

*Civil Action No. 4:18-cv-4543*

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United States Courts  
Southern District of Texas  
FILED

SEP 18 2019

David J. Bradley, Clerk of Court

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,  
  
vs.  
  
Hopkins Law, PLLC, Mark Daniel  
Hopkins and Shelley Luan Hopkins,  
  
Defendants.

} PLAINTIFFS MOTION AND  
} INCORPORATED MEMORANDUM TO  
} INVITE THE VIEWS OF THE  
} ATTORNEY GENERAL OF THE  
} UNITED STATES (FEDERAL)

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**PLAINTIFFS MOTION AND INCORPORATED MEMORANDUM TO  
INVITE THE VIEWS OF THE ATTORNEY GENERAL  
OF THE UNITED STATES**

Plaintiffs Joanna & John Burke (“Plaintiffs”) hereby move the Court to invite the Attorney General of the United States to participate in the above styled civil action wherein the Burkes have; (1) Challenged the constitutionality of Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692a(6) which has been questioned and (2) FDCPA is questioned as unconstitutional because of its

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vagueness in clarifying the terms “debt collector”, and “third-party debt collector”<sup>1</sup>, pursuant to foreclosure, surety bonds and attorneys involved in debt collection and; (3) CFPB is unconstitutional due to the Separation of Powers clause and, combined with (1) and (2) above, is creating legal confusion in the Courts in Texas and indeed the US Supreme Court.<sup>2</sup>

Inviting the views of the Attorney General is consistent with the purpose of 28 U.S.C. § 2403, which requires district courts to notify the Attorney General of a constitutional challenge in any action in which the United States or any agency is not a party. The Burkes today served and sent the Court (as PACER/ECF filing has been denied) a Notice of Constitutional Challenge to William P. Barr, Attorney General of the United States, Dkt. No. to be assigned.

**Background:** The Burkes have today, simultaneously filed a Notice of Constitutional Challenge with the Attorney General for the State of Texas, Ken Paxton in relation to the constitutionality of Texas Finance Code 392. Rather than repeat the content therein, will attach a copy of the filing for the Attorney General

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<sup>1</sup> The FDCPA defines “debt collector” as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. §1692a(6).

<sup>2</sup> A federal law claim under 42 U.S.C. § 1983 for violation of constitutional rights, for deprivation of property rights without due process. See *Zinerman v. Burch*, 494 U.S. 113 (1990) - Holding that when a plaintiff brings an action under § 1983 for procedural due process violations, he must show that the state deprived him of a constitutionally protected interest in life, liberty, or property without due process of law.

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of the United States to read in conjunction with this motion. The Burkes first noted interest in the three branches of government, legislative, executive and judicial after Hopkins removed the Burkes civil action from State to Federal Court and did so using “federal question” jurisdiction<sup>3</sup>. Prior to this, the Burkes understanding of the structure of the Courts and Government was very limited. As *pro se*, they are ‘learning on the fly’ and during this period have only just discovered they can question the Constitutionality of a State Statute or Act of Congress. Had the Burkes known, or the Court on its own initiative identified that the Burkes filings were raising a Rule 5.1 challenge, this could have been addressed much earlier. Alas, that did not happen. The Burkes promptly do so now.

As a result of the Burkes continual legal education and study, the Burkes reached out the Texas Department of Savings and Mortgage Lending (“TXSML”) and spent the good part of a year trying to extract information to aid in their legal case(s), in relation to the Texas Finance Code and Hopkins, the Attorney/Debt Collector’s failure to hold a Surety Bond as required in Texas Law. TXSML ultimately deferred to the Office of the Attorney General (“OAG”). During this time, the Burkes uncovered that TXSML “reports” directly to the Consumer Finance

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<sup>3</sup> See *Burke v Hopkins*, Dec 2018: Doc. 10, p.2, #3 reads: “*Pro Se* Plaintiffs incorrectly interpret 28 U.S.C. §1331 the federal removal statutes relation to federal question jurisdiction. Given that Plaintiffs allege a federal question (violation of FD CPA) removal is proper under 28 U.S.C. §1331 and diversity jurisdiction is not relevant.”

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Protection Bureau (“CFPB”) and it is this watchdog agency who has ultimate oversight and control over TXSML in Texas. This, however, conflicts with the views of the Office of the Attorney General for the State of Texas.<sup>4</sup>

The term “debt collector” was recently discussed by the US Supreme Court in *Obduskey*<sup>5</sup> ; While the Burkes question revolves around the “primary definition” Section 1692a(6), the Court in *Obduskey* focused on the “limited-purpose” definition Section 1692f(6). And as concurring Justice Sotomeyer opined;

“I join the Court’s opinion, which makes a coherent whole of a thorny section of statutory text. I write separately to make two observations: First, this is a close case, and today’s opinion does not prevent Congress from clarifying this statute if we have gotten it wrong...”.

The Burkes challenge the constitutionality of the term “debt collector” and “third-party debt collector” in the Burkes case(s) as interpreted in these proceedings which is vague, in conflict with an Act of Congress and left undecided by the highest Court.<sup>6</sup> To state, in Hopkins own words, citing Doc. 6, p. 17, #36;

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<sup>4</sup> “Texas draws its authority not from the federal government, but from its status as a dual sovereign within the Union. That being the case, the Supreme Court has recognized that preserving comity between the dual sovereigns that make up our union is a core value of our Constitution. This comity demands “a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.”

– Jeffrey C. Mateer, First Asst AG, Texas OFFICE OF THE ATTORNEY GENERAL’S LETTER TO WAYS & MEANS COMMITTEE, MAY 15TH, 2019 -

[https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/Texas%20AG%27s%20Response%20to%20House%20Ways%20and%20Means\\_05152019.pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/Texas%20AG%27s%20Response%20to%20House%20Ways%20and%20Means_05152019.pdf)

<sup>5</sup> See *Obduskey v. McCarthy & Holthus LLP*, 139 S. Ct. 1029 (2019)

<sup>6</sup> Extract from *Obduskey* which was a *non-judicial* opinion: “To begin with, the venue section has no direct application in this case, for here we consider *nonjudicial* foreclosure. And whether those

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“The FDCPA defines “debt collector” as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. §1692a(6). Attorney Defendants are not debt collectors and are thus, not subject to the FDCPA. Though Attorney Defendants represent Deutsche Bank and Ocwen in **judicial foreclosure proceedings**, this does not amount to debt collection within the definition of FDCPA.”

Finally, the Burkes turn to the CFPB. The Court of Appeals for the Fifth Circuit recently ruled the FHFA is unconstitutional in *Collins v. Mnuchin*, No. 17-20364 (5th Cir. Sep. 6, 2019). Now, in the pending case of *CFPB v. All American Check Cashing, Inc.*, No. 18-60302 (5th Cir. 2018), on Sept. 10, the 5<sup>th</sup> Circuit sent a letter to the parties requesting responses in light of their FHFA decision. In the interim, the AG in Texas has led the attack<sup>7</sup> on the constitutionality of the CFPB who, as the Burkes have stated, are responsible for mortgage servicers, non-banks [and as such, enforcing the legislation as applied to debt collecting foreclosure attorneys] oversight nationwide, including the TXSML. CFPB currently enjoys a dual role and oversees Texas. In retaliation, the State of Texas is trying to dismiss

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who *judicially* enforce mortgages fall within the scope of the primary definition is a question we can leave for another day. See 879 F.3d at 1221–1222 (noting that the availability of a deficiency judgment is a potentially relevant distinction between judicial and nonjudicial foreclosures).”

<sup>7</sup> See <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-leads-12-state-brief-scotus-challenging-constitutionality-consumer-financial-protection> ; “The CFPB is a rogue agency and its structure violates the Constitution’s separation of powers,” Attorney General Paxton said. “The CFPB’s structure allows for an unelected and unaccountable director to wield more power than any other single official in the U.S. government except the President of the United States. Our founders would never have tolerated so much power being held by a public official who is not held accountable to the President, the Congress, or the People.” – Ken Paxton.

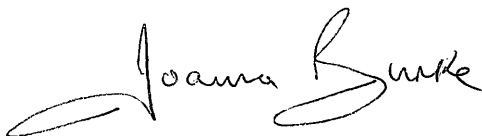
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that authority. However, the State of Texas itself is acting as a rogue State which does not answer its own [Senior] Citizens when approached and is therefore unconstitutional.<sup>8</sup>

Under these circumstances, inviting the Attorney General of the United States to participate ensures "a proper presentation of the facts and law relating to the question of constitutionality." 28 U.S.C. § 2403.

RESPECTFULLY submitted this 17<sup>th</sup> day of September, 2019.

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



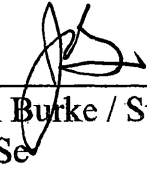
Joanna Burke / State of Texas  
Pro Se

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

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<sup>8</sup> Under 1983, any person who, under color of state law, deprives another of "any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . ." *Harrington v. Harris*, 118 F.3d 359, 365 (5th Cir. 1997) (citing 42 U.S.C. § 1983).

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John Burke / State of Texas  
Pro Se

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## **CERTIFICATE OF CONFERENCE**

We, Joanna Burke and John Burke hereby certify that we have not conferenced with Mark Daniel Hopkins, Shelley Luan Hopkins of Hopkins Law, PLLC, as they have previously refused to discuss the case or provide adequate time to reply to procedural matters in this court as evidenced on the record. Hopkins has also stated on the record he/she/they prefer to answer written communications from the *pro se* Burkes'. Also, in all other recent requests, Hopkins has indicated they are OPPOSED. In light of this, the Burkes will assume Hopkins is OPPOSED to this Motion and Incorporated Memorandum.

## **CERTIFICATE OF SERVICE**

We, Joanna Burke and John Burke hereby certify that on September 17, 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, 7<sup>th</sup> Floor  
Houston TX 77002

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

Mr. Mark Hopkins,  
Mrs. Shelley Hopkins  
& Hopkins Law PLLC  
Hopkins Law PLLC  
3809 Juniper Trce, Suite 101  
Austin, TX 78738