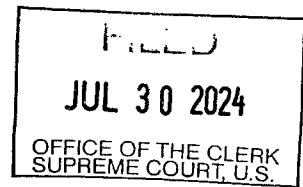


24-6568  
No. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES

ANDRIVIA FRANCES WELLS PETITIONER  
(Your Name)

vs.  
MECKLENBURG CO. PROBATE RESPONDENT(S)  
ESTATE, et al, etc.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)  
FOURTH CIRCUIT  
PETITION FOR WRIT OF CERTIORARI

ANDRIVIA FRANCES WELLS  
(Your Name)

521 SO. SUMMIT AVE  
(Address)

CHARLOTTE NC 28208  
(City, State, Zip Code)

704 619-8383  
(Phone Number)

38

39       I. Question Presented

40       Congress enacted 42 U.S.C. § 1983 *Blessing v. Freestone*, 520 U.S. 329 (1997) as a means  
41       to hold state actors accountable for violating federal constitutional and statutory rights 5th  
42       Amendments and 14 Amendments and 8th Amendment Constitutional Violations. Why  
43       Congress did not, however, specify every rule governing claims filed under Section 1983  
44       why Agencies have continued to violate Due Process Rights. *Marshall v. Marshall*, 547  
45       U.S. 293 (2006), is a case in which the United States Supreme Court held that a federal  
46       district court had equal or concurrent jurisdiction with state probate (will) courts over tort  
47       claims under state common law. N.C.G.S. § 29-14. Share of surviving spouse. (c) When  
48       an equitable distribution of property is awarded to the surviving spouse pursuant to G.S.  
49       50-20 subsequent to the death of the decedent, the share of the surviving spouse determined  
50       under subsections (a) and (b) of this section shall be first determined as though no property  
51       had been awarded to the surviving spouse pursuant to N.C.G.S. 50-20 subsequent to the  
52       death of the decedent, and then reduced by the net value of the marital estate awarded to  
53       the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent. (1959,  
54       c. 879, s. 1; 1979, c. 186, s. 1; 1981, c. 69; 1995, c. 262, s. 3; 2001-364, s. 6; 2012-71, s.  
55       1.) Intestate Succession Act was violated. *Swift v. Tyson*, 41 U.S. (16 Pet.) 1 (1842)

56

57       Rehabilitation Act and Inmate Rights: The Rehabilitation Act of 1973, particularly Section  
58       504, protects the rights of disabled individuals, including inmates. This act ensures that no  
59       qualified individual with a disability is excluded from, denied the benefits of, or subjected

60 to discrimination under any program or activity receiving federal financial assistance  
61 within Judicial forum of arbitration. The 5th Amendment was stopped by an agency.  
62 Inmates have certain due process rights under the Fourteenth Amendment, which includes  
63 protections against arbitrary denial.

64

65 Non-judicial appearance for not -yet-to be assert -entry of Equitable Distribution pursuant  
66 North Carolina extensive statutory procedure within the subject to Marital Property 14th  
67 Amendment Due Process protection and 5th Amendment were Constitutional Violations.  
68 Chapter 50 § 50-20. N.C.G.S. Distribution by court of marital and divisible property. (a)  
69 Upon application of a party, the court shall determine what is the marital property within  
70 state statute that within federal jurisdiction of adopting state Laws 28 USC 1652, Erie  
71 Railroad Company v. Tompkins 304 U.S. 64 (1938). Judiciary Act of 1789, section 34  
72 ("Rules of Decision Act") (28 U.S.C. § 1652)

73 Can a court deny Breach of Fiduciary Duties and conversion within bounds of Law provide  
74 fair procedures, life" and property. Motion to Reinstate a Complaint liberties" that violates  
75 or abridge the privileges or immunities 14th Amendment and 5th Amendment ignored and  
76 placed in vanilla court file that was identified as miscarriage of justice.

77 Due Process protection reflect on Local Rule 40(b) Conflict of United States Supreme  
78 Court Rules, or the Mail did not reach the Pro 'se individual on the 18th of October  
79 2023. The Notice of the Order.

80 Can court deny a Motion Equitable Distribution Open Motion within Probate Estate all  
81 Creditor Notice never was served Surviving Spouse vested Legal Right my 5th Amendment  
82 and 14th Amendment Due Process Rights was violated.

83 14th Amendment Due Process protection equal protection of 5th Amendments. Dred Scott  
84 v. Sandford (1857) 13th and 14th amendments to the Constitution.

85 Can court dismiss Roseboro Notice pro se filed asking for Motion to grant for Summary  
86 Judgment and Response to Show Cause Order explaining the third-party action. Because  
87 the petitioner is proceeding pro se 14th Amendment and 5th Amendment Rights.

88 Appellate Court practice jurisdiction procedures or was my rights being violated by  
89 Appellate Courts in reference to the 5th Amendment of the Constitution.

90 Can the Appellate Court violate Federal Rule of Civil Procedure 26(c) falls on a Saturday,  
91 the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday.  
92 This is specified in Rule 6(a) (2) of the Federal Rules of Civil Procedure, which governs  
93 the computation of time periods. Can a court Reinstate Appeal dismiss Complaint on FRCP  
94 Grant hearing or enhance, to dismiss action again 5th Amendment and 14th Amendment  
95 constitution Violation. Nestlé USA, Inc. v. Doe, 593 U. S. 628 (2021).

96 Otherwise provided in Rule 26(b), prior to a case being closed that was post-stamped or  
97 walked in-to the District Court and Stamped.

98 Can court waive an immunity on Agency federal administrative law agency's interpretation  
99 of the statute, promulgating and curtailing the value of our Constitutional Rights, resilience  
100 that I will not give up continue to fight for my MARITAL PROPERTY the federal statutory  
101 scheme and the interests that it is designed to uphold (and if so, how courts should

102 determine the appropriate limitations ON State miscarriage of judgement on Equal Rights  
103 Violations of my 14th Amendment . Because I was incarcerated, and they thought I was  
104 going to stop.) I wrote the Motion in Ceil during COVID. No law library only tablet. Why  
105 natural born citizen of the UNITED STATES 14th Amendment of her Due Process was  
106 ignored 14th Amendment Rights and 5th Amendment. CONSTITUTIONAL RIGHTS was  
107 violated.

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131           1. Equitable Distribution completed judicial entry.

132           Marital Property.

133           2. Probate Estate was closed and open illegally, no notice was forwarded to surviving

134           spouse.

135           IX. REASONS FOR GRANTING THE WRIT

136           A.       TO AVOID ERRONEOUS DEPRIVATIONS OF THE RIGHT

137           B.

138           Marital Property.

139           2. Probate Estate was closed and open illegally, no notice was forwarded to surviving  
140           spouse.

141           IX.REASONS FOR GRANTING THE WRIT

142           A.       TO AVOID ERRONEOUS DEPRIVATIONS OF THE RIGHT

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704 IV. Petition for Writ of Certiorari

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706 Petitioner Andrvia Frances Wells respectfully requests the issuance of a writ of certiorari to review  
707 the judgment of the United States Court of Appeals for the Fourth Circuit.

708 DECISION BELOW

709 The decision of the United States Court of Appeals for the Fourth Circuit is published at (3hus:23-  
710 cv-00356-MOC-SCR) (4th Cir. 2024) and is reproduced at Pet. App. 1a.

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714 V. Jurisdiction

715 The 4th Circuit entered judgment on May 1, 2024. See Pet. App. 1a. Justice

716 Appeal from the United States District Court for the Western District of North Carolina, at

717 Charlotte. Max O. Cogburn, Jr., District Judge. (3:23-cv-00356-MOC-SCR)

718 Submitted: March 28, 2024, Decided: April 2, 2024

719 Before KING and RUSHING, Circuit Judges, and MOTZ, Senior Circuit Judge.

720 Dismissed by unpublished per curiam opinion.

721 Andrivia Frances Wells, Appellant Pro Se. J.P. McGuire Boyd, Jr., WILLIAMS

722 MULLEN, Richmond, Virginia, for Appellee Audris Veronica Ford Asmond.

723 Unpublished opinions are not binding precedent in this circuit.

724 What is the affirmance of a united states district court ruling?

725 The affirmance ruling within the Estate Claim was the jurisdiction of the Article II court could  
726 not exonerate the nature of the capacity of the subject entailed Probate of Estate could not be the  
727 relief requested by Plaintiff here (to “recover marital estate property”) would potentially require  
728 this court to “annul” or “administer” my husband MEMPHIS LEWIS SMITH estate NCGS. §  
729 28A-2A-5. What shown on application for probate.

730 On application to the clerk of the superior court, he must ascertain by affidavit of the applicant -

731 (1) That such applicant is the executor or devisee named in the will, or is some other

732 person interested in the estate, and how so interested. I, ANDRIVIA FRANCES WELLS-SMITH  
733 have interest and the Section 28A-19-1 of NCGS Section Chapter 28A and within the scope of  
734 Section 50 of NCGS which governs Equitable Distribution Procedures. Matter is jurisdiction in  
735 the within the scope of UNITED STATES SUPREME COURT of declaratory judgment claim. 1  
736 Equitable Distribution Versus Estate Administration. Equitable Distribution is the process by  
737 which a court divides property belonging to married couple based upon a variety of statutory  
738 factors. N.C. Gen. Stat. § 50-20 (c).

739 It is presumed that in-kind distribution of marital property is equitable.” The rights of the parties  
740 to an equitable distribution of marital property and divisible property are a species of common  
741 ownership, the rights of the respective parties vesting at the time of the parties’ separation.” Id.  
742 §50-20(k). The State of North Carolina have different categories of claims are paid according to  
743 statutory hierarchy, which includes the:

744 (a) After payment of costs and expenses of administration, the claims against the Estate must  
745 be paid. Eighth Class, A claim for Equitable distribution. Ninth Class, All other claims. N.C.G.  
746 Stat. §28A-19-6(a) (2017). The Eighth class of claims was added to the statute in 2005, after  
747 Section,50-20(L) had been amended to provide that equitable distribution claims whether  
748 pending or not-yet filed at the time of a spouse’s death could be pursued against the decedent’s  
749 estate. Act of July12,2005. Pending Action is not Claim, prior to the death of spouse with respect  
750 to Chapter 28A-19-6(a) but represents [ the surviving spouse] portion of the marital property.”  
751 Although the ANDRIVIA FRANCES WELLS argues here that it also raises an

752 (a) equal protection challenge, it was plead a claim under the Equal Protection Clause in the  
753 district court. Because this issue is raised for the second time on appeal, we continued to address  
754 it. See *Muth v. United States*, 1 F.3d 246, 250 (4th Cir. 1993).

755 *Kerns v. United States*, 585 F.3d 187, 192

756 (4th Cir. 2009). The State of North Carolina made decision within a in default state that violates  
757 Due Process Right. The sovereignty within a decision of a court of Law is in personum in  
758 reference to property right. I, ANDRIVIA FRANCES WELLS-SMITH was absent nor was a  
759 divorce legal. State and Federal court have different sovereignty and jurisdiction procedures.  
760 Documents of summons Nol in void and process was an ad prosequendum procedure Life,  
761 liberty, and property. There rules of law cannot violate individual rights during a decision of  
762 marital rights.

763

## 764 VI. Constitutional Provisions Involved

765 Federal court's diversity jurisdiction applies only if a federal judge is being asked to: (1) probate  
766 a will, (2) administer a decedent's estate, or (3) interfere with property already in the custody of a  
767 probate court. Racketeer Influenced and Corrupt Organizations Act (RICO) Part I explores the  
768 development of the exception, with particular attention to the Supreme Court's recent grounding  
769 of the exception in the rule that one court's assertion of in rem jurisdiction can preclude  
770 another's. Part II canvasses the lower court decisions that have followed that explanation. Those  
771 decisions show uncertainty over what the "prior exclusive jurisdiction" doctrine means in  
772 general, and what it means for federal question cases in particular. To address that uncertainty,  
773 Part III draws on connections between in rem jurisdiction and judgments to conclude that the

774 prior exclusive jurisdiction doctrine is a rule of common law about the federal judicial power.  
775 Unless displaced by legislation, then, the probate exception can properly limit federal jurisdiction  
776 even over federal questions. And, based on the available evidence, so it does.

777

778 United States Constitution, Amendment XIV

779 All persons born or naturalized in the United States, and subject to the jurisdiction, therefore, are  
780 citizen of the United States of the State wherein they reside. No State shall make or enforce any  
781 law which shall abridge the privileges or immunities of citizens of the United States; nor shall  
782 any state deprive any person of life, liberty, or property, without due process of law; nor deny to  
783 any person within its jurisdiction the equal protection of the Law.

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794 STATEMENT OF THE CASE

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796 On July 15, 2020, a Sheriff Deputy Mecklenburg County Summons I, ANDRIVIA FRANCES  
797 WELLS was summons with documents G.S. 1A-1, Rule 4(j)(1) (n) Asserting Jurisdiction over  
798 Property or Assets. U.S. Marshall did not provide I, (“Wells”) documents. Nor, received  
799 permission from my Federal Judge.

800

801 (1) Federal Law. The court may assert jurisdiction over property if authorized by a federal statute.  
802 Notice to claimants of the property must be given as provided in the statute or by serving a  
803 summons under this rule.

804 (2) State Law. On a showing that personal jurisdiction over a defendant cannot be obtained in the  
805 district where the action is brought by reasonable efforts to serve a summons under this rule, the  
806 court may assert jurisdiction over f fiduciary duty, the defendant's assets found in the district.  
807 Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided  
808 by state law in that district. The state judge did not ask My federal adjudicator to require my  
809 presences August 8 ,2020 a Pro se extension was submitted contesting marriage and property  
810 Rule 60(b). On September 09, 2020, Pro Se' Equitable Distribution Matter was excepted. My  
811 Civil Rights was violated during the proceedings of the North Carolina Chapter 50 provisions.  
812 Pending the hearing, my husband Memphis Smith died domicile, prior to District Judge entering  
813 an order for divisible property. The Amended Actions NC General Statute 50-20(L) (1) A claim  
814 for equitable distribution, whether an action is filed or not, survives the death of a spouse so long  
815 as the parties are living separate could separation of one year on application of either party, I

816 Andrivia Frances Wells-Smith contested. N.C. Gen.Stat. 28A-19-1, a statute governing claims  
817 against an estate, breach of fiduciary duty, conversion, and for a declaratory judgment that, I  
818 Andrivia Frances Wells-Smith is entitled to her half of the distributive value of the LLC interest  
819 and Marital Property.

820  
821

822 1. The Government's Roseboro Order

823 Right to Respond to the allegations a of statement of the claim showing that the pleader is  
824 entitled to relief." The factual I, Andrivia Frances Wells-Smith was substantial. To expound on  
825 Due Process of Law. Within the District Circuit only Statutes and Rules to curtail my actions to  
826 continue to process my actions. Until I engage Rights within the correct Judicial Forum, Court of  
827 Law, That Can fulfill a Constitutional Rights.

828 2. The District Court's Ruling Allowing the Government to Establish Jurisdiction.

829 The Supreme Court has articulated a "probate exception" to the federal question jurisdiction  
830 extended to Article III courts by 28 U.S.C. § 1331. That exception "reserves to state probate  
831 courts the probate or annulment of a will and the administration of a decedent's estate." Marshall  
832 v. Marshall, 547 U.S. 293, 296 (2006). If a statute's language is clear and unambiguous, no  
833 further analysis is necessary" and the courts must give it its plain and definite meaning." Quality  
834 Built Homes Inc. Town of Carthage,369 N.C. 15,19,789 S.E.2d 454,457(2016). Chapter 50  
835 N.C.G. Statute 50-20 (l)(2) does not require surviving spouse to comply with Section 28A-19-3  
836 filing notice requirements to enforce an equitable distribution order. require a federal court to

837 assume in rem jurisdiction over those shares, then it follows that the probate exception precludes  
838 the exercise of diversity jurisdiction. In Gaines v. Fuentes, 92 U.S. 10 (1876), Marshall v.  
839 Marshall, 547 U.S. 293, 296 (2006). Brown v. Brown, 353 N.C. 220.

840

841 3. The Fourth Circuit's Affirmance of the District Court's Ruling

842 28 U.S.C. § 1254 determine the instruction of Constitutional Law that was violated within a  
843 jurisdiction of Courts that cannot resolve an act of Law. Marshall v. Meadows, 105 F.3d 904, 906  
844 (4th Cir. 1997). An "injury in fact" is "an invasion of a legally protected interest which is (a)  
845 concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical."  
846 Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (internal quotation marks omitted). The  
847 plaintiffs have the burden of alleging sufficient facts to demonstrate standing. Marshall, 105 F.3d  
848 at 906 (citing FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990)).

849

850

851

852 IX. REASON FOR GRANTING THE WRIT

853

854 A. To avoid erroneous deprivation of the right of a surviving spouse. the Fourteenth  
855 Amendment's Equal Protection Clause can be applied to intestate succession laws, meaning they  
856 cannot discriminate unfairly based on factors like gender or legitimacy of children, Fifth  
857 Amendment a person cannot be deprived of life, liberty, or property without fair procedures and

858 trials. The thirteenth Amendment as a surviving spouse violation as a Natural born Citizen my  
859 Rights were deprive from immunity of State Agency.

860 In Marshall v. Marshall, 547 U.S. 293 (2006), this Court adopted a set of prophylactic measures to  
861 protect the respondents In Ankenbrandt v. Richards, 504 U.S. 689, 112 S. Ct. 2206, 119 L. Ed. 2d  
862 468 (1992), this Court reined in the "domestic relations exception." Earlier, in Markham v. Allen,  
863 326 U.S. 490, 66 S. Ct. 296, 90 L. Ed. 256 (1946), the Court endeavored similarly curtail the statute  
864 of State elements and Chapters of various laws that substantiate the procedures of Probate of Estate  
865 and Equitable Distribution is Hierarchy within establishing Marital Property. With in the "probate  
866 exception." The jurisdiction analogy has reach that curtail of the right to provide, Terry v. Sharon,  
867 131 U.S. 40, 48, 9 S. Ct. 705, 707, 33 L. Ed. 94 (1889). But don't utilize the 14th Amendment of  
868 a Due Process Right to be heard within the court observed that a federal court has jurisdiction to  
869 "adjudicate rights in probate property, state North Carolina is non-default state which is violation  
870 of several Constitutional Rights, so as long as its final judgment does not undertake to interfere  
871 with the state court's possession of the property. "Brown v. Brown, 353 N.C. 220. In order dissipate  
872 the" compelling pressures which works towards undermining an individual thoughts action  
873 without an attorney. The stipulation of law is a curious design to speak on defective actions that is  
874 considered as effective within the Constitution of Law that is unambiguous to the indigent, or pro  
875 se. To speak freely is a first amendment right. But to void an action of  
  
876 Individuals will resist and compel her to speak where she would not be otherwise to do so freely,"  
877 She was never advised by counsel what to state or claim. I will say, during various pro se motions  
878 that was written under the Laws of state, and they ignored my Motions while being detained by  
879 Federal government. The state did not have jurisdiction to summons I, with divorce papers.  
880 Without asking for permission as a detainee." OLD WAYNE MUT. L. ASSOC. v. McDonough,

881 204 U. S. 8,27 S. Ct. 236 (1907). "Judgment is a void judgment if court that rendered judgment  
882 lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with  
883 due process, Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C. A., U.S.C.A. Const." The 14th  
884 amendment of the United States Constitution gives everyone a right to due process of law, which  
885 includes judgments that comply with the rules and case law. Most due process exceptions deal with  
886 the issue of notification. If, for example, someone gets a judgement against you in another state  
887 without your having been notified, you can attack. Quiet Title Law."

888 § 41-10. Titles quieted. An action may be brought by any person against another who claims an  
889 estate or interest in real property adverse to him for the purpose of determining such adverse  
890 claims; and by any man or woman against his or her wife or husband or alleged wife or husband  
891 who have not lived together as man and wife within the two years preceding, and who at the death  
892 of such plaintiff might have or claim to have an interest in his or her estate, and a decree for the  
893 plaintiff shall debar all claims of the defendant in the property of the plaintiff then owned or  
894 afterwards acquired: Provided, that no such relief shall be granted against such husband or wife or  
895 alleged wife or husband, except in case the summons in said action is personally served on such  
896 defendant. If the defendant in such action disclaim in his answer any interest or estate in the  
897 property or suffer judgment to be taken against him without answer, the plaintiff cannot recover  
898 costs. In any case in which judgment has been or shall be docketed, whether such judgment is in  
899 favor of or against the person bringing such action, or is claimed by him, or affects real estate  
900 claimed by him, or whether such judgment is in favor of or against the person against whom such  
901 action may be brought, or is claimed by him, or affects real estate claimed by him, the lien of said  
902 judgment shall be such claim of an estate or interest in real estate as is contemplated by this section  
903 the judgement for lack of due process of law. In Griffen v. Griffen, 327 U.S. 220, 66 S. Ct. 556, 90

904 L. Ed. 635 a pro se litigant won his case in the Supreme Court who stated. During the Probate  
905 Estate a Notice was not provided to me, during my incarceration. We were married for seven years  
906 counting the two years of common law. The Family Court ignored my Motions during the judicial  
907 proceeding, and she rendered an order during my absence of 41(b). I was not notified of the Court  
908 date nor was I, informed of the order. Until was released from F.B.O.P. custody and was transferred  
909 the Federal Halfway house that is when I, read the file and informed the North Carolina Bar of her  
910 misconduct and constitutional violation. During the years of fighting and laps of time and on the  
911 verge of nervous breakdown .Because ,I need for judicial system to hear my voice and North  
912 Carolina actions of Civil Rights violation on Marital property a default judgment without the  
913 appearance of an individual to fight for their rights .The N.C.G.S. 50-20 state various claims in  
914 reference to a surviving spouse I, asserted a FRCP RULE 60(b) FRCP Rule 60(b) provides that the  
915 court may relieve a party from a final judgment and sets forth the following six categories of  
916 reasons for which such relief.

917 may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newlydiscovered  
918 evidence which by due diligence could not have been discovered in time, to move for a new trial  
919 under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party:

920 (4) circumstances under which a judgment is void; (5) circumstances under which a judgment  
921 has been satisfied, released, or discharged, or a prior judgment upon?

922 Which it is based has been reversed or otherwise vacated, or it is no longer equitable that.

923 the judgment should have prospective application; or (6) any other reason justifying relief.

924 from the operation of the judgment. F.R.C.P. Rule 60(b)(1) -(b)(6). To be entitled to relief, the  
925 moving party must establish facts within one of the reasons enumerated in Rule 60(b). Prior to

926 my husband answering the assert he passed domicile. Within Law of North Carolina, it states I,  
927 have a vested right, interest, or title, and not taken away or “divested.” There is a third-party  
928 property that my husband explained to me in reference to the name on the commercial property I,  
929 help pay taxes on the easement of 30 years I, have a vested interest and right the Quiet Title  
930 Laws § 1-40. Twenty years adverse possession. No action for the recovery or possession of real  
931 property, or the issues and profits thereof, shall be maintained when the person in possession  
932 thereof, or defendant in the action, or those under whom he claims, has possessed the property  
933 under known and visible lines and boundaries adversely to all other persons for 20 years; and  
934 such possession so held gives a title in fee to the possessor, in such property, against all persons  
935 not under disability.

936 . Quiet Title Law§ 41-10. Titles quieted. An action may be brought by any person against another  
937 who claims an estate or interest in real property adverse to him for the purpose of determining  
938 such adverse claims; and by any man or woman against his or her wife or husband or alleged  
939 wife or husband who have not lived together as man and wife within the two years preceding,  
940 and who at the death of such plaintiff might have or claim to have an interest in his or her estate,  
941 and a decree for the plaintiff shall debar all claims of the defendant in the property of the plaintiff  
942 then owned or afterwards acquired: Provided, that no such relief shall be granted against such  
943 husband or wife or alleged wife or husband, except in case the summons in said action is  
944 personally served on such defendant. If the defendant in such action disclaim in his answer any  
945 interest or estate in the property or suffer judgment to be taken against him without answer, the  
946 plaintiff cannot recover costs. In any case in which judgment has been or shall be docketed,  
947 whether such judgment is in favor of or against the person bringing such action, or is claimed by  
948 him, or affects real estate claimed by him, or whether such judgment is in favor of or against the

949 person against whom such action may be brought, or is claimed by him, or affects real estate  
950 claimed by him, the lien of said judgment shall be such claim of an estate or interest in real estate  
951 as is contemplated by this section. However, in Upchurch v. Upchurch, 122 NC App 172  
952 (1996)(Upchurch I), the court of appeals held that ownership for purposes of ED includes both  
953 legal and equitable ownership and recognized that within the context of an ED proceeding, a  
954 court has the equitable authority to impose a constructive or resulting trust upon property legally  
955 owned by someone other than a spouse. While in other situations a party has a right to have a  
956 jury determine whether grounds exist for the imposition of a trust, the Supreme Court held in  
957 Sharp v. Sharp, 351 NC 37 (1999), that there is no jury trial right when the issue arises in the  
958 context of an ED case. The judge rather than the jury must decide whether a trust should be  
959 imposed.

960 The court of appeals also has held that a trial court can impose a trust on property owned by a  
961 third party even if neither spouse expressly requests that relief in a pleading. Weatherford v.  
962 Keenan, 128 NC App 178 (1998).

963 If the trial court finds grounds to impose a trust, the court can order the title to the property be  
964 conveyed to one or both spouses and classified as marital property. Gragg v. Gragg, 94 NC App  
965 134 (1989).

966 Andrvia Frances Wells, the plaintiff-appellant, filed a 42 U.S.C. § 1983 action against the  
967 Mecklenburg County Clerk of Probate Estates, Memphis L. Smith, Jr., and Audris Veronica Ford  
968 Asmond. The case was initially heard by the United States District Court for the Western District  
969 of North Carolina, where the district judge, Max O. Cogburn, Jr., dismissed the action for failure  
970 to state a claim upon which relief could be granted. The claim was third-party property that held  
971 the or name of her("Wells") brother-in-law estate name. The Plaintiff-Appellant, Andrvia

972 Frances Wells husband possess the property and paid off the mortgage that was claimed contract  
973 within him and his brother. Mecklenburg County Probate of Estate would not let me reopen the  
974 Estate, our system of government "requires that federal courts on occasion interpret the  
975 Constitution in a manner at variance with the construction given the document by another  
976 branch." Powell v. McCormack, *supra*, at 549. And in *Baker v. Carr*, 369 U.S., at 211, the Court  
977 stated:

978 "Deciding whether a matter has in any measure been committed by the Constitution to another  
979 branch of government, or whether the action of that branch exceeds whatever authority has been  
980 committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of  
981 this Court as ultimate interpreter of the Constitution."

982 *Askew v. City of Kinston*, 902 S.E.2d 722(N.C. 2024), and *Kinsley v. Ace Speedway Racing, Ltd.*, 904 S.E.2d 720(N.C. 2024).

984 The crux of the appellate court's decision rested on the timeliness of the notice of appeal filed by  
985 Wells. According to Federal Rule of Appellate Procedure v Ma4(a)(1)(A), a party has 30 days  
986 after the entry of the district court's final judgment or order to file a notice of appeal. Wells filed  
987 the notice of appeal 33 days after the district court's order, missing the 30-day deadline. The  
988 appellant did not seek an extension or reopening of the appeal period as allowed under Federal  
989 Rule of Appellate Procedure 4(a)(5) or 4(a)(6).

990 See, *United States v. Nixon*, 418 U.S. 683, 705-707 (1974).

991 "Whether the federal courts should be especially alert to avoid undue interference with the  
992 state judicial system flowing from demands upon state judges to appear as witnesses need not be  
993 addressed at this time."

994     Judicial immunity attaches only to actions undertaken in a judicial capacity. *Forrester v. White*,  
995     484 U.S. 219, 227-229 (1988). In determining whether an action is "judicial," we consider the  
996     nature of the act and whether it is a "function normally performed by a judge." *Stump v.*  
997     *Sparkman*, 435 U.S. 349, 362 (1978).

998

999     Page 14 See also *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U.S.  
1000     719, 736-737 (1980) (judge not entitled to judicial immunity when acting in enforcement  
1001     capacity); cf. *Mitchell v. Forsyth*, 472 U.S. 511, 520-524 (1985) (Attorney General not  
1002     absolutely immune when performing "national security," rather than prosecutorial, function).  
1003     Moreover, even if the act is "judicial," judicial immunity does not attach if the judge is acting in  
1004     the "'clear absence of all jurisdictions.'" *Stump v. Sparkman*, 435 U.S., at 357 (quoting *Bradley*  
1005     *v. Fisher*, 13 Wall. 335, 351 (1872)).

1006     The Fourth Circuit panel, including Circuit Judges King and Rushing, and Senior Circuit Judge  
1007     Motz, upheld that the timely filing of a notice of appeal in a civil case is a jurisdictional  
1008     requirement, citing *Bowles v. Russell*. Consequently, the court found that it lacked jurisdiction to  
1009     hear the appeal due to the untimely notice of appeal filed by Wells. The panel dismissed the  
1010     appeal without oral argument, stating that the facts and legal contentions were adequately  
1011     presented in the materials before the court and that oral argument would not aid the decisional  
1012     process.

1013     If you are a Surviving Spouse, you have rights that can benefit you from many different sources  
1014     and bodies of law. You should contact Jet Probate immediately whether you were named as a  
1015     Beneficiary of your Spouse's Will or whether or not your loved one even had a Will3. Courts will

1016 look at state law for guidance on who to appoint but typically the law will provide for the  
1017 following people: surviving spouse, children, parents of the decedent, the decedent's siblings, or  
1018 the decedent's grandchildren<sup>4</sup>. If a will attempts to disinherit a spouse in some way, the spouse  
1019 may be protected by state law. Each state has laws regarding spousal inheritance, which  
1020 generally follow one of three approaches: the traditional spousal share approach, the augmented  
1021 estate approach, or the community property approach. Like credibility determinations, the weight  
1022 of the evidence is a matter left to the finder of fact, and this Court does not reweigh the evidence  
1023 produced at trial or substitute its judgment for that of the finder of fact. See, e.g., *In re Patron*,  
1024 250 N.C. App. 375, 384, 792 S.E.2d 853, 860 (2016).

1025 The son which the judicial system of the probate of Estate was provided letters by judge. Marital  
1026 property fraudulently sold Jurisdiction of the person was essential to a valid order. *Stancill v.*  
1027 *Gay*, *supra*. See, *Grasty v. Grasty*, 125 N.C. App. 736, 739, 482 S.E.2d 752, 754 (trial court did  
1028 not err in failing to value husband's business  
1029 when only evidence offered was "wholly incredible and without reasonable basis"), review  
1030 denied, 346 N.C. 278, 487 S.E.2d 545 (1997)

1031 *McLeod v. McLeod*, 74 N.C. App. 144, 327 S.E.2d 910 (1985), The Company I provided  
1032 interest, money, and equipment. Every year I paid the Secretary of Estate to L.L.C. and property  
1033 taxes on Commercial Property and personal property.

1034 In 2003, the General Assembly amended Section 50-20 to add the following pertinent  
1035 language: Chapter 50-20 (l)(1) A claim for equitable distribution, whether an action is filed or  
1036 not, survives the death of a spouse so long as the parties are living separate and apart at the time  
1037 of death.(2) The provisions of Article 19 of Chapter 28A of the General Statutes shall be

1038 applicable to a claim for equitable dist. If a statute's language is clear and unambiguous, no  
1039 further analysis is necessary "and the courts must give it its plain and definite meaning.  
1040 distribution against the estate of the deceased spouse. See, SMITH v. RODGERS | 824 S.E.2d  
1041 155 (2019).

1042 '[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.' - Bowles  
1043 v. Russell, 551 U.S. 205, 214 (2007).

1044 The key notes: Judge of the Appellate Courts violated my Constitutional Right. I was being  
1045 released from Federal custody. I was living in a home with no electricity. Because the individuals  
1046 that resided in my home during COVID-19 was stealing power and I had Duke Energy to come  
1047 to an agreement with me. They were fixing on the issue for six-months. The lines that were cut.  
1048 I asked them to place them underground. I, give it to God, they did not charge me for the Labor.  
1049 I, had to pay for various permits and I purchase the material. For the License Electrician to  
1050 complete the task. That was strenuous within a home that was cold and there were days when its  
1051 rain. God have favor on me.

1052 'Because Wells failed to file a timely notice of appeal or to obtain an extension or reopening of  
1053 the appeal period, we dismiss the appeal.' - Per Curium Opinion. The Appeal dismissed within an  
1054 order that I waited in the mail to receive an answer of the Notice. The Jurisdiction of the Action  
1055 of a Federal Judge that is Article III for disturbing a Probate Action of Caveators Fraudulently  
1056 sold my property. I wrote the state judge – up for not complying to Equitable Distribution Action.

1057 This case presents this Court with an opportunity to clarify the Equitable Distribution Action  
1058 and Estate Claim.

1059 1983 Civil Rights Violation “initiation” standard in the face of the Law of Marshall v Marshall  
1060 rule. Absent intervention by this Court, the Fourth Circuit Court of Appeals published the  
1061 decision will work to undermine the carefully crafted procedural safeguards that this Court has  
1062 spent the past years within the interlocutory of state and federal laws adopt a solution of trust  
1063 that’s not an heir. The intestate share of a surviving spouse who was married to the decedent for  
1064 at least 15 years in state of North Carolina, NC Gen St 29-1 to 29-30.

1065

1066 Conclusion

1067 Marital Properties that were distributed within arms of the interlocutory provisions was illegal  
1068 and I want my marital property to return the third-party property and other initial property that’s  
1069 mines within eye of the NCGS and the Constitution of Law. The 6th, the 5th, and the 14th  
1070 Amendment Violation of the Constitution. I hope to God you all hear my cry and grant me. My  
1071 properties and surviving spousal rights.

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## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andri via Francis wells

Date: July 30, 2024