

No. _____

In The
Supreme Court of the United States

—◆—
DERON G BRUNSON,
Petitioner,

v.

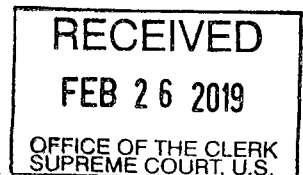
HONORABLE L. DOUGLAS HOGAN; AND
BAYVIEW LOAN SERVICING, LLC

Respondents.

—◆—
On Petition for Writ of Certiorari
To The Utah State Supreme Court

—◆—
PETITION FOR A WRIT OF CERTIORARI

—◆—
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INTRODUCTION TO QUESTIONS PRESENTED

1. This case is of first impression which strongly changes the process of ruling as guided by the US Constitution for every single court in the United States of America.
2. As demonstrated in this case, The United States Supreme Court, under the doctrine of *equitable maxim*, has stated that a trial court enjoys a certain self imposed ordinance of broad discretion to disregard any and all precedence's developed by any appeals court, including the United States Supreme Court, and to disregard the United States Constitution, and its own State Constitution along with The Object Principle Of Justice.
3. Furthermore, and in addition, every single court in the USA unconstitutionally disregards the doctrine of The Object Principle of Justice which is the supreme law of the land. The United States Constitution requires the enforcement of this doctrine. This doctrine is the bedrock in making our courts the most highly respected, loved and admired judicial system above anything the world has ever before seen. Parties in court would have a strong sense of the outcome, our courts would no longer be so dangerously precarious, and as such the filing of lawsuits and appeals would drop dramatically while greatly increasing settlements.
4. In addition, under the guidance of The Object Principle of Justice, it would dispel the bad labeling

of judges and attorneys. No longer would “We the People . . .” be faced with either losing their moral sense of justice or losing respect for our judicial system. The bells of justice would ring louder, greater, more effectively than ever before while attorneys and judges would be revered like never before seen.

QUESTIONS PRESENTED

5. Whether the United States Supreme Court has set a precedence, under the doctrine of *equitable maxim*, that contradicts its own precedence’s by freely giving broad discretion to a trial court to; 1) disregard the *Fourteenth Amendment*, and *Articles III and VI* to the *United States Constitution*, and 2) to disregards it’s own State Constitution, which in this case would be *Article 1 Section 7 & 11* to the *Constitution of Utah*, and 3) to disregard precedence’s of any appeals court, which in this case would be *The Utah Court of Appeals* and *The Supreme Court of the State of Utah*, and the *United States Supreme Court*, and 4) to disregard *The Object Principle of Justice*. Under the doctrine of equitable maxim trial courts are the supreme law of the land.

PARTIES TO THE PROCEEDING

Petitioner is an individual representing himself and is a Plaintiff in the trial court.

Respondent is a Judge in the trial court.

TABLE OF CONTENTS

**INTRODUCTION TO QUESTIONS
PRESENTED..... i**

QUESTIONS PRESENTED ii

PARTIES TO THE PROCEEDING..... ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW.....1

JURISDICTION1

CONSTITUTIONAL PROVISIONS INVOLVED.2

STATEMENT OF THE CASE3

CONCLUSION.....20

APPENDIX

IN THE SUPREME COURT UTAH.....1

IN THE UTAH COURT OF APPEALS.....2

IN THE UTAH COURT OF APPEALS.....4

IN THE THIRD JUDICIALCOURT.....5

FRAUDULENT DOCUMENTS.....15

IM MEMORY OF RUDY A DIAZ.....18

TABLE OF AUTHORITIES

US CONSTITUTIONAL PROVISIONS

Article IIIii, 10
Article VIii, 10
Declaration Of Independence 8, 9
Fifth Amendment 2
Fourteenth Amendment ii, 2

UTAH CONSTITUTIONAL PROVISIONS

Article 1 Section 7ii, 18
Article 1, Section 11 18

STATUTES

28 U.S.C.A. §1257(a): 1

CASES

American Bush v. City Of South Salt Lake, 2006 UT
40 140 P.3d.1235.....9
Bein v. Heath, 6 How. 228, 2476
Brent Brown Dealerships v. Tax Com'n, MVED, 2006
UT App 261 20
Council Of Federated Organizations v. MIZE, 339
F.2d 898 (5th Cir. 1964) 20
In re Worthen, 926 P.2d at 876 (Utah 1996)..... 20

Jenkins v. Weis, 868 P.2d 1374 (Utah App. 1994)...	20
Johnson v. Yellow Cab Co., 321 U.S. 383, 387.....	7
Keystone Driller Co. v. General Excavator Co., 290 U.S. 240, 245.....	7
Loughran v. Loughran, 292 U.S. 216, 229	6
Ninth Amendment	2, 8, 10
<i>Precision Co. v. Automotive Co.</i> , 324 US 806	5, 6
<i>State Ex Rel. Z.C.</i> , 2007 UT 54	14
<i>State v. Walker</i> , 267 P.3d 210 Utah 2011.....	15

OPINIONS BELOW

The opinion of the Utah State Supreme Court filed on November 23, 2018, and is believed to not have been reported, appears as Appendix 1.

The opinion of the Utah Court Of Appeals filed on September 20, 2018, and is believed to not have been reported, appears as Appendix 2.

The opinion of the Utah Court Of Appeals filed on September 13, 2018, and is believed to not have been reported, appears as Appendix 4.

The opinion of the trial court appears as Appendix 5.



JURISDICTION

The Utah State Supreme Court entered its judgment on November 23, 2018, and this petition is filed within the allotted 90 days. This Court's jurisdiction is invoked under *28 U.S.C.A. §1257(a)*:

“Final judgments...rendered by the highest court of a State...may be reviewed by the Supreme Court by writ of certiorari...where any...right [or] privilege...is specially set up or claimed under the...statutes of...the United States.”

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment I to the Constitution of the United States, provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Relevant provisions of the Fourteenth Amendment to the Constitution of the United States, in part provides; ". . . nor shall any state deprive any person of life, liberty, or property, without due process of laws. . ."

Relevant provisions of the Fifth Amendment to the United States Constitution states, "No person shall...be deprived of life, liberty, or property, without due process of law . . .".

Relevant provisions of Article I Section VII of the Constitution of Utah, provides: "No person shall be deprived of life, liberty or property, without due process of law."

Ninth Amendment to the Constitution of the United States; "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

STATEMENT OF THE CASE

This appeal follows Petitioner Deron Brunson's petition for extraordinary relief against the Honorable Douglas Hogan. The United States Supreme Court's analysis of the doctrine of equitable maxim gives lower courts, like The Honorable Hogan, the broad discretion to shut its door without explanation against anybody like Mr. Brunson. The Honorable Hogan did not address Mr. Brunson's arguments and shut its door against Mr. Brunson without explanation. The shutting of the court door reaches the same effect of denying Mr. Brunson's right to petition including his right of due process — these rights are Constitutionally protected.

The Utah Court of Appeals continued with the doctrine of equitable maxim and also shut its door against Mr. Brunson's said writ, thus refusing to hear or address Mr. Brunson's argument further denying Mr. Brunson's Constitutionally protected right of due process and right to petition.

The Utah Supreme Court of the State Of Utah provided no explanation beyond it's simple denial of Mr. Brunson's appeal.

This case commenced when Mr. Brunson paid \$610.00 by filing a lawsuit against Bayview Loan Servicing, LLC ("Bayview"). Bayview then filed a summary judgment motion arguing *res judicata*. In response Mr. Brunson filed a opposition arguing why *res judicata* did not apply and provided copies of

documents¹ that are fraudulent on their face that Bayview either help produce or used to steal Mr. Brunson's real estate through a non-judicial foreclosure. One of the documents was provided by Bayview certifying that there is a break in the chain of title. These documents also prove that Mr. Brunson's mortgage loan was never securitized. On October 27th, 2017 Bayview filed a request for decision. Almost 5 months later on October 19, 2018 the court entered its decision ignoring Mr. Brunson's opposition despite the fact he paid \$610.00 to be heard. The Honorable Hogan went beyond just ignoring Mr. Brunson's documented supported opposition that Bayview did not and cannot overcome, he granted Bayview's summary judgment by reciting Bayview's res judicata argument with some additional argument developed solely by the Honorable Hogan. The refusal of the Honorable Hogan to address Mr. Brunson's opposition reaches the same effect of denying Mr. Brunson's Constitutionally protected right of due process and to petition the court at a cost of \$610.00, in addition the Honorable Hogan added his own argument reflecting a biased nature against Mr. Brunson.

On August 29, 2018 Mr. Brunson filed a petition for extraordinary relief against the Honorable Hogan because he had, among other things, failed to notify Mr. Brunson of his final ruling leaving Mr. Brunson with no other plain, speedy or adequate remedy.

¹ See Appendix 15 for a description of these documents.

On August 28, 2018 Mr. Brunson filed a supplemental objection to the Honorable Hogan's said decision.

Bayveiw's summary judgment motion cited prior lawsuits filed by Mr. Brunson, each and everyone of these cases were dismissed under the doctrine of equitable maxim; without ever addressing Mr. Brunson's opposition.

Four other times, including this case, Mr. Brunson's controlling pleadings were ignored by the Utah courts, the courts cited arguments provided by the opposition wrongfully painting a bad picture against Mr. Brunson. Each court has closed its door against Mr. Brunson without explanation despite the fact that Mr. Brunson paid to be heard. The refusal to address Mr. Brunson's controlling pleadings is a denial of his due process rights, it also reaches the same effect of denying his right to petition which is compounded because the courts took Mr. Brunson's filing fee money.

The Honorable Hogan, along with all three other cases of Mr. Brunson, all have decided that Mr. Brunson does not have an unfettered Constitutionally protected right of due process including the right to petition the court — in essence on these cases the court is closed to Mr. Brunson. The United States Supreme Court as declared in the case of *Precision Co. v. Automotive Co.*, 324 US 806, claiming that under doctrine of equitable maxim, courts may shut their door to the demise of one party while favoring the opposing party. In this case the Honorable Hogan went beyond shutting it's door

against Mr. Brunson, he granted Bayview everything they wanted, he also cited their argument in his decision which included some of his own argument, and he even went so far as awarding attorney fees and costs to Bayview despite the fact that Bayview did not request them.

The said equitable maxim doctrine as stated by the United States Supreme Court allows a trial court to close its door against one of the parties in its court disregarding any pleadings that party has filed. When a court closes its door against a party in court it favors the other party making the court biased. This type of door shutting also undermines any controlling case law, including Federal and State Constitutional provisions, thus circumventing the right of due process and the right to petition. The case of *Precision* states "The guiding doctrine in this case is the equitable maxim that" he who comes into equity must come with clean hands." This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be "the abettor of iniquity." *Bein v. Heath*, 6 How. 228, 247. Thus while "equity does not demand that its suitors shall have led blameless lives, *Loughran v. Loughran*, 292 U.S. 216, 229, as to other matters, it does require that they shall have acted fairly and without fraud or

deceit as to the controversy in issue. *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245; *Johnson v. Yellow Cab Co.*, 321 U.S. 383, 387; 2 Pomeroy, *Equity Jurisprudence* (5th Ed.) §§ 379-399."

The doctrine of equitable maxim, as stated by the United States Supreme Court, provided the platform for The Honorable Hogan to shut its door against Mr. Brunson by claiming that Mr. Brunson came to court with unclean hands as a default mortgagor. The deduction was made without addressing Mr. Brunson's argument to the contrary. In addition Mr. Brunson was never told why the court(s) shut its door against him, he was forced to find out why on his own. The Honorable Hogan would not address Mr. Brunson's argument that was supported by documents that on their face clearly and factually prove that Mr. Brunson did not come to court with unclean hands.

Not only did the United States Supreme Court unjustly allow The Honorable Hogan to disregard Mr. Brunson's unfettered Constitutionally protected right of due process and to petition, but he was given unjust power to disregard the doctrine of The Object Principle Of Justice.

The doctrine of The Object Principle of Justice is the supreme law of the land, it sets in motion to provide the most just, limited, highly effective, easy to understand, highly respected and dearly admired court system the world has never before seen.

In addition, this doctrine stops the precarious nature of our courts, their jobs would be much easier with less stress, and parties in court would have a strong sense on how the court is going to rule thus promoting settlements to high degree and greatly discouraging lawsuits.

The Object Principle Of Justice is founded under the origination of our rights, and is protected by the 9th Amendment of the United States Constitution which states “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The Constitution cannot be construed by any means, by any law, by any power, by any court of law on earth to deny or disparage our rights. This is how the Constitution is to be interpreted. These rights that cannot be violated are identified in the second clause of the Declaration Of Independence, it states: “We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness . . .” These self evident rights are God given—unalienable, therefore you cannot give them away and nobody can take them from you, not even a court of law. People may have the means to violate, disparage or construe with your God-given rights, but this does not mean they took your rights away.

No Constitution or any kind of agency erected by man, including courts of law, can ever be construed as being the author, giver or interpreter of our God-given rights. With these rights we erect agencies to protect these rights, “That to secure these

rights, governments are instituted among Men, deriving their just powers from the consent of the governed. . .” *Declaration Of Independence*. *Id.* The Utah State Supreme court recognizes that judges have not the right to construe or disparage our rights. In the case of *American Bush v. City Of South Salt Lake*, 2006 UT 40 140 P.3d.1235 the Utah State Supreme Court stated that “In considering State constitutions we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed. . . . [A state constitution] is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; **it grants no rights to the people**, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the **rights and powers which they possessed before the constitution was made**, it is but the framework of the political government . . . It presupposes an organized society, law, order, property, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard it against the encroachments of tyranny.” (Bold emphasis added)

Courts of law are governed by and subject to the consent of the people (Amendment IX), and judges are bound to the United States Constitution by Article VI of the Constitution which states “This

Constitution, and the Laws of the United States which shall be made Pursuance thereof; . . . shall be the supreme Law of the land; and the Judges in every State shall be bound thereby.” And Article III states “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior”. This is known as the ‘Good Behavior Clause’.

Under our God-given rights we seek to do business with each other, and in the occasion that there is a disagreement, we have the right to find somebody to hear our disagreements — to help us settle the matter, in this matter courts were created, to hear these arguments. So “We The People” have created courts with the agreement that if you go, or are compelled to go to court, you are subject to its decision without violating the 9th Amendment.

The Constitution recognizes that it cannot construe or disparage our rights, or create a court of law that can construe or disparage our rights (this is also self evident). This means that because Judges are bound by the Constitution, they cannot ever at any time inflict the law or their interpretation of law upon the parties in court. The judge must base his decision on the parties interpretation of the law. It is the peoples’ right to seek a judge to referee their argument; they cannot give rights to a judge which they don’t have themselves. They cannot ever at any time require a judge to become the giver of their rights or to tell them what they are. They can only give the judge the right to **referee their interpretation of what they claim their rights are**. All courts of law are required as a matter of law

to follow this, when judges take the oath of office they have sworn to do this.

Once a party invokes legal authority in court the court cannot violate it, or enter in its own arguments which would add to the arguments already in flow. Basically speaking, when a party goes to court he argues what his rights are while the opposing party produces an argument that disagrees, herein the court bases his decision on the arguments before him.

If controlling legal authorities, or the law invoked by a party in court, first become subject to the court's judicial determination or interpretation, then the only rights you have is what the court states it to be which you cannot know beforehand, this makes our courts precarious and produces uncertainty in our courts, for how can you rely on the law to protect your rights? This makes a party in court subject to the court because the court is now the ultimate holder of your rights instead of it being the protector of them. How can this be just?

Under the doctrine of *equitable maxim*, which is a self imposed doctrine that allows a court to shut its door against one whom comes to court with unclean hands, or against one who uses the courts for a wrongful purpose, it allows a court to strip away the law or any legal authority from a party who uses it to hide their wrongful acts, this stripping power is inherently wrong for two reasons: 1) this stripping power (or the power to shut its doors) puts the court back into the first position of determining or interpreting legal authorities which is unjust and

produces uncertainty making the court the giver of your rights instead of the protector of them, and 2) this stripping power puts the party that it favors safely behind the court—this party is protected by the court which the opposing party cannot penetrate; there is no justice served in allowing a party to hide behind a court. When a party is allowed to hide behind the court it prejudices the opposing party and forces the opposing party to argue with the court. A court that positions a party to argue with the court becomes unjust, this is because the court and the opposing party are not on the same equal ground, unless the court agrees to share in the liability of the case and becomes equal to the party that it protects which it cannot do and still be a judge.

For argument purposes, let's say the *equitable maxim* doctrine forbids a person from being unjustly enriched by the law which creates a reason why a party cannot hide behind the law and allows a court to shut its door against such party. Under The Object Principle of Justice it still becomes the responsibility of a party in court to demonstrate to the court how the law is unjustly enriching the other party, or that the party has unclean hands. The court cannot invoke any doctrine or any kind of judicial determination against any party that may become unjustly enriched by the law. It is up to one of the parties in court to present an argument that overcomes this. Again, under the doctrine of The Object Principle of Justice the court cannot ever help one party to the demise of the other party without prejudicing the demising party.

Codes of judicial conduct, like the one in Utah, seem to all echo the following theme; Utah Canon 2.2 of the Code Of Judicial Conduct state that “A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.” “{*COMMENT – [1] . . .a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. [2] When applying and interpreting the law, a judge may make good-faith errors of fact or law. Errors of this kind do not violate this Rule”

This Canon violates the doctrine of The Object Principle of Justice. The moment the judge makes any kind of interpretation of the law it has helped one party to the demise of the other party, it has prejudiced that party it demised, and has positioned the demised party to argue with the court. This becomes a direct argument between the party it prejudiced and the court while the winning party becomes protected by the court’s own volition. More than likely if you argue with the court you will upset the court and you will lose.

The case of *State Ex Rel. Z.C.*, 2007 UT 54 identifies how the court has the broad discretion to protect The Object Principle Of Justice, it states “. . . consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. I lay down the rule with these restrictions; though I know it is generally laid down more largely, that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power that can control it: and the

examples usually alleged in support of this sense of the rule do none of them prove, that where the main object of a statute is unreasonable the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable; there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity, and only quoad hoc disregard it.”

Again, under the doctrine of The Object Principle of Justice the court cannot interpret the law, it must look to the pleadings/arguments in court in determining which interpretation of the law is correct. At that point if the pleadings/arguments are both ambiguous upon which the court cannot make a decision, the court can make a decision of status quo without prejudice (allowing the case to remain the same as it was before it entered the court with a chance of the parties to provide a better interpretation of the law for the court to understand and rule on.

In opposition to the Object Principle of Justice the Honorable Judge Bruce C. Lebeck of the Utah Third District Court stated: “ The Utah Supreme Court addressed the role of judges in *State v. Walker*, 267 P.3d 210,217-218 Utah 2011), and stated:

“For the most part, the role of modern judges is to interpret the law, not to repeal or amend it, and then to apply it to the facts of

the cases that come before them. The process of interpretation, moreover, involves the judge in an exercise that implicates not the judge's own view of what the law should be, but instead a determination of what the law is as handed down by the legislature or framers of the constitution.

The judge, in other words, is not a primary lawgiver but instead an agent for the legislature or framer that played that role. This allocation of power again is deliberate. The more politically accountable bodies of government make new laws; judges, who are more insulated from political processes, simply interpret them and attempt to apply them in an objective, evenhanded manner.

This court's role is to interpret the law and apply it to the facts of the case. A court cannot interpret the law if the court does not know the law.

Absent statutes which are to be interpreted, the court must seek to find and know and understand the law. To do as argued by the Brunsons would be to abrogate this role to the parties. If the court was only permitted to choose between the interpretation provided by one of the parties, then if either party failed to provide the interpretation supported by the language of the rule or statute and case law the application of rules and laws, then the court would be required to apply the only interpretation available to it

that could possibly be wholly incorrect. For a court to know which interpretation was "incorrect" that court would have to know what the "correct" law is. If the parties are not able to advise the court on what the law is, the court must do so itself, this court being unaware of who else would provide that information to the court. If the court followed Brunson's argument this would create inconsistency in the interpretation and application of the law. This would inherently create an injustice in our court system. To prevent this, the court's role is to interpret the law and apply it to the facts of the case."

What happens if the Judge himself gives a wrong interpretation of the law which makes his decision wholly incorrect? And in that case who suffers? Not the Judge!! Did the Judge's opinion address this concern in his opposition to the Object Principle of Justice? No!

The following would eliminate Judge Lubeck's fear of having inconsistency in the interpretation and application of the law.

Under the Object Principle of Justice, if a Judge is confronted with a party in court who fails to provide proper interpretation of any legal authority, and the opposing party fails to point this out, the Judge at that point could easily rule to leave the case as status quo due to the fact that he was not convinced by either arguments, he could allow the parties to come back with proper

interpretations for the court to rule on. However if one of the parties pointed out that a improper interpretation was given he could rule in that direction.

Per the analysis given above under the 9th Amendment, when parties in court invoke legal authorities it is up to them to demonstrate to the court how that law does or does not protect their rights. It is the parties in court who must declare unto the court what their rights are and how they want them protected or how their rights were violated and should be changed. It then becomes the duty of the judge to referee their arguments in deciding which argument will prevail. This is justice. All courts of law are required as a matter of supreme law to follow its doctrine. When judges take the oath of office they have sworn to do so.

There are a few exceptions to where a Judge may enter in his own arguments, those of Jurisdictional questions, and other matters that bar him from hearing the case.

The doctrine of *equitable maxim* that allows a court to shut its door undermines the following Constitutional and case law provisions:

- 1) Article 1, Section 11 of the Constitution of Utah, provides:

“All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be

administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.”

- 2) Article 1 Section 7 of the Utah Constitution;

“No person shall be deprived of life, liberty or property, without due process of law.”

- 3) First Amendment to the Constitution of the United States, provides:

"Congress shall make no law . . . abridging the freedom of . . . the people . . .to petition the Government for a redress of grievances."

- 4) “This Court is not alone in recognizing that the right to be heard . . . is a principle basic to our society. . . . which in the course of centuries have come to be associated with due process.” (page 168) *Jointrefugee Committee v. Grath National Council Offriendship . . .*, 341 U.S. 123, 71 S.Ct. 624, 95 L.Ed. 817 (1951)

- 5) “A judgment is void "if the court that rendered it . . . acted in a manner inconsistent with due process." *Richins v. Delbert Chipman & Sons Co.*, 817 P.2d 382,

385 (Utah App. 1991) (quoting *Automatic Feeder Co. v. Tobey*, 221 Kan. 17, 558 P.2d 101, 104 (1976)); accord *In Re Estate of Jones*, 858 P.2d 983, 985 (Utah 1993); *Brimhall v. Mecham*, 27 Utah 2d 222, 224, 494 P.2d 525, 526 (1972); *Workman v. Nagle Constr., Inc.*, 802 P.2d 749, 753 (Utah App. 1990)" *Jenkins v. Weis*, 868 P.2d 1374 (Utah App. 1994)

- 6) "The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of the right requires a reversal." _____ *Council Of Federated Organizations v. MIZE*, 339 F.2d 898 (5th Cir. 1964).
- 7) "[T]imely and adequate notice and an opportunity to be heard in a meaningful way are at the very heart of procedural fairness." (quotations, citations, and footnote omitted) *In re Worthen*, 926 P.2d at 876 (Utah 1996
- 8) "[E]very person who brings a claim in a court or at a hearing held before an administrative agency has a due process right to receive a fair trial in front of a fair tribunal." *Id.* (quotations and citations omitted)." *Brent Brown Dealerships v. Tax Com'n*, MVED, 2006 UT App 261.
- 9) (" . . . an opportunity to be heard in a meaningful way are at the very heart of procedural fairness . . .") *Brent Brown*

Dealerships v. Tax Com'n, MVED, 2006 UT
App 261.

Accordingly, Mr. Brunson's fundamental right to petition, to be heard, which is a due process right should not be controlled or delineated by the doctrine of equitable maxim.

CONCLUSION

This petition is set forth in the interest of justice in protecting the right to petition, and of due process, and of The Object Principle Of Justice against the encroachment of the doctrine of equitable maxim that also wrongfully allow the awarding of attorney fees and costs without request. This petition is the mechanism to allow the sounds of justice to ring as never before heard, these are reasons for certiorari to be granted.

Dated: January 29th, 2019

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