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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 4:18-cv-04543

Joanna Burke and John Burke	}	PLAINTIFFS MOTION TO STAY PROCEEDINGS
Plaintiffs,		
vs.		
Hopkins Law, PLLC, Mark Daniel Hopkins and Shelley Luan Hopkins,		
Defendants.		

PLAINTIFFS MOTION TO STAY PROCEEDINGS

Plaintiffs Joanna & John Burke (“Plaintiffs”) move to ask this court to stay proceedings for the following reasons;

“To the Framers, the separation of powers and checks and balances were more than just theories. They were practical and real protections for individual liberty in the new Constitution. See *Mistretta v. United States*, 488 U.S. 361, 426, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989) (SCALIA, J., dissenting) (“[The Constitution] is a prescribed structure, a framework, for the conduct of government. In designing that structure, the Framers *themselves* considered how much commingling [of governmental powers] was, in the generality of things, acceptable, and set forth their conclusions in the document”).

The Judiciary—no less than the other two branches—has an obligation to guard against deviations from those principles. The *Seminole Rock* line of precedent is one such deviation.” *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1216-17 (2015)

US Supreme Court: On Friday, 18th October, 2019 The Supreme Court Order was released; *SEILA LAW LLC V. CONSUMER PROTECTION BUREAU* (Case #19-7); “The petition for a writ of certiorari is granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: If the Consumer Financial Protection Bureau is found unconstitutional on the basis of the separation of powers, can 12 U.S.C. §5491(c)(3) be severed from the Dodd-Frank Act?”¹

Unconstitutional Means the Act may be Stricken: As you can see, the Dodd-Frank Act, which encompasses the FDCPA, is under question. Stephen I. Vladeck (@steve_vladeck) is the A. Dalton Cross Professor in Law at the University of Texas School of Law.² On Friday, he stated on Twitter the following; “It’s worth noting that the Court _added_ to the @CFPB case whether, if the structure is unconstitutional, the _entire_ Dodd-Frank Act must be thrown out, or whether the

¹ See Scotus Blog article; <https://www.scotusblog.com/2019/10/justices-to-review-constitutionality-of-cfpb-structure/> and Friday’s Order; https://www.supremecourt.gov/orders/courtorders/101819zr_6j37.pdf

² See Bio; <https://law.utexas.edu/faculty/stephen-i-vladeck/>

offending structural provision can be "severed." That dramatically raises the stakes of this cert. grant."³

No Federal Jurisdiction: This Court would lack standing and jurisdiction⁴ in this case if the Dodd-Frank Act was struck down. Why? Because the case was removed from the State Court by BDF Hopkins on the basis of a "Federal Question".⁵ This court denied remand in Doc. 23, relying specifically on BDF Hopkins arguments re 'Federal Question' jurisdiction and the FDCPA. Now, and based on the new order of the highest court, if the Dodd-Frank Act is struck down, the case would be eligible for remand to the State court [as the federal question relied upon would have been severed].

Judicial Bias: The Burkes, however, are under no illusions. This court may well attempt to invoke it's authority by attempting to rely upon supplemental jurisdiction which would allow this court [in error] to enter a final order of dismissal,

³ See https://twitter.com/steve_vladeck/status/1185267729055567872

⁴ See Wikipedia on Pendent Jurisdiction; https://en.wikipedia.org/wiki/Supplemental_jurisdiction and "It is well-settled that a district court may remand to state court a removed case involving pendent state-law claims if all claims arising under federal law are withdrawn." *McGhiey v. Metro News Serv., Inc.*, CV. NO. SA-12-CV-00578-DAE (W.D. Tex. Jul. 1, 2013) - Or in this case, the CFPB Constitutionality question necessitates that the Frank-Dodd Act is wholly stricken, then the Federal Question relied upon by BDF Hopkins and this court is moot.

⁵ See Doc. 10, in part #7, p.2; "Plaintiffs fail to understand that their assertion of violation of the FDCPA equates to a Federal Question, thus conferring jurisdiction upon this Court pursuant to 28 U.S.C. §1331."

should it wish, relative to the pending order of this court regarding the Second Motion to Dismiss.⁶ This would be error for the following reasons:

The Supreme Court is the highest court: and their word usurps this lower court. The Burkes have a Constitutional Challenge pending before this Court and another currently being considered by State and Federal Attorney Generals in the Court of Appeals for the Fifth Circuit.

5th Circuit: The Burkes have detailed the Constitutional arguments and the reasons why the *Burke v. Ocwen* case should have been remanded in the Fifth Circuit appeal.⁷ At the time of this filing, the Burkes have also filed a Motion to Stay Proceedings with the Fifth Circuit.

11th Circuit: The Burkes have also filed a Motion to Stay Proceedings in the Intervention Appeal case currently before the Eleventh Circuit (Appeal #19-13015).

In short, this request for abatement of proceedings is universal and will affect not only the Burkes' cases but the many related cases. For example, the *Selia Law* case (9th Circuit), the *All American* case (Appeal #19-432, 5th Circuit) and *RD Funding* case (Appeal #18-2743, 2nd Circuit)⁸ are all stayed and/or relying upon the

⁶ See Doc. 50.

⁷ See lower court case; *Burke v Ocwen*, 4:18-cv-04544, S.D. Tex. (2019) and 5th Circuit appeal; #19-20267

⁸ The matter currently pending in the Second Circuit Court of Appeals is an appeal from the Bureau's enforcement action against RD Legal Funding, LLC. *CFPB v. RD Legal*, S.D.N.Y. No. 1:17-cv-00890.

pending clarification of the constitutionality of the CFPB. Now they all rely upon the *Dodd-Frank Act* question as well.

S.D. Texas Ditech Bankruptcy: When non-bank mortgage servicer Ditech went into bankruptcy this court stayed all cases pending the resolution of the bankruptcy. The Burkes were put on alert of *judicial bias* against citizens who are in foreclosure proceedings before this court when Judge Sim Lake entered an order of foreclosure on a homeowner on the Friday before the press release was even issued (the following Tuesday).⁹ The Burkes' wish to put this court on notice that they will vehemently object to any and all attempts to circumvent due process and the Constitutional rights to a fair hearing and trial in this case.

Hopkins Law, PLLC is A Rogue Debt Collector: unbonded and unlicensed in the State of Texas and which is a question before this court, the 5th Circuit and the AG's for both the State and Federal Government. If, however, this court rules before the Burkes Constitutional challenge(s) are answered, then due process and justice will have been denied. It will be an abuse of discretion by this court.

'We The People': As such, the Burkes request to stay proceedings is reasonable¹⁰ and a Constitutional request for time to allow for due process and for

⁹ *Henry v. Ditech Financial LLC* (4:18-cv-04414) District Court, S.D. Texas; The formal Press Release Date of the Sale was Tuesday, 18th June, 2019. Judge Sim Lake Entered Judgment for Ditech on June 14th, 2019. See <https://www.businesswire.com/news/home/20190618005269/en/>

¹⁰ The Supreme Court has intimated that Oral arguments will be in early January 2020 with a decision rendered before the summer of 2020.

liberty, as guaranteed to citizens of the United States of America by the original framers (see opening citation, page 1 above).

Conclusion: The Burkes now request this court grants a timely Motion to Stay Proceedings until the matter of the CFPB's Constitutionality is answered by the US Supreme Court as discussed herein, OR in the alternative, stay proceedings for a period of no less than nine months (which equates to the anticipated timeline for a decision in the *Selia Law* case before the US Supreme Court).

RESPECTFULLY submitted this 19th day of October, 2019.

I declare under penalty of perjury that the foregoing and following is true and correct. (28 U.S.C. § 1746 - U.S. Code.)

Joanna Burke / State of Texas
Pro Se

I declare under penalty of perjury that the foregoing and following is true and correct. (28 U.S.C. § 1746 - U.S. Code.)

John Burke / State of Texas
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CERTIFICATE OF SERVICE

We, Joanna Burke and John Burke hereby certify that on October 19, 2019, we posted the attached document via USPS Priority Mail to the US District Court;

Clerk of Court
United States District Court
515 Rusk St
Courtroom 703, 7th Floor
Houston TX 77002

And also served copies to the following parties, by USPS Mail:

Mr. Mark Hopkins,
Mrs. Shelley Hopkins
& Hopkins Law PLLC
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