No. 19-13015

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JOANNA BURKE,
JOHN BURKE,

Interested Parties - Appellants,

CONSUMER FINANCIAL PROTECTION BUREAU,

Plaintiffs,

OFFICE OF THE ATTORNEY GENERAL,

State of Florida, Department of Legal Affairs, et al

Consolidated Plaintiffs

v.

OCWEN FINANCIAL CORPORATION,
a Florida corporation,
OCWEN LOAN SERVICING LLC,
a Delaware limited liability company,
OCWEN MORTGAGE SERVICING INC.,
a U. S. Virgin Islands corporation,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Florida
District Court Docket No. 9:17-cv-80495-KAM

PETITION FOR REHEARING EN BANC

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CERTIFICATE OF INTERESTED PERSONS ("CIP")
AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Local Rule 28.2. We have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

US District Judge;
Marra, Kenneth A.

US Magistrate Judge;
Matthewman, William

Consumer Financial Protection Bureau ("CFPB");
Brenowitz, Stephanie C.
Baez, Tianna Elise
Chin, Shirley T.
Cohen, Adam Harris
Demille-Wagman, Lawrence
Desai, Atur Ravi
Healey, Jean Marie
Kelly, Erin Mary
Nodler, Gregory Ryan
Posner, Michael
Roberson, Amanda Christine
Savage, James Joseph

Singelmann, Jan Edwards
Wilson, Jack Douglas

Office of the Attorney General &
Office of Financial Regulation;
Fransen, Scott Ray
Granai, Sasha Funk
Pinder, Jennifer Hayes
Winship, Blaine H.

Intervenor Plaintiff;
Burke, Joanna
Burke, John
Fauley, Robynne *(TERMINATED)*
Subramaniam, Denise *(TERMINATED)*

Ocwen Financial Corporation &
Ocwen Loan Servicing, LLC &
Ocwen Mortgage Servicing, Inc.;
Azuero, Catalina E.
Berry, Bridget Ann
Craven, Laura S.
Hefferon, Thomas M.
Previn, Matthew P.
Protess, Amanda B.
Riffee, Matthew L.

Rose-Smith, Sabrina M.

Sheldon, Matthew S.

Smith, Tierney E.

Stoll, Laura

Tayman, W. Kyle

Wein, Andrew Stuart

Law Firms;

Buckley, LLP ("Buckley")

Greenberg Traurig ("GTLaw")

Goodwin Proctor, LLP ("Goodwin")

Dated; 22 November 2020;

/s/ Joanna Burke

_____

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RULE 35(B)(1) STATEMENT

This proceeding involves the following questions of exceptional importance.

A. Synopsis (Question One)

There are 12 active circuit judges at the Eleventh Circuit. When the Burkes commenced the appeal, the 3-panel assigned to the case included Judges Martin, Pryor, J., and Wilson. The Burkes sought to recuse Judge Pryor and she denied the motion. The Burkes renewed the motion after she sealed the Burkes first recusal motion. This appeared to set-off a chain of judicial 'swops'. In motions submitted, Judge Branch appeared on single motions and Judge Jordan appeared alongside her when reconsideration was requested. The Burkes objected to these orders and the 2-panel. When the opinion was issued a completely new panel had been assigned, namely Judges Newsom, Grant and Lagoa and the pending motions deemed moot, including the second motion to recuse Judge Jill Pryor.

Question I

Part one is whether an en banc quorum can be achieved in this petition, based on the fact 8 out of 12 active judges, while not recused per say, have been involved in deciding this first and only appeal in this court by the Burkes and in denial of intervention, either as a right, or permissively.

Part two, is whether this court has followed or violated the rules in random assignment of panel judges for the Burkes appeal.

B. Synopsis (Question Two)

As well-documented - but completely omitted by the panel - Judge Kenneth Marra unlawfully prevented the putative intervenors, the Burkes, from gaining access to the lower court case documents. Yet inexplicably, this courts' final assigned 3-panel completely discounted any reference to the Judges' opinion where his irrefutable 'codicil' statement was recorded in the *unpublished* court's opinion, and when it is central to the Burkes case(s).

At a minimum, the impeachable[1] conduct from the lower court judge and perjurious conduct of the lawyers for both *Ocwen* and the CFPB merited discussion in the opinion. However, completely erasing this central issue based on the incorrect

[1]The Impeachment Trial of *Alcee L. Hastings* (1989) U.S. [Southern] District Judge, Florida; "In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact."

And; "His actions, Senate lawmakers said, "undermined the integrity and impartiality of the judiciary" and "betrayed the trust of the people of the United States." HTTPS://2DOBERMANS.COM/WOOF/1H.

Likewise, Judge Kenneth A. Marra also betrayed the trust of the Burkes, as litigants and citizens of the United States when they discovered his codicil was in fact a known false written statement by the senior judge.

perceived reason this panel provided *e.g.* the Burkes raised this issue for the first time on reconsideration, and as such refusing to address the impeachable conduct, is manifest error.

Question II

The second question is whether this court, bound by the law, ethics codes, canons and rules, could avoid addressing the perjury, collusion, conspiracy and bad faith by United States District Judge Kenneth A. Marra (*e.g.* fraud by the court)[2] and opposing counsel[3] for both *Ocwen* and the CFPB in the courts *unpublished* opinion.

[2]"Such nondisclosure constitutes constitutional error and requires reversal."- *United States v. Bagley*, 473 U.S. 667 (1985).

[3]*Miccosukee Tribe of Indians of Fla. v. Cypress*, No. 15-11223 (11th Cir. Mar. 8, 2017) (c) *Miccosukee Tribe of Indians of Fla. v. Cypress*, No. 12-22439-Civ-COOKE/MCALILEY, at *11 (S.D. Fla. Jan. 16, 2015).

II. TABLE OF CONTENTS

Page

III. TABLE OF AUTHORITIES

Page(s)

CASES

OTHER AUTHORITIES

STATUTES & RULES

IV. INTRODUCTION

The Fourteenth Amendment to the United States Constitution provides in part: "No State shall…deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

In the recent matter of Ronnie Wallace Long[4], the deprivation was 44 years in prison for a crime he did not commit due to suppression of evidence by corrupt officials. In the Burkes near decade long wrongful foreclosure case, they too have been subject to suppression of evidence and left incarcerated in federal court.

The significant difference is the Burkes defeated the Banks' wrongful foreclosure, not one time, but twice in Texas, only for the circuit court to overturn those cases in violation of the law and relying upon an erie guess. To correct this wrong and collect evidence for their new case(s) in Texas, the Burkes applied to intervene in the Florida case. The lower court denied the Burkes intervention as a right or permissively.

Distressingly, in this circuit panel's affirmation, an even more egregious plot to injure the Burkes has transpired. The panel has executed a known *system*: in Judge Tjoflat's own words:

[4] *Long v. Hooks*, No. 18-6980 (4th Cir. Aug. 24, 2020).

> "You just *unpublish* them (opinions)…you just do a little *gloss* over here, and you do a little *gloss* over there..."[5]

With these circuit and lower court judges' statements both archived in print, it is without question, the overall effect of unlawful denial of intervention and access to sealed documents in the Florida case will terminally injure the Burkes. The elder Burkes will lose the security of their homestead and any shelter and this travesty of justice will occur during a deadly international pandemic. It is effectively a death warrant for the elder and infirm Burkes. See; *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 901 F.3d 1282, 1289 (11th Cir. 2018).

As fragile as it may be to point the blame toward the court(s) for erasing arguments and facts pivotal to their appeal and to which the Burkes now seek relief, it is a necessary requirement, but the Burkes are not alone.[6] The current situation in which the Burkes find themselves has only been achieved by lies, deception and suppression of evidence in federal courts. As such, it has resulted in theft of property, financial hardship, emotional distress and an unstoppable decline in the Burkes health, both mental and physical. See; *McGinnis v. Am. Home Mortg. Servicing, Inc*.,

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[5] The Commission on Structural Alternatives for the Federal Courts of Appeals, March 23, 1998, Atlanta, GA meeting transcript; HTTPS://2DOBERMANS.COM/WOOF/1I

[6] 'So Many Lies in Pryor's Opinion': Legal Experts Savage Chief Judge for Approving Florida's 'Poll Tax', Sept 11, 2020, Law and Crime; HTTPS://2DOBERMANS.COM/WOOF/1J

901 F.3d 1282, 1288-89 (11th Cir. 2018) In legal terms, it is unequivocally a denial of liberty, property, due process and justice.

An en banc panel would have the opportunity to correct such a miscarriage of justice and the Burkes now respectfully ask the court to consider the irrefutable facts herein and grant the Burkes petition for en banc in an independent circuit and where a quorum of judges can be formed, as required by law.

V. STATEMENT OF THE ISSUES

The Burkes focus on the two questions and succinctly address the specific and erroneous findings in the 3-panel's opinion, relative to Intervention as a Right and Permissive Intervention. The Burkes maintain the panel's 'specifics' are moot, as presented in Questions I and II. The fraud *by* the court and impeachable conduct should render the order dismissing the Burkes intervention as void, rather than voidable.

VI. ARGUMENT

QUESTION I

The Non-Random and 2-Panel Assignments

The US Supreme Court has stated; "the judiciary's authority...depends in large measure on the public's willingness to respect and follow its decisions." *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 445-446 (2015). It is therefore a necessity of the

judiciary's continued legitimacy that "justice must satisfy the appearance of justice"—a mandate that is carried into action in the judicial-assignment context by the Due Process Clause. Id. at 446 (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)); see generally *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868 (2009).

In turn, "random assignment of cases is essential to the public's confidence in an impartial judiciary." E.g., *Committee on Judiciary v. McGahn*, 391 F. Supp. 3d 116, 119 (D.D.C. 2019).

As stated in the synopsis above, this court may have commenced the Burkes appeal with a random assignment of 3 judges, but would turn into a litany of changes, resulting in a total of 8 judges who have interfered in this appeal and with the exception of part of one order from Judge Martin, grossly erred in orders on motions presented or the courts' final opinion.[7]

The En Banc Quorum Dilemma

Eight out of twelve active judges have been identified as directly involved in the Burkes specific appeal.

[7] "Since the composition of a panel can bear on the outcome of an appeal, attorneys should be aware of which judges participate in deciding Eleventh Circuit appeals." - Kevin Golembiewski and Jessica Arden Ettinger, Advocacy Before the Eleventh Circuit: A Clerk's Perspective, 73 U. Miami L. Rev. 1221 (2019) HTTPS://2DOBERMANS.COM/WOOF/1K

The Chief Judge, William Pryor, is identified as being directly involved in the Burkes judicial complaint against Judge Marra. This complaint and follow up letter by the Burkes was not answered before the appeal opinion was released, affirming the lower courts denial of intervention as a right and permissively.

The Chief Judge makes the Burkes 'list' for a second time, as he sat with Judges Jill Pryor and Robert Luck in the fraudulent transfer case of *Regions v. Kaplan*, and despite Judge Luck's assault on Kaplan's attorney in oral argument and confirming the law firm fraudulently inflated fees by hundreds of thousands of dollars, this act was never sanctioned or reported to the Bar or District Attorney. This fraudulent and bad faith conduct was completely excluded from the two opinions this court issued.[8] This mirrors the exclusions in the Burkes case as discussed herein. As such, the 3-panel could not be impartial, should the court grant the Burkes en banc rehearing.

Judges Rosenbaum's husband Phil Rothschild clerked for Judge Kenneth A. Marra, S.D. Florida, (he worked there over a decade, assisting 3 judges). It makes common sense she'd be far from ideal sitting en banc and considering a judicial

[8] In the *Kaplan* case the panel erased the fraud from its opinion(s), *Regions Bank v. Kaplan*, No. 18-14010 (11th Cir. Feb. 19, 2020) and (11th Cir. Mar. 19, 2020), and thereby, this court also blanked binding precedent when presented with compelling evidence in respect to attorney fraud; See *In re Harwell*, 628 F.3d 1312 (11th Cir. 2010).

complaint is percolating - while Judge Aileen Mercedes Cannon prepares to take the helm and in turn will allow Judge Marra to resign. This will trigger a dismissal of the Burkes complaint.

In summary, this leaves a single Judge, recently nominated Andrew Brasher. Thus, there is no quorum.

A Question of First Impression and a Formal Request to Transfer Circuit

The Burkes have spent considerable time researching published cases which could help with this quorum dilemma. The only viable situation in this unusual appeal is the case be transferred to another circuit, excluding the Court of Appeals for the Fifth Circuit.

The Burkes reach this conclusion by relying upon the published opinion of *Bolin v. Story*, 225 F.3d 1234 (11th Cir. 2000). In *Bolin*, this court conceded (regarding 3-Panel assignment);

> "We are faced with a similar situation in this case. Because only one judge currently serving on this Court was not named as a party, it is impossible to convene a three-judge panel in which none of the judges *have a personal interest in this case*."

However, this court did assign a panel;

> "Given the similarity of the situation, and the persuasive nature of the Second and Tenth Circuits' reasoning, we follow both *Tapia-Ortiz* and *Switzer* in concluding that the rule of necessity allows at least those

> judges on this Court who have not been involved in plaintiffs' prior appeals to hear this appeal."

In the Burkes appeal, they have not sought to recuse all the judges and/or staff attorneys. On the contrary, this court elected to assign 8 judges during the time the appeal arrived and until the final opinion was released on November 2, 2020. For this reason, these judges *'have a personal interest in this case'*.[9]

The Burkes also reviewed the Fifth Circuit's much publicized en banc case, *Comer v. Murphy Oil USA*, 607 F.3d 1049 (5th Cir. 2010), wherein they elected to dismiss the appeal when a quorum could not be achieved. This meant the appellant's right of appeal were in effect, removed as they were unable to petition the U.S. Supreme Court and now with a judgment which could not be appealed, due to the quorum rules in place at the time (now amended). In that opinion, the circuit court considered and rejected several options before coming to its decision.

This petition falls squarely between the Eleventh Circuit's *Story* appeal and the Fifth Circuit's *Comer* appeal. The Burkes are *pro se*, and most certainly no experts in en banc rules. It would appear that transfer to an independent circuit as discussed in *Story*, would be the most judicial solution.

[9] For similar reasons, the Fifth Circuit would not be an impartial circuit to transfer the Burkes case, should this court agree with the Burkes recommendation.

QUESTION II

Impeachable Conduct by Judge Kenneth A. Marra, S.D. Fl.

As history authenticates, three federal judges from Florida have been impeached. Two judges from the Southern District were removed from judicial office, namely Alcee Hastings and Halsted Ritter. In Fifth Circuit territory, Thomas Porteous of Louisiana and Samuel Kent were impeached. *Kent* resigned and *Porteous* was removed from judicial office.

In *Porteous*, Judge Dennis wrote a blistering and lengthy dissent.[10] See; summary extract;

> "A careful and judicious analysis of the evidence in the present case fails to demonstrate that Judge Porteous committed possible treason, bribery, or a high crime or misdemeanor."

As documented, Judge Dennis's objections were overruled and *Porteous* removed from office. This feathers into the impeachable conduct by Judge Marra. The Federal Judicial Center[11] confirms former judges *Ritter* and *Porteous* were impeached for crimes including perjury - the same crime committed by Judge Marra. For the reasons discussed below, this is wholly sufficient to reverse this case and

[10] HTTPS://2DOBERMANS.COM/WOOF/1R

[11] HTTPS://2DOBERMANS.COM/WOOF/1L

assign a new judge, [and magistrate], if the lower court case has not settled by then and/or Judge Cannon installed.

Bad Faith Conduct by Counsel: Perjury, Collusion, and Conspiracy

The lawyers representing *Ocwen* and the CFPB submitted perjurious motions and briefs in bad faith. So far, the Burkes have initiated four Bar complaints filed against the most active and senior lawyers representing *Ocwen*. These unethical lawyers colluded and willfully conspired together along with the court to maliciously and unlawfully deny the Burkes access to court documents. This, despite the *Greens*, homeowners involved in a civil dispute with *Ocwen*, recovering sealed files from Judge Marra's court for their own *Ocwen* case in S.D. Texas.

In fact, counsel for the *Greens* even documented in court filings they provided *Ocwen's* counsel in Texas direct contact information for the *Ocwen* lawyers[12] in the Florida action after the judge ruled in favor of the *Greens* recovery and ordered that *Ocwen* provide the said documents on a timely basis.

> **(iv) The Greens - *Azuero's* Scandalous Statement:** *Azuero's* first statement in B.(9) can be swiftly discredited. All you need to do is read the following - it speaks for itself; Below is an extract of the Joint Case Discovery and Management Plan, (Doc. 9, p. 5, (Jan. 1, 2019) - Case #18-03351, S.D. Tex. (Bankruptcy)).
>
> > **"A copy of the CFPB Complaint, Docket sheet, and contact information for Ocwen's counsel in the CFPB litigation has been provided to Mr. Curran, Ocwen's counsel in this adversary proceeding."**

[12] *See* p.7(iv): HTTPS://2DOBERMANS.COM/WOOF/1Q

These details were clearly known by the parties in the Florida case, yet at no time did *Ocwen* or their counsel disclose the *Greens* case to the Burkes directly, or in court filings. Instead they falsely and knowingly maintained a frivolous argument and did so in bad faith - while continually lying in sworn statements to the court - vexatiously stating the Burkes could not recover documents for their private action in Texas.

The CFPB also knew these facts and are complicit. Both CFPB and *Ocwen* continued to provide false statements under oath in this appeal. Alarmingly, despite the Burkes extensive discussion in their briefing on this topic, the 3-panel once again excluded any mention of the perjury, the *Greens* case in Texas, the collusion and conspiracy and the lawyers bad faith in the *glossed* and *unpublished* opinion.

INTERVENTION AS A RIGHT

The Panel is Guilty of a Manifest Error in Excluding Judge Kenneth A. Marra's Codicil, Which Irrefutably Confirms in Writing He Knowingly Withheld Evidence from the Burkes and as Such Committed Perjury.

It is difficult to discern why the panel found justifiable reason to exclude any reference to Doc. 411, which proved beyond a reasonable doubt the unlawful withholding of evidence and perjury by the Judge's own words in the codicil;

> "In addition to the grounds stated in the Court's Order Denying Intervention (ECF No. 375), the Court notes that intervention is not permitted to allow a party to seek or obtain evidence for other litigation

> as asserted by the proposed Intervenors. (See ECF No. 408 at 4).” - Signed by Judge Kenneth A Marra, United States District Judge, July 3, 2019.

Although vague, it would appear the panel claim the Burkes raised the matter ‘for the first time’ and hence could discount it entirely. That assertion is rebuffed herein. In any event, the seriousness of the allegations by the Burkes (impeachable conduct) warranted mandatory inclusion and discussion of this codicil in the panel’s opinion, when it includes fraud *by* the court.

However, by its complete absence, it only illuminated the fact that the panel’s exclusion is not permitted in law. It is a manifest error which commands reversal. In this petition, the Burkes clearly show they are entitled to both Intervention as a right and also permissively.

The evidence - newly discovered and presented by the Burkes in this appeal - wholly supports their claims that the Judge, opposing parties and respective counsel all conspired to withhold evidence from the Burkes. This conclusion is based on undisputed facts. Namely the Greens, who recovered evidence and sealed documents from the same court, the same case and from the same parties. Relying on this courts recent decision in *Eldredge v. Edcare Mgmt., Inc.,* No. 17-14821, at *13-14 (11th Cir. Mar. 19, 2019), as cited in part below, the conduct of the judge and the lawyers here is equally vexatious wherein they obstructed the Burkes and by doing so,

withheld critical documents which the Burkes had timely requested for their ongoing Texas litigation. The conduct is so egregious it amounts to bad faith.

The Panel Erred When it Stated the Burkes Were Untimely

"The Burkes do not explain why they could not have moved to intervene before the judgment of foreclosure in their Texas case, which commenced in 2011."

The panel's question is peculiar. The Burkes had won their case against Deutsche Bank in 2015 and for the second time in 2017 at the lower court. As such, why would the Burkes need to intervene before the Fifth Circuit's erroneous judgment in law? Clearly this is error.

> "The Burkes state conclusorily that they "could not have intervened any earlier…"

The Panel has missed the point and misinterpreted the facts and laws. In *Riddle*, she contended that the original lender, Bank of America, was vicariously liable for its servicer's violation. The Fifth Circuit affirmed the dismissal of the claims against Bank of America in part because it held that..."Bank of America, as a matter of law, is not vicariously liable for the alleged RESPA violations of its servicers." *Christiana Trust v. Riddle*, 2018 U.S. App. LEXIS 36217, *7 (5th Cir. Dec. 21, 2018).

This applies in the Burkes case. They could not hold Deutsche Bank accountable after the *Riddle* opinion...only *Ocwen.* And obviously, since the Burkes defeated Deutsche Bank twice in the lower court, only a reversal by the 5th Cir. would necessitate further litigation by the Burkes.

Conclusory it's not. *Riddle* is binding precedent[13], according to the Fifth Circuit and this court has followed similar lines in the affirmation of a $3.5m award, including RESPA violations by the mortgage servicer in *McGinnis v. Am. Home Mortg. Servicing, Inc*., 901 F.3d 1282, 1289-91 (11th Cir. 2018).

The Panel Erred When Asserting the Burkes Made Arguments Central to their Intervention "For the First Time on Reconsideration".

This is utterly false. First, a review of Doc. 237, the Burkes reply to the Opposing Parties Joint Opposition to Motion to Intervene, pages 13 and 14, goes into great detail regarding the intervention timeline. The Burkes motion was timely.

Second, the panel minimalized the delay by Judge Marra and the courts' failure to address the Burkes motion to intervene and memorandum, which had been percolating for nearly 6 months at the time the Burkes wrote their letter to the court (May 15, 2019, Doc. 359). As discussed herein, the courts' delay is extremely applicable to the Burkes arguments.

[13] *Tavera v. United States*, No. 18-13499, at *9 (11th Cir. July 1, 2020).

Third, the panel argues the Burkes could and did commence litigation directly against *Ocwen* (in Texas). While admitted as true, in the interim the Burkes case was dismissed in the lower court in S.D. Texas (March 19, 2019).[14] The courts issued order was released May 30, 2019 (Doc. 375). The court was made aware of this fact in the letter to the court two weeks before, on May 15, 2019 (Doc.359). As such, the only remedies available to the Burkes after they exhausted the lower court by filing a motion to reinstate (which was denied on April 16, 2019) was to appeal in Texas (as filed April 18, 2019) and this only increased the Burkes reliance on the Intervention in Florida. And not only for recovery of documents from the Florida case, but also when considering application of the law; res judicata, statutes of limitations and other legal issues may result from the pending Fifth Circuit opinion.

Judge Marra's delay meant that the Burkes Texas litigation against *Ocwen* was effectively at an end Intervention as a right was essential to the Burkes and in conformance with *Salvors*. ("Intervention in the original action is also generally the proper mechanism for a nonparty to seek relief from an existing judgment."). The Burkes provided case status in Texas and information in their letter to the court.

[14] Order March 19, 2019: HTTPS://2DOBERMANS.COM/WOOF/1M

The Homestead is an Interest Per Rule 24 and the Burkes Amply Meet the Standard Required for Intervention.

The panel then attempts to quash the Burkes 'homestead is an interest' as a legitimate reason to intervene as a right; for failure to expand their argument in their motion to intervene and reply brief,[15] despite the motion to intervene and memorandum, in totality, focusing completely on the Burkes wrongful foreclosure, their homestead, including their personal assessment of the unconstitutional CFPB and $3 billion admonished *Ocwen* and discussing why intervention is essential. The panel's decision also splits with other circuits: See; *Pennsylvania v. President U.S.*, 888 F.3d 52 (3d Cir. 2018). Furthermore, reviewing the opinion itself, this finding is contradicted later by the panels own words:

> "The Burkes share the same ultimate objective [as CFPB] — "to protect homeowners in 'distress' nationwide."" (emphasis added).

Title X of the Dodd-Frank Act created the Consumer Financial Protection Bureau (CFPB). Clearly, if the Burkes are classified as the type of consumer *e.g.* homeowners, covered by the consumer laws such as RESPA, and which the CFPB oversees, that itself is confirmation of "a legally significant and protectable interest"

[15] Generalized v. Particularized: "The "injury in fact" that respondents have suffered consists of their inability to obtain information" *Federal Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998).

as it has become a statute protected and governed by law. The Burkes cite in their original motion to intervene and memorandum, their case in Texas which plainly indicated a judgment of foreclosure had been entered and this meets the impairment standard, which is defined as; " there must be a tangible threat to the applicant's legal interest." (see *Pennsylvania*).

Furthermore, in *Pennsylvania*, the court opined;

"Because our focus is on the "practical consequences" of the litigation, we "may consider any significant legal effect on the applicant's interest," including a decision's stare decisis effect or a proposed remedy's impact on the applicant for intervention."

Thus, the Burkes, facing the same potential restrictions (stare decisis), it should require no further justification for the purposes of intervention as a right. A homestead is sacrosanct. This courts determination is both obtuse and inadmissible in law.

Nevertheless, the panel assessed the CFPB representation as being adequate: This can easily be rebuffed. In addition to *Pennsylvania*, the Burkes initial motion and memorandum is testament to the evidence identified by the Burkes: (a) the CFPB were approached by the Burkes before intervention and they were repelled; (b) the CFPB aligned with *Ocwen* against the homeowners intervention; (c) the

CFPB has endorsed Altisource be excluded from the civil action despite *Ocwen*'s reliance on the totally unreliable[16] accounting software called *RealServicing* it rents from Erbey's Altisource[17] (alter ego of *Ocwen*) and as such the Burkes sought to add Altisource as a party upon intervention; (d) CFPB's record of financial compensation for homeowners' true injury and financial loss in the past has been wholly inadequate. The Burkes sought to intervene to ensure, as plaintiffs, they would be compensated financially in full for their injuries; (e) The former Assistant Director and Head of the Enforcement Office of the CFPB, Tony Alexis switched to opposing counsel (where Alexis is the Head of Goodwin Procter's Consumer Financial Services Enforcement Practice) and never removed (CIP). The Burkes appealed to this court in motions where Alexis was listed as counsel for the CFPB. Shockingly, Judge Branch agreed with the tardy CFPB reply that he holds "an arguable interest in the case" - and as such repealed the actual rules on CIP by her order. However, this erroneous final motion order stands, denying the Burkes relief. (f) The CFPB is guilty of the charges outlined in the Questions I & II above, including perjury, collusion, conspiracy and bad faith.

[16] Memorandum, Doc. 220-1 Page 15 "What the QWR is Going on With Accounting?"

[17] HTTPS://2DOBERMANS.COM/WOOF/1N

All these factors, as documented by the Burkes in their motions prior to judgment and briefs on appeal, certainly go above and beyond the [weak] standard(s) necessary in law. The panel erred.

PERMISSIVE INTERVENTION

It is unnecessary for the Burkes to address the panels' erroneous reasoning for affirming denial of permissive intervention as; (a) Many of the panels facts revisit intervention as a right and; (b) The Burkes meet the requirements for intervention as a right and hence permissive intervention is moot; (c) In addition, based on Questions I and II above, the order of the lower court denying intervention is void, as it was issued based on fraud.

VII. CONCLUSION

> "I submit that the secret to Justice Scalia's success was that he always remembered for whom he worked: the American people...No judge has ever been a greater friend of We the People." - Scalia and Democracy by Hon. William Pryor, Chief Judge, 11th Circuit.[18]
>
> The Supreme Court has repeatedly held that federal courts possess the inherent power "to vacate [their] own judgment[s] upon proof that a fraud has been perpetrated upon the court." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)).

[18] HTTPS://2DOBERMANS.COM/WOOF/1P

The Court should grant this petition.

DATED: November 22, 2020

JOANNA BURKE

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

By *s/ John Burke*
JOHN BURKE

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CERTIFICATE OF SERVICE

We hereby certify that, on November 22, 2020, a true and correct copy of the foregoing Motion to Stay Proceedings was served via the Court's EM/ECF system to the attorneys of record per the CIP listing enclosed herein.

s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

CERTIFICATE OF COMPLIANCE

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