of the legislature is repugnant or contrary to the constitution, it is, ipso facto, void." 2 Pet. R. 522; 12 Wheat. 270; 3 Dall. 286; 4 Dall. 18.

3.7 "powers not granted (to any government) are prohibited." *United States v. Butler*, 297 U.S 1, 68 (1936).

3.8 "Insofar as a statute runs counter to the fundamental law of the land, (constitution) it is superseded thereby." (16 Am Jur 2d 177, Late Am Jur 2d. 256), " . . . all laws which are repugnant to the Constitution are null and void" (*Marbury v. Madison*, 5 US 1803 (2 Cranch) 137, 174, 170).

3.9 "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."–*Miranda v. Arizona*, 384 U.S. 436, 491.

3.10 "The claim and exercise of a constitutional right cannot be converted into a crime." *Miller v. U.S.*, 230 F 2d 486, 489.

3.11 "There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights."–*Sherar v. Cullen*, 481 F. 945.

3.12 To disregard Constitutional law, and to violate the same, creates a sure liability upon the one involved: *"State officers may be held personally liable for damages based upon actions taken in their official capacities." Hafer v. Melo*, 502 U.S. 21 (1991).

IV. The Plaintiff Challenges Any Taxing Activities By Government As To Their Validity And Legal Standing:

4.1 "Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of limitations upon his authority."

4.2 The United States Supreme Court, *Federal Crop Ins. Corp, v. Merrill*, 332 US 380-388 (1947) "The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way.

4.3 His power to contract is unlimited.

4.4 He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him.

4.5 He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property.

4.6 His rights are such as existed by the law of the land long antecedent to the organization of the state and can only be taken from him by due process of law, and in accordance with the Constitution.

4.7 United States Supreme Court reminds us in *Hale v. Henkel*, 201 U.S. 43 (1906): "The legal right of an individual to decrease or ALTOGETHER AVOID his/her taxes by means which the law permits cannot be doubted"–*Gregory v. Helvering*, 293 U.S. 465.

4.8 "The fact is, property is a tree; income is the fruit; labor is a tree; income the fruit; capital, the tree; income the 'fruit.' The fruit, if not consumed (severed) as fast as it ripens, will germinate from the seed . . . and will produce other trees and grow into more property; but so long as it is fruit merely, and plucked (severed) to eat . . . it is no tree, and will produce itself no fruit." *Waring v. City of Savennah.* 60 Ga. 93, 100 (1878).

4.9 The point being made is that the tree (private property, land, wages, salaries, compensation) is NOT taxable, while the "fruit" (or "income" FROM said property or wages) of the tree CAN possibly be taxed, (but only according to constitutional provisions).

4.10 Tax upon income derived from, say, rental property, CAN be taxed, but ONLY according to the

Constitution, because the tax does NOT diminish "tree," the principal, or lessen the value of the person or property.

4.11 Property taxation diminishes the "tree" itself, (the wealth of the person) thereby creating a possible situation where the tree could disappear because of the tax.

V. Property Taxation in Jefferson County:

5.1 Property taxation must fall within constitutional guidelines set forth for all People of our community. To be applied other than under Constitutional parameters is to make such a law or application null and void and is a violation of our constitutional rights.

5.2 Direct taxes must be "apportioned among the several states which may be included within this Union". [See Article I, Section 2, Clause 3 and Article 1, Section 9, Clause 4.] These include taxes directly upon people or personal property." . . . all duties, imposts and excises [indirect taxes], shall be uniform throughout the United States". [*See* Article I, Section 8, Clause 1.]

5.3 "Apportionment" means according to the census . . . the actual number of people in the county or state. "Uniform throughout the United States" means the tax is the same everywhere, such as alcohol, tobacco and other excise taxes, where all Americans pay the same tax regardless of the state, they are in.

5.4 "Thus, in the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes and lays down two rules by which their imposition must be governed, namely: the rule of apportionment as to direct taxes and the rule of

uniformity as to duties, imposts and excises. " . . . determining that, the classification of Direct adopted for the purpose of rendering it impossible for the government to burden, by taxation, accumulation of property, real or personal, except subject to the regulation of apportionment . . . " *Pollock v. Farmers' Loan & Trust Co.* 158, U.S. 601, at 637 (1895).

5.5 "The name of the tax is unimportant that it is the substance and not the form which controls;' that the limitations of the constitution cannot be 'frittered away' by calling a tax indirect when it is in fact direct." *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429, 580, 583 (1895). "That decision affirms the great principle that what cannot be done directly (direct taxation) because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result." *Fairbanks v. U.S.* 181 U.S. 283, 294 (1901).

5.6 "If it be true by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the constitution, or of the rule of taxation and representation, so carefully recognized and guarded in favor of the citizen of each state.

5.7 But constitutional provisions cannot be thus evaded. It is the substance, and not the form, which controls, as has been established by repeated decisions of this court." *Id.* At 296.

5.8 The Constitution of the United States of America and Case law shows that capitation taxes and taxes on personal private property are in the category of direct taxes as being applied to Plaintiff today by Jefferson County, but which must be apportioned

among the States as required by the United States Constitution if it is a direct tax. (*See* Supreme Court Case law–*Penn Mutual Indemnity Co. v. C.I.R.*, 277 F.2d 16, 19-20 (3rd Cir. 1960); *Steward Machine Co. v. Davis*, 301 U.S. 548, 581-582 (1937)).

5.9 The Constitution of the United States of America and Case law shows that since capitation taxes and taxes on personal private property must be apportioned among the States in accordance with the United States Constitution, and plaintiff's personal private property tax is NOT being legally apportioned among the States (or State of Kentucky) by Jefferson County, they must, therefore, be in the category of indirect taxes, which are taxes imposed on the happening of an event or activity.

5.10 "Direct taxes bear immediately upon persons, upon possessions and enjoyments of rights. 5.11 Indirect taxes are levied upon the happening of an event . . . " *Knowlton v. Moore*, 178 U.S. 41. *See also, Tyler v. United States*, 281 U.S. 497, at 502 (1930)

5.12 "A tax laid upon the happening of an event as distinguished from its tangible fruits, is an indirect tax . . . " *Tyler v. U.S.* 497 at pg. 502 (1930)

5.13 "A tax levied upon property because of its ownership is a direct tax, whereas one levied upon property because of its use is an excise, duty or impost." Manufactures' *Trust Co. vs. U.S.*, 32 F. Supp. 289.

5.14 "A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." *Murdock vs. Com. of Penn.*, 319 US 105, at 113; 63 S Ct at 875; 87 L Ed at 1298 (1943)

5.15 All Citizens have the right to a home and personal property, and this property cannot be taxed unless in accordance with the two forms of Constitutional taxation mentioned above.

5.16 "Keeping in mind the well settled rule, which the citizen is exempt from taxation, unless the same is imposed by clear and unequivocal language, and that where the construction of a tax is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid." *Spreckles Sugar Refining Co. vs. McLain*: 192 US 397.

5.17 In Jefferson County records or documentation, Plaintiff cannot find any tax imposed on any activities he is involved in as rights under the Constitution, nor does he find a section in the Kentucky Revised Statutes or county law that makes him subject to or liable for any direct or indirect, unconstitutionally applied private property tax.

VI. Jurisdiction

6.1 The Constitution and 28 U.S.C. § 1332 vest federal courts with jurisdiction to hear cases that "arise under" federal law.

6.2 The Constitution vests federal courts with the authority to hear cases "arising under the Constitution [or] the Laws of the United States." U.S. Const. art III, § 2. Congress vests federal district courts with subject-matter jurisdiction over cases involving questions of federal law: 6.3 "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

VII. Reservation Of Rights

7.1 I have reserved my rights under the UCC 1-308, formally 1-207, and demand the statutes used in this court be construed in harmony with Common Law.

7.2 The code is complimentary to the common law, which remains in force, except where displaced by the code.

7.3 A statute should be construed in harmony with the common law, unless there is a clear legislative intent to abrogate the common law.

7.4 The code was written as not to abolish the common law entirely.

7.5 I was not involved with an international maritime contract, so in good faith, I deny that such a contract exists, and demand the court proceed under Common Law Jurisdiction.

7.6 I'm only aware of two jurisdiction the court can operate under as per the Constitution, and those jurisdictions are Common Law, and Admiralty Jurisdiction.

7.7 If the court chooses to proceed under Admiralty Jurisdiction, I will need the court to inform me where I can find the rules of procedures for admiralty jurisdiction for my review, to avoid a violation of my due process, which will result in a civil claim against the court for obstruction of the administration of justice.

VIII. Legal Prejudice:

8.1 Legal prejudice refers to a condition shown by a party that will defeat the action of an opposing party.

8.2 In other words, it is a fact or condition which may defeat the opposing party's case, if the same is established or shown by a party to litigation.

8.3 The normal process in which the county recorders operates will verify the illegal operation of re-classification of property for the sole purpose of unlawful taxation.

IX. There is No Law Requiring Property Owners To Record Their Property With The County Recorder's Office

10.1 It is an indirect tax, levied because you have voluntarily used government services, and because your property has been classified as a commercial piece of property.

10.2 There is no law requiring a real property owner to record his property with the County Recorder.

10.3 Therefore, when a person's attorney records their property in the county recorder's office, they are using government services which they are not required to use. The property tax allegedly goes to pay for those services.

10.4 When the attorney recorded plaintiff's property, plaintiff unknowingly enter into a Trustor/ Trustee relationship, in which plaintiff's real property was transferred into a government trust, and plaintiff was given authorized permission to use their property (warranty deed).

XI. Illegal Commercial Re-Classification of Real Property:

11.1 Plaintiff's property tax is based on a commercial classification which has been assigned to his real property.

11.2 Plaintiff's property was wrongfully re-classified as agricultural, industrial or residential.

11.3 Each of these are commercial in nature (the legal definition of "resident" is a class of government official; residential is a house in which a government official lives).

11.4 Plaintiff's recorded property is unlawfully being used to collateralize government loans, and has a public debt attached to it.

11.5 Plaintiff's real property has been re-classified, without his permission, for the sole purpose of taxation. This is the firm basis for the lawsuit.

XII. Facts of The Dispute:

12.1 A lawyer "Recorded" plaintiff's land property (rights) "DEED" in their corporate States "Recorder of Deeds" office without the plaintiff's knowledge or consent.

12.2 Attorney who filed plaintiff's deed in the county recorder's office had a conflict of interest due to his "sworn oath" to support "The State" and its corporate municipal subdivisions.

12.3 Plaintiff's real property was re-classified, without her/his permission, for the sole purpose of taxation. This is the firm basis for a lawsuit.

12.4 The law required all deeds to land or property rights purchased or condemned for public use be purchased and recorded in the local county court "Recorder of Deeds Office"

12.5 There is no law that requires Private Owners to Record their private property deeds, in the county recorder's office.

12.6 When the attorney placed the plaintiff's "document of title" in their records the attorney created a secret Constructive Quasi "Trust" on the presumption that their "State corporation" has "AN interest in plaintiff's land, and they now control plaintiff's property rights such as "possession" etc., and plaintiff has been forced to pay annual fee (tax) in "return" for benefit.

12.7 When the attorney voluntarily placed the plaintiff's property deed into "Their" corporate records, it forced the plaintiff to be a "Debtor to the State" (see "who may be a debtor" — 11, U.S Code, Section 108).

12.8 The attorney without plaintiff's consent recorded the deed thereby selling plaintiff's land into captivity (slavery) of their government corporation.

12.9 Had the deed not been recorded no bank can place a mortgage against it, no one else Sherriff, IRS, tax agency, would be able to place a lien.

12.10 Plaintiff's land property was posted as security for the government's debts, with the U.S. Department of Commerce.

12.11 When the State accepts loans from the Federal government (corporate United States) the State hypothecates/post the deed to the plaintiff's land as security for its debts.

12.12 Some of the benefits of the illegal control are, the privileges of applying to the government corporation for "building permit" to regulate plaintiff's land use, and control of usage by zoning, land use plans, certificate of Occupancy's, and architectural approval committees, the compelled acceptance of government sewer, storm damage control, and other government granted/compelled benefits and privilege of paying taxes to pay for them.

12.13 Plaintiff is damaged by having his deed on record as an asset of the corporate state government, and since it is pledged as collateral for a debt which Plaintiff supposedly owe, The State had pledged in turn, plaintiff's land deed as security/collateral for the State's debts.

XIII. Scheme To Defraud-Damages:

13.1 Plaintiff's real property was re-classified, without her/his permission, for the sole purpose of taxation.

13.2 There is no law that requires Private Owners to Record their private property deeds, in the county recorder's office.

13.3 When the attorney placed the plaintiffs "document of title" in their records the attorney created a secret Constructive Quasi "Trust" on the presumption that their "State corporation" has "AN interest in plaintiff's land, and they now control plaintiff's property rights such as "possession" etc., and plaintiff has been forced to pay annual fee (tax) in "return" for benefit.

13.4 Some of the benefits of the illegal control over the plaintiff's property benefits are, the privileges

of applying to the government corporation for "building permit" to regulate plaintiff's land use, and control of usage by zoning, land use plans, certificate of Occupancy's, and architectural approval committees, the compelled acceptance of government sewer, storm damage control, and other government granted/compelled benefits and privilege of paying taxes to pay for them. Plaintiff was damaged by this unlawful seizure of his/her property when control of his property away stripped away and plaintiff had to request permission to enjoy his property. Plaintiff was also damaged when forced to make unlawful property tax payments for years or risk losing the property to the city for nonpayment of unlawful taxes.

IXV Violation of The Internal Revenue Code:

14.1 The defendants violated the I.R.S. Code § 15, 18, 26 of the Code.

XV. Elements for Common Law:

15.1 Controversy (The listed defendants)

15.2 Specific Claim (Violation of the Constitution, 18 U.S.C. 241, sec. 2414, R.I.C.O. and the IRS Code)

15.3 Specific Remedy Sought by Claimant (My Deed removed from the recorder's office,

15.4 million dollars damages, the debt attached to the property to be discharged.

15.5 Claim is Sworn To By (Affidavit of Verification attached), and I will verify in open court that all herein be true.

XVI. The Claims:

First Claim: Unlawful Taxation

16.1 Plaintiff was charged a direct tax on that which he already owned.

Second Claim: Violation of The Constitutional:

16.2 Direct taxes are prohibited by the Constitution

Third Claim: Conspiracy Count-1

16.3 There is no law requiring a real property owner to record his property with the County Recorder.

Fourth Claim: Conspiracy Count-2

16.4 Plaintiff was forced to use government services which were not required by law.

Fifth Claim: Conspiracy Count-3

16.5 Plaintiff's property was unlawfully transferred into a government trust.

Sixth Claim: Conspiracy Count-4

16.6 Plaintiff was forced to seek authorized permission to use their property (warranty deed).

Seventh Claim: Conspiracy Count-5

16.7 Plaintiff's property was unlawfully re-classified as commercial for the sole purpose of taxation.

Eight Claim: Conspiracy Count-5

16.8 Plaintiff's real property was recorded and used to collateralize government loans.

Ninth Claim: Conspiracy Count-6

16.9 Plaintiff's real property has public debt attached to it.

Tenth Claim: Conspiracy Count-7

16.10 The attorney created a secret Constructive Quasi "Trust" when he recorded plaintiff's land without consent.

Eleventh Claim: Violation of IRS Code Count-1

16.11 Violation of I.R.S. 26 U.S. Code § 15.

Twelfth Claim: Violation of IRS Code Count-2

16.12 Violation of I.R.S. 26 U.S. Code § 18

Thirteenth Claim: Violation of IRS, Code Count-3

16.13 Violation of I.R.S. 26 U.S. Code § 26

Notice of RICO Crimes Count One:

16.14 The Douglas County Recorder of Records unlawfully re-classified plaintiff's private property without permission, for the sole purpose of taxation.

Twelfth Claim RICO: Count Two

16.15 Defendant's misconduct affects Interstate Commerce.

Thirteenth Claim RICO: Count Three

16.16 The unlawful enforcement for property taxes clearly constitutes financial fraud

Fourteenth Claim RICO: Count Four

16.17 Two or more similar acts of fraud, mail fraud or extortion having occurred . . .

Fifteenth Claim RICO: Count Five

16.18 Pattern is likely to continue.

Sixteenth Claim: Slander of Credit

16.19 The defendants false credit reports provided to the credit reporting agencies damaged plaintiffs credit history.

Seventeenth Claim: Infliction of Emotional Distress

16.20 The defendants have intentionally or negligently taken actions which have caused the plaintiff's severe emotional distress.

Wherefore, having set forth various causes of action against the defendants, the plaintiffs pray for the following relief:

1. To have the plaintiff's deed removed from the county recorder's office and returned to the plaintiff.

2. To have the actions of defendants be determined to be unfair and deceptive business practices in violation of Federal Laws.

3. To have the alleged tax debt discharged.

4. To have the public debt attached to the plaintiff's property discharged.

5. Order an investigation into the defendant's for R.I.C.O. violations

6. To be awarded compensatory and punitive damages in the amount of 5.5 million dollars for punitive damages, and emotional stress.

7. That the Court grant any other relief that may be just or equitable.

/s/ Gary Robinson

8/5/2022

VERIFICATION:

I Gary Robinson declares under penalty of perjury in accordance with the Laws of the United States of America that the foregoing is true and correct and complete to the best of my knowledge and belief.

Gary Robinson, on this 5th Day, of 2022.

On this 5th, day of August, 8/5/2022 before me, the undersigned, a Notary Public in and for the State of Kentucky, personally appeared the above-signed, known to me to be the one whose name is signed on this instrument, and has acknowledged to me that he has Executed the same.

/s/ Cynthia B. Baker
Signed

/s/ Cynthia B. Baker
Printed Name

My Commission Expires:

Cynthia B. Baker
Notary Public State at Large KY
My Commission Expires March 13, 2026
Commission Number KYNP45879

OPINION OF FACT

To the honorable Judge Stalwart this case filed in Circuit Court on March 2020. The motion was filed to be heard by the judge but unfortunate the courts were shut down and I never had the chance to address the judge before the selling of my property. I attempted to contact the Commissioner and Mr. Higgins prior to the sale so that I could get a buyout for said property and they just would not return my calls. More motions were filed but they were ignored by the court. By the time I was able to have a phone hearing the judge treated me like I was 3/5 of a person allowing the commissioner to talk over me, this is clearly on audio in the court archives of hearings. At this point I hired a lawyer and he was able to file an appeal in appeals court. This lawyer, Zachary Taylor had my case dismissed and didn't contact me until 6 months later telling me about the dismissal, he then said he would file my case in state court to try to get it overturned but this did not happen. I had the resources to purchase the buyout but I never got the opportunity to do so. I even attempted to settled the debt but the Circuit Court returned my certified check. This is summary of my casefile. If you would just look at all the information with in this file you will clearly see that my constitutional rights were violated with this illegal processes.

Office of the clerk of The Supreme Court of Kentucky, this memorandum should be vacated and so should the judgment until a clear investigation into this case has been completed. This case is a violation of section 42 of Constitution and the Civil Rights bill. Filing number 2021 — SC — 0268. 17-CI-400112.

The purchaser, Christopher Herndon was well aware of the property 653 South 20th Street was not for sale by the current owner of property Gary Robinson but he decided to purchase the property anyway . The property was fraudulently sold by Jerry N. Higgins and the master commissioner who failed to do an investigation into the property, motions have been filed and they were ignored, a motion has been filed before the sale by attorney Jan Waddell, the sale resumed during covid when we could not get in court and the sale resume, this is clearly a violation of section 42 and the Constitution and the Civil Rights.

Short and Plain Statement of The Claim:

Judge Shaw, and attorney Higgins acted with "deliberate indifference to the Constitution" and Federal law when they conspired to steal the plaintiff's property while illegally acting as a 3rd party debt collector pretending to be collecting on behalf of some 3rd party corporation/lender in violation of the F.D.C.P.A. The Attorney illegally filed a foreclosure petition against the plaintiff's property acting as a 3rd party debt collector. The attorneys, in this case, are the only person who signed the foreclosure documents against the plaintiff's property and that makes the attorney the real plaintiff in the state foreclosure and not the lender.

The attorney failed to provide a contract or affidavit showing they were working on behalf of a lender. This false misrepresentation while collecting a debt is a violation of the F.D.C.P.A. provisions contained in 15 U.S.C. §§ 1692a-1692. The attorney violated provisions defined in 15 U.S.C. Sec. 1692 false misrepresentation while collecting this debt. The attorneys are also in

violation of the Foreign Agent Registration act of 1938 (fara).

Judge Shaw made a judicial determination in an administrative hearing without a witness or affidavit to give the court jurisdiction.

State court has no jurisdiction over a dispute between a State citizen and a foreign agent. The foreign agent must file their claim in a Federal Court for a court to have jurisdiction. Judge Shaw placed herself in a position of civil liability for dismissing the plaintiff's jurisdictional challenge with an affidavit, the default motion and all the other pleadings the attorney failed to respond to. Judge Shaw stepped outside of the Constitution and Federal law when she ruled without jurisdiction and therefore has No Immunity!

{mailing addresses excluded}

COMPLAINT FILED AND CASE ASSIGNEMNT IN THE U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY (DECEMBER 29, 2022)

Case Assignment
Standard Civil Assignment

Case number 3:23CV-9-DJH

Assigned: Judge David J. Hale
Judge Code : 4415

Assigned on 1/4/2023 3:22:20 PM

Transaction ID: 72236

[Request New Judge] [Return]

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Gary B. Robinson

(b) County of Residence of First Listed Plaintiff

Jefferson

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gary Robinson 1935 W. Broadway Louisville, KY

DEFENDANTS

Jerry N. Higgins

County of Residence of First Listed Defendant Floyd

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Alyssa C.B. Cochran

II. BASIS OF JURISDICTION

■ Federal Question
(US. Government Not a Party)

III. CITIZENSHIP OF PRINCIPAL PARTIES

Citizen of This State PTE ☑ 1

Citizen of Another State DEF ☑ 2

Incorporated or Principal Place of Business
In This State PTE ☑ 4

Incorporated and Principal Place of Business
In Another State DEF ☑ 5

IV. NATUE OF SUIT

Real Property

- 220 Foreclosure

Other Statutes

- 899 Administrative Procedure Act/Review or Appeal of Agency Decision

V. ORIGIN

- Removed from State Court

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C.A. 1343(3)(1948) and
28 U.S.C. 1331 (1948)

Brief description of cause: Illegal Tax Foreclosure

VII. REQUESTED IN COMPLAINT

DEMAND $ 5.5 Million Dollars

CHECK YES only if demanded in complaint:

■ YES

VIII. RELATED CASE(S) IF ANY

Judge: Mary Shaw

Docket Number: 17CI400112

Date 12/29/2022

Introduction

28 U.S.C.A, 1343(3) (1948) and 28 U.S.C., 1331 (1948).

Gary Robinson's rights under article III section 2 was violated by the Circuit Court in the state of Kentucky for an unconstitutional tax foreclosure on his property at 653 South 20th Street Louisville, KY 40203.

Under the Constitution all parties of a tax foreclosure must be present in court, and it must have a witness and injured party and explained on a point by point basis to be valid law in this case there was none the state judicial system took it upon themselves to sign off on Mr. Robinson's property and to sale the property without Mr. Robinsons knowledge, violation of his 14th Amendment rights of this action that was taken by Attorney Jerry Higgins and The Honorable Mary Shaw judge.

This Federal Law was "Enacted" into law in 1946, and the key to this law is it states the government administrative policies must be in harmony with the Constitution. The administrative procedures act mandates in part "non-legislative rules" such as guidance, guidelines, agency staff manuals, staff instructions,

opinion letters, and press releases are called "statements of policy" or "guidance."

Mr. Robinson argues the courts did not have jurisdiction without an injured party and without this no State Court could have jurisdiction over a state citizen in violation of the 11th Amendment and by me being a state citizen I have the rights to the 14th Amendment, so clearly my constitutional rights have been violated the judge should have disqualified herself. She has engaged in a criminal act of treason and or extortion and interfering with interstate commerce. And treating me like I'm 3/5th of a human being every time I appear in court. As a citizen of the state of Kentucky my fifth amendment rights were violated as well.

28 U.S. Code § 1441-Removal of civil actions

(a) Generally.—

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

Derivative Removal Jurisdiction. —

The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 94-583, § 6, Oct. 21, 1976, 90 Stat. 2898; Pub. L. 99-336, § 3(a), June 19, 1986, 100 Stat. 637; Pub. L. 100-702, title X, § 1016(a), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 101-650, title III, § 312, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102-198, § 4, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 107-273, div. C, title I, § 11020(b)(3), Nov. 2, 2002, 116 Stat. 1827; Pub. L. 112-63, title I, § 103(a), Dec. 7, 2011, 125 Stat. 759.) The State court from which such civil action is removed did not have jurisdiction over that claim.

IN THE DISTRICT COURT OF THE
UNITED STATES WESTERN DISTRICT OF
KENTUCKY CIVIL DEPARTMENT

GARY ROBINSON,

Plaintiff,

v.

JERRY N. HIGGINS, MARY SHAW,
CAROLE C. SCHNEIDER, STATE OF KENTUCKY,

Defendants.

No. 17-CI-400112

File NO. 2021-sc-0268

Before: Hon. MARY SHAW, Judge.

5.5-MILLION DOLLAR CLAIM UNDER 42 U.S. CODE SEC. 1983 ACTION FOR DEPRAVATION OF CIVIL RIGHTS, VIOLATION OF THE "TUCKERS ACT" CODIFIED AT 28 U.S.C. SEC. 1346 (a) AND 1491, AND VIOLATION OF THE ADMINISTRATION PROCEDURES ACT OF 1946 AT 5 USC § 551 et seq. THIS CLAIM IS ALSO FOR VIOLATION OF DUE PROCESS

["Cujusque Rei Potissima Pars"] [The Principle Part of Everything Is In The Beginning]

Comes Now Plaintiff, Gary Robinson, to file his Civil Claim. The claim is brought forward in Common Law, "Administrative Law," "Law," "Equity," and Under

the Uniform Commercial Code. This 42 U.S. Code Sec. 1983 Civil Action Claim is for Depravation of Civil Right Under Color of Law. This claim is for 5.5 Million Dollars, to revoke the state court judge's license to practice law, to be granted the Prosecutor's Assets, to be granted judgment in full to be paid collectively. The Plaintiff also demands complete control of the state court's corporate charter and to have all records of the alleged foreclosure removed from the record.

No corporation can legally give its self-judicial authority. It appears the Master Commissioner is not a real judge with legal judicial authority and is participating in the misconduct of making a legal determination as an administrative judge without jurisdiction. The plaintiff did not get a fair and impartial procedure in the municipal court or state court process. The right of any public body to determine its own rules of procedure must be exercised in conformity with existing laws. *See*: *Heiskell v. City of Baltimore* (1888), 86 Md. 126, Atl. 116. A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution or statutes governing it, and it cannot do by indirection what it cannot do directly. *See: Crawford v. l-Uchrfet* (1912), 64 P'Ia. 41, SS So. 983; Can-6etd *Gresham* (1881), 82 Tez. 10, 17 S.W. 390; *Tayloe v. Davis* (1924), 212 Ala. 282, 102 90. 433 ; *Brennan v. Con-Aou— (ie—e)*, gar a—icn, sa, 173 N.W. sii.

The Following Fatal Flaws Blocked Foreclosure Court's Jurisdiction

1. The Master Commissioner violated the Separation Clause in the Constitution when she signed

the summons (ticket) for the plaintiff to appear in court.

2. The illegal signing cause a "Due Process" violation when the court proceeded with the court processes and local rules.

3. The players in the court all have a conflict of interest because they all are being paid by the same corporation.

4. There is no injured party, and the commissioner violated the Constitution and therefore has no credibility to testify.

5. The prosecutor has no witness.

6. Ordinances and statutes are not valid laws because they do not have the three elements the state constitution mandates must be present to be a valid law.

Statement of Jurisdiction:

Federal courts are authorized to hear cases brought under section 1983 pursuant to two statutory provisions: 28 U.S.C.A. § 1343(3) (1948) and 28 U.S.C.A. § 1331 (1948). The former statute permits federal district courts to hear cases involving the deprivation of civil rights, and the latter statute permits federal courts to hear all cases involving a federal question or issue. Cases brought under section 1983 may therefore be heard in federal courts by application of both jurisdictional statutes. The Cause of Action can be found at 5 USC § 702.

42 U.S. Code § 1983-Civil Action For Deprivation Of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be a statute of the District of Columbia.

The Tuckers Act:

Tucker Act exposes the government to liability for certain claims. Specifically, the Act extended the original Court of Claims' jurisdiction to include claims for liquidated or unliquidated damages arising from the Constitution (including takings claims under the Fifth Amendment), a federal statute or regulation and claims in cases not arising in tort. The relevant text of the Act is codified in 28 U.S.C. §§ 1346(a) and 1491. The Tucker Act (March 3, 1887, ch. 359, 24 Stat. 505, 28 U.S.C. § 1491) is a federal statute of the United States by which the United States government has waived its sovereign immunity with respect to lawsuits pertaining to 5th Amendment violations of due process.

The Plaintiff Is A State Citizen Of The Republic State Of Kentucky:

The Plaintiff, Gary Robinson, is a citizen of the Republic State of Kentucky and as such is not subject to a corporate policies and rules without an injured party, and without an order from a judicial judge. *See*: Exhibit A-A copy of the plaintiff's affidavit of state citizenship, and a copy of his birth certificate and passport card verifying his state citizenship.

Short And Plain Statement of The Claim:

The defendant, Jerry N. Higgins, acted with deliberate indifferent to the Constitution and federal laws when performed an illegal Foreclosure without an injured party. During the foreclosure the Master Commissioner Carole C. Schneider signed the summons as an officer of the court in violation of the "separation of the power clause in the constitution. The defendant's conspired to violate the plaintiff's right UNDER 42 U.S. CODE SEC. 1983, the plaintiff's right to due process. The defendants violated the administrative procedures act of 1946, which in short mandate that corporations and policies must be in harmony with the constitution, and federal laws. The structure of the foreclosure shows it is unconstitutional starting at the gate when the Master Commissioner illegally signs in the place of a judicial officer of the court. The plaintiff has been violated by the employee enforcing the city rules, policies. Also, the plaintiff's right to due process is violated by the court's procedures and local rules. The parties in this foreclosure scheme have a conflict of interest because they all are being paid by the same state corporation. Municipal court has no legal

judicial authority to make a legal determination in an administrative court process.

Demand For Judgement:

The plaintiff demands the court to grant judgment for 5.5 Million Dollars, in compensatory, punitive, and future damages, revoke the judge/prosecutor's bond and license to practice law.

Common Law Claim Elements:

1. Controversy (The listed defendant)

2. Specific Claim (violation of 18 U.S.C.S 1983)

3. Specific Remedy Sought by Claimant (5.5-Million)

4. Claim Must be Sworn To (Affidavit of Verification attached), and I will verify in open court that all herein be true.

Article III Standing

Plaintiff, Gary Robinson, has Article III standing when he shows: (1) an injury in fact, (2) causation, (3) and redressability. The plaintiff will meet the constitutional standing requirements, necessary to suing a state agency under the APA. Plaintiff will show he was injured, and the injury is linked to the defendant's conduct while performing employee duties outlined by the state corporation. The injury was caused by the unconstitutional policing, court procedures and processes, the injury is capable of redress under the civil rights laws. The plaintiff also has an interest within the "zone of interests" protected by federal law governing the agency's actions.

Remedy:

Every system of civilized law must have two characteristics: Remedy and Recourse. Remedy is a way to get out from under that law, and you recover your loss. The Common Law, the Law Merchants, and even the Uniform Commercial Code all have remedy and recourse. The Remedy and Recourse are found in the UCC. They are found right in the first volume, at 1-308 (old 1-207) and 1-103.

Recourse:

Recourse appears in the Uniform Commercial Code at 1-103.6, which says: The Code is complimentary to the Common Law, which remains in force, except were displaced by the code. A statute should be construed in harmony with the Common Law unless there is a clear legislative intent to abrogate the Common Law. The plaintiff is a 'State" citizen of the Republic State of Kentucky, and therefore not therefore subject to the state court's statutory jurisdiction without an injured party.

The Defendant's Liability:

Plaintiff will prove that an "actions pursuant to official agency policy" caused his injuries). The Supreme Court has emphasized that "[w]here a plaintiff claims that the agency . . . has caused an employee to [violate plaintiff's constitutional rights], rigorous standards of culpability and causation must be applied to ensure that the agency is not held liable solely for the actions of its employee." *Brown,* 520 U.S. at 405.

The Master Commissioner, and the Attorney-official's (the defendant's), through the official own

individual actions, have violated the Constitution." *Ashcroft v. Iqbal,* 129 S. Ct. 1937, 1948 (2009); *see also Starr v. Baca,* No. 09-55233, ___ F.3d ___, 2011 WL 2988827, at *2-*3 (9th Cir. July 25, 2011). The constitutional deprivation the plaintiff suffered was the product of a policy or custom of the local governmental unit because an agency's liability must rest on the actions of the agency, and not the actions of the employees of the agency. *See Brown,* 520 U.S. at 403; *City of Canton,* 489 U.S. at 385; *Monell,* 436 U.S. at 690-91; *Fogel,* 531 F.3d at 834; *Webb,* 330 F.3d at 1164; *Gibson,* 290 F.3d at 1187; *Hopper,* 241 F.3d at 1082; *Blair v. City of Pomona,* 223 F.3d 1074, 1079 (9th Cir. 2000); *Oviatt v. Pearce,* 954 F.2d 1470, 1473-74 (9th Cir. 1992). *See also Connick v. Thompson,* 131 S. Ct. 1350, 1359 (2011) 4.

Policies

"Official agency's policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices as persistent and widespread as to practically have the force of law." *Connick v. Thompson,* 131 S. Ct. 1350, 1359 (2011).

Agency's Customs

The plaintiff, Gary Robinson, will establish the agency's liability upon a showing that there is a permanent and well-settled practice by the agency which gave rise to the alleged constitutional violation. *See City of St. Louis v. Praprotnik,* 485 U.S. 112, 127 (1988); *Navarro v. Block,* 72 F.3d 712, 714-15 (9th Cir. 1996); *Thompson v. City of Los Angeles,* 885 F.2d 1439, 1444 (9th Cir. 1989), *overruled on other grounds by Bull v. City & County of San Francisco,* 595 F.3d 964

(9th Cir. 2010). Once the plaintiff, has demonstrated that a custom exists, the plaintiff need not also demonstrate that "official policy-makers had actual knowledge of the practice at issue." *Navarro,* 72 F.3d at 714-15; *Thompson,* 885 F.2d at 1444.

Pleading Standard

There is no heightened pleading standard with respect to the "policy or custom" requirement of demonstrating agency's liability. *See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 507 U.S. 163, 167-68 (1993); *see also Empress LLC v. City of San Francisco,* 419 F.3d 1052, 1055 (9th Cir. 2005); *Galbraith v. County of Santa Clara,* 307 F.3d 1119, 1124 (9th Cir. 2002); *Lee v. City of Los Angeles,* 250 F.3d 668, 679-80 (9th Cir. 2001); *Evans v. McKay,* 869 F.2d 1341, 1349 (9th Cir. 1989).

Acting under Color of State Law

The question of whether a person who has allegedly caused a constitutional injury was acting under color of state law is a factual determination. *See Brunette v. Humane Soc'y of Ventura County,* 294 F.3d 1205, 1209 (9th Cir. 2002); *Gritchen v. Collier,* 254 F.3d 807, 813 (9th Cir. 2001); *Lopez v. Dep't of Health Servs.,* 939 F.2d 881, 883 (9th Cir. 1991) (per curiam); *Howerton v. Gabica,* 708 F.2d 380, 383 (9th Cir. 1983). A defendant has acted under color of state law where he or she has "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins,* 487 U.S. 42, 49 (1988) (quoting *United States v. Classic,* 313 U.S. 299, 326 (1941)); *see also Polk County v. Dodson,* 454 U.S. 312, 317-18 (1981); *Anderson v.*

Warner, 451 F.3d 1063, 1068 (9th Cir. 2006); *McDade v. West,* 223 F.3d 1135, 1139-40 (9th Cir. 2000); *Johnson v. Knowles,* 113 F.3d 1114, 1117 (9th Cir. 1997); *Vang v. Xiong,* 944 F.2d 476, 479 (9th Cir. 1991); *see also Florer v. Congregation Pidyon Shevuyim, N.A.,* 639 F.3d 916, 922 (9th Cir. 2011).

"Actions taken pursuant to a agency's rules or policies are made 'under color of state law.'" *See Coral Constr. Co. v. King County,* 941 F.2d 910, 926 (9th Cir. 1991). Even if the deprivation represents an abuse of authority or lies outside the authority of the official, if the official is acting within the scope of his or her employment, the person is still acting under color of state law. *See Anderson,* 451 F.3d at 1068-69; *McDade,* 223 F.3d at 1140; *Shah v. County of Los Angeles,* 797 F.2d 743, 746 (9th Cir. 1986). However, "[i]f a government officer does not act within [the] scope of employment or under the color of state law, then that government officer acts as a private citizen." *See Van Ort v. Estate of Stanewich,* 92 F.3d 831, 835 (9th Cir. 1996) (finding no action under color of state law where a police officer returned to a home where a search had taken place the day before, forced his way in, and tortured the two people residing in the home); *see also Gritchen,* 254 F.3d at 812-13; *Huffman v. County of Los Angeles,* 147 F.3d 1054, 1058 (9th Cir. 1998); *Johnson,* 113 F.3d at 1117-18.

Affirmative Cause Link

Plaintiff has established an affirmative causal link between the agency's policy or practice and the alleged constitutional violation. *See City of Canton, Ohio v. Harris,* 489 U.S. 378, 385, 391-92 (1989); *Van Ort v. Estate of Stanewich,* 92 F.3d 831, 835 (9th Cir.

1996); *Oviatt v. Pearce,* 954 F.2d 1470, 1473-74 (9th Cir. 1992).

The Administrative Procedures Act. Of 1946

The defendants violated The "ADMINISTRATIVE PROCEDURES ACT AT 5 USC § 551 et seq. (1946). This Federal Law was "Enacted" into law in 1946, and the key to this law is it states the governments administrative policies must be in harmony with the Constitution. The administrative procedures act mandates in part "non-legislative rules" such as guidance, guidelines, agency staff manuals, staff instructions, opinion letters, and press releases are called "statements of policy" or "guidance." (The two terms are not synonyms, only closely correlated: statements of policy are almost always issued in documents classified as guidance, and guidance documents to the public often include statements of policy.) Guidance and statements of policy are not legally binding on the public because they have not gone through the required procedures to become "legislative" regulations binding on the public (depending on the rule, hearing, notice, comment, publication). However, when stated in mandatory language, they can bind the agency itself. They have only hortatory effect on the public, the plaintiff is challenging the court's (agency's) right to enforce their policy (statute) statement or guidance rules on a state citizen without jurisdiction, an injured party, due process and without an order from a judicial judge. The fact the commissioners' process is structured in violation of the rights of state citizens is a clear showing the process is not structured to be constitutional, and clearly is in violation, of the administrative procedures act as the agency's policies and rules violate the constitution.

The plaintiff demands a Judicial review of the defendant's misconduct for abuse of discretion, as authorized by the US Administrative Procedures Act. of 1946.

Parties-Corporations

a. Master Commissioner Schneider is a resident of the court's jurisdiction.

b. Attorney Higgins is doing business in the court's jurisdiction.

c. The Attorney's Bond Insurance.

Negligence:

a. The defendant's breached the duty of care owed when issues a summons without an injured party.

b. The defendant also violated the separation clause in the constitution when he signed the summons to appear on behalf of the judicial officer of the court.

c. The Master Commissioner department's normal everyday procedures are clearly in violation of the rights of citizens.

d. The breach of duty caused by the defendant's caused Mr. Robinson to suffer substantial damages including past and future legal expenses, past and future economic loss.

e. At all times relevant the defendants were acting in the scope of their employment with the Master Commissioner department and the state corporation.

d. Pursuant to the Tucker Act. the court waives immunity for employees violating the rights of state citizens.

e. The defendant's violated the plaintiffs 5th amendment right to due process.

Claims:

1st Claim-

Violation of 42 U.S.C. Sec. 1983

2nd Claim-

Violation of the Administrative Procedures Act. Of 1946.

3rd Claim-

Violation of the plaintiffs right to Due Process Under the 5th Amendment.

4th Claim-

Violation of the Tucker's ACT

Damages:

1. Plaintiff adopts and incorporates by reference is if fully set forth herein the document.

2. As a direct and proximate result of the aforementioned acts and/or omissions of the defendants, plaintiff is entitled to recover damages. The damages for which Plaintiff seeks compensation for from the defendants, both jointly and severally, include but are not limited to, the following:

a. Physical, mental, and emotional pain, and suffering of Gary Robinson Sr.

b. Punitive damages.

c. All cost, including any and all discretionary cost. e. The jury be impaneled to try all, and issues joined in the case.

WHEREFORE, Plaintiff, Gary Robinson., request the following

a. That the court enter a judgment in favor of the plaintiff, and against the defendants on all counts of the Complaint:

b. That the court award compensatory damages in Gold to plaintiff, and against the defendants jointly and severally, in an amount to be determined at trial:

c. That the court award punitive damages to the plaintiff, and against the defendants, jointly and severally, in an amount to determine at trial in order that such award will deter similar proscribed conduct by the defendants in the future;

d. That the court award the plaintiff, and against the defendants, prejudgment and post-judgment interest on all sums awarded in this action, and including reasonable legal fees, pursuant to 42.U.S.C. Sec. 1988: and

e. The court award the property at 653 South 20th Street in Louisville KY to the plaintiff and order the defendants have no contact with plaintiff.

f. Order the court corporation to allow plaintiff to have a vote in any manners concerning administrative operations.

g. That the court grant the plaintiff such other equitable relief that the court deems appropriate.

Demand For A Trial By Jury

Comes Now, the plaintiff, and hereby demands jury trial o ate issues so triable to a jury.

/s/ Gary Robinson
12/29/2022
Without Prejudice UCC 1-308

{certificate of services excluded}

AFFIDAVIT OF Gary Robinson

STATE OF KENTUCKY
COUNTY OF JEFFERSON

I, the Affiant, who goes by a man, being of sound mind, and over the age of twenty-one, reserving all rights, being unschooled in law, and who has no BAR attorney, is without an attorney, and having never been re-presented by an attorney, and not waiving assistance of counsel, knowingly and willingly Declares and Duly affirms, in accordance with laws in and for the State of Kentucky, in good faith, and with full intent for preserving and promoting the public confidence in the integrity and impartiality of the government and the judiciary, that the following statements and facts, are true and correct of Affiant's own first-hand knowledge, understanding, and belief, do solemnly declare, and depose and say: The above mentioned case must be transferred in the interest of justice. Other state court judges are participating in the same misconduct and therefore the defendant cannot get a fair and impartial trial in the state court.

FURTHER AFFIANT SAITH NOT.

I declare under the penalty of bearing false witness before God and as recognized under the laws in and for The State of Kentucky, the Laws of the United States of America, acting with sincere intent and full standing in law, do herewith certify and state that the foregoing contents are true, correct, complete, certain, admissible as evidence, and not intended to mislead anyone, and that Jon Doe, executes this document in accordance with best knowledge and understanding without dishonour, without recourse; with All rights reserved, without prejudice.

Done this 29th day of December in the year 2022, under penalty of perjury under the laws of the United States of America.

/s/ Gary Robinson

SUBSCRIBED AND SWORN to this 29th day of, December 2022

/s/ Cynthia B. Baker
Notary Public State at Large KY
My Commission Expires March 13, 2026
Commission Number KYNP45879

MOTION TO FILE CIVIL CLAIM (NOVEMBER 7, 2023)

Comes Now Plaintiff, Gary Robinson, to file his Civil Claim. The claim is brought forward in Common Law, "Administrative Law," "Law," "Equity," and Under the Uniform Commercial Code. This 42 U.S. Code Sec. 1983 Civil Action Claim is for Depravation of Civil Right Under Color of Law. This claim is for 5.5 Million Dollars, to revoke the state court judge's license to practice law, to be granted the Prosecutor's Assets, to be granted judgment in full to be paid collectively. The Plaintiff also demands complete control of the state court's corporate charter and to have all records of the alleged foreclosure removed from the record.

No corporation can legally give its self-judicial authority. It appears the Master Commissioner is not a real judge with legal judicial authority and is participating in the misconduct of making a legal determination as an administrative judge without jurisdiction. The plaintiff did not get a fair and impartial procedure in the municipal court or state court process. The right of any public body to determine its own rules of procedure must be exercised in conformity with existing laws. *See*: *Heiskell v. City of Baltimore* (1888), 86 Md. 126, Atl. 116. A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution or statutes governing it, and it cannot do by indirection what it cannot do directly. *See: Crawford v. l-Uchrfet* (1912), 64 P'Ia. 41, SS So. 983; Can-6etd *Gresham* (1881), 82 Tez. 10, 17 S.W. 390; *Tayloe v. Davis* (1924), 212 Ala. 282, 102 90.

433 ; *Brennan v. Con-Aou— (ie—e)*, gar a—icn, sa, 173 N.W. sii.

The Following Fatal Flaws Blocked Foreclosure Court's Jurisdiction

Tax Ease Lien Servicing, LLC is a different Corporation than, Kentucky Tax Lien Fund, LLC. The Law Office of Jerry N. Higgins PLLC represent Kentucky Tax Lien Fund, LLC. Attorney Jerry Higgins cannot be a witness and/or injured party in the foreclosure case against the plaintiff, Mr. Robinson because he did not represent Tax Ease Lien Servicing, LLC. He was a representative of Kentucky Tax Lien Fund, LLC. The plaintiff, Mr. Robinson, in the Judicial tax foreclosure was not consulted and was not informed about a hearing of his said property. This is a violation of his Fifth and 14th Amendments as well as other civil rights violations.

Tax Ease Lien Servicing, LLC is the principal holder in the case, and it is a Texas-based corporation that is no longer doing business in Kentucky since 2009. This document (*see* exhibit A) is also in the case Files of the federal court. Mr. Higgins tried to seem, as though, he was representing Tax Ease Lien Servicing, LLC, which had left Kentucky in 2009. As you will see in the exhibit they stated they were no longer doing business in Kentucky. Now Mr. Higgins claimed in 2019 he was representing Kentucky Tax Lien Fund, LLC, Not Tax Ease Lien Servicing, LLC who purchased the taxes in 2007.

There is a fatal flaw in this action due to the fact the attorney listed the lender Tax Ease Lien Servicing LLC as the plaintiff when in fact the attorney Mr. Higgins is attempting to collect an alleged debt that

has already been claimed under the original lender's insurance. And the lender listed is not legally registered in the state of Kentucky to do business and has no business footprint in the State of Kentucky and therefore cannot sue a State Citizen. In 2009 the original lender Tax Ease Lien Servicing LLC or attorney Higgins never contacted the plaintiff about back taxes. And for the Commonwealth of Kentucky to buy taxes back from a company that is not registered to do business in the state is suspicious at best. This may be a case of racketeering. The judge denied discovery (Rule 46) which would have exposed this activity. Lack of jurisdiction over a state citizen. How did the Commonwealth of Kentucky and The Jefferson County Court get jurisdiction over this case? It is a violation of due process. Subject matter jurisdiction requires a competent witness or notarized affidavit demonstrating an injury. And a statutory or common law basis for a remedy of the injury. Any ruling involves violation of due process of law under the Fifth Amendment is also a void judgment. Void judgment can be attacked or vacated at any time and there is no statute of limitation. *See Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7111.1999). A void judgement is one which from its inception, was a complete nullify and without legal effect, *Lubben v. Selective System Local Bd.* No 27,453 F.2d 645,14 A.LR. Fed.298 (C.A.1 Mass.1972).

I asked the appeals court not to be fooled by the pop-up company Tax Ease Lien Servicing LLC of Kentucky, they have a similar name, but this is a different corporation, they are not the principal holder in this account, proof is on page 186. This will show the date of the 2009 certification. So does that mean the state re-purchased the taxes so that they could re-

classify them? Which is an illegal act on their part. This is from the Commonwealth court records David L Nicholson, was the Jefferson County Circuit Clerk, this will help give you some clarity on this company. The records are on pages 152, 153, 186, 201 and 207. (*see* exhibit B) These are on the Commonwealth of Kentucky records that are on file in the federal court. The Commonwealth of Kentucky did not have any standings in this tax foreclosure case, so it did not have jurisdiction for the court to have power over the case. Illegal Assignable Contract states that the court would have to decide, "'As a general rule, all contracts are assignable. . . . An exception to this rule is a contract that relies on the personal trust, confidence, skill, character, or CREDIT of the parties may not be assigned without the consent of the parties." *See: Crim Truck & Tractor Co. v. Navistar Int'l* 823 S.W.2d 591,596 (Tex. 1992).This case was assigned without consent from all parties and therefore the assignment was illegal, and the foreclosure is void because it was initiated by a party without standing.

Evidence in the Commonwealth of Kentucky records that are in the case File with the federal court showing that Mr. Robinson's property was removed without a hearing or opportunity for the plaintiff to respond. The plaintiff tried to contact the commissioner's office and Mr. Jerry Higgins's Office, before the sale of the plaintiff's property, they would not respond and as you review the records you will see that this is accurate. This was part of the reason that the federal judge again denied Discovery. This clearly provided an unfair advantage for fellow B.A.R. members involved in the case. The phone records and the conversations between the Master commissioner and Mr. Higgins,

were all a cover up by the Commonwealth of Kentucky, among other things.

When I found out what was due on back taxes, a check was issued, judge Mary Shaw returned the check and denied the motion, you will see when you review the Commonwealth documents on the case, without stating her points of law or why she returned the check. The court had no authority over the subject matter. Any authority exercised is a usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible." *Bradley v. Fisher*, 13 Wall 335,351,352.

No investigation was given into this case because of the area code where the property was located and the person who owned the property. The attorneys that I interviewed for this case told me I had no hope of winning this case and I had talked to attorneys that told me to give up my house. This was a White-Collar crime that they all knew about it, fellow B.A.R. members. It is a crime for any government office or any official to auction or otherwise sell in any way, private or business property of any individual WITHOUT FIRST HAVING DUE PROCESS OF LAW, to determine the cause of action and the recourse in law. The sale of any property outside this means is illegal, and all those involved with such a sale, including those purchasing said property, are personally liable for damages and subject to criminal charges under Racketeering (RICO) laws, and for violation of civil and Due Process rights. All government officials have the "Greater Duty" to know the law and comply with it, and if you are involved with such an auction without Due Process for the owner, you are in breach of your fiduciary duty and you can be held personally liable

by those harmed by this fraud. Any challenge to property taxation or property sale made by any citizen requires you to respond, point by point and to "prove up" your position in law.

The Federal judge denied the discovery order because it would uncover the prejudice and bias that is going on with this case, here in Kentucky the tax foreclosure cases are unconstitutional, *and* a violation of due process. The normal process in which the county recorders should let homeowners know about delinquent taxes would be for them to contact the taxpayer and inform them of the total amount that is delinquent and allow them due process to pay, prior to reclassification of their property for sale or auction. The plaintiff after being made aware of the total amount of delinquent taxes for that said year (2011) issued three United States postal money orders which totaled $2300 on 08/28/2019, Receipt No: p-62622, M.O.No. 25994472052. This is the proper way to process back taxes you can research this. It is on the Mike O'Connell Jefferson County Delinquent Tax Department website.

The Commonwealth of Kentucky reclassifies personal property for the sole purpose of raffling it off to local attorneys. They go to court claiming they are the injured party, and this is a clear example of violation of due process and is unconstitutional. Home owners never know how the attorneys come up with such a case until the Sheriffs Office serves them and they never have a hearing, most people give up their property in fear, they do not have the type of money they need to save their property, most are living on fixed incomes or have recently filed for bankruptcy, their property's quickly move to the master commissioner's

office were attorney's contact the commissioner, so they can move on the sale of the property, now there has been no hearing no adjudication of the person's rights under the law, so basically they're violating ones Fifth Amendment rights as well as ones 14th Amendment rights. The point of it all is that the court does not have jurisdiction to remove someone's property without an injured party or a witness.

The Commonwealth of Kentucky and the master commissioner sold the plaintiff's property to Christopher Herndon, and in February 2022 Mr. Herndon came and set the personal belongings of the plaintiff outside in the freezing rain. The plaintiff was at work, and this is a high crime rate area, so neighbors called the plaintiff's job to alert him that someone was breaking into his house. This was after the plaintiff had worked 10 hours and had been placed on overtime. The plaintiff had to then come home in the freezing rain to remove his furniture from the street before it was ruined. This required the plaintiff to rent a U-Haul and purchase a storage unit. All of this was done by the 60-year-old plaintiff who has bad feet. All while Mr. Herndon was still in the plaintiffs house with a gun, if the plaintiff had acted immaturely or with enrage at any time he could have been killed by Mr. Herndon or even the police. Remember, the Breonna Taylor case, the police kicked the door in, and her boyfriend fired a weapon which ultimately caused her death, this could have happened to the plain tiff. At the time of this incident the case had already been moved over to the Federal Court. It is apparent that Mr. Herndon's attorney did not inform him that the case had been moved. It was a notice on the front door indicating that the case had been moved to the Federal

Court. (*see* exhibit C) Mr. Herndon removed the notice and broke into my house.

Principles of Law:

The people have rights, Corporations do not have rights. Among these "Rights" is the right to contract, the people have this right under 42 USC 1981. The people exercise this right by their signature and/or Social Security Number. Corporations cannot sign and therefore cannot enter into any contract, with an attorney. The right to contract is reserved to the people. This is established by the age-old principle of "Agency". To establish an "Agency", the "Principal" must ask the "Agent" to perform a task. The "Agent" must agree to perform the task. It is a time-tested principle, of "American Jurisprudence" that the "Court" must not rely upon the" Agent" to prove" Agency". The "Court" must follow the "Principal" to establish "Agency". The law is simple no "Principal" no "Agency" to "Capacity to Sue". Case must be dismissed.

Under The Principles of Law One Cannot Be Defeated by Lies: Under the principles of law, one cannot be defeated by lies of what is or is not law spouted by incompetent attorneys who are ignorant of law by law. Article I, Section 10 prohibits "Titles of Nobility", issued by states. All attorneys have unlawfully accepted the title of "Esquire". Thus, they are clearly incompetent in law and should not be relied upon as a source of legal advice. Their acceptance of a "British Atoned Registry"(BAR) "Title of Nobility" establish their loyalty to the crown, which makes them a "Foreign Agents" 22 USC 611.

No attorney can appear in court without the physical human being he represents. "Agents can not

testify for principals." I will excise my right to challenge every witness to prove they are the principal, by asking for their Driver's Licenses, proving they are the "principal" i.e. "AUTO VEST LLC". If they are not, I demand their testimony be removed from the record as "Hearsay" testimony. An imaginary person cannot appear no agent can speak for them. No "Debt Collector" attorney can collect any debt without the "Original Wet Ink Signed Contract" being present in court. Copies are not admissible; I object to any copies as they are forgeries. This missing contract is the "subject matter" of the "Court's jurisdiction" without it the court has no jurisdiction to proceed. The court must dismiss for lack of subject matter jurisdiction. The United States Supreme Court has repeatedly held that any judge who acts without jurisdiction is engaged in an act of treason. *U.S. v. Will* 499 US 200, 216, S. Ct. 471, 66 L.Ed.2d 392, 406 (1980); *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed. 257 (1821).

Fraudulent Civil Action:

This civil action is "Fraud" because the attorneys are claiming a "Corporation" has rights, privileges, and immunities in court, common knowledge dictates a Corporation is an artificial person without natural rights. For an attorney to file a civil action with a "Corporation" as "Plaintiff" is clear "Fraud on the Court". A "Corporation" cannot sign a "Power of Attorney" or give any attorney verbal instructions to act on its behalf. Therefore, no attorney can lawfully represent any "Corporation in court".

State court has no jurisdiction over a dispute between a State citizen and a foreign agent. The foreign agent must file their claim in a Federal Court

for a court to have jurisdiction. Judge Shaw placed herself in a position of civil liability for dismissing the plaintiffs jurisdictional challenge with an affidavit, the default motion and all the other pleadings the attorney failed to respond to. Judge Shaw stepped outside of the Constitution and Federal law when she ruled without jurisdiction and therefore has No Immunity!

They have only hortatory effect on the public, the plaintiff is challenging the courts right to enforce the policy statement or guidance and to dismiss the plaintiffs legal pleading without forcing the attorneys to prove jurisdiction on the court record to give the court jurisdiction to hear this dispute. The judge unlawfully dismissed the plaintiffs jurisdictional challenge with an affidavit without forcing the attorneys to prove jurisdiction. The plaintiff demands a Judicial review of the defendant's misconduct for abuse of discretion, as authorized by the US Administrative Procedures Act. of 1946.

Acting under Color of State Law

The question of whether a person who has allegedly caused a constitutional injury was acting under color of state law is a factual determination. *See Brunette v. Humane Soc'y of Ventura County,* 294 F.3d 1205, 1209 (9th Cir. 2002); *Gritchen v. Collier,* 254 F.3d 807, 813 (9th Cir. 2001); *Lopez v. Dep't of Health Servs.,* 939 F.2d 881, 883 (9th Cir. 1991) (per curiam); *Howerton v. Gabica,* 708 F.2d 380, 383 (9th Cir. 1983). A defendant has acted under color of state law where the judge and the master commissioner has "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins,* 487 U.S.

42, 49 (1988) (quoting *United States v. Classic,* 313 U.S. 299, 326 (1941)); *see also Polk County v. Dodson,* 454 U.S. 312, 317-18 (1981); *Anderson v. Warner,* 451 F.3d 1063, 1068 (9th Cir. 2006); *McDade v. West,* 223 F.3d 1135, 1139-40 (9th Cir. 2000); *Johnson v. Knowles,* 113 F.3d 1114, 1117 (9th Cir. 1997); *Vang v. Xiong,* 944 F.2d 476, 479 (9th Cir. 1991); *see also Florer v. Congregation Pidyon Shevuyim, N.A.,* 639 F.3d 916, 922 (9th Cir. 2011).

9.3 Section 1983 Claim Against Defendant in Individual Capacity Elements and Burden of Proof

1. The defendant acted under the color of state law; and

2. The [act[s]] [failure to act] of the defendant deprived the plaintiff of [his][her] particular rights under [the laws of the United States] [the United States Constitution] as explained in this case.

WHEREFORE, Plaintiff, Gary Robinson., request the following from the Court of Appeals.

a. That the court reverse the order from the lower court.

b. For the court to consider asking the Department of Justice for an investigation into Commonwealth of Kentucky and Jefferson County property taxation process.

c. That the court enter summary judgment (Rule 56) (f) (3) in favor of the plaintiff, and against the defendants on all counts of the Complaint:

d. That the court award compensatory damages to plaintiff, and against the defendants jointly

and severally, in an amount that is determined.

e. That the court award punitive damages to the plaintiff, and against the defendants, jointly and severally, in an amount of 5.5 million dollars in order that an award will deter similar proscribed conduct by the defendants in the future.

f. That the court award the plaintiff, and against the defendants, prejudgment and post-judgment interest on all sums awarded in this action, and including reasonable legal fees, pursuant to 42.U.S.C. Sec. 1988: and

g. That the court award the deed and property at 653 South 20th Street in Louisville KY to the plaintiff and order the defendants have no contact with plaintiff.

h. Plaintiff ask that the court does not send this case back to lower court because of the prejudices and biases in place in Kentucky courts.

i. That the court grant the plaintiff such other equitable relief that the court deems appropriate.

Damages

Foreclosure on my property resulted in:

1. Evicted notice served.
2. House broken into and locks ripped off and changed.
3. Gun pulled out on me on the property.

4. Belongings being put outside in freezing rain.
5. U-Haul rented.
6. Storage units purchased.
7. Homeless for over a year — had to accommodate new living arrangements and monthly cost associated with it.
8. Court Cost
9. Pain, Suffering and Humiliations and Embarrassments

Relief

1. Return deed with property.
2. Cost to repair home from illegal eviction
3. Cost to U-Haul and storage units
4. Cost of living without home for over two years
5. Cost associated with Court Fees
6. Pain, Suffering, Humiliations and Embarrassments = 5.5 million dollars

AFFIDAVIT OF Gary Robinson

STATE OF KENTUCKY
COUNTY OF JEFFERSON

I, the Affiant, who goes by a man, being of sound mind, and over the age of twenty-one, reserving all rights, being unschooled in law, and who has no BAR attorney, is without an attorney, and having never been represented by an attorney, and not waiving assistance of counsel, knowingly and willingly Declares and Duly affirms, in accordance with laws in and for the State of Kentucky, in good faith, and with full intent for preserving and promoting the public confidence in the integrity and impartiality of the government and the judiciary, that the following statements and facts, are true and correct of Affiant's own first-hand knowledge, understanding, and belief, do solemnly declare, and depose and say: The above mentioned case must be transferred in the interest of justice. Other state court judges are participating in the same misconduct and therefore the defendant cannot get a fair and impartial trial in the state court.

FURTHER AFFIANT SAITH NOT.

I declare under the penalty of bearing false witness before God and as recognized under the laws in and for The State of Kentucky, the Laws of the United States of America, acting with sincere intent and full standing in law, do herewith certify and state that the foregoing contents are true, correct, complete, certain, admissible as evidence, and not intended to mislead anyone, and that Gary Robinson, executes this document in accordance with best knowledge and

understanding without dishonor, without recourse; with All rights reserved, without prejudice.

Done this 13th day of November in the year 2023, under penalty of perjury under the laws of the United States of America.

/s/ Gary Robinson

SUBSCRIBED AND SWORN to this 13th day of, November 2023

{certificate of services excluded}

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

GARY ROBINSON

Plaintiff-Appellant

v.

JERRY N. HIGGINS, JUDGE MARY M. SHAW, CAROLE C. SCNIEDER, STATE OF KENTUCKY, TAX EASE LIEN SERVICING, LLC, ALYSSA COCRAN

Defendants-Appellees

MERITS ANSWER TO THE BRIEF FROM CRYSTAL GATES ROWE AND MELISSA NORMAN BORK

The Kentucky Courts and The Master Commissioner are without standing. Master Commissioner Schneider did not provide a contract in its original summons proving there was no standing. How was this case able to proceed? Under common law if you do not provide a contract you do not have a case. You have no jurisdiction to file a tax foreclosure without evidence of a contract.

The attorneys arguing the case did not provide such evidence either. Mr. Higgins was not representing Tax Ease Lien Servicing LLC. His representation was false and a misleading violation.

15 U.S. Code § 1692e-False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that non-payment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such

action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to —

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a format pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

(Pub. L. 90-321, title VIII, § 807 as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877; amended Pub. L. 104-208, div. A, title II § 2305(a), Sept. 30, 1996, 110 Stat. 3009-425.)

The federal judge denied my request for discovery. Which is the backbone of any case. This may be a violation of the Bevins Act that is why I filed the affidavit with the court of appeals. Allowing the court to see that bias and prejudice is well received here in the state of Kentucky. AMONG BOTH THE STATE AND FEDERAL COURTS. Putting them in violation of 15 U.S. Code § 1-Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93-528 3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 94-145, 9 2, Dec. 12, 1975, 89 Stat. 801; Pub. L. 101-588. § 4(a), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 108-237, title § 215(a), June 22, 2004, 118 Stat. 668.)

"THIS IS A MATTER OF LAW"

CIVIL ORDERS Anna Maria Wilhelmina Hanna Sophia Riezinger-Von Reitzenstein von Lettow-vorbek, Private Attorney in services to His Holiness, Pope Francis Documents.

Issued to Alt Members of the Domestic Police Forces, US Marshals Service, the Provost Marshal, Members of the American Bar Association and the American Armed Services.

U.S. Mail and sworn to act as constitutional officers. All other federal agency personnel are limited to unarmed service until further notice.

We direct the Joint Chiefs of Staff to communicate these first two General Civil Orders directly to the President, the members of the "US Congress", the administrators of all "federal" agencies, the members of the "Supreme Court" and those acting as" Governors" to compel their rapid understanding and cooperation.

Any expense or damage incurred by these organic states or any American State Citizen as a result of actions undertaken by any federal agency personnel acting as armed mercenaries on American State soil will be understood as the result of violent crimes committed against the peaceful inhabitants of the land and will incur immediate judgment liquidating the assets of the International Monetary Fund (IMF) and the Federal Reserve (FEDERAL RESERVE) in payment of the stipulated reparations. Such crimes shall also be considered contract default increasing the public debt subject to bounty.

Any and all corporate officers of the UNITED STATES or any successor organization (s) inheriting "federal" service contracts who support, condone, or promote such crimes against the American States or against American State Citizens shall be subject to arrest and prosecution for commercial and violent crimes. All foreign officials operating as elected or appointed officials of the United States of America

(minor) who support, condone, or promote such crimes against the American States or against American State Citizens shall be subject to arrest, confiscation of their assets, and deportation to Puerto Rico, Guam, or such other "states" as may be willing to receive them.

Such "foreign officials" include members of the American and British Bar Associations who were licensed to act as privateers against the interests of the American States and the American State Citizens from 1845 to 2013 in flagrant Breach of Trust. All such licenses are now extinguished Members of the Bar Associations are required to cease and desist assaults against the American States and American State Citizens and shall be subject to arrest, confiscation, and deportation otherwise.

Because the "State" and "Federal" entities have all functioned under conditions of non-disclosure semantic deceit serving to promulgate and fraud upon the organic states and the American people. They are all considered criminal syndicates to the extent that they have been aware of their status and have failed to correct their operations and representation. All contracts held by these organizations or assumed to be held by these organizations are null and void for fraud. These contracts include but are not limited to contracts for sale, for labor, for trade, "citizenship" contracts, power of attorney, licenses, mortgages, registrations, and application agreements of all kinds. All signatures of American State Citizens acting under the influence of semantic deceit and non-disclosure are rescinded.

All those (E)states and ESTATES erroneously believe to represent the American State and the American State Citizen and which was conveyed by

fraud and legal deceit to the United States of American (minor) and more recently to the city state and united nations are re-venued without exception to the geographically defined American States and American States Citizen where they will remain in perpetuity as belonging to the rightful and lawful beneficiaries. All legal fiction entities however structured and named after the American States and the American State Citizen are returned to them and their control. Free and clear of any debt, promise, encumbrance or obligations alleged against them as result of false claims made in their behalf by officers of officer of United States of America Inc. and the UNITED STATES INC., or by foreign officials operating the United States of America (minor), or the United Nations City State falsely claiming to "represent" them or have jurisdiction over them.

{certificate of services excluded}

[. . .]

Comes Now Plaintiff, Gary Robinson, to file his Civil Claim. The claim is brought forward in Common Law, "Administrative Law," "Law," "Equity," and Under the Uniform Commercial Code. This 42 U.S. Code Sec. 1983 Civil Action Claim is for Depravation of Civil Right Under Color of Law. This claim is for 5.5 Million Dollars, to revoke the state court judge's license to practice law, to be granted the Prosecutor's Assets, to be granted judgment in full to be paid collectively. The Plaintiff also demands complete control of the state court's corporate charter and to have all records of the alleged foreclosure removed from the record.

No corporation can legally give its self-judicial authority. It appears the Master Commissioner is not a real judge with legal judicial authority and is participating in the misconduct of making a legal determination as an administrative judge without jurisdiction. The plaintiff did not get a fair and impartial procedure in the municipal court or state court process. The right of any public body to determine its own rules of procedure must be exercised in conformity with existing laws. *See*: *Heiskell v. City of Baltimore* (1888), 86 Md. 126, Atl. 116. A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution or statutes governing it, and it cannot do by indirection what it cannot do directly. *See: Crawford v. l-Uchrfet* (1912), 64 P'Ia. 41, SS So. 983; Can-6etd *Gresham* (1881), 82 Tez. 10, 17 S.W. 390; *Tayloe v. Davis* (1924), 212 Ala. 282, 102 90. 433 ; *Brennan v. Con-Aou— (ie—e)*, gar a—icn, sa, 173 N.W. sii.

The Tuckers Act:

Tucker Act exposes the government to liability for certain claims. Specifically, the Act extended the original Court of Claims' jurisdiction to include claims for liquidated or unliquidated damages arising from the Constitution (including takings claims under the Fifth Amendment), a federal statute or regulation and claims in cases not arising in tort. The relevant text of the Act is codified in 28 U.S.C. §§ 1346(a) and 1491. The Tucker Act (March 3, 1887, ch. 359, 24 Stat. 505, 28 U.S.C. § 1491) is a federal statute of the United States by which the United States government has waived its sovereign immunity with respect to lawsuits pertaining to 5th Amendment violations of due process.

The Commonwealth of Kentucky made a judgment in a tax foreclosure case without any standing and were in violation of article 111. Master commissioner Schneider signed off on the property deed transfer and so did Judge Mary Shaw this was in violation of due process, a jurisdiction challenge with an affidavit was filed in State Court but was never addressed, which also violated my 14th Amendment rights. Then after my property was illegally seized it was another violation of civil procedure rule 64 and 65. The Attorney General received copies of all documents pertaining to this case file, they were sent by certified mail. But this Attorney General chose not to interfere, why? As I stated before, the Kentucky Office of Attorney General turns a blind eye to the injustice for those of us that are marginalized and oppressed. Representative Samuel Shellabarger for Ohio introduced an "act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other

Purposes". This act was the third of a set increasingly detailed efforts to curb the violence and protect African Americans and Reconstruction authorities and allies in the South. The modern version of the KKK Act, 42 U.S.C. § 1983, is one of the primary means of vindicating federal constitutional rights against state and local actors even today.

Article III Standing

Plaintiff, Gary Robinson, has Article III standing when he shows: (1) an injury in fact, (2) causation, (3) and redressability. The plaintiff will meet the constitutional standing requirements, necessary to sue a state agency under the APA. Plaintiff will show he was injured, and the injury is linked to the defendant's conduct while performing employee duties outlined by the state corporation. The injury was caused by unconstitutional policing, court procedures and processes, the injury is capable of redress under the civil rights laws. The plaintiff also has an interest within the "zone of interests" protected by federal law governing the agency's actions.

The plaintiff, Gary Robinson, will establish the agency's liability upon a showing that there is a permanent and well-settled practice by the agency which gave rise to the alleged constitutional violation. *See City of St. Louis v. Praprotnik,* 485 U.S. 112, 127 (1988); *Navarro v. Block,* 72 F.3d 712, 714-15 (9th Cir. 1996); *Thompson v. City of Angeles,* 885 F.2d 1439, 1444 (9th Cir. 1989), *overruled on other-grounds by Bull v. City & County of San Francisco,* 595 F.3d 964 (9th Cir. 2010). Once the plaintiff, has demonstrated that a custom exists, the plaintiff need not also demonstrate that "official policy-makers had actual

knowledge of the practice at issue." *Navarro,* 72 F.3d at 714-15; *Thompson,* 885 F.2d at 1444.

Amdt. 11.1.3.2.2 Exceptions to Eleventh Amendment Immunity: Abrogation Eleventh Amendment:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Constitution grants Congress power to regulate state action by legislation. At least in some instances when Congress does so, it may subject the states themselves to suit by individuals to implement the legislation. The clearest example arises from the Civil War Amendments, which directly restrict state powers and expressly authorize Congress to enforce these restrictions through appropriate legislation) Thus, "the Eleventh Amendment and the principle of state sovereignty which it embodies . . . are necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment." The power to enforce the Civil War Amendments is substantive, however, not being limited to remedying judicially cognizable violations of the amendments, but extending as well to measures that in Congress's judgment will promote compliance. The principal judicial brake on this power to abrogate state immunity in legislation enforcing the Civil War Amendments is the rule requiring that congressional intent to subject states to suit be clearly stated, Congress had not intended to include states within the term "person" for the purpose of subjecting them to suit. The question arose after *Monell v. New York City Dept of Social Services,* 436 U.S. 658 (1978),

reinterpreted "person" to include municipal corporations. *Cf. Alabama v. Pugh*, 438 U.S. 781 (1978). The Court has reserved the question whether the Fourteenth Amendment itself, without congressional action, modifies the Eleventh Amendment to permit suits against states, *Milliken v. Bradley*, 433 U.S. 267, 290 n.23 (1977), but the result in Milliken, holding that the Governor could be enjoined to pay half the cost of providing compensatory education for certain schools, which would come from ▸ the state treasury, and in *Scheuer v. Rhodes*, 416 U.S. 232 (1974), permitting imposition of damages upon the governor, which would come from the state treasury, is suggestive. *But see Mauclet v. Nyquist*, 406 F. Supp. 1233 W.D.N.Y. 1976) (refusing money damages under the Fourteenth Amendment), appeal dismissed sub nom, *Rabinovitch v. Nyquist*, 433 U.S. 901 (1977). The court declined in *Ex parte Young*, 209 U.S. 123, 150 (1908), to view the Eleventh Amendment as modified by the Fourteenth.

Amdt 11.6.4 Tort Actions Against State Officials Eleventh Amendment:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

In *Tindal v. Wesley*, the Court adopted the rule of United *States v. Lee*, a tort suit against federal officials, to permit a tort action against state officials to recover real property held by them and claimed by the state and to obtain damages for the period of withholding. State immunity afforded by the Eleventh Amendment has long been held not to extend to

actions against state officials for damages arising out of willful and negligent disregard of state laws. The reach of the rule is evident in *Scheuer v. Rhodes*, in which the Court held that plaintiffs were not barred by the Eleventh Amendment or other immunity doctrines from suing the governor and other officials of a state alleging that they deprived plaintiffs of federal rights under color of state law and seeking damages, when it was clear that plaintiffs were seeking to impose individual and personal liability on the officials. There was no "executive immunity" from suit, the Court held; rather, the immunity of state officials is qualified and varies according to the scope of discretion and responsibilities of the particular office and the circumstances

Congressional *Withdrawal* of Immunity.–The Constitution grants Congress power to regulate state action by legislation. At least in some instances when Congress does so, it may subject the states themselves to suit by individuals to implement the legislation. The clearest example arises from the Civil War Amendments, which directly restrict state powers and expressly authorize Congress to enforce these restrictions through appropriate legislation.[88] Thus, "the Eleventh Amendment and the principle of state sovereignty which it embodies . . . are necessarily limited, by the enforcement provisions of § 5 of the

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88 *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976); *Hutto v. Finney*, 437 U.S. 678 (1978); *City of Rome v. United States*, 446 U.S. 156 (1980). More recent cases affirming Congress's § 5 powers include *Pennhurst State School & Hosp. v. Haldeman*, 465 U.S. 89, 99 (1984); *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 (1985); and *Dellmuth v. Muth*, 491 U.S. 223, 227 (1989).

Fourteenth Amendment."[89] The power to enforce the Civil War Amendments is substantive, however, not being limited to remedying judicially cognizable violations of the amendments, but extending as well to measures that in Congress's judgment will promote compliance.[90] The principal judicial brake on this power to abrogate state immunity in legislation enforcing the Civil War Amendments is the rule requiring that congressional intent to subject states to suit be clearly stated.[91]

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[89] *Fitzpatrick v. Bitzer*, 427 U.S. 445,456 (1976) (under the Fourteenth Amendment, Congress may "provide for private suits against States or state officials which are constitutionally impermissible in other contexts.").

[90] In *Maher v. Gagne*, 448 U.S. 122 (1980), the Court found that Congress could validly authorize imposition of attorneys' fees on the state following settlement of a suit based on both constitutional and statutory grounds, even though settlement had prevented determination that there had been a constitutional violation. *Maine v. Thiboutot*, 448 U.S. 1 (1980), held that § 1983 suits could be premised on federal statutory as well as constitutional grounds. Other cases in which attorney& fees were awarded https://law.justia.com/constitution/us/amendment-11 /03-suits-against-states/2/1/24,8:50PM against states are *Hutto v. Finney*, 437 U.S. 678 (1978); and *New York Gaslight Club v. Carey*, 447 U.S. 54 (1980). *See also Frewv. Hawkins*, 540 U.S. 431 (2004) (upholding enforcement of consent decree).

[91] Even prior to the tightening of the clear statement rule over the past several subject application of the rule curbed congressional enforcement. *Fitzpatrick v. Bitzer*, 427 U.S. 445 451-53 (1976); *Hutto v. Finney*, 437 U.S. 678, 693-98 (1978). Because of its rule of clear statement, the Court in *Quern v. Jordan*, 440 U.S. 332 (1979), held that in enacting 42 U.S.C. § 1983, Congress had not intended to include states within the term "person" for the purpose of subjecting them to suit. The question arose after *Monell v. New York City Dep't of Social Services*, 436 U.S. 658

In the 1989 case of *Pennsylvania v. Union Gas Co.*,[92] the Court-temporarily at least-ended years of uncertainty by holding expressly that Congress acting pursuant to its Article I powers (as opposed to its Fourteenth Amendment powers) may abrogate the Eleventh Amendment immunity of the states, so long as it does so with sufficient clarity. Twenty-five years

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(1978), reinterpreted "person" to include municipal corporations. *Cf Alabama v. Pugh*, 438 U.S. 781 (1978). The Court has reserved the question whether the Fourteenth Amendment itself, without congressional action, modifies the Eleventh Amendment to permit suits against states, *Milliken v. Bradley*, 433 U.S. 267, 290 n.23 (1977), but the result in *Milliken*, holding that the Governor could be enjoined to pay half the cost of providing compensatory education for certain schools, which would come from the state treasury, and in *Scheuer v. Rhodes*, 416 U.S. 232 (1974), permitting imposition of damages upon the governor, which would come from the state treasury, is suggestive. *But see Mauclet v. Nyquist*, 406 F. Supp. 1233 (W.D.N.Y. 1976) (refusing money damages under the Fourteenth Amendment), appeal dismissed sub nom. *Rabinovitch v. Nyquist*, 433 U.S. 901 (1977). The Court declined in *Ex parte Young*, 209 U.S. 123, 150 (1908), to view the Eleventh Amendment as modified by the Fourteenth.

[92] 491 U.S. 1 (1989). The plurality opinion of the Court was by Justice Brennan and was joined by the three other Justices who believed *Hans* was incorrectly decided. *See id.* at 23 (Justice Stevens concurring). The fifth vote was provided by Justice White, *id.* at 45, 55-56 (Justice White concurring), although he believed *Hans* was correctly decided and ought to be maintained and although he did not believe Congress had acted with sufficient clarity in the statutes before the Court to abrogate immunity. Justice Scalia thought the statutes were express enough but that Congress simply lacked the power. *Id.* at 29. Chief Justice Rehnquist and Justices O'Connor and Kennedy joined relevant portions of both opinions finding lack of power and lack of clarity.

earlier the Court had stated that same principle,[93] but only as an alternative holding, and a later case had set forth a more restrictive rule.[94] The premises of *Union Gas* were that by consenting to ratification of the Constitution, with its Commerce Clause and other clauses empowering Congress and limiting the states, the states had implicitly authorized Congress to divest them of immunity, that the Eleventh Amendment was a restraint upon the courts and not similarly upon Congress, and that the exercises of Congress's powers under the Commerce Clause and other clauses would be incomplete without the ability to authorize damage actions against the states to enforce congressional enactments. The dissenters disputed each of these strands of the argument, and, while recognizing the Fourteenth Amendment abrogation power, would have held that no such power existed under Article I.

Pennsylvania v. Union Gas lasted less than seven years before the Court overruled it in *Seminole Tribe of Florida v. Florida.*[95] Chief Justice Rehnquist, writing for a 5-4 majority, concluded *Union Gas* had deviated

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[93] *Parden v. Terminal Railway*, 377 U.S. 184, 190-92 (1964). *See also Employees of the Dept of Pub. Health and Welfare v. Department of Pub. Health and Welfare*, 411 U.S. 279, 283, 284, 285-86 (1973).

[94] *Edelman v. Jordan*, 415 U.S. 651, 672 (1974).

[95] 517 U.S. 44 (1996) (invalidating a provision of the Indian Gaining Regulatory Act authorizing an Indian tribe to sue a state in federal court to compel performance of a duty to negotiate in good faith toward the formation of a compact).

from a line of cases, tracing back to *Hans v. Louisiana,*[96] that viewed the Eleventh Amendment as implementing the "fundamental principle of sovereign immunity [that] limits the grant of judicial authority in Article III."[97] Because "the Eleventh Amendment restricts the judicial power under Article III, . . . Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction."[98] Subsequent cases have upheld this interpretation.[99]

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[96] 134 U.S. 1 (1890).

[97] 517 U.S. at 64 (quoting *Pennhurst State School & Hosp. v. Haldeman*, 465 U.S. 89, 97-98 (1984).

[98] 517 U.S. at 72-73. Justice Souter's dissent undertook a lengthy refutation of the majority's analysis, asserting that the Eleventh Amendment is best understood, in keeping with its express language, as barring only suits based on diversity of citizenship, and as having no application to federal question litigation. Moreover, Justice Souter contended, the state sovereign immunity that the Court mistakenly recognized in *Hans v. Louisiana* was a common law concept that "had no constitutional status and was subject to congressional abrogation." 517 U.S. at 117. The Constitution made no provision for wholesale adoption of the common law, but, on the contrary, was premised on the view that common law rules would always be subject to legislative alteration. This "imperative of legislative control grew directly out of the Framers' revolutionary idea of popular sovereignty." *Id.* at 160.

[99] *College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666 (1999) (the Trademark Remedy Clarification Act, an amendment to the Lanham Act, did not validly abrogate state immunity); *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Savings Bank,* 527 U.S. 627 (1999) (amendment to patent laws abrogating state immunity from infringement suits is invalid); *Kimel v. Florida Bd. of Regents,*

Section 5 of the Fourteenth Amendment, of course, is another matter. *Fitzpatrick v. Bitzer,*[100] which was "based upon a rationale wholly inapplicable to the Interstate Commerce Clause, viz., that the Fourteenth Amendment, adopted well after the adoption of the Eleventh Amendment and the ratification of the Constitution, operated to alter the pre-existing balance between state and federal power achieved by Article III and the Eleventh Amendment," remains good law.[101] This ruling has led to a significant number of cases that examined whether a statute that might be applied against non-state actors under an Article I power, could also, under section 5 of the Fourteenth Amendment, be applied against the states.

In another line of case, a different majority of the Court focused not so much on the authority Congress used to subject states to suit as on the language Congress used to overcome immunity. Henceforth, the Court held in a 1985 decision, and even with respect to statutes that were enacted prior to promulgation of this judicial rule of construction, "Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear *in the language of the statute"*[102]

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528 U.S. 62 (2000) (abrogation of state immunity in the Age Discrimination in Employment Act is invalid).

[100] 427 U.S. 445 (1976).

[101] *Seminole Tribe,* 517 U.S. at 65-66.

[102] *See* Fourteenth Amendment, Congressional Definition of Fourteenth Amendment Rights, *infra.*

itself,[103] This means that no legislative history will suffice at all.[104]

Indeed, at one time a plurality of the Court apparently believed that only if Congress refers specifically to state sovereign immunity and the Eleventh Amendment will its language be unmistakably clear.[105] Thus, the Court held in *Atascadero* that general language subjecting to suit in federal court "any recipient of Federal assistance" under the Rehabilitation Act was deemed insufficient to satisfy this test, not because of any question about whether states are "recipients" within the meaning of the provision but because "given their constitutional role, the states are not like any other class of recipients of federal aid.[106] As a result of these rulings, Congress began to use the "magic words" the Court appeared to

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[103] *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985) (emphasis added).

[104] *See,* particularly, *Dellmuth v. Muth*, 491 U.S. 223, 230 (1989) ("legislative history generally will be irrelevant"), and *Hoffman v. Connecticut Dep't of income Maintenance*, 492 U.S. 96, 103-04 (1989).

[105] Justice Kennedy for the Court m *Dellmuth,* 491 U.S. at 231, expressly noted that the statute before the Court did not demonstrate abrogation with unmistakably clarity because, inter alia, it "makes no reference whatsoever to either the Eleventh Amendment or the States' sovereign immunity." Justice Scalia, one of four concurring Justices, expressed an "understanding" that the Court's reasoning would allow for clearly expressed abrogation of immunity "without explicit reference to state sovereign immunity or the Eleventh Amendment." *Id.* at 233.

[106] *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234,246 (1985). *See also Dellmuth v. Muth*, 491 U.S. 223 (1989).

insist on.[107] Later, however, the Court has accepted less precise language, and in at least one context, has eliminated the requirement[108] of specific abrogation language altogether.[109]

Even before the decision in *Alden v. Maine,*[110] when the Court believed that Eleventh Amendment

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[107] In 1986, following *Atascadero,* Congress provided that states were not to be immune under the Eleventh Amendment from suits under several laws barring discrimination by recipients of federal financial assistance. Pub. L. 99-506, § 1003, 100 Stat. 1845 (1986), 42 U.S.C. § 2000d-7. Following *Dellmuth,* Congress amended the statute to insert the explicit language. Pub. L. 101-476, § 103,104 Stat. 1106 (1990), 20 U.S.C. § 1403. *See also* the Copyright Remedy Clarification Act, Pub. L. 101-553, § 2, 104 Stat. 2749 (1990), 17 U.S.C. § 511 (making states and state officials liable in damages for copyright violations).

[108] *Kimel v. Florida Board of Regents*, 528 U.S. 62, 74-78 (2000). In *Kimel,* statutory language authorized age discrimination suits "against any employer (including a public agency)," and a "public agency" was defined to include "the government of a State or political subdivision thereof" The Court found this language to be sufficiently clear evidence of intent to abrogate state sovereign immunity. The relevant portion of the opinion was written by Justice O'Connor, and joined by Chief Justice Rehnquist and Justices Stevens, Scalia, Souter, Ginsberg, Breyer and Stevens. *But see Raygor v. Regents of the University of Minnesota*, 534 U.S. 533 (2002) (federal supplemental jurisdiction statute which tolls limitations period for state claims during pendency of federal case not applicable to claim dismissed on the basis of Eleventh Amendment immunity).

[109] *Central Virginia Community College v. Katz*, 546 U.S. 356, 363 (2006) (abrogation of state sovereign immunity under the Bankruptcy Clause was effectuated by the Constitution, so it need not additionally be done by statute); *id.* at 383 (Justice Thomas dissenting).

[110] 527 U.S. 706 (1999).

sovereign immunity did not apply to suits in state courts, the Court applied its rule of strict construction to require "unmistakable clarity" by Congress in order to subject states to suit.[111] Although the Court was willing to recognize exceptions to the clear statement rule when the issue involved subjection of states to suit in state courts, the Court also suggested the need for "symmetry" so that states' liability or immunity would be the same in both state and federal courts.[112]

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111 *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989) (holding that states and state officials sued in their official capacity could not be made defendants in § 1983 actions in state courts).

112 *Hilton v. South Carolina Pub. Rys. Comen*, 502 U.S. 197,206 (1991) (interest in "symmetry" is outweighed by stare decisis, the FELA action being controlled by *Parden v. Terminal Ry.*).

End Notes

64 *See Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 446-48 (2004) (exercise of bankruptcy court's *in rem* jurisdiction over a debtor's estate to discharge a debt owed to a state does not infringe the state's sovereignty); *California v. Deep Sea Research, Inc.*, 523 U.S. 491, 507-08 (1998) (despite state claims over shipwrecked vessel, the Eleventh Amendment does not bar federal court *in* rem admiralty jurisdiction where the *res* is not in the possession of the sovereign).

65 *Central Virginia Community College v. Katz*, 546 U.S. 356, 362-63 (2006).

66 A "preferential transfer" was defined as the transfer of a property interest from an insolvent debtor to a creditor, which occurred on or within 90 days before the filing of a bankruptcy petition, and which exceeds what the creditor would have been entitled to receive under such bankruptcy filing. U.S.C. § 547(b).

67 546 U.S. at 373.

68 *Lake County Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391, 400-01 (1979), *citing Edelman v. Jordan*, 415 U.S. 651 (1974), and *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945). The fact that a state agency can be indemnified for the costs of litigation does not divest the agency of its Eleventh Amendment immunity. Regents of the University of *California v. Doe*, 519 U.S. 425 (1997).

69 *See, e.g., Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) Local school district not an arm of the state based on (1) its designation in state law as a political subdivision, (2) the degree of supervision by the state board of education, (3) the level of funding received from the state, and (4) the districts' empowerment to generate their own revenue through the issuance of bonds or levying taxes.

70 Northern Insurance Company of *New York v. Chatham County*, 547 U.S. 189, 193 (2006) (counties have neither Eleventh Amendment immunity nor residual common law immunity). *See Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977); *Moor v. County of Alameda*, 411 U.S. 693 (1973); *Workman v. City of New York*, 179 U.S. 552 (1900); *Lincoln County v. Luning*, 133 U.S. 529 (1890). In contrast to their treatment under the

Eleventh Amendment, the Court has found that state immunity from federal regulation under the Tenth Amendment extends to political subdivisions as well. *See Printz v. United States*, 521 U.S. 898 (1997).

71 *Lake County Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391, 400-01 (1979) (quoting earlier cases).

72 *Chicot County v. Sherwood*, 148 U.S. 529 (1893).

73 *Lake County Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Petty v. Tennessee-Missouri Bridge Comen*, 359 U.S. 275 (1959).

74 *Gunter v. Atlantic Coast Line R.R.*, 200 U.S. 273, 284 (1906).

75 *Smith v. Reeves*, 178 U.S. 436 (1900); *Murray v. Wilson Distilling Co.*, 213 U.S. 151, 172 (1909); *Graves v. Texas Co.*, 298 U.S. 393, 403-04 (1936); *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47 (1944).

76 *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 54 (1944); *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945); *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573 (1947); *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275 (1959); *Florida Dep't of Health v. Florida Nursing Home Ass'n*, 450 U.S. 147 (1981). *Compare Patsy v. Florida Bd. of Regents*, 457 U.S. 496, 519 n.' (1982) (Justice White concurring), *with* id. at 522 and n.5 (Justice Powell dissenting).

77 *Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 305-06 (1990) (internal citations omitted; emphasis in original).

78 495 U.S. 299 (1990).

79 495 U.S. at 306-07. *But see Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985),

80 377 U.S. 184 (1964). The alternative but interwoven ground had to do with Congress's power to withdraw immunity. *See also Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275 (1959).

81 The implied waiver issue aside, *Parden* subsequently was overruled, a plurality of the Court emphasizing that Congress had failed to abrogate state immunity unmistakably. *Welch v. Texas Dep't of Highways and Pub. Transp.*, 483 U.S. 468 (1987). Justice Powell's plurality opinion was joined by Chief Justice

Rehnquist and by Justices White and O'Connor. Justice Scalia, concurring, thought *Parden* should be overruled because it must be assumed that Congress enacted the FELA and other statutes with the understanding that *Hans v. Louisiana shielded states from immunity. Id.* at 495.

82 *Edelman v. Jordan*, 415 U.S. 651, 671-72 (1974). For the same distinction in the Tenth Amendment context, *see National League of Cities v. Usery*, 426 U.S. 833,854 n.18 (1976).

83 *Edelman v. Jordan*, 415 U.S. 651 (1974) (quoting *id.* at 673, *Murray v. Wilson Distilling Co.*, 213 U.S. 151, 171 (1909)); *Florida Dep't of Health v. Florida Nursing Home Ass'n*, 450 U.S. 147 (1981). Of the four *Edelman* dissenters, Justices Marshall and Blackmun found waiver through knowing participation, 415 U.S. at 688. In *Florida Dep't, Justice Stevens* noted he would have agreed with them had he been on the Court at the time but that he would now adhere to *Edelman.* Id. at 151.

84 *Sossamon v. Texas*, 563 U.S. ___, No. 08-1438, slip op. (2011).

85 108 U.S. 436 (1883).

86 *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459, 466-467 (1945); *Edelman v. Jordan*, 415 U.S. 651, 677-678 (1974).

87 *Lapides v. Board of Regents*, 535 U.S. 613 (2002).

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Chief Justice John Marshall, Maybury v. Madison* 1803.

The substance of constitutional rights is meaningless if state actors can violate those rights with immunity. Such rights would become, in James Madison's words, "parchment barriers"-symbolic commitments to individual liberty that do nothing in practice to deter or prevent unlawful misconduct by government agents. After the Civil War, 4 million former slaves were looking for social equality and economic opportunity. It wasn't clear initially whether they would enjoy FULL-FLEDGE CITIZENSHIP or would be subjugated by the white population that also consisted of the government and its officials. 150 years later black people are still being subjugated by the white population and its government.

Violations of Federal Rules of Civil Procedure By State and Federal In The State of Kentucky Rule 38, (a)(b) TITLE VI. TRIALS

Rule 38. Right to a Jury Trial; Demand

Rule 39

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

Rule 26.

Duty to Disclose; General Provisions Governing Discovery (a) REQUIRED DISCLOSURES. (1) Initial Disclosure. (A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

The definition of "discovery" in law is the exchange of legal information and known facts of a case. Think of discovery as obtaining and disclosing the evidence and position of each side of a case so that all parties involved can decide what their best options are-move forward toward to trial or negotiate an early settlement.

Parties in a case are required to participate in the discovery process, meaning they must hand over information and evidence about a claim so all participants can know what they are facing at trial.

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