24-5187

No. 23-_____

In The
Supreme Court of the United States

EVA ANNA CZYZ,

Appellant,

v.

ANDREW ROMAN NIECZYPEROWICZ,

Appellee.

On Petition to the Texas State Supreme Court, *Czyz v. Nieczyperowicz*, Record No. 24-0107 (Tex. 2024), *on appeal from Nieczyperowicz v. Nieczyperowicz*, Cause No. 2020-05703 (245th Dist.-Harris Cy. 2023), *aff'd* Record No. 14-23-00695-CV (14th Ct. App. 2024)

Petition for Writ of Certiorari

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PETITION FOR A WRIT OF CERTIORARI

Appellant, Eva Anna Czyz, who "went through a devastating divorce, lost her job, and lost her insurance", *Bates v. Duby*, Civil Action Docket No. CV-89-088, 111 (Me. Super. May. 23, 2003), in an as-applied challenge, respectfully requests the issuance of a writ of certiorari to review the judgment of the State Court of Last Resort, dated May 10, 2024, denying a discretionary petition for review in the above-referenced case, turning on an erroneous characterization of an argument as substantive and not procedural regarding perfection of an appeal, within 21 days, in accordance with Tex. R. Civ. P. 506.1 (a), while permitting, in denial of equal protection, one party to perfect an appeal of right, deferring costs at his whim, preference and pleasure, in contravention to Tex. R. App. P. 20.1(b)(1), and circumventing the filing of a required form, as authorized under Tex. R. Civ. P. 145. *See* S.Ct.R. 13(1); 28 U.S.C. § 1257(a). Accordingly, "28 U. S. C. § 2403(b) may apply and shall be served on the Attorney General of that State". S.Ct.R. 29(4)(c).

"Every person who, under color . . . , subjects, or causes to be subjected, any citizen of the United States or other person. . . to the deprivation of any rights. . . , shall be liable to the party injured", 42 U.S.C. § 1983, and "the court, in its discretion, may allow the prevailing party. . . a reasonable attorney's fee as part of the costs". 42 U.S.C. § 1988(b).

QUESTIONS PRESENTED

If "there is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others", and if "[t]o hold otherwise. . . is irrational and antithetical to the very nature of the. . . the equal protection of citizens

guaranteed by the *Constitution*", *U.S. v. Vaello Madero,* 596 U.S. 159 (2022) (Sotomayor, J. dissenting), certainly, "[a]ll persons. . . have the same right in every State. . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." 42 U.S.C. § 1981(a). Moreover, "[t]he fundamental requisite of due process of law is the opportunity to be heard", and *Grannis v. Ordean,* 234 U.S. 385 (1914), and that should occur "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545 (1965).

While "these united colonies are and of right ought to be free and independent states," *Lee Resolution*; still, "a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation", *Decl. of Indep.*, and, "although neither controlling nor fully measuring the Court's discretion", "[a] petition for a writ of certiorari will be granted only for compelling reasons", including where "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals",. S.Ct.R. 10(b).

"A petition for a writ of certiorari seeking review of a judgment of a lower state court that is [similarly] subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review." S.Ct.R. 13(1). *See also* 28 U.S.C. § 1257(a). Accordingly, by the order entered on May 10, 2024, in the above referenced matter, the State Supreme Court for the State of Texas had denied an interlocutory petition for review of the

judgment issued by the state appellate court, from which a timely appeal had been brought, first filed with this Court on May 17, 2024, upon which filing, Czyz had been granted 60 days to address defects that had rendered it noncompliant with S.Ct.R. 33.2(b). *See also* S.Ct.R. 14.5.

Due process, in syllogistic express is merely "the process that is due," *T.P. Mining, Inc.*, 8 FMSHRC 687 (1986), and the deprivation thereof involves an irreparable harm, in derogation or abnegation thereof. *Cohen v. Rosenstein*, 691 F. App'x 728, (Mem)–730 (4th Cir. 2017). Moreover, "[i]t may be realistic today to regard [even] welfare entitlements as more like 'property' than a 'gratuity.'" *Goldberg v. Kelly*, 397 U.S. 254, n.8 (1970). And"especially a *pro se* complaint, should not be dismissed summarily unless 'it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'", *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978) (quoting *Haines v. Kerner*, 404 U.S. 519 (1972) (quoting *Conley v. Gibson*, 355 U.S. 41 (1957), a consideration of imperative significance the sole issue raised now on appeal:

> **Whether, for purposes of equal protection, the actions of a State Court, which provides a statutorily conferred right to "file the *Statement of Inability to Afford Payment of Court Costs* approved by the Supreme Court or another sworn document containing the same information", Tex. R. Civ. P. 145, so that that "party is not required to pay costs in the appellate court unless the trial court overruled the party's claim of indigence in an order that complies with Texas Rule of Civil Procedure 145", Tex. R. App. P. 20.1(b)(1), places others, similarly situated, in disparate treatment, when at least one appellant is permitted to circumvent the established procedure to "appeal a judgment by filing a bond, making a cash deposit, or filing a *Statement of Inability to Afford Payment of Court Costs* with the justice court *within 21 days after the judgment is signed* or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied". Tex. R. Civ. P. 506.1 (a).**

Stated alternatively, one may consider whether any civil actions, where the case does not "fall into the 'narrow class of state-law actions'", *Vlaming v. West Point Sch. Bd.*, Record No. 20-1940 (4th Cir. August 20, 2021), and yet "commenced in a State court may be removed" by "*any person* who is denied or cannot enforce in the courts of such State *a right under any law providing for the equal civil rights of citizens* of the United States, or of *all persons* within the jurisdiction thereof", 28 U.S.C. § 1443(1) (emphasis added). Clearly, removal is proper "[f]or *any act under color of authority derived from any law providing for equal rights*, or for refusing to do any act on the ground that it would be *inconsistent with such law*", 28 U.S.C. § 1443(2) (emphasis added), and when "the plain text of the statute suggests a broader interpretation of 'equal civil rights', *Vlaming*, Record No. 20-194028, *supra* (quoting U.S.C. § 1443(1).

This yet is permitted to occur, because this Court has held that "'any law providing for . . . equal civil rights' as referenced in § 1443(1) only includes those addressing racial equality." *Id. See also Georgia v. Rachel*, 384 U.S. 780 (1966).

PARTIES AND RULE 29.6 STATEMENT

Appellant, EVA ANNA CZYZ, hereinafter referred to as "CZYZ", has "gone through a bitter and financially devastating divorce", *Goldhoff v. Saunders*, 5:22-cv-324-PRL, 3 (M.D. Fla. Sep. 22, 2023). She has no parent corporation, and there is no publicly held corporation owning 10% of more of its stock. The sole Appellee is ANDREW[1] ROMAN NIECZYPEROWICZ, hereinafter referred to as "NIECZYPEROWICZ". Czyz was the Defendant in the in the 245th District Family

[1] Andrzej.

Court in Houston Texas (Harris County), Texas, in an action commenced, pursuant to Tex. Fam. Code § 6.001, for dissolution of Marriage, on October 26, 2021, described by Nieczyperowicz as "the third divorce." Transcript, p.6 (May 15, 2023)[2].

DECISIONS BELOW

All decisions, excepting the action brought in the State Supreme Court for the State of Texas, in this case in the lower courts are styled *Nieczyperowicz v. Nieczyperowicz*, commenced in the "the third divorce", *Id.*[3], on October 26, 2021, while the matter for which Czyz seeks a writ of certiorari, on review of a denial of a petition from the State Court of Last Resort is styled, *Czyz v. Nieczyperowicz.*

From the Trial Court, docketed at Cause No. No. 2017-58540, only the Final Divorce Decree, September 15, 2023, is available, having found the Trial Court unable or unwilling to provide a docket, and this order is attached in the Appendix of Authorities (Exhibit **A)**. The transcript record includes the following, attached in the Appendix of Authorities: Transcript, May 15, 2023 (Exhibit **B**); Transcript, May 15, 2023 (Exhibit **C**); Transcript, July 12, 2023 (Exhibit **D**)[4]; Transcript, July 25, 2023 (Exhibit **E**); Transcript, August 28, 2023 (Exhibit **F**). In addition, herein is submitted

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[2] *Nieczyperowicz v. Nieczyperowicz*, No. 2020-77320 (312th District Court 2020) was filed on December 2, 2020 by Hershel P. Cashin on behalf of Czyz, while Pitre Siomara Ramirez, Esq., retained counsel for Czyz, had filed the initial action for dissolution of marriage, in the matter, *Nieczyperowicz v. Nieczyperowicz*, Case No. 2017-58540 (245th District Court 2017), on September 7, 2017, while Czyz and Nieczyperowicz "were married on November 27, 2006", Appellant's Brief, p. 10, (citing RR 9:22-10:1).

[3] "THE COURT: This is the thing: If you've done this three times -- you've filed this divorce three times." *Id.*, p. 7.

[4] The transcript for this hearing, regarding the Order to Compel the Sale of the Marital Homestead, had been requested neither by Counsel for Czyz, James M. Evans, Esquire of Laura Dale & Associates, P.C., nor by Counsel for Nieczyperowicz, of Eaton Family Law, and is only available because Czyz, in due diligence preparation for an appeal filed by Nieczyperowicz, had requested a copy of the record transcribed.

the approved *Statement of Inability to Afford Payment of Court Costs* as published on the Appeals Court docket in public domain (Exhibit **G**). None have been designated for publication in the Federal Supplement or the Federal Reporter.

From the Appellate Court, docketed at Record No. 14-23-00695-CV, the following orders are attached in the Appendix of Authorities: Order, Motion for Extension of Appellate Fee Deadline, November 2, 2023 (Exhibit **H**); Order, Motion to Extend Time to File Reporter's Record, November 14, 2023 (Exhibit **I**); Order, Court Reporter's Request to Extend Time to File Reporter's Record (Exhibit **J**); Order, Motion to Withdraw as Counsel, December 19, 2023 (Exhibit **K**); Order, Motion for Extension to Extend Time to File Brief, January 25, 2024 (Exhibit **L**); Order, Motion Relating to Informalities in the Record, January 25, 2024 (Exhibit **M**); Order, Second Amended Motion to Reconsider, February 28, 2024 (Exhibit **N**); and Order, Motion for Leave to Amend or Strike, March 29, 2024 (Exhibit **O**). No transcript record has been created, and none have been designation for publication the Federal Supplement or the Federal Reporter.

From the State Supreme Court, docketed at Record No. 24-0107, the following orders are attached in the Appendix of Authorities: Filing Fee Notice, February 12, 2024; Order, Petition for Review, May 10, 2024 (Exhibit **P**). In addition, herein is submitted the denied *Statement of Inability to Afford Payment of Court Costs* as published on the Appeals Court docket in public domain (Exhibit **Q**). No transcript record has been created, and none have been designation for publication the Federal Supplement or the Federal Reporter.

JURISDICTION

The Texas Supreme Court entered judgment on March 27, 2024, and this Court's jurisdiction had been initially invoked under 28 U.S.C. § 1257(a), with a timely filing acknowledged on May 17, 2024. *See also* S.Ct.R. 13(1). "An 'as applied' challenge contends that a law's application to a particular person under particular circumstances deprives that person of a constitutional right", and, "[t]hus, a successful 'as applied' challenge precludes the enforcement of a statute against a plaintiff alone." *Marcellus v. Va. State Bd. of Elections*, 168 F. Supp. 3d 865 (E.D. Va. 2016) (quoting *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007).

And, raised in assignment of error for discretionary review, the appeal of the Final Divorce Decree "smack[s] of sour grapes by a sore loser lacking the grace to accept that, over the course of this case," *Liberte v. Reid*, 18-CV-5398 (DLI)(JRC), 6 (E.D.N.Y. Sep. 30, 2023), in a brief not filed until February 26, 2024, after grant of extension, in prayer for relief, under claim that "[t]he trial court erred in awarding Appellee a disproportionate share of the community estate as there was insufficient evidence provide a reasonable basis necessary to show that Appellee needed a disproportionate share of the community estate to support herself after the divorce". Nieczyperowicz's Brief, p. 14.

Clearly, "[t]he deference accorded the trial court's findings will vary, depending on the importance of the parties' credibility to a proper determination of the issue." *In re Marriage of Powers*, 527 S.W.2d at 949 (citations omitted).

"Notice, to comply with due process requirements, . . . must set forth the alleged misconduct with particularity", *In re Gault*, 387 U.S. 1 (1967) (internal quotation

marks omitted), and "the basic rule of statutory construction is to first seek the legislative intention, and to effectuate it if possible, and the law favors constructions which harmonize with reason, and which tend to avoid unjust, absurd, unreasonable or confiscatory results, or oppression'". *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (1989) (citations omitted). "[I]f the legislature had meant. . . [any other factor] to be considered. . . , it would have said so explicitly". *Brown v. Payton*, 544 U.S. 133 (2005).

As emphasized at the outset of his now famous opinion, Justice Harlan stated, "no power can be exerted to that end by the United States unless, apart from the *Preamble*, it be found in some express delegation of power or in some power to be properly implied therefrom", *Jacobson*, 197 U.S. at 11 (citing 1 Story's Const. § 462).Most recently, in dissent, several Justices had expressed the view, clearly applicable here, that "there is nothing unworkable about *Casey's* 'undue burden' standard", or "[i]ts primary focus on whether a State has placed a 'substantial obstacle' on a woman. . . is 'the sort of inquiry familiar to judges across a variety of contexts." *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) (quoting *June Medical Services L.L.C. v. Russo*, 591 U. S. ___, ___ (2020) (slip op., at 6) (ROBERTS, C. J., concurring in judgment) (Breyer, Sotomayor, and Kagan, JJ., dissenting). Moreover, and worse, "'the threat of a sanction should not be used to stifle counsel in advancing [just] novel legal theories or asserting a client's rights in a doubtful case.'" *Buxton v. Murch*, No. 2026-03-2, 2004 WL 1091903 at *1–6 (Va. Ct. App. May 18, 2004) (citations omitted).

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Cases

STATEMENT OF THE CASE

A. Access to the Courts

"While the failure to comply with the appellate rules subjects an appeal to dismissal, *Steingress v. Steingress*, 350 N.C. 64 (1999), this Court may suspend or vary the requirements of the rules to 'prevent manifest injustice,' . . . , or 'as a matter of appellate grace.'" *Viar v. N.C. Department of Transportation*, 162 N.C. App. 362 (N.C. Ct. App. 2004) (quoting *Enterprises, Inc. v. Equipment Co.*, 300 N.C. 286 (1980)). And, to "have access to their civil courts is not an evil to be regretted; rather, it is an attribute of our system of justice in which we ought to take pride", and that "[t]he State is not entitled to interfere with that access by denying its citizens accurate information about their legal rights", *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985) (quoting *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)). Furthermore, "a trial court has inherent power to sanction bad faith conduct during the course of litigation that interferes with administration of justice or the preservation of the court's dignity and integrity." *Onwuteaka v. Gill*, 908 S.W.2d 276 (Tex. App.—Houston [1st Dist.] 1995, *no writ*)

Yet, arguably, "[t]here is another consideration growing out of this part of the case which necessarily rises in judgment", and, analogously, "[w]hen the *Amistad* arrived, she was in possession of the negroes, asserting their freedom, and in no sense could they possibly intend to import themselves here, as slaves or for sale as slaves", arguing that the order of the "the District Court is unmaintainable, and must be reversed." *U.S. v. The Amistad*, 40 U.S. 518 (1841). "The ultimate purpose of the judicial process is to determine the truth", *Caldor, Inc. v. Bowden*, 330 Md. 632 (1993),

and "[a] lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth", *Com. v. Manigo*, 2010 WL 468084 (Va.Cir.Ct. 2010); accordingly, "[w]e who are seeking truth and not victory, whether right or wrong, have no reason to turn our eyes from any source of light which presents itself, and least of all from a source so high and so respectable as the decision of the supreme court of the United States." *U.S. v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807).

B. **Subject Matter Jurisdiction**

"Federal courts are courts of limited jurisdiction", and "[t]hey possess only that power authorized by *Constitution* and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*,511 U.S. 375 (1994) (internal citations omitted). Furthermore, generally, "[t]he whole subject of the domestic relations. . . belongs to the laws of the States", *In re Burrus*, 136 U.S. 586 (1890); however, "[s]ubject-matter jurisdiction is best understood as the power of a court to hear particular classes of cases", *Citizens for Rule of Law v. Senate*, 770 N.W.2d 169 (Minn. Ct. App. 2009) (citing *Black's Law Dictionary* 857 (7th ed. 1999); *Kontrick v. Ryan*, 540 U.S. 443 (2004)), and "[t]he existence of subject-matter jurisdiction raises a question of law subject to *de novo* review." *Id.* (citing *Grundtner v. Univ. of Minn.*, 730 N.W.2d 323 (Minn.App. 2007)).

C. **Domestic Relations Abstention**

Article III Courts generally examine the facts in conjunction with the procedural history, and "should not be hesitant to decline to exercise jurisdiction when 'state issues substantially predominate, whether in terms of proof, of the scope of the issues

raised, or of the comprehensiveness of the remedy sought.'" *Mann v. Waste Management of Ohio, Inc.*, 253 B.R. 211 (N.D. Ohio 2000) (quoting *In re White Motor Credit*,761 F.2d 270 (6th Cir. 1985) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966)). However, here, the issue raised on appeal, while arising during a case brought in dissolution of marriage, is distilled to an application of a statutorily conferred right available to all who use the courts in the State of Texas.

"To establish a claim for relief under the *Equal Protection Clause*, a plaintiff must demonstrate that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis." *Club Italia Soccer & Sports Org., Inc.*, 470 F.3d, at 286. "Procedural due process. . . extends potentially to any statutorily conferred benefit, whether or not it can be properly construed as a liberty or property interest", *Dilbert v. Newsom*, No. C096274 (Cal. Ct. App. Apr. 8, 2024) (citing *Conejo Wellness Center, Inc. v. City of Agoura Hills* 214 Cal.App.4th 1534 (2013)); "[b]ut, 'it still requires the deprivation of some statutorily conferred benefit before it is implicated.'" *Id.* (quoting *Ibid.*). "While '[a] state-created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right . . ., the underlying right must have come into existence before it can trigger due process protection.'" *Id.* Such is the matter raised in error for review.

D. Challenged Provision

Generally, "the plaintiff must pay the appropriate filing fee and service fees, if any, with the court", Tex. R. Civ. P. 502. "'We must. . . assume that the legislature chose, with care, the words it used when it enacted the relevant statute, and we are

bound by those words as we interpret the statute.'" *Id.* (*Barr v. Town & Country Properties, Inc.*, 240 Va. 292 (1990)) "Courts are "not free to add language, or ignore language, contained in statutes." *Id.* (*In re: Gordon E. Hannett*, 270 Va. 223 (2005)).

However, "[a]n abuse of discretion occurs when a ruling of the trial court 'is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.'" *State v. Hart*, 179 N.C. App. 30 (N.C. Ct. App. 2006) (quoting *State v. Hennis*, 323 N.C. 279 (1988) (citations omitted)). The "'abuse of discretion' test requires us first to consider whether the. . . [lower] court identified the correct legal standard for decision of the issue before it", and, "[s]econd, the test then requires us to determine whether the. . . [lower] court's findings of fact, and its application of those findings of fact to the correct legal standard, were illogical, implausible, or without support in inferences that may be drawn from facts in the record." *U.S. v. Hinkson*, 585 F.3d 1247 (9th Cir. 2009).

Where it is "alleged that more than the statutorily prescribed time has elapsed. . . the [opposing party]. . . bear[s] the burden of establishing sufficient excludable delay", *People ex rel. Ferro v. Brann*, 197 A.D.3d 787 (N.Y. App. Div. 2021), a burden that has not been met. "[A] belated. . . notice is. . . itself relevant to [Nieczyperowicz's] obligations", and he cannot argue that he "should [not] be held responsible for. . . delay," for "as a rule of law, . . . [he is] responsible for any unexcused time 'between [a] court-imposed deadline to respond... and the date on which. . . [he] actually filed a response.'" *People v. Zhagnay*, 2023 N.Y. Slip Op. 50480, (N.Y. Crim. Ct. 2023) (quoting *Ferro*, 197 A.D.3d at 7887; *see also People v. Delosanto*, 307 A.D.2d 298 [2d Dep't 2003]). "Therefore, they are responsible for. . . [all] additional days of delay." *Id.*

Still, "[a]s always, we must begin with the words of the statute creating the *[c]ommission* and delineating its powers." *Nat'l Petroleum Refiners Ass'n v. FTC*, 482 F.2d 672 (1973). "We *are obligated* to review issues affecting jurisdiction", and "[a]n appellate court generally has jurisdiction over a case *if a notice of appeal is filed* within thirty days after the judgment is signed u*nless one of the deadline-extending circumstances listed in Texas Rule of Appellate Procedure 26.1 exists.*" *Owens v. Brock Agency, Inc.*, No. 09-22-00336-CV, 11 (Tex. App. Jun. 1, 2023) (emphasis added). Yet, none are found here, with a patent failure to perfect appeal, pursuant to Tex. R. Civ. P. 506.1 (a).

"An appeal is perfected when a written notice of appeal is filed with the trial court clerk", Tex. R. App. P. 25.1(a), and "[t]he filing of a notice of appeal by any party invokes the appellate court's jurisdiction over all parties to the trial court's judgment or order appealed from." Tex. R. App. P. 25.1(b). Accordingly, by order, Nieczyperowicz had been graciously reminded that "[t]he notice of appeal in this case was filed September 19, 2023", three months having lapsed, and yet, "the filing fee of $205.00 ha[d] not been paid", noting that there was "[n]o evidence that appellant is excused. . . from paying costs", nor had any statement therefor "been filed", Order, December 19, 2023 (citing Tex. R. App. P. 5). Nieczyperowicz, therefore, had been directed "to pay the filing fee", and warned that should he "fail[] to do so, the appeal is subject to dismissal", *Id.* (citing Tex. R. App. P. 42.3(b)), a procedural rule required for establishing subject matter jurisdiction not invoked for three months, and, at least in temporal correlation, not acted upon with legal force until the same date upon which Czyz's former legal counsel's December 5, 2024 motion to withdraw had been decided.

Order, Motion to Withdraw Representation, December 19, 2023.

Inter alia, "[w]hen a *Statement* has been filed, the declarant *must not be ordered to pay costs* unless. . . [t]he declarant. . . [has been] given 10 days' notice of the hearing" that is "in writing and served in accordance with Rule 21a or given in open court", and wherein such an evidentiary hearing "the burden is on the declarant to prove the inability to afford costs", any such order is "supported by detailed findings that the declarant can afford to pay costs", and "[t]he court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments"; however, "the court must not delay the case if payment is made in installments." Tex. R. Civ. P. 145.

Yet, upon filing her timely appeal with the State Court of Last Resort, patently treated in disparate treatment, despite having a prior *Statement of Inability to Avoid Court Costs* on record, from her proceedings in the Trial Court, she had been subjected a civil form of "double jeopardy", *U.S. v. El-Mezain*, 664 F.3d 467 (5th Cir. 2011), *as revised* (Dec. 27, 2011)[5] and had been required, again, to file with that Court, a conforming *Statement*, which had been duly filed. Yet, to date, Czyz has never received a refund for the filing fee of $150.00 that she had been ordered to pay by notice, dated February 12, 2024.

Czyz had properly raised the issue regarding the act of appellate grace granted to Nieczyperowicz in assignment of in error, filing a timely Motion Relating to

[5] "The *Fifth Amendment's Double Jeopardy Clause* 'protects against a second prosecution for the same offense after conviction.'" *Id.* (quoting *Brown v. Ohio*, 432 U.S. 161 (1977) (internal quotation marks and citation omitted); *U.S. v. Levy*, 803 F.2d 1390 (5th Cir.1986)).

Informalities, Tex. R. App. P. 10.5(a). Yet, in error, the 14th Court of Appeal had determined that the issue raised had been a substantive, not a procedural argument, while the State Court of Last Resort had ruled that the "petition for review, . . . having been duly considered, is ordered, and hereby is, denied." Order, May 10, 2024. However, where "we do not have jurisdiction to consider [an] appellant's appeal", a court must "therefore dismiss. . . for lack of jurisdiction." *Amaechi v. Amaechi*, No. 14-23-00303-CV, (Tex. App. May. 9, 2024).

E. **Procedural or Substantive**

"A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364 (1948), and a reasonable inference of suspicion arises where "the circumstances are such as to suggest to a person of ordinary intelligence the probability that he has been defrauded, a duty of inquiry arises, and if he omits that inquiry when it would have developed the truth, and shuts his eyes to the facts which call for investigation, knowledge of the fraud will be imputed to him." *Town of Poughkeepsie v. Espie*, 402 F. Supp. 2d 443 (S.D.N.Y. 2005).

While, as noted above, the State Court of Last Resort had demanded of Czyz a filing fee to perfect her appeal, and had, in discretion, refused to grant judicial review, just one day after receipt of the pleading, the Appellate Court had, summarily, "advised that on this date the Court DENIED APPELLEE'S second amended motion for reconsideration. Reconsideration Denial Order, February 8, 2024. A week prior, all parties had been "advised that on this date the Court DENIED APPELLEE'S motion

relating to informalities in the record filed January 17, 2024, as the objections raised in appellee's motion *are substantive rather than based on mere procedural defects* in the appellate record" (emphasis added), referencing the proposition that a doctrinal argument "is a substantive rule grounded in estoppel; it has nothing to do with informalities in an appellate record, which involve procedural defects in the form of the record." Order Denying Motion Relating to Informalities, January 25, 2024 (citing *Waite v. Waite*, 150 S.W.3d 797 (Tex. App.—Houston [14th Dist.] 2004, *pet. denied*).

Yet, this case upon which the Appellate Court had relied had re-echoed the proposition that "[s]ubject matter jurisdiction exists by operation of law only, and 'this jurisdictional prerequisite plainly cannot be conferred by consent, waiver, or estoppel at any state of a proceeding", *Waite v. Waite*, 150 S.W.3d 797 (Tex. App. 2004) (citations omitted); therefore, "[i]f the. . . court had no subject matter jurisdiction. . . , the judgment is void", and "if the claim is valid and the judgment is void, we can go no further", *Id.* (citations omitted), the very argument raised by an unrepresented litigant arising from a failure of the Appellate Court to comply with Tex. R. Civ. P. 506.1(a), so as to deny Nieczyperowicz an opportunity to proceed on appeal.

Where "Applicant's belated inquiry demonstrates that she wished to appeal", a court may "find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment", and be "returned to that time at which she may give a written notice of appeal so that she may then, with the aid of counsel, obtain a meaningful appeal", but still, "she must take affirmative steps to file a written notice of appeal. . . after the mandate of this Court issues", *Ex parte Harris*, NO. WR-88,001-01, 2 (Tex. Crim. App. Sep. 12, 2018), facts clearly distinguished from the facts on the record, as

to Nieczyperowicz, who, in a signed pleading filed, but not dated, only indicating that an "order appealed from was signed on September 14, 2023", Notice of Appeal, December 28, 2023 (*delivered* September 19, 2024) (Exhibit **R**), had been awarded "$77,198.15 as his share of the of the proceeds", held in an IOLTA account, shifting the burden to Czyz's attorney's firm, which had been ordered custody of the trust. Motion for Extension of Appellate Fee Deadline, October 13, 2020.

"[I]f 'the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law'". *Muldrow v. Muldrow*, 2013-UP-373 (S.C. Ct. App. Oct. 9, 2013) (citations omitted). The firm had reiterated, on multiple occasions, "We do not represent you in this matter." Evodije L. Fornelius, "Email to Eva A. Czyz," November 10, 2023, (Exhibit **S**), signifying, to a reasonable trier of fact, an acknowledgment of a termination of the retainer agreement, communications shortly after the publishing of the Final Divorce Decree, in which James M. Evans, Esq. had stated in a plain and simple statement, "We have been working diligently on getting your qualified domestic relations orders (QDROs) drafted", and "[o]nce they are filed and signed by the court, I will withdraw as your attorney" (Exhibit **T**), by email to his former client on September 21, 2023, leaving no ambiguity, with the exception as to why he had waited until December to file a motion to withdraw. However, within a reasonable time, in Ponzi scheme fashion, that firm would later file only a letter with the Appellate Court to note that "James Michael Evans, does not represent appellee Eva A. Nieczyperowicz", Notice of Nonrepresentation, November 10, 2024. According to the former associate judge,

although, by action, the Appellate Court adopted another view, not declaring his motion as moot, "Regarding my 'withdrawal,' it was not necessary to withdraw because I never appeared on your behalf in the appeals case" (Exhibit U), although his paralegal, Evodije Fornelius, who is under the belief that that firm "generally does not handle appeals" (Exhibit V), contrary to claims on the full service law firm's official website, which has an entire section dedicated to the subject, Staff, "Family Law Appeals," *Dale Family Law*, https://www.dalefamilylaw.com/divorce-family-law/family-law-appeals/ (accessed May 15, 2024), had conceded, after the withdrawal had been granted, and attaching "some recent filings in the appeal", Czyz should "also received them since you are now on the service list." (Exhibit W), while James M. Evans insisted, "I filed a withdrawal simply as a courtesy to the appellate court so that they could memorialize that I was not representing you in the appeal--which, again, should not have been needed since I had never appeared in the appeal on your behalf." "The Commission has the burden to prove the case for an interim suspension by a preponderance of the evidence", and "[i]f proved by a preponderance of the evidence," certain acts of misconduct may "establish[] conclusively that the attorney poses a substantial threat of irreparable harm to clients or prospective clients". Tex. R. Disc. P. 14.02.

F. "A Woman's Choice"[6]

"Review on a writ of certiorari is not a matter of right, but of judicial discretion", S.Ct.R. 10(b), and, on previous occasions, this Court has granted certiorari in a Texas

[6] *A Woman's Choice-East Side v. Newman*, 671 N.E.2d 104 (Ind. 1996).

case to challenge a measure designed "to defeat any suit against them by showing, among other things, that holding them liable would place an 'undue burden' on women". *Whole Woman's Health* v. *Jackson*, 595 U.S. 30 (2021). Substantively, this case is not distinguishable, except that it involves a woman's right, in domestic relations, to seek a dissolution of an unwanted or undesirable marital union, a statutorily conferred right under Tex. Fam. Code § 6.001, and, *a priori*, in derogation of an opportunity that "[would] lead to nothing more than 'a day in court'". *De Leon v. Napolitano*, No. C 09-3644 JW, 2009 WL 4823358, at *1–4 (N.D. Cal. Dec. 10, 2009).

This Court has held that "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman . . . impose an undue burden on the right". *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992). In that case, "a plurality of the Court [had] concluded that there 'exists' an 'undue burden' on a woman's right. . . , and consequently a provision of law is constitutionally invalid, if the 'purpose or effect' of the provision 'is to place a substantial obstacle in the path of a woman". *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016) (citations omitted). And, "[t]o succeed on an as-applied challenge, the moving party must show it is unconstitutional because the way it was applied to the particular facts of their case." *Id.* (citations omitted).

The gravamen of this discretionarily reviewable issue turns on the availability of a statutorily conferred procedure afforded to the indigent, as Czyz had been adjudged in the Trial Court, albeit denied, without due process, on discretionary appeal to the State Court of Last Resort, that permits "[a] party who cannot afford payment of court costs" to "file the *Statement of Inability to Afford Payment of Court Costs. . .*", Tex. R.

Civ. P. 145, so that that "party is not required to pay costs in the appellate court unless the trial court overruled the party's claim of indigence in an order that complies with Texas Rule of Civil Procedure 145." Tex. R. App. P. 20.1(b)(1), and its nexus with the statutorily conferred right to "appeal a judgment by filing a bond, making a cash deposit, or filing a *Statement of Inability to Afford Payment of Court Costs* with the justice court within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied", Tex. R. Civ. P. 506.1(a)—a procedure at least Nieczyperowicz had been permitted to circumvent, if not contravene.

REASONS FOR GRANTING CERTIORARI

Where there exists an appeal of right, it is not subject to discretion of any court. Moreover, in perfection, it is ordered by rules, neither subject to the discretion of any court any more than an appeal is perfected at the pleasure, whim, preference or fancy of any party who so elects to pursue this statutorily conferred right, guaranteed, in equal protection to all persons, to which, apparently, at least one man, in subordination to a woman, finds extraordinary exception, arbitrarily and capriciously, a clear abuse of discretion. *Azalea Corp. v. City of Richmond*, 201 Va. 636 (1960).

A. **Domestic Violence**

"[I]f the gentleman had believed this decision to be favorable to him, we should have heard of it in the beginning. . . , for the path of inquiry in which he was led him directly to it", As stated in *U.S. v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807). Yet "evidence of . . . flight. . . [is] admissible even if offered solely to prove his consciousness of guilt

as to that predicate act." *U.S. v. Pungitore*, 910 F.2d 1084 (3d Cir. 1990). And, in this case, involving two former Polish immigrants, whilst one retreated to his native land, the other, financially devastated, by a long divorce and abusive marriage, remains here, at the discretion of the courts. "Bad faith can be established with direct or circumstantial evidence, but absent direct evidence, the record must reasonably give rise to an inference of intent or willfulness". *Brewer v. Lennox Hearth Products*, LLC, 601 S.W.3d 704 (2020) (citations omitted).

In the State of Texas, "'[f]amily violence' means. . . an act by a member of a family. . . against another member. . . that is intended to result in physical harm. . . [or] bodily injury". Tex. Fam. Code § 71.004(1). "The court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable", Tex. Fam. Code § 6.002(1), and "[t]he court may grant a divorce in favor of one spouse if during the marriage the other spouse. . . has been convicted of a felony." Tex. Fam. Code § 6.004(a)(1), a fate first avoided by a suspect reclassification of an offense to a misdemeanor (Exhibit **X**). Clearly, "[a] person commits an offense if the person. . . intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse", Tex. Penal Code § 22.01(a)(1), while "[a]n offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against. . . a person whose relationship to or association with the defendant. . . if. . . against a person whose relationship to or association with the defendant". Tex. Penal Code § 22.01(b)(2)(A)(i)(c).

Furthermore, "[a] court that determines that a spouse is eligible to receive

maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including. . . any history or pattern of family violence, as defined by Section 71.004 (Family Violence)" Tex. Fam. Code § 8.052(11). Yet, while, discovery "must be conducted during the discovery period," Tex. Civ. P. 190.3(b)(1)(B), in the matter raised on review, discovery had been prematurely closed, precluding inquiry into an intriguingly unlisted pretrial diversion program, Staff, "Programs & Diversion," *Harris County DA*, https://www.harriscountyda.com/programs_diversion (accessed March 10, 2024), none of which describe Nieczyperowicz's March 25, 2021 offense (Exhibit **Y**), while, in pleading, with the acquiescence of the State Courts, Czyz's former spouse, Nieczyperowicz, elected a right to remain silent, *Miranda v. Arizona*, 384 U.S. 436 (1966), and raising a reasonable suspicion as to how or why, while a civil judgment lien is the only extant record (Exhibit **Z**), during the year, and time, apparently, when Nieczyperowicz had already identified the investor (Exhibit **AA**), contradicting the claims of Czyz's former spouse that he had "quickly found an investor who was willing to close the sale of the property by July 17, 2023." Nieczyperowicz's Brief, p. 10 (citing RR 5:25-7:1).

While Nieczyperowicz had proffered, "I don't really feel that I can really afford to invest in the house and finish it, which would be great because that's a big difference between selling it to an investor", *Transcript*, p. 28, May 22, 2023, by its own admission, the chosen investor markets its services for properties that "need repairs, title work or other work of that sort", and they warn that "there are some people who are just not suited for an investment sale", specifically referencing "a house in a

beautiful neighborhood or a house that's in perfect condition", because then "the best way to get money for your house is to put it on the whole, full listing service to hire a professional realtor to list it, show it and market it and get top dollar." Big State Home Buyers, "Why You Shouldn't Sell To An Investor - Big State Home Buyers Tips," *YouTube*, July 16, 2015, https://youtu.be/jjEvTXbxQ6Y?si=ZkveLIoHhbp1zpRA (accessed March 24, 2024). Apparently, this Marital Homestead was the exception to the rule, even for the Trial Court, in discretion.

B. **Equal Rights for Women**

"The term 'moral turpitude' refers to behavior 'that shocks the public conscience as being inherently base, vile, or depraved'," *Uribe v. Sessions*, 855 F.3d 622 (4th Cir. 2017) (citations omitted). Moreover, "conduct deliberately intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level," rebutting even a claim in defense of sovereign immunity. *Cty. of Sacramento v. Lewis*, 523 U.S. 833 (1998). And, distinguishable from a rational basis , "[a] statute challenged on equal protection grounds is evaluated under 'strict scrutiny' if it interferes with a 'fundamental right' or discriminates against a 'suspect class'". *Gray v. Commonwealth*, 274 Va. 290 (Va. 2007) (quoting *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450 (1988), and, of record, Czyz is a woman, in claims averring a derogation of rights to due process and equal protection.

C. **Dissolution of Marriage**

"As long as the district court's chosen instructions represent a complete and correct statement of law, we will not disturb them. *U.S. v. Ashqar*, 582 F.3d 819 (7th Cir. 2009) (citing *U.S. v. Matthews*, 505 F.3d 698 (7th Cir.2007)); however, "a judgment

order must name the party against whom the judgment is entered as '[a] judgment that does not show for and against who it is void for uncertainty.'" *Hubbard v. State Farm Indemnity Co.*, Record No. No. 31031 (W.V. 2023) (citations omitted). Accordingly, a party to litigation "must at minimum have been granted sufficient 'notice and . . . opportunity [to be heard].'" *OSI LLC v. City of New York*, 22-cv-10921 (S.D.N.Y. Mar. 29, 2024) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)), and "[i]n determining whether the granted process is sufficient, a reviewing court must employ the balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976)", wherein "[t]he *Mathews* inquiry considers the private interest at stake, the risk of erroneous deprivation the present process carries, and the government's interest in the relevant function involved and/or the potential burden that the imposition of greater or different process may carry." *Id.* (citations omitted).

The Fourth Circuit, where Czyz resides, had recently reminded all regarding dysphoric conditions that, "[l]eft untreated, . . . can cause, among other things, depression, substance use, self-mutilation, other self-harm, and suicide", *Grimm v. Gloucester Cy/ Sch. Bd.*, No. 19-1952 (4th Cir. 2020) (citations omitted)., has commanded that "[t]here is, therefore, a greater burden and a correlative greater responsibility upon the district court to insure that constitutional deprivations are redressed and that justice is done." *Leeke*, 574 F.2d at 1147. Indisputably, a court may "not dismiss[] summarily unless 'it appears '*beyond doubt* that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'", *Leeke*, 574 F.2d at 1147 (citations omitted).

D. **Divorced from Reality**

Yet, in the matter raised in assignment of error for discretionary, by the account of Rick Brass, a former attorney for Czyz, before his motion to withdraw, "I'm the fourth lawyer", and "[t]his is the third divorce." *Transcript*, p. 6, May 15, 2023[7]. By Nieczyperowicz's admission, "[t]his is a divorce with no children, so it's really just a division of the assets", "[i]n particular, a home and retirement accounts", and "[t]he parties have already separated their bank accounts." *Transcript*, p. 6, May 22, 2023. Yet, "a duty of inquiry arises,. . . if. . . [one] omits that inquiry when it would have developed the truth, and shuts his eyes to the facts which call for investigation, knowledge of the fraud will be imputed to him." *Town of Poughkeepsie v. Espie*, 402 F. Supp. 2d 443 (S.D.N.Y. 2005).

Commenced first in the courts on September 7, 2017, *Nieczyperowicz v. Nieczyperowicz*, Case No. 2017-58540 (245th District Court September 7, 2017), the facts surrounding a dissolution of marriage, still pending disposition on appeals, at the 14th Court of Appeals, *see Nieczyperowicz v. Nieczyperowicz*, No. 14-23-00695-CV (14th Ct. App. 2024), even after a discretionary decision on an interlocutory appeal, in *Czyz v. Nieczyperowicz*, Record No. No. 24-0107 (Tex. 2024), stand in stark contrast to common beliefs and opinions, divorced from reality, because, according to some sources, "[c]ontested divorces usually take over a year to finalize—although simple divorces can be completed in as little as three months", and "[d]ivorce comes at a big cost, with couples spending an average of $7,000 to dissolve their union", Christy Bieber & Adam Ramirez, "Forbes Advisor: Revealing Divorce Statistics In 2024,"

[7] *Nieczyperowicz*, No. 2020-77320 (312th District Court 2020) was filed on December 2, 2020 by Hershel P. Cashin on behalf of Appellee.

Forbes, January 8, 2024 (citations omitted). Even according to the website for law firm retained by her former spouse, "finalizing a divorce in Houston can take anywhere from several months to over a year on average", but "[t]he timeline can fluctuate significantly depending on variables like its complexity and whether it's contested or not." Staff, "Houston Divorce Attorneys: Everything You Need to Know about the Divorce Process," *Eaton Family Law*, https://eatonfamilylawgroup.com/houston/divorce/ (accessed April 8, 2024).

"Working through a separation is still a very stressful experience", and "[w]hile much of the stress is emotional, there is often a financial element as well." Hristina Byrnes (24/7 Wall Street), "The cost of divorce: How much do you pay to get divorced in California vs. Colorado?" *USA Today*, January 20, 2021. According to a study completed by Martindale Nolo Research in 2015, on the national level, *ceteris paribus*, "the cost of a divorce can be as little as $8,400 or as much as $17,500", and "[t]he average attorney fee in the United States during divorce proceedings is more than $12,800, with an average rate of $250-plus per hour", *Id.*, compared to her last attorney of record, James M. Evans, Esq., at Laura Dale & Associates, P.C., in Houston, Texas, who had a billable rate of $475.00/hour, "recorded in units of 1/4 hour (15 minutes) even though the time spent may be less than 1/4 hour". Eva A. Nieczyperowicz & James M. Evans, "Employment Agreement Family Law, *Laura Dale & Associates*, June 29, 2023. This suggests to a reasonable trier of fact that this firm had estimated 26.3 hours of trial, or a little less 3.3 days of trial for a Marital Estate in which the highest valued community property item had been a Marital Homestead sold for just $320,000.00.

Czyz's last attorney of record, James M. Evans, Esq., at Laura Dale &

Associates, P.C., in Houston, Texas had held her responsible for an invoice for legal services, demanding $22,298.34 (Exhibit **BB)**, including the responsibility to replenish the exhausted $12,500.00 retainer, computed "in an amount not less than the amount determined by multiplying eight (8) hours per day by the attorney's hourly rate as provided herein for the number of trial days estimated by the Firm", Eva A. Nieczyperowicz & James M. Evans, "Employment Agreement Family Law, after only the first full month of representation, and including 12.75 hours billed by a paralegal, Evodije Fornelius, amounting to $3,187.50, apparently triggering a requirement for explanation, noting how this paralegal had "completed a review of your case pleadings" and indicating that she would "work on setting a hearing on the *Motion to Appear in Court Remotely*", in regards to the Motion to Compel Sale. (emphasis added)

In the State of Texas, "[i]t is presumed that the usual and customary attorney's fees for a claim. . . are reasonable", but this is a rebuttable presumption, Tex. Civ. Prac. & Rem. Code § 38.003, and "[t]his chapter shall be liberally construed to promote its underlying purposes." Tex. Civ. Prac. & Rem. Code § 38.005. "The court may take judicial notice of the usual and customary attorney's fees and of the contents of the case file without receiving further evidence in: (1) a proceeding before the court; or (2) a jury case in which the amount of attorney's fees is submitted to the court by agreement", Tex. Civ. Prac. & Rem. Code § 38.004; however, Czyz's attorney fees were never questioned by the Trial Court, while the Trial Court, Hon. Angela Lancelin presiding, reprimanded Czyz, publicly stating, "If I get you a translator, you're going to pay for it", and, in reference to her legal representative before James M. Evans, Esq., Rick Bass, of Brass Law, in Houston Texas, "I can't order him to work for free, ma'am",

and "You. . . pay him with cash right now what you owe him", as I explained how I had "just lost my job." *Transcript*, p. 9 (245th District Court, May 15, 2023).

E. Marital Homestead

Generally, "property conveyed to one spouse during a marriage is presumed to be community property unless that presumption be displaced by a different or contrary presumption that would show that the property so conveyed was in fact, separate property." *Kyles v. Kyles*, 832 S.W.2d 194 (Tex. App. 1992). "[A] presumption of undue influence may arise '[w]here one person stands in a relation of special confidence towards another, so as to acquire habitual influence over him." *Friendly Ice Cream Corp. v. Beckner*, 268 Va. 23 (2004) (quoting *Fishburne v. Ferguson*, 84 Va. 87 (1887)). Moreover, "a presumption of constructive fraud arises when a spouse unfairly disposes of the other spouse's one-half interest in community property", *Carnes v. Meador*, 533 S.W.2d 365 (Tex. Civ. App. 1976) (citing *Reaney v. Reaney*, 505 S.W.2d 338 (Tex. Civ. App. — Dallas 1974, *no writ*).

Even Nieczyperowicz conceded that "[t]he nature of the property is simple enough for the court to make an even distribution of the property." Nieczyperowicz's Brief, p. 23. Moreover, the Trial Court, while dispensing with any concerns for Czyz, had affirmed an understanding as to Nieczyperowicz, "He wants to be divorced because he wants to go back to his home country", and, as to the Marital Homestead, "that's the only one asset that there is of value to distribute, and I know that from the last setting the testimony was that he just needs to get rid of it." *Transcript*, p. 9 (July 25, 2023).

Accordingly, it is of at least probative value that the property purchased for

$225,000.00 on June 30, 2015, held a Real AVM Range of $433,000 - $496,300, as of January 16, 2024, Houston Association of Realtors, "7714 Northbridge Dr, Spring, TX 77379-8730, Harris County; APN: 115-727-021-0026; CLIP: 1164205648," *Property Details*, January 29, 2024, with minor improvements, had been listed and sold for $499,900 on March 8, 2024. Staff, "7714 Northbridge Dr, Spring, TX 77379 (Est. $499,869)," *Realtor*, https://www.realtor.com/realestateandhomes-detail/7714-Northbridge-Dr_Spring_TX_77379_M82592-25954 (accessed March 11, 2024).

"Certain constitutional provisions, statutory enactments, and settled principles of law govern our determination of the questions presented by this appeal", and "[w]e must presume that the residential property is community." *Marriage of York, Matter of*, 613 S.W.2d 764 (Tex. Civ. App. 1981). In 2023, the average interest rate for a traditional 30 year mortgage was just 6.81%, Peter Miller & Aleksandra Kadzielawski, "Mortgage Rates Chart: Historical and Current Rate Trends: 30-year fixed-rate mortgage trends over time," *Mortgage Reports*, March 13, 2024, while at closing the payoff figure to Flagstar Bank, FSB, was only $ 135,147.36, Fidelity National Title Agency, Inc., *Seller's Statement (Escrow Number: FAH23008110)*, August 14, 2023, translating into only an $885.00/month mortgage upon refinancing, had the Marital Homestead been awarded to either party, but, when questioned about the best interest of both parties, upon direct examination, my former spouse had stated, "I don't really feel that I can really afford to invest in the house and finish it, which would be great because that's a big difference between selling it *to an investor for* -- probably the last offer we had $300, which we're not going to get it probably now because the market is slow versus 500 or even over when the house is finished." *Transcript*, p. 28, May 22,

2023. Upon Czyz's testimony, the Trial Court decided "to recess this trial. . . for two months so that you-all can sell – sell the home." *Id.*

The Marital Homestead had been purchased on June 30, 2015, through a conventional mortgage, for $225,000, and, pursuant to Fidelity National Title Agency, Inc., *Seller's Statement (Escrow Number: FAH23008110)*, August 14, 2023, Czyz's former Marital Estate was sold to Big State Homes, LLC/TEI Holdings 401K Trust, for $320,000.00, while encumbered by a $135,147.36 mortgage, payable to Flagstar Bank FSB, reducing the remaining distribution to $184,852.64. Yet, pursuant to the *Final Divorce Decree*, while Mr. Nieczyperowicz had been awarded "$77,189.15 of the proceeds from the sale of the home respectively", Niecczyperowicz's Brief, p. 11 (citing RR 173:9-174:4), a sale that had yielded only $320,000.00, *Sellers Agreement*, dated August 14, 2023, in a sale to an investor that had publicly advertised for purchasing homes, "as is", from persons in distress, seeking immediate cash, promising that the a Houston based business entity "will make you a fair cash offer on your home — AS IS", Staff, "We Buy Houston Houses in Any Condition ," *Big State Homebuyers*. Further, the sale had effectively transferred this personal property to the investor, selected by Nieczyperowicz, as early as December 2021, as in evidence at Exhibit **AA**, indicia to support a *prima facie* case of forgery and fraud, rendering the sale void. "[O]nce conspiracy has been established, the government need show only 'slight evidence' that a particular person was a member of the conspiracy", *U.S. v. Elliott*, 571 F.2d 880 (5th Cir. 1978) (quoting *U.S. v. Morado*, 454 F.2d 167 (5th Cir. 1972)).

Under the *Final Divorce Decree*, despite an estimate from the last retained attorney, estimating proceeds of around $145,000.00 (Exhibit **CC**), Czyz had been

awarded, on paper, "[t]he sum of $97,199.16 from the net sales proceeds of the sale", *Final Divorce Decree*, September 15, 2023; however, on October 26, 2023, *via* Wire Transfer 23Aqh3139Kaw7Dhh, only $81,071.22 was remitted (Exhibit **DD)**, a difference amounting to $16,127.94, in addition to an unaccountedd for award for "[t]he J.P. Morgan Securities LLC. . . , held in the name of Respondent, in the amount of $9,251.09, as attorney's fees payable to LAURA DALE & ASSOCIATES, P.C.", for which the subject firm denies acknowledgment of receipt, (Exhibit **EE**) a firm that, by December 2023 had billed Czyz for a total of $69,578.75(Exhibit **FF**), including fees for expenses like air conditioning (Exhibit **GG**), adversely impacting the financial condition of this woman, and representing 85.8% of the total funds disbursed from the Marital Homestead sale proceeds, as further discussed below, for work commenced officially on June 29, 2023 (Exhibit **HH)**.

"In determining the number of hours reasonably expended, a court should exclude hours that are not adequately documented, or that are excessive, redundant, or otherwise unnecessary. *Maldonado v. Morgan Hill Unified Sch. Dist.*, 21-cv-06611-VKD, 13 (N.D. Cal. Sep. 21, 2022) (citations omitted). In considering unreasonable fees, "[w]hile the test for 'relatedness' is not precise, claims that are related have a common core of facts or are based on the same or similar legal theories." *Id.* (citations omitted).

F. **Equal Protection**

A reasonable trier of fact would find a simple legal procedure, had been availed as a statutorily conferred right, Tex. R. Civ. P. 145, for indigent litigants, akin to that class about whom an "*amici* of economists and researchers with extensive experience in 'causal inference' – the practical meaning of statistical results", had proffered to

include those "who seek abortions", "more than three time as likely to be poor", finding 49%, exceeding the 12% national poverty rate, and representing "75% of women who seek abortions", who are low income", Teresa Ghilarducci, "59% Of Women Seeking Abortions Are Mothers Facing High Poverty Risk," *Forbes*, December 24, 2021, and in which the woman spouse in a dissolved marital union, which she had initiated in September 2017, *Nieczyperowicz v. Nieczyperowicz*, Case No. 2017-58540 (245th District Court September 7, 2017), chiefly to escape domestic violence (Exhibit **II**).

A reasonable trier of fact would find that a woman, and former immigrant from Poland, isolated from her lifelong family and friends, by the man in whom she had placed her deepest affections, dreams and trust, after persevering through years of thwarted attempts to finalize a dissolution of marriage, in accordance with Tex. Fam. Code § 6.001, retaining several divorce attorneys, finding herself in financial ruin, and seeking, in desperation, after having been abandoned by her retained counsel, Rick Brass, Esq., during a hearing on a motion to withdraw, during which the presiding judge had stated, for the record, " You either pay him with cash right now what you owe him -- . . . I can't order him to work for free, ma'am", *Transcript*, p. 9, May 15, 2023, availing herself of that procedure, before seeking the expertise of a firm that had advertised that they "will fight zealously for your interests", a law firm ranked third for best divorce attorneys in Houston, Joey Callo, "The 20 Best Divorce Lawyers in Houston," *Lawyer Inc*, March 20, 2024, and completing a retainer an unconscionable retainer agreement for representation from a former associate judge from the family court, *see generally* Aubrey R. Taylor, "Something Went Terribly Wrong in the 507th Family District Court Under the Watch of Associate Judge Jim Evans," *Blogspot*, July

24, 2021; Brandon Wolf, "Houstonian Becomes First Openly Gay Family-Court Judge in Texas," *Out Smart Magazine*, February 1, 2017.

A reasonable trier of fact would find that same woman, a former immigrant from Poland, abandoned by her retained counsel, after her former spouse had failed to sign the Final Divorce Decree (Exhibit **JJ**), attempting to appeal the matter, on a claim that "[t]he trial court erred in awarding Appellee a disproportionate share of the community estate as there was insufficient evidence provide a reasonable basis necessary to show that Appellee needed a disproportionate share of the community estate to support herself after the divorce", Nieczyperowicz's Brief, p. 9, albeit arguably an appeal sought, with impunity, in abuse of process (Exhibit **KK**), a patently "improper use of a regularly issued process, not for maliciously causing process to issue, or for an unlawful detention of the person.'" *Mullins v. Sanders*, 189 Va. 624 (1949) (citations omitted).

A reasonable trier of fact would find a woman born in Poland, seeking an American Dream, "a dream deeply rooted in the American Dream," Martin Luther King, Jr., *I Have a Dream*, August 28, 1963, but in Texas, yet, in an American nightmare, found losing the home that she loved, subjected to a Motion to Compel its sale, which, notwithstanding that , and "[i]t is emphatically the duty of the Judicial Department to say what the law is." *Marbury v. Madison*, 5 U.S. 137 (1803), reviewing courts, of right or in discretion, will not disturb. . . unless the trial court has committed a clear abuse of discretion", *BMC Software Belgium*, 83 S.W.3d at 789 (citations omitted), and "[a] trial court 'abuses its discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.'" *Id.* (citations omitted).

A reasonable trier of fact would find a woman, not in a family way, but yet still a man's victim of an unplanned marriage, approaching "a mere nullity", whose "validity may be impeached in any court, whether the question arises directly or indirectly, and whether the parties be living or dead", *Kuykendall*, 192 Va. at 8, for a marital union commenced "on November 27, 2006", Nieczyperowicz's Brief, p. 10 (citing RR 9:22-10:1), just a month before, in the State of Illinois, Nieczyperowicz had been granted a decree of dissolution from a prior marriage to one Lidia Johannssen Nieczyperowicz in Cook County, Illinois, on October 10, 2006, as confirmed by Sameer Vohra, the State Registrar, dissolving a marital union commenced on January 26, 1987, as recorded by Karen A. Yarborough, the Recording Officer for the Department of Public Health.

"If you find that. . . [conduct had been] preceded and accompanied by a clear, deliberate intent on the part of the defendant. . . , which was the result of deliberation and premeditation, so that it must have been formed upon pre-existing reflection. . . it is" knowing and willful conduct; however, "[t]he law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent. . . which is truly deliberate and premeditated", and "[t]he time will vary with different individuals and under varying circumstances." *People v. Perez*, 2 Cal.4th 1117 (Cal. 1992). "The true test is not the duration of time, but rather the extent of the reflection", and "[a] cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it include[d] an intent. . . , is not such deliberation and premeditation as

will fix an unlawful" and premeditated conduct. *Id.* In *People v. Anderson*, 70 Cal.2d 15 (Cal. 1968), the "court identified three categories of evidence pertinent to the determination of premeditation and deliberation: (1) planning activity, (2) motive, and (3) manner", and had stated that: "'Analysis of the cases will show that this court sustains verdicts. . . typically when there is evidence of all three types and otherwise requires at least extremely strong evidence of (1) or evidence of (2) in conjunction with either (1) or (3)." *Perez*, 2 Cal. 4th at 1117 (citations omitted). Hence, it of at least probative value to a reasonable trier of fact that Nieczyperowicz had transmitted to Czyz, during the long process of divorce, a complete playbook, written in Polish, and followed to the letter, on how to divorce your spouse and return to Poland (Exhibit **LL**).

Notably, spousal support is awarded in Texas, but a spouse must prove that, after the division of property is complete, "[t]he other spouse has committed domestic violence towards the spouse seeking support. . . within two years of the divorce", Jeffery Johnson & Adam Ramirez, "Texas Alimony & Spousal Support (2024 Guide)," *Forbes*, January 26, 2023, and at least in coincidental correlation, Nieczyperowicz had sought, apparently while arranging to dispose of the Marital Homestead, a means through which he could expunge his criminal record, as noted above.

G. **Statement of Inability to Avoid Court Costs**

Yet, while Czyz, a woman, had been subjected, by order, in a civil version of double jeopardy, to prove once again that she had been adjudged as indigent, under Tex. R. Civ. P. 145, and an application as yet unanswered, contravening the rule that a "party is not required to pay costs in the appellate court unless the trial court overruled the party's claim of indigence", Tex. R. App. P. 20.1(b)(1), at the State Court

of Last Resort, the subject of a Motion for Remittance of Filing Fee, unresolved before issue of the final order, in undoubtedly disparate treatment, Nieczyperowicz, with impunity, had been permitted to file a Notice of Appeal, "within 21 days after the judgment [wa]s signed", Tex. R. Civ. P. 506.1(a), without presenting a *Statement of Inability to Afford Payment of Court Costs*, but rather filing a request for extension, granted not just once, but twice, not presenting a payment of the required fee, until December 28, 2023, on a Notice of Appeal, for a "judgment or order appealed from [that] was signed on September 14, 2023", while the 14th Court of Appeals, obligingly had granted the male spouse further extensions, accepting a claim that an argument had been delayed in January on account of just an ice storm, about which a reasonable trier of fact would conclude that the "proffered explanation is unworthy of credence". *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981).

H. **Void Judgment**

"At common law a judgment *non obstante veredicto* would be allowed only when the plea confessed a cause of action and set up matters in avoidance which were insufficient, although found true, to constitute either a defense or a bar to the action", *Baxter v. Irvin*, 73 S.E. 882 (N.C. 1912) (citations omitted), but "the motion for such a judgment must, of course, be made after verdict, and the practice in such cases is very restricted." *Id.* (citations omitted). "The motion will not be granted unless it appears from the plea and the verdict, and not from the evidence, that the plaintiff is entitled to the judgment." *Id.* "An order is *void ab initio* if entered. . . in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the. . . [issuer] had no power to render it, or if the mode of procedure used. .

. was one that the. . . [issuer] 'could not lawfully adopt.'" *Singh v. Mooney*, 261 Va. 48 (2001) (internal citations omitted). Further still, "[a]n order may also be 'voidable' if it contains reversible error". *Kelley v. Stamos*, 285 Va. 68 (2013) (ciations omitted).

"The trial court has 'not only the power but the duty to vacate the inadvertent entry of a void judgment at any time'", *Thomas v. Miller*, 906 S.W.2d 260 (Tex. App. 1995) (citations omitted), because "[a]n order is void when a court has no power or jurisdiction to render it." *Id.* (citations omitted). Moreover, "[i]t is the duty of the appellate court to review the case *de novo* upon both the law and the evidence, giving due deference to the trial court's assessment of the credibility of the witnesses". *In re Marriage of Powers*, 527 S.W.2d 949 (Mo. Ct. App. 1975).

"Where administrative action has raised serious constitutional problems, the Court has assumed that. . . [the legislature] or the. . . [the executive] intended to afford those affected by the action the traditional safeguards of due process." *Greene v. McElroy*, 360 U.S. 474 (1959) (citations omitted), and "[t]hese cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition." *Id.*

"[T]he word 'jurisdiction' means different things in different contexts"; "[i]n one context, it may mean the authority to do a particular thing"; while, "[i]n another, it may mean the power of the court to entertain an action of a particular subject matter", and "[t]hese are very different uses." *Taliaferro v. Taliaferro*, 186 Ariz. 221, 223 (Ariz. 1996). "[A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final." *United Student Aid*

Funds, Inc. v. Espinosa, 559 U.S. 260 (2010). "The list of such infirmities is exceedingly short; otherwise, Rule 60(b)(4)'s exception to finality would swallow the rule." *Id.*

CONCLUSION

This Court should not, in discretion, and could not "endorse the proposition that a lawsuit, as such, is an evil", because "[o]ver the course of centuries, our society has settled upon civil litigation as a means for redressing grievances, resolving disputes, and vindicating rights when other means fail", *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985).

WHEREFORE, for the reasons stated in this application, Appellant Czyz respectfully requests, in as as-applied challenge, the issuance of a writ of certiorari, and, in equity, such relief as this Court may deem required to ensure the administration of justice. *In re White*, No. 2:07CV342, 2013 WL 5295652, at *1–71 (E.D. Va. Sept. 13, 2013).

Respectfully submitted,

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Dated: July 25, 2024

No. 23-_____

In The
Supreme Court of the United States

EVA ANNA CZYZ,

Petitioner-Appellant,

v.

ANDREW ROMAN NIECZYPEROWICZ,

Respondent-Appellee.

On Petition to the Texas State Supreme Court, *Czyz v. Nieczyperowicz*, Record No. 24-0107 (Tex. 2024), *on appeal from Nieczyperowicz v. Nieczyperowicz*, Cause No. 2020-05703 (245th Dist.-Harris Cy. 2023), *aff'd* Record No. 14-23-00695-CV (14th Ct. App. 2024)

Appendix: Rule 33.1 Certification on Word Limitations

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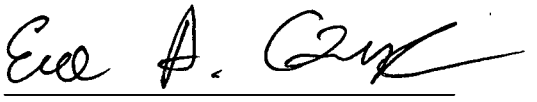
RULE 33.1 CERTIFICATION ON WORD LIMITATIONS

Pursuant to Rule 33(1)(h), Eva Anna Czyz certifies that the document filed with this certification (Petition for Certiorari) contains exactly 8,884 words, excluding document parts exempted by Rule 33.1(d), according to the word-count function of the word-processing program used to prepare it, and, further, is duly authorized to make this statement upon his own behalf, and in accordance with 28 U.S.C. § 1746(2).

Pursuant to Rule 33(1)(h), Eva Anna Czyz is duly authorized to make this statement upon his own behalf, and in accordance with 28 U.S.C. § 1746(2), I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,



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