No. 24-6547 ORIGINAL

In The

Supreme Court of the United States

Mitchell S. Sanderson,

Petitioner,

v.

Janne Myrdal, et al.

Respondent.

On Petition For A Writ Of Certiorari
To The North Dakota Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Mitchell S. Sanderson
214 Sandwood Circle
Park River, ND 58270
701-331-0410
mitchell_sanderson@hotmail.com
Pro Se Litigant

QUESTIONS PRESENTED FOR REVEIW

This case involves Constitutional/Federal questions that must be codified in law by the U.S. Supreme Court that All Courts must follow! The Walsh Court ignored Forgery, ignored Evidence Tampering, rules of court, Judicial Cannons, State, Federal and Constitutional law and the Supremacy Clause, the ND Supreme Court did the same. The Questions Presented are:

Whether the Rules of Court must be followed by the Court. The Walsh District Court violated Rules of Court on the 21-day default judgment. ND Supreme Court ignored this violation!

Whether Judges can violate their Oath of Office.

Whether Judges can violate Due Process. The court violated Due Process by denying all Motions and Hearings.

Whether Judges can violate the Supremacy Clause.

Whether Judges can hear a case without Proper Service. The Plaintiff did not do Proper Service on a State Actor so the Court did not have jurisdiction.

Whether government can violate the Oath of Office, Constitution, laws and case law and have immunity!

A Judge cannot take an Oath to the U.S. Constitution and then violate that Constitution! We are either a Constitutional Republic of laws or we are an Authoritarian police State where the laws only apply to the people and not the Government! The Citizens should be able to bring Criminal charges when the Government fails to do so!

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

The Petitioner, is Mitchell S. Sanderson.

The Respondent, is Janne Myrdal.

The Intervener, Courtney R. Titus: Office of the ND Attorney General.

CORPORATE DISCLOSURE STATEMENT

There is no Corporate disclosure due to Sanderson is a private citizen and Myrdal is a State Senator.

RELATED PROCEEDINGS/CASES

Sanderson v. Myrdal, ND Supreme Court case, et al., No. 20240091, Supreme Court of North Dakota, Judgment entered November 8, 2024.

Sanderson v. Myrdal, Walsh County District Court case. No. 50-2023-CV-129, Walsh County District Court Northeastern Division of North Dakota, Judgment entered December 14, 2024.

TABLE OF CONTENTS

APPENDIX Page

TABLE OF AUTHORITIES

CASES Page

CONSTITUIONAL LAW

STATUTES (FEDERAL)

STATUTES (STATE)

REGULATIONS AND RULES

PETITION FOR WRIT OF CERTIORARI

Mitchell S. Sanderson respectfully petition for a writ of certiorari to review the judgments of the North Dakota Supreme Court and Walsh County District Court in this case.

OPINIONS BELOW

The North Dakota Supreme Court's (State Court of Appeals) North Dakota Supreme Court, No. 20240091, Opinion (Nov. 8, 2024) & North Dakota Supreme Court, No. 20240091, Judgment (Nov. 8, 2024)

Walsh County District Circuit (Summary Judgment & Qualified Immunity etc.) - Walsh County District Court Northeastern Division of North Dakota, No. 50-2023-CV-129

Walsh County District Circuit (Summary Judgment & Qualified Immunity etc.) - Walsh County District Court Northeastern Division of North Dakota, No. 50-2023-CV-129.

JURISDICTION

The opinion and judgment of the North Dakota Supreme Court were entered on November 8, 2024. App. L & M. Pursuant to this Court's Rules 13.1 and 13.3, a petition for certiorari was initially due by February 6, 2025. This petition is timely filed on or before the extended due date. Rules 13.1, 13.3, 13.5.

Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

The Federal and U.S. Supreme Courts have ruled that Proper Service is needed for a court to have jurisdiction. They as well have ruled that rules of court must be followed like the 21-day Default rule. That Clerks of Court must have an Oath of Office, That a violation of the Oath of Office by a Judge is treason. That Courts must provide Due Process. That lower courts must follow Constitutional, Federal and State law and the Supremacy Clause of the U.S. Constitution. See index and case law below!

INTRODUCTION / STATEMENT OF THE CASE AND FACTS

A. FACTUAL BACKGROUND:

Myrdal is a State Senator! Myrdal blocked Sanderson on "both" of her Facebook pages. Myrdal simply does not like Sanderson and does not want Sanderson to communicate to the people of Walsh and North Dakota as to what is going on in the ND Government. Sanderson asked Myrdal to settle this issue without going to court when she did not Sanderson filed legal action against Myrdal. Sanderson understands that this Court has ruled "after he filed this case" that Private Facebook pages are not subject to the First and Fourteenth Amendments. At the time of the filing of this case this was not settled by this court. This case was not appealed on this issue but on the issues below.

B. WALSH COUNTY DISTRICT COURT:

The Walsh County District Judge violated Sanderson's Rights which involves 1st and 14th Amendment allegations for blocking a citizen of North Dakota on a governmental Public Forum Facebook page that many federal appellate courts "at the time" had ruled as constitutional violations. The Senator was served on May 2, 2023, see index #3, #4 in Walsh District Court, service was done through the USPS under *Rule 4(d)* through the USPS. It is also proven by the USPS Inspector General email as an Exhibit to the District Court, see index. The Service was signed by the Senator's husband, but he signed/forged the senator's name! The Walsh Clerk of Court accepted the filing, and the case began with improper service. Judge Agotness

should have recused herself under Rules of court, Judicial Canons and case law. In a previous case before Judge Agotness Sanderson asked for a time sensitive injunction ignoring state law and Court Rules and Agotness proceeded to be biased against Sanderson – the Judge would not recuse herself so I continued with this case knowing full well she would be biased.

It was also discovered that the Walsh Clerks of Court have no Oath of Office in violation of law! The Clerk is acting in contrary to the Constitution and are illegally holding the office and everything they have done is Null and Void – the clerks had no authority to accept or file this case with the Court and all orders she has sent out are void.

In this case the Myrdal provided an Answer on 6-12-2023, see index # 19, well beyond the 21-day deadline by Civil Procedure rules. Sanderson filed a Default Judgment on June 16 2023, see index # 22, # 23, # 24, thinking that by this Rule they could no longer Respond in this matter. Motion for Default and a Summary Judgment was denied in violation of U.S. Supreme Court rulings see index # 39.

This matter is very clear that both the Defendant and the State have alleged improper Service. The Clerk of Court should not have accepted the service. The Judge could not rule on or even hear the case and any moral and competent Judge looking at this case can clearly see Bias and Retaliation by Judge Agotness.

Senator Myrdal made multiple statements in her replies to discovery which were untrue and refused to answer most all the other questions see index # 63.

Senator Myrdal has perjured herself in her Answer and in many other filings. The Courts have ignored these facts!

These violations presented to the court by Sanderson are true and violate everything a judge has sworn not to do. See complaint index # 1. Every Motion and Hearing was denied or canceled, and no bench Trial was had, see index # 107, # 140, # 156, # 158, # 160, # 183, # 188, canceled Trial Hearing 3-19-2024!

Sanderson as well provided an Order for Dismissal Without Prejudice see index! This is in line with North Dakota and U.S. Supreme Court rulings!

Sanderson filed a Summons and Complaint on Senator Janne Myrdal, and the Senator did not respond in the allotted time as required by Court Rules of Civil Procedure *Rule 55(a)* in violation of U.S Supreme Court rulings that if an answer was not timely the court rules must be followed as the written word. Documents were improperly served due to service was completed through the USPS and must be personal service such as with the Sheriff's Department! Judge Agotness knows full well that personal service must be done on the State by a Sheriff on a State actor.

Judge Agotness violated Rules of Court/Civ. Procedure, Judicial Canons, State law, Federal law, Constitutional law, ND Supreme Court case law, Federal Case law, and U.S. Supreme Court case law.

Myrdal did commit evidence tampering and Obstruction and her husband did commit Forgery through the USPS!

A Motion for Relief from judgment is allowed by rules of court! The lower court has a duty to provide relief to the Plaintiff on any good theory. The Motion was denied!

Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory". *Bonner v. Circuit court of St. Louis,* 526 F.2d 1331, 1334 (8th Cir. 1975).

Many of the issues presented, such as Evidence Tampering and Forgery, in this case were ignored so I will ask this Court to take Judicial Notice and address them and rule on them separately.

All Motions and Hearing were denied or canceled and no trial was held in violation of Constitutional Due Process.

Agotness violated U.S. Supreme Court rulings on Default Judgment, she also is in violation acting with no Jurisdiction.

Sanderson is demanding his time and costs be awarded to him for having to defend himself against the frivolous claims of the State and the Myrdal. See *Ridge at Back Brook LLC v. Klenert,* Pro Se Litigants are entitled to the same relief as those who are represented by council.

The District Courts erred in the awarding of attorney fees for frivolous action in accordance with *N.D.C.C. § 28-26-01* was not proven.

Ther District Court errored in not following *ND Constitution Article VI section 3*: The supreme court shall have authority to promulgate rules of procedure, including appellate procedure, to be followed by all the courts of this state.

The District Court failed to address the legitimacy of all Motions, and violated Constitutional Due Process by denying all Motions, Hearings and a Trial Hearing

and charged sanderson with Attorney fees. Judge Agotness also ignored forgery in the case and evidence tampering/obstruction!

Judge Agotness has stated a case should be decided on its Merits not procedural rules. Then dismisses the case with no hearings, no trial.

Judge Agotness's ruled in *Sanderson v. Myrdal* denying Motion for Default siting *Filler v. Bragg,* 1997 ND 24, ¶ 14, 559 N.W. 2d 225. "Mindful of North Dakota's strong preference that cases be decided on their merits, this court will exercise its discretion and deny Sanderson's request for an entry of default judgment". Then she dismisses the case without hearing the case on the Merits.

Rule 60(b) governs the trial court's authority to vacate a judgment. (*See Gepner v. Fujicolor Processing* (2001) 637 N.W. 2d 681, 684.) This may be done if there is mistake, inadvertence, or excusable neglect. It can be used to correct errors of law. *See Flaten v. Couture (2018)* 912 N.W. 2nd 330, 338.

There are many errors in law and extreme neglect of the law and case law by Judge Agotness.

The Walsh County District Court lacked jurisdiction due to improper service and the Court failed to provide Sanderson with Due Process. A Plaintiff can request Declaratory and Injunctive relief which are reliefs the Court can grant, and the Senator has no immunity from. Monetary relief is available by Federal law and Federal case law in a *42 U.S.C. Section 1983* or *18 U.S.C. 241, 242.*

Sanderson Motioned for Relief from Judgment based on solid legal argument and Judge Agotness denied the Motion.

Sanderson believed according to the many Federal court cases and U.S. Supreme Court cases that Government actors could not violate the First and Fourteenth amendment by blocking Sanderson on a Senator's Facebook page if it had the Trappings of a Governmental page/actor.

Senator Janne Myrdal had blocked Sanderson from commenting on "both" of her Facebook pages one of which had the Trappings of a Senator's page.

Sanderson sued Myrdal in her official capacity and The U.S. Supreme Court has clearly ruled that with improper service the court has no jurisdiction to take a case, hear the case or rule on a case. Myrdal's attorney pointed out in the case that Sanderson did not do proper service by serving the Senator and the State! This court has also ruled that all a judge can do is dismiss the case without prejudice. This Court has also ruled that rules of court must be followed by all for if one party does not, it prejudices a party who does. This court has ruled that if a judge does not follow their Oath of Office they have committed Treason. In addition, all judge shall uphold the Supremacy Clause.

The additional violations of law by the Myrdal and the Judge in this case are still legal arguments needed to be addressed and settled. To say the Plaintiff has failed to state a claim that cannot be granted is utterly false and deceptive. *See Haines v. Kerner*, Pro Se Litigants cannot be dismissed for failure to state a claim which

cannot be granted! This court must rule that there are no material facts are in dispute and support it in findings of fact and conclusions of law to allow a Summary Judgment or any Declaratory relief to dismiss this case and to be able to charge Sanderson with attorney fees without ever hearing the case on the Merits. Judge Agotness improperly denied Motions on Default Judgement – **app. A**, Denied Motion on Spoilage and denied hearing on Forgery **app. B**, Denied hearing on Motion on First and Fourteenth Amendment **app. C,** Denied Motion on Forgery **app. D**, Denied Motion on Spoilage **app. E**, Denied Motion on Obstruction **app. F**, Denied hearing on Public Forum and Color of law app. **G**, Award attorney fees **app. H**, Declaratory Judgment **app. I**, Order Granting Motion for Summary Judgment, Order Denying Motion to Rule on First and Fourteenth Amendment Violations, Order Denying Motion to Rule on Qualified Immunity, and Order Denying Motion to Rule on Public Forum and Color of Law **app. J**, Denied Plaintiff's Motion to vacate judgment **app. K**. When improper Service is done the Court has no jurisdiction to hear the case or rule on the case. This case should have been dismissed Without Prejudice due to improper service and no attorney fees awarded or this case should have been won by Sanderson by the 21-day de The District Court erred in not hearing the case on its Merits and dismissing the case without an evidentiary hearing and further the awarded of rebuttal, and mitigation for said action attorney fees without giving the Appellant the opportunity to be heard in defense,

The District Court violated the rules of Civil Procedure and the ND Supreme Court ignored these violations which are sound in U.S. Supreme Court rulings and all judges are bound to follow them. The District Court, Judge Agotness, errored in not following *ND Constitution Article VI section 3*: The supreme court shall have authority to promulgate rules of procedure, including appellate procedure, to be followed by all the courts of this state. This Court has ruled "Courts are supposed to read any rule of civil procedure according to its "plain meaning", just like a statue." *See Bus. Guides, Inc. v. Chromatic Commc'ns Enters. Inc.,* 498 U.S. 533, 533, 540 (1991).

The District Court erred in judgment because documents filed by the Clerk of Court and Deputy Clerk are invalid due to the Clerks not having any Oath of Office!

The District Court and ND Supreme Court failed to address high crimes and misdemeanors and Material Facts and did not address all actions of Sanderson's motion's including Forgery *18 U.S.C § 471, 8 U.S.C 1324(c).* Evidence Tampering/Spoilation/Obstruction Due to Myrdal deleting and changing About Information on her Facebook page in violation of *Title 18 U.S.C § 1503, NDCC 12.1-09-0, NDCC 12.1-09-03, NDCC 12.1-08-01,* and Federal Spoilation laws and case law which would have a strong impact on this case! If a court finds clear and convincing evidence that you have intentionally concealed or destroyed evidence, your case could be dismissed (if you are the plaintiff), or you could be found summarily liable without a trial (if you are the defendant). The Defendant and State are the only ones who

have violated any laws in attempting to cover up for a sitting Senator and showed criminal bias and retaliation towards Sanderson.

C. NORTH DAKOTA SUPREME COURT:

The ND Supreme Court ignored all violations of law in this case ignored their own rulings and Oath of Office and the Supremacy Clause and other high crimes.

Myrdal Answering Sanderson's Complaint does not negate U.S. Supreme Court case law that Proper Service must be done before the Lower Court could exercise Jurisdiction. The U.S. Postal Service Inspector General's email is evidence that service was done by US Mail in violation of Court Rules instead of by a Third Party. The N.D. Supreme Court is in violation of its own rulings on Proper Service as well as U.S. Supreme Court rulings. Both the Defendant and the Plaintiff agreed in filings to the lower court that improper service was done. The Eight Circuit has ruled "Where there is absence of proof of jurisdiction, all administrative and judicial proceedings are a nullity, and confer no right, offer no protection, and afford no justification, and may be rejected upon direct collateral attack." *Thompson v Tolmie*, 2 Pet. 157, 7 L. Ed. 381; and *Griffith v. Frazier,* 8 Cr. 9, 3 L. Ed. 471. "the burden of proving jurisdiction rests upon the party asserting it." *Bindell v. City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991).

The ND Supreme Court violated their Oath Office, violated the Supremacy Clause of the U.S. Constitution which they are bound to uphold. Ignored Oath and violations of ND Constitution. It violated 8th Circuit and U.S. Supreme Court rulings. It as well violated/ignored many Federal and State laws. Any judge or officer of the government who does not comply with his Oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason." *Cooper v. Aaron,* 358 U.S. 1,78 S. Ct. 1401 (1958). *Article VI, Clause 2 US Constitution*: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,.

The ND Supreme Court erred by dismissing the case with prejudice due to lack of jurisdiction by the Court and improper service by Sanderson. The Court never addressed jurisdiction as stated in; *Hagans v. Levine,* 415 U.S. 533, n.3. "once jurisdiction is challenged, it must be proved".

The U.S. Supreme Court has ruled that Pro Se Litigants are not to be held to the same standard as a learned attorney but Courts are bound to the rules and the law! Due Process Provides the "rights of Pro Se Litigants are to be construed liberally and held to less stringent standard as stated in *Haines v Kerner,*404 U.S. 519-520 (1972) and *Hughes v Rowe,* 449 U.S. 4, 9-10 (1980).

The ND Supreme Court abused its discretion and violated Mr. Sanderson's due process rights, ignored court rules by not following the 21-day rule to respond with an Answer by Myrdal but held Sanderson to timeframes.

LAW AND ARGUMENT

JURISDICTION

The Walsh Judge Agotness had no authority to take this case due to improper service on a State Government actor thru the USPS which is in violation of Civ. Pro. with no service there is no jurisdiction!

Jurisdiction is a question of law! Jurisdiction can be challenged at any time and it is up to the Court to show it had Jurisdiction! The Court had no Jurisdiction due to improper service when suing a State actor which is what this case started out as. Without proper Service the Court cannot take the case, hear the case or rule on the case. It can only dismiss without prejudice and U.S. Supreme Court case law takes precedence by the Supremacy Clause in the U.S. Constitution! All ND Supreme Court case law is null and void when it violates the Supremacy Clause.

Service of summons is the procedure by which a court. . asserts jurisdiction over the person of the party served, *See Murphy Brothers, Inc., Petitioner v. Michetti Pipes Stringing, Inc.,* Case No. 97-1909, U.S. (1999). When the defendant was untimely with their Answer the District Court could no longer assert jurisdiction over them under *Rule Civ. Proc. 12(a)(1)(A).* The Court overlooked the fact that after the defendant was untimely on its Answer, Myrdal was allowed to file motions to the

District Court that the court lacked jurisdiction to hear and allowed the filings, *See Main v. Thiboutot,* 100 S. Ct 2502 U.S. (1980). This statute requires the defendant "must serve an Answer within 21 days after being served, *See Bus. Guides, Inc. Chromatic Commc'ns Enters, Inc.,* 498 U.S. 533. 540 (1981). Pleading deadlines must be strictly adhered to, otherwise the party who follows the timeline will be unfairly prejudiced by the party that did not follow the rules *See Brookhart v. Jams, 384 U.S. Also See Smith v. Illinois,* 390 U.S. 129, 131 (1968).

Whenever a judge, acts where he does not have jurisdiction to act, the judge is engaged in an act of treason. See *S. v. Will,* U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d. 392, 406 (1980). *United States v. Real Props.*, 750 F. 3d 968, 972 8th Cir. (2014). *See also Koon v. United States,* 518 U.S. 81, 100 (1996). A district court by definition abuses its discretion when it makes an error of law.

In *Franciere v. City of Mandan,* 2019 ND 233 ¶ 2-6, 932 N.W. 2d 907; An elementary principle for rendition of a valid judgment is that the district court have both subject matter jurisdiction over the cause of action and personal jurisdiction over the parties. *Sieg v. Karnes,* 693 F.2d 803, 807 (8th Cir. 1982). *Rule 4* deals extensively with service of original process, which is the means of securing jurisdiction by the court over the defendant's person or over the res. Without jurisdiction over the person or the res, the court cannot render a valid judgment, even if it has subject-matter jurisdiction. When service was improper and absent personal jurisdiction, the court is powerless to do anything beyond dismissing without prejudice.

The United States Supreme Court stated, "before a court may exercise personal jurisdiction over a defendant the procedural requirement of service must be satisfied." *See Mississippi Publishing Corp. v. Murphree,* 326 U.S. 438, 44-445 (1946). "Service of summons is the procedure by which a court. . asserts jurisdiction over the person of the party served," *See Murphy Brothers, Inc., Petitioner v. Michetti Pipes Stringing, Inc.,* Case No. 97-1909, U.S. (1999). When the defendant was untimely with their Answer the District Court could no longer assert jurisdiction over them under Rule Civ. Proc. 12(a)(1)(A).

The N.D. Supreme Court did not follow its own rulings In the N.D. case *Franciere v. City of Mandan,* 2019 ND 233 ¶ 2-6, 932 N.W. 2d 907; An elementary principle for rendition of a valid judgment is that the district court have both subject matter jurisdiction over the cause of action and personal jurisdiction over the parties. See, e.g., *Smith v. City of Grand Forks,* 478 N.W.2d 370, 371 (N.D. 1991). "A party must strictly comply with the specific requirements for service of process." *Sanderson v. Walsh County,* 2006 ND 83, ¶ 13, 712 N.W.2d 842. "Absent valid service of process, even actual knowledge of the existence of a lawsuit is insufficient to effectuate personal jurisdiction over a defendant." Id.; *see also Riemers v. State, 2006 ND 162, ¶ 7, 718 N.W.2d 566.* In *Riemers v. State,* 2006 ND 162, 718 N.W.2d 566, Riemers attempted to commence the action by serving process via certified mail with return receipt. The district court issued an order granting the dismissal for insufficient service of process. Riemers appealed, arguing he served the process in accordance with the Rules of Civil Procedure. This Court

held service was improper and "[a]bsent personal jurisdiction, `the court is powerless to do anything beyond dismissing without prejudice.'" Id. at ¶ 10. The Court stated, "Therefore, while the district court correctly dismissed the action, it erred doing so with prejudice." Id. Like *Riemers*, this case was correctly dismissed, but the district court erred in doing so with prejudice. We affirm dismissal for lack of personal jurisdiction 256*256 as modified to dismiss without prejudice. herefore, the district court had no legal authority to determine anything other than the jurisdiction question. *Smith,* 478 N.W.2d 370, 371, 373 (N.D. 1991); see *King v. Menz,* 75 N.W.2d 516, 521 (N.D. 1956) ("There being no service on the defendant the trial court had no jurisdiction to make any order in regard to the issue raised by the complaint."). Until jurisdiction is decided, the court can only determine issues regarding jurisdiction. We affirm the judgment granting dismissal based on lack of personal jurisdiction due to insufficient service as modified to dismiss without prejudice.

We have recognized the elementary principle that "[j]urisdiction of both the subject matter and the parties is essential to the rendition of a valid judgment . . . ." *Johnson v. Johnson,* 86 N.W.2d 647, 651 (N.D. 1957). *Accord Reliable, Inc. v. Stutsman County Commission,* 409 N.W.2d 632, 634 (N.D. 1987); *see also Matter of Estate of Hansen,* 458 N.W.2d 264, 268 (N.D. 1990) ["A judgment is void if the court lacked subject matter jurisdiction over the action or if the court lacked personal jurisdiction over the parties."] It is also firmly established that valid service of process is necessary in order to assert personal jurisdiction over a defendant. *Mid-Continent*

Wood Products, Inc. v. Harris, 936 F.2d 297, 301 (7th Cir. 1991); *Sieg v. Karnes*, 693 F.2d 803, 807 (8th Cir. 1982); *Farrington, supra.* "*Rule 4* deals extensively with service of original process, which is the means of securing jurisdiction by the court over the defendant's person or over the res. Without jurisdiction over the person or the res, the court cannot render a valid judgment, even if it has subject-matter jurisdiction." *2 J. Moore and J. Lucas, Moore's Federal Practice*, ¶ 4.02[3], at p. 4-66 (2d ed. 1991)... *ND R. Civ. P 12(b)(iv)* authorizes a motion to dismiss for insufficiency of service of process.

"Where there is absence of proof of jurisdiction, all administrative and judicial proceedings are a nullity, and confer no right, offer no protection, and afford no justification, and may be rejected upon direct collateral attack." *Thompson v Tolmie*, 2 Pet. 157, 7 L. Ed. 381; and *Griffith v. Frazier*, 8 Cr. 9, 3 L. Ed. 471. "the burden of proving jurisdiction rests upon the party asserting it." *Bindell v. City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991).

" once jurisdiction is challenged, it must be proved". *Hagans v. Levine*, 415 U.S. 533, n.3.

Whenever a judge, acts where he does not have jurisdiction to act, the judge is engaged in an act of treason. *S. v. Will*, U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d. 392, 406 (1980).

This Court must prove that Judge Agotness had jurisdiction! The Myrdal docket clearly shows that the Senator was served via USPS with signed returned

receipt which is improper when bringing an action against a State government actor! With this evidence, Judge Agotness was acting with no jurisdiction!

The Court overlooked the fact that after the defendant was untimely on its Answer, they were allowed to file motions to the District Court that the court lacked jurisdiction to hear and allowed the filings, *See Main v. Thiboutot*, 100 S. Ct 2502 U.S. (1980).

Acknowledging the U.S. Supreme Court case above, Senator Myrdal was in violation of Civ. Pro. when she did not Answer in the 21-day deadline making this also a jurisdictional matter.

The North Dakota Supreme Court has the power to overturn these rulings due to *Rule 4* not being properly followed. The Court Failed to do so! The lower Court had no jurisdiction to even hear the case!

"A court lacks discretion to consider the Merits of a case over which it is without jurisdiction and thus, by definition, a jurisdictional ruling may never be made prospective only. We therefore hold that, because the Court was without jurisdiction to hear the case, it was without authority to decide the merits." *See Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981)."

This statute requires the defendant "must serve an Answer within 21 days after being served," *See Bus. Guides, Inc. Chromatic Commc'ns Enters, Inc.*, 498 U.S. 533. 540 (1981). Pleading deadlines must be strictly adhered to, otherwise the party who follows the timeline will be unfairly prejudiced by the party that did not follow

the rules *See Brookhart v. Jams*, 384 U.S. Also See *Smith v. Illinois*, 390 U.S. 129, 131 (1968).

Service of summons is the procedure by which a court.., asserts jurisdiction over the person of the party served." *See Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 44-445 (1946) also *see Murphy Brothers, Inc., Petitioner v. Michetti Pipes Stringing, Inc.*, Case No. 97-1909. U.S. (1999). The defendant was untimely on their Answer thus did not satisfy the service requirement and the Court of Appeals court no longer assert jurisdiction over them under the *Rules of Civ. Proc. 12(a)(1)(A)*. Thus, could not decide any Merits to this case.

"Courts are supposed to read any rule of civil procedure according to its "plain meaning", just like a statue." *See Bus. Guides, Inc. v. Chromatic Commc'ns Enters. Inc.*, 498 U.S. 533, 533, 540 (1991).

Sanderson provided exhibits with all Motions and filings and supported them with law and case law and Judge Agotness ignored them all making horrific violations of law and discretion.

However, while our rules do provide for a motion to reconsider, where appropriate, we have treated such motion as motions to alter or amend the judgement *N.D.R. Civ. P. 59(j)*, which may be reversed if the district court misinterpreted or misapplied the law. *See Langer v. Pender* (2009) 764 N.W. 2d 159, 163.

Jurisdiction is power to declare the law and when is ceases to exist, the only function to the court is that of announcing the fact and dismissing the cause; *Steele Co. v. Citizens for Better Environment*, 523, U.S. 83, 94 (1998).

DUE PROCESS

The District Court abused its discretion and violated Mr. Sanderson's due process rights: Judge Agotness violated the *U.S. Const. Amend XIV* rights by denying all requests for hearings: Violations of Constitutional rights, by violating court rules, law and case law and having no jurisdiction. The *Fifth Amendment* guarantees every citizen the right to due process. The following case law supports Sanderson's allegations! *See: Article VI, Clause 2 US Constitution.*

Due Process Provides the "rights of Pro Se Litigants are to be construed liberally and held to less stringent standard...*Haines v Kerner*,404 U.S. 519-520 (1972) and *Hughes v Rowe*, 449 U.S. 4, 9-10 (1980).

United States v. Real Props. Located at 7215 Longboat Drive (Lot 24), 750 F.3d 968, 972 (8th Cir. 2014). *See also Koon v. United States,* 518 U.S. 81, 100 (1996) ("A district court by definition abu A claim is facially plausible if it allows the reasonable inference that the defendant is liable for the conduct alleged. See *Horras v. Am. Capital Strategies,* Ltd., 729 F.3d 798, 801 (8th Cir. 2013)...abuses its discretion when it makes an error of law.")

Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally

tolerable." Id. at 907 (*quoting Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813, 825 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). Bias or prejudice of an appellate judge can also deprive a litigant of due process. *Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813 (1986) (failure of state supreme court judge with pecuniary interest—a pending suit on an indistinguishable claim—to recuse).

All Sanderson's Motions and Hearings were all denied, and no Trial was had. The Court also overlooked the defendant admitted being untimely with their Answer which was substantial "prejudice to Mr. Sanderson when his procedural due process was denied when the defendant was allowed to proceed as if they were not untimely with their Answer *See Davis v. Alaska* 415 U.S. 308 (1974).

This would not be in the public interest when it is not constitutional. "Due process balances the power of the land and protects the individual person from it. When a government harms a person without following the exact course of the law, this constitutes a due process violation, which offends against the rule of law," *See Carroll v. Greenwich Co.*, 199 U.S. 401, 410 (1905) *See also French v. Barber Asphalt Paving Co.*, 181 U.S. 328 (1901).

The reasons for granting the petition is "courts are supposed to read any rule of civil procedure according to it "plain meaning", just like a statue." *See Bus. Guides, Inc. v. Chromatic Commc'ns Enters. Inc.*, 498 U.S. 533, 533, 540 (1991).

Judge Agotness violated Constitutional Due Process at every turn violating Sanderson's Constitutional Rights!

Rule 12 (a) Time to serve a responsive pleading. (1) In General. Unless another time is specified by this rule or a statute, the time for serving a responsive pleading is: (A) a defendant must serve an answer within 21 days after being served with the summons and complaint; Definition of Default: A default in a legal action occurs when a defendant fails to plead, appear or otherwise defend within the time allowed. DEFAULT Definition & Legal Meaning Definition & Citations: The omission or failure to fulfill a duty, observe a promise, discharge an obligation, or perform an agreement. *State v. Moores*, 52 Neb. 770, 73 N. W. 299; *Osborn v. Rogers*, 49 Hun, 245, 1 N. Y. Supp. 623; *Mason v. Aldrich*, 36 Minn. 283, 30N. W. SS4. In practice. Omission; neglect or failure. When a defendant in an action at law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to make default, and the judgment entered in the former case is technically called a "judgment by default" 3 Bl.

Pleading deadlines must be strictly adhered to, otherwise the party who follows the timeline will be unfairly prejudiced by the party that did not follow the rules *See Brookhart v. Jams*, 384 U.S. Also *See Smith v. Illinois*, 390 U.S. 129, 131 (1968).

United States v. Real Props., 750 F. 3d 968, 972 8th Cir. (2014). *See also Koon v. United States,* 518 U.S. 81, 100 (1996) ("A district court by definition abuses its discretion when it makes an error of law.")

Everything Judge Agotness has done was in error of law as supported in this Brief and the entire Sanderson v. Myrdal case!

IMMUNITY

18 U.S.C 242 and 42 U.S.C. 1983 states that all can be sued and for monetary damages. It is clear, beyond dispute, that punitive or exemplary damages are available in 1983 action where the defendant has acted willfully, or with malice, or with reckless disregard of the rights of the complaining party, or where he has not acted in good faith. *See Palmer v. Hall*, 517 F. 2nd 705 (5th Cir. 1975); *Aldridge v. Mullins*, 474 F. 2nd 1189 (6th Cir. 1973); *McDaniel v. Carroll*, 457 F. 2nd 968 (6th Cir. (1972).

Harlow v. Fitzgerald, 457 U.S. 800 (1982)... It was important that Fitzgerald sued for damages as qualified immunity is unavailable as a defense against claims for injunctive relief. *See, e.g., Pearson v. Callahan*, 555 U.S. 223, 242–43 (2009).

The doctrine of qualified immunity shields officials from civil liability so long as their conduct " 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' " *Pearson v. Callahan*, 555 U. S. 223, 231 (2009) (*quoting Harlow v. Fitzgerald*, 457 U. S. 800, 818 (1982)).

U.S. v. Throckmorton, 98 US 61 officials and even judges have no immunity *See, Owen vs. City of Independence*, 100 S Ct. 1398; *Maine vs. Thiboutot*, 100 S. Ct. 2502; and *Hafer vs. Melo*, 502 U.S. 21; officials and judges are deemed to know the law and sworn to uphold the law; officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, even the Citizen cannot plead ignorance of the law, the courts have ruled there is no such

thing as ignorance of the law *Cooper v. Aaron*, 358 U.S. 1, 78 S. Ct. 1401 (1958). "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.

In *Ex Parte Young*, the Supreme Court held that a private litigant can bring suit against a state officer for prospective injunctive relief in order to end "a continuing violation of federal law." A state official who enforces "'an unconstitutional legislative enactment . . . comes into conflict with the superior authority of the Constitution,' and therefore is 'stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.

42 U.S.C. § 1985(3), a federal law that dates to the Reconstruction era, prohibits private and governmental actors from working together to violate the constitutional rights of Americans...*Section 1983* provides a remedy against any person who, under color of state law, deprives another of rights protected by the Constitution and laws of the United States. *Dossett v. First State Bank*, 399 F.3d 940, 947 (8th Cir. 2005) (*quoting Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 931 (1982)); *see also Yassin v. Weyker*, 39 F.4th 1086, 1089 (8th Cir. 2022)...When administering a social media account, a government official acts under color of state law when "the page is clothed in the `power and prestige of [his] state office' and administered `to

perform actual or apparent duties of [his] office." *Davison v. Randall*, 912 F.3d 666, 680-81 (4th Cir. 2019)

ATTORNEY FEES

The Court improperly charged Sanderson with Attorney fees. Myrdal on her own choosing hired her own attorney instead of having the State represent her. Therefore, Sanderson cannot be held responsible for Myrdal's attorney fees when she should have contacted the State first. Sanderson filed nothing frivolous and supported all filings with evidence and law. The District Court should have denied the defendant's motion for attorney fees and stated, "if the district court lacked jurisdiction over the underlying suit, it had no authority to award attorney's fees" "(*quoting Latch v. United States*, 842 F. 2d 1031, 1033 (9th Cir. 1988)"

The Defendant cannot be awarded attorney fees on a case that was dismissed and not heard on the Merits. I ask this court to take Judicial Notice and Motion this Court to address and rule on each one of these issues with a finding of fact and conclusions of law.

The District Court erred in not deciding the case on its Merits and the awarding of attorney fees for a nonfrivolous action in accordance with *N.D.C.C. § 28-26-01* and *ND R. Civ P 54(e)(ii)*.

It is clear, beyond dispute, that punitive or exemplary damages are available in 1983 action where the defendant has acted willfully, or with malice, or with reckless disregard of the rights of the complaining party, or where he has not acted

in good faith. *See Palmer v. Hall*, 517 F. 2nd 705 (5th Cir. 1975); *Aldridge v. Mullins*, 474 F. 2nd 1189 (6th Cir. 1973); *McDaniel v. Carroll*, 457 F. 2nd 968 (6th Cir. 1972).

The Supreme Court has established "an implied private right of action" under *Title VI*, leaving it "beyond dispute that private individuals may sue" to address allegations of intentional discrimination. *Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (*quoting Alexander v. Sandoval*, 532 U.S. 275, 280 (2001)). The Court previously has stated that it had "no doubt that Congress ... understood *Title VI* as authorizing an implied private cause of action for victims of illegal discrimination." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 703 (1979) (holding that an individual has a private right of action under *Title IX*).

NDCC 28-26-01. Attorney's fees by agreement - Exceptions - Awarding of costs and attorney's fees to prevailing party. 2. In civil actions the court shall, upon a finding that a claim for relief was frivolous, award reasonable actual and statutory costs, including reasonable attorney's fees to the prevailing party.

The District Court should have denied the defendant's motion for attorney fees and stated, "if the district court lacked jurisdiction over the underlying suit, it had no authority to award attorney's fees" "(*quoting Latch v. United States*, 842 F. 2d 1031, 1033 (9th Cir. 1988)"

RULES OF CIVIL PROCEDURE

The District Court "Judge Agotness" violated the rules of Civil Procedure: The following case law supports Sanderson's claims.

N.D.C.C. § 01-02-02 states: Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained. The Supreme Court of the State of North Dakota has affirmed these words in *State of North Dakota v. Castleman*, 2022 ND 7969 ¶9 N.W.2d 169. *Stephenson v. Hoven*, 2007 ND 136737 ¶14 N.W.2d 260: "we construe statutes as a whole to give meaning, if possible, to every word, phrase, and sentence" In the ordinary sense and considering the statutes and case law, no sane, logical person would.

The ND statute requires the defendant "must serve an Answer within 21 days after being served," *See Bus. Guides, Inc. Chromatic Commc'ns Enters, Inc.*, 498 U.S. 533. 540 (1981). Pleading deadlines must be strictly adhered to, otherwise the party who follows the timeline will be unfairly prejudiced by the party that did not follow the rules *See Brookhart v. Jams*, 384 U.S. Also *See Smith v. Illinois*, 390 U.S. 129, 131 (1968).

"courts are supposed to read any rule of civil procedure according to it "plain meaning", just like a statue." *See Bus. Guides, Inc. v. Chromatic Commc'ns Enters. Inc.*, 498 U.S. 533, 533, 540 (1991).

Sanderson should have received a ruling in his favor on all Motions under *N.D. R. Civ. P. 52(a)(1)* because this was a non-jury trial. The Court never made a finding of fact or conclusion of law on any Motion!

OATHS OF OFFICE

In the State of ND v. Stuart, the ND Justices clearly state that state law requires that District clerks have an oath. *Article XI ND Constitution Section 4, Article VI of the US Constitution, NDCC 44-01-05, NDCC 44-01-05.1, 18 U.S.C. 1918* provides penalties for violation of oath office described in *5 U.S.C. 7311 (2)* which include: removal from office *Frothingham v. Mellon,* 262 U.S. 447 (1923), "Jurisdiction can be challenged at any time." *Basso v. Utah Power & Light Co.*, 495 F 2nd 906 at 910.

The District Court erred in judgment due to documents filed by the Clerk of Court and Deputy Clerk in this case are invalid due to the Clerk not having any Oath of Office!

Precedence clearly shows that the use of the word "shall" in a statute creates a mandatory duty. *See e.g., Appalachian Voices v. McCarthy*, 989 F. Supp. 2d 30, 54 (D.D.C. 2013); *See also Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171–72, 136 S. Ct. 1969, 1977, 195 L. Ed. 2d 334 (2016) ("Unlike the word 'may', which implies discretion, the word "shall" usually connotes a requirement. Compare *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35, 118 S. Ct. 956, 140 L.Ed.2d 62 (1998) (recognizing that "shall" is 'mandatory' and normally creates an obligation impervious to judicial discretion.")

As *Marbury v. Madison* the court clearly states that an Unconstitutional act is unenforceable. Since a Clerk needs an Oath according to the *ND and US Constitution*

this case and all its filings and Rulings are null and void and any other case she was involved in as Clerk!

The U.S. Supreme Court has ruled: "Any judge [or officer of the government] who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason." *Cooper v. Aaron*, 358 U.S. 1,78 S. Ct. 1401 (1958).

In *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 337 (1867) "Any person who shall falsely take the said oath shall be guilty of perjury; and shall be deprived of his office, and rendered incapable forever after of holding any office or place under the United States.

NDCC 44-01-05. Oath of civil officers. Each civil officer in this state before entering upon the duties of that individual's office shall take and subscribe the oath prescribed in *section 4 of article XI of the Constitution* of North Dakota. The oath must be endorsed upon the back of, or attached to, the commission, appointment, or certificate of election. The term civil officer includes every elected official and any individual appointed by such elected official; ...For purposes of this chapter and chapter 44-05, the term civil officer has the same meaning as public officer.

NDCC 44-01-05.1. Failure to file oath. The appointment of any civil officer may be rescinded by the appointing authority if the appointed civil officer fails to file an oath of office at the place of filing required by *section 44-05-04.*

Article XI ND Constitution Section 4. Members of the legislative assembly and the executive and judicial branches, except such inferior officers as may be by law exempted, before they enter on the duties of their respective offices, shall take and subscribe the following oath or affirmation:

Article VI of the US Constitution says, "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; ...

The Clerks have admitted they do not possess the requisite Oath and affidavit and that she does not need one!

EVIDENCE TAMPERING/SPOILATION/OBSTRUCTION/FORGERY

In Martin v. DaimlerChrysler Corp., 251 F.3d 691, 693 (8th Cir. 2001) (dismissing a complaint where plaintiff lied to conceal the existence of evidence); *Everyday Learning Corp. v. Larson,* 242 F.3d 815 (8th Cir. 2001) (employing dismissal as a sanction for spoliation). To purge damaging information on social media would, if relevant, likely constitute spoliation. *See Scott v. Garfield, 454 Mass.* 790, 798 (2009). *Title 18 of United States Code Sections 1503, 1510, 1512 and 1519. Fines v. Ressler Enterprises, Inc.* IN THE SUPREME COURT STATE OF NORTH DAKOTA 2012 ND 175...When litigation is reasonably foreseeable, there is a duty to preserve evidence. *See Bachmeier v. Wallwork Truck Ctrs.*, 507 N.W.2d 527,

532 (N.D. 1993) (*Bachmeier I*) (stating sanctions may be appropriate for the destruction of evidence relevant to a lawsuit).

The District judge errored by not addressing the Forgery that was committed by Myrdal's husband signing and printing Janne Myrdal on the signed return receipt through the USPS. It is clear from the USPS Inspector General email listed in the Myrdal case as an exhibit that Senator Myrdal's husband forged the Senators name on the signed return receipt when served the Summons and Complaint. *18 U.S.C § 471, 8 U.S.C 1324(c).* See exhibits in Sanderson v. Myrdal.

NDCC 12.1-24-01. Forgery or counterfeiting. 1. A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating such deception or harm by another person, the person: a. Knowingly and falsely makes, completes, or alters any writing; or b. Knowingly utters or possesses a forged or counterfeited writing.

Waller v. Georgia, 467 U.S. 39, 48 (1984). "Trial courts are strictly required to make findings before a trial closure, and failure to make each of the findings requires reversal."

Judge Agotness ignored this violation of law and in doing so failed to make a finding of fact and conclusions of law!

District Judge Agotness errored ignoring crimes committed by Myrdal such as evidence tampering/Obstruction. The cases below support Sanderson's claims.

Senator Myrdal changed and deleted information on her Facebook page in violation of the law this is a criminal act! *See exhibits* and filings in *Sanderson v. Myrdal.*

Title 18 U.S.C § 1503, federal law defines "obstruction of justice" as: Any act which, corruptly or by the threat of force / threatening communication, impedes, influences, obstructs, or aims to impede, influence, or obstruct the due administration of justice.

At a minimum, if you have been found to have destroyed evidence, the judge may draw or the jury may be told it can draw an inference that the materials you destroyed were harmful to your case. Courts can also impose monetary sanctions and exclude evidence and witness testimony as a result of misconduct. In extreme circumstances, if a court finds clear and convincing evidence that you have intentionally concealed or destroyed evidence, your case could be dismissed (if you are the plaintiff), or you could be found summarily liable without a trial (if you are the defendant). *See Martin v. DaimlerChrysler Corp.*, 251 F.3d 691, 693 (8th Cir. 2001) (dismissing a complaint where plaintiff lied to conceal the existence of evidence); *Everyday Learning Corp. v. Larson*, 242 F.3d 815 (8th Cir. 2001) (employing dismissal as a sanction for spoliation).

To purge damaging information on social media would, if relevant, likely constitute spoliation. *See Scott v. Garfield, 454 Mass.* 790, 798 (2009).

Obstructing Witnesses and Evidence *18 U.S.C. § 1512*: The law also makes it a crime to destroy, change, or hide evidence that could be used in an official proceeding.

Title 18 of United States Code Sections 1503, 1510, 1512 and 1519 prohibits a party from destroying or assisting another in destroying evidence and provides for criminal prosecution against the wrongdoer.

In *Chapter 73 of Title 18 of the United States Code.* This chapter contains provisions covering various specific crimes such as witness tampering and retaliation, jury tampering, destruction of evidence.

Spoliation sanctions are typically imposed where one party gains an evidentiary advantage over the opposing party by failing to preserve evidence. This is true where the spoliator knew or should have known that the evidence should be preserved for pending or future litigation; the intent of the spoliator is irrelevant. When the evidence is under the exclusive control of the party who fails to produce it, Minnesota also permits the jury to infer that the evidence, if produced, would have been unfavorable to that party. The propriety of a sanction for the spoliation of evidence is determined by the prejudice resulting to the opposing party. Prejudice is determined by considering the nature of the item lost in the context of the claims asserted and the potential for correcting the prejudice. *Foust v. McFarland*, 698 N.W.2d 24 (Minn. Ct. App. 2005).

NDCC 12.1-08-01. Physical obstruction of government function. 1. A person is guilty of a class A misdemeanor if he intentionally obstructs, impairs, impedes, hinders, prevents, or perverts the administration of law or other governmental function.

NDCC 12.1-09-03. Tampering with physical evidence. 1. A person is guilty of an offense if, believing an official proceeding is pending or about to be instituted, or believing process, demand, or order has been issued or is about to be issued, he alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability in such official proceeding or for the purposes of such process, demand, or order....discovery, or examination of a record, document, or thing.

In *Bachmeier v. Wallwork Truck Ctrs.*, 507 N.W.2d 527, 532 (N.D. 1993) stated sanctions may be appropriate for the destruction of evidence relevant to a lawsuit.

FRIVOLOUS CLAIMS

Sanderson filed nothing frivolous! This court must clearly state what Sanderson filed was not in good faith or frivolous. The case law below supports his claims.

A frivolous claim, often called a bad faith claim, refers to a lawsuit, motion or appeal that is intended to harass, delay or embarrass the opposition. A claim is frivolous when the claim lacks any arguable basis either in law or in fact *Neitze v. Williams*, 490 U.S. 319, 325 (1989) and *Spencer v. Rhodes* 1988. That means, in a frivolous claim, either: "(1) "the 'factual contentions are clearly baseless,' such as

when allegations are the product of delusion or fantasy;" or (2) "the claim is 'based on an indisputably meritless legal theory.'" *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998).

BIAS/DISCRIMINATION

Any competent Judge can clearly see that Judge Agotness was biased and retaliated against Sanderson! She ruled against Sanderson at all turns and violated everything a judge is to uphold!

In, *United States v. Real Props. Located at 7215 Longboat Drive 9Lot 24),* 750 F. 3d 968, 972 (8th Cir. 2014*). See also Koon v. United States,* 518 U.S. 81, 100 (1996) ("A district court by definition abuses its discretion when it makes an error of law.")

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007).

Judge Agotness ignored exhibits supporting Sanderson's allegations ignored many violations made by Myrdal.

28 U.S.C 144 if a judge has a personal bias or prejudice that judge shall precede no more.

28 U. S. C. §455(a) ("Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned"). a judge should be disqualified only if it appears that he

or she harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute").

Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Id. at 907 (*quoting Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813, 825 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). Bias or prejudice of an appellate judge can also deprive a litigant of due process. *Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813 (1986) (failure of state supreme court judge with pecuniary interest—a pending suit on an indistinguishable claim—to recuse).

REASONS FOR GRANTING THE PETITION

This Case Is The Ideal Vehicle For Review! Sanderson has shown why Judge Agotness should have not dismissed the case with prejudice and why the North Dakota Supreme Court should have overturned the lower court's rulings.

1. Judge Agotness and the North Dakota Supreme Court ignored U.S. Supreme court rulings, Constitutional law, Oath of office, the Supremacy Clause, Due Process, and Federal law!

The District Court erred by dismissing the case with prejudice due to lack of jurisdiction and improper service. *See* Register of Actions *Docket Index 1 thru 218.* Case dates 5-19-2023 thru 3-19-2024. *See* Service Document *Index #3* Affidavit

2. Improper service was done by Sanderson! The Court had NO jurisdiction! Service by Mail and *Index #4* Return Receipt for Certified Mail, *See* Index_# 80 *Exhibit # U Certified Return Receipt Card.*
3. The District Court abused its discretion and violated Mr. Sanderson's due process rights, and Violations of Constitutional rights by denying all requests for hearings, denying all Motions, denying a trial hearing, violating court rules, law and case law.
4. The District Court and North Dakota Supreme Court failed to address all actions including high crimes and misdemeanors and did not address all actions of Sanderson's motion's including Forgery, Evidence Tampering/Obstruction: *See*

USPS Inspector General email *Index # 112 Exhibit # T Return Receipt*. *See 8-2-2023 Index #72 Exhibit S*.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

Mitchell S. Sanderson
Pro Se Litigant
214 Sandwood Circle
Park River, ND 58270
701-331-0410
mitchell_sanderson@hotmail.com