NO. 20-____

IN THE

SUPREME COURT OF THE UNITED STATES

In re Jerald Hammann, Petitioner,

and

Jerald Hammann, Petitioner,

vs.

Wells Fargo Bank, N. A., Respondent.

On Petition for a Writ of Certiorari to the Minnesota Supreme Court

PETITION FOR A WRIT OF CERTIORARI

JERALD A. HAMMANN
1566 Sumter Ave N
Minneapolis, MN 55427
jerrympls@gmail.com
(612) 290-7282
Petitioner, pro se

QUESTIONS PRESENTED

The **first** question presented is whether existing judicial procedures and standards are adequate to protect individual constitutional rights.

The **second** question presented is whether the court erred in declining to grant a writ of prohibition.

The **third** question presented is whether the court erred in declining to find the underlying orders and judgment void.

The **fourth** question presented is whether the court erred in its determinations relating to the deemed dismissal rule.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Hammann respectfully submits this petition for a writ of certiorari to review the judgment of the Minnesota State Courts. A state court of last resort has declined review of important constitutional questions.

OPINIONS BELOW

The orders and opinions of the Minnesota Courts are unpublished. Key documents among these are produced in the Appendix.

JURISDICTION

The Minnesota Supreme Court denied review in Case Nos. A19-1816 and A19-1304 on February 18, 2020 and May 19, 2020, respectively. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) ("where any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . . of . . . the United States") and 1331 (civil injuries "arising under the Constitution of the . . . United States."). Pursuant to this Court's March 19, 2020, Order, the deadline to file this petition "is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, . . . -- to Controversies between . . . Citizens of different States . . .

Article III, Section 2 of United States Constitution

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

Amendment V to United States Constitution

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .

Amendment VII to United States Constitution

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment XIV to United States Constitution

STATEMENT OF THE CASE

Partiality constitutes a "structural defect . . . in the constitution of the [civil disposition] mechanism. The entire conduct of the [civil case] from beginning to end is obviously affected by . . . the presence on the bench of a judge who is not impartial." *Arizona v. Fulminante*, 499 U.S. 279, 309-310 (1991). "[C]onstitutional deprivations . . . affecting the framework within which the [case] proceeds" "are not subject to harmless error." Id. at 210. This same logic must apply to systemic partiality which transcends the conduct of individual judges.

This case exemplifies the difficulty with picking a lead. Is it that the Minnesota state courts have reduced civil trial rates by 93% and civil jury trial rates by 99% since 1992? Is it that the court overreports its civil trial and jury trial statistics by 24%-31%? Is it that represented parties and parties receiving limited representation fare twice as well before the Hennepin County Housing Court compared to unrepresented parties? Is it that Wells Fargo has not lost a contested state civil case in Minnesota for over 5 years, and likely for much longer? Is it that in many of these cases, it should have lost, but the court nonetheless permitted it to prevail? Is it that the Hennepin County District Court has created hidden rules of civil procedure that benefit Wells Fargo and other mortgage loan servicers? Is it that the Hennepin County District Court has created these hidden rules to prevent future void judgments, but refuses, along with the entire state court system, to even acknowledge the argument that similar past judgments are void? Or is it one unrepresented party's search for a structural-defect-free resolution

to his relatively simple claims against Wells Fargo? Because in the existing state court system, he will lose his case – and indeed, he may already have – while in a system that preserves his individual constitutional rights, he will win.

Whatever the lead, perhaps our story should begin with why there are two cases involving the identical cause of action, the repossession of personal property originally held within a foreclosed residential home.

In 1993, the Minnesota Legislature created specialized housing courts with an accelerated docket and modified civil procedures (e.g., limited access to discovery, modified appellate review, etc.) for residential rental housing matters. The specialized courts exist in Hennepin and Ramsey Counties, wherein Minneapolis and St. Paul are located. However, over time, municipalities and mortgage servicing entities began using the accelerated dockets with the modified civil procedures as well, even though the housing courts had no statutory authority to handle these cases. Thousands (perhaps even tens of thousands) of cases brought by mortgage servicing entities were improperly resolved by the two specialized housing courts using the accelerated docket and the modified civil procedures.

When a party complained about the housing court's lack of statutory authority over municipal cases in 2017, it brought attention to this jurisdictional failing. *County of Hennepin v. 6131 Colfax Ln.*, 907 N.W.2d 257 (2018) In the *Colfax* action, the Minnesota Court of Appeals found that "[t]he housing-calendar program, also known as the housing court, lacks authority under Minnesota

Statutes section 484.013, subdivision 1(a) (2016), to hear and determine any matter unrelated to 'residential rental housing.'" *Id.* at 258. In anticipation of the adverse ruling, the Hennepin County District Court created some hidden rules of civil procedure to handle existing and new cases for which the housing court lacked statutory authority.

For new cases, Hennepin County Court Administration would reject the housing court accelerated docket filing and instruct the filer to instead file their case under the standard civil docket. For some of Minnesota's largest mortgage loan servicers, below are the dates of their last-filed housing court case and their first-filed non-housing court case, demonstrating the existence of the hidden rule:

Mortgage Servicer	**Housing Court Accelerated Docket (Last-Filed)**	**Standard Civil Docket (First-Filed)**
Event: *Oral Argument in Colfax (11/01/2017)*		
Wells Fargo Bank N.A.	12/21/2017	12/08/2017
Bank of New York Mellon	12/27/2017	01/28/2018
Event: *Colfax Opinion Issues (01/29/2018)*		
Bank of America	01/29/2018	01/31/2018

Mortgage Servicer	Housing Court Accelerated Docket (Last-Filed)	Standard Civil Docket (First-Filed)
U.S. Bank	01/30/2018	02/27/2018
JP Morgan Chase	06/16/2017	02/28/2018
Deutsche Bank	01/30/2018	02/28/2018
Event: *Standing Order Issues (03/05/2018)*		
Federal National Mortgage Association	12/27/2017	03/27/2018

Notably, despite discontinuing use of the Hennepin County housing court accelerated docket, Wells Fargo and each of these other mortgage servicers other than Bank of New York Mellon continued to use the Ramsey County housing court accelerated docket in 2019 and 2020. In the case of Bank of New York Mellon, it simply has not had any eviction proceedings in Ramsey County since 2014. This further demonstrates the existence of the hidden rule implemented by the Hennepin County judiciary relating to new cases filed by mortgage servicing entities.

This treatment follows the civil practice directed by a Hennepin County Standing Order issued on

March 5, 2018 ("Standing Order"). App. 11a. However, while the Standing Order identifies nine (9) separate types of cases impacted by the *Colfax* ruling (which it never mentions), the Standing Order does not identify foreclosed residential housing eviction and related cases, which appear to be the largest category type of cases wherein the housing court's authority and subject-matter jurisdiction was clarified by the *Colfax* ruling. In fact, it is possible that foreclosed residential housing eviction and related cases exceed the number of cases in all of the listed nine categories combined.

For new filings in existing cases, Court Administration would also reject the housing court accelerated docket filing and instruct the filer to instead file their case under the standard civil docket. When Hammann attempted to file a supplemental complaint into an existing housing court case, Court Administration rejected the filing and requested that he instead file a new case:

> "Reason(s) for Rejection: Please file this complaint as a civil case instead of a housing court case. Use type 'civil other/misc' (under the civil category). The filing fee is still $297."

When Hammann objected to this instruction as inconsistent with a Minnesota Statute relevant to his particular personal property claims,[1] Court Administration referred him to the Standing Order. However, as mentioned, foreclosed residential

[1] Minn. Stat. §504B.365(4) ("court hearing the eviction action shall retain jurisdiction in matters relating to removal of personal property").

housing eviction and related cases are not among the nine types of cases listed in the Standing Order.

Since Hammann was unaware of the *Colfax* determination and since the responses he was getting from Court Administration – and the Standing Order it cited – did not directly relate to his facts and circumstances, he motioned the housing court to compel Court Administration to file his filing in the existing case. This is where things got interesting.

Hammann was severely punished for attempting to compel the filing, including the summary rejection of his claims and the imposition of monetary and reputational sanctions for making what the court found to be a frivolous filing. This is Court Case No. A19-1304, the appeal of a housing court case file number wherein the housing court lacked authority and subject matter jurisdiction over both Hammann's original claims (relating to Wells Fargo's unlawful changing of the locks on his residence and not providing him a new key) and his new claims (relating to Wells Fargo's subsequent conversion of his personal property remaining in the residence). Then, Hammann followed Court Administration's original directive to create a new case and make his filing in the new case. This is Court Case No. A19-1816, the appeal of a non-housing court case file number. So now, one case has become two.

In this new A19-1816 case, Hammann immediately exercised his right to recuse the first judge assigned and then motioned to have the second

judge assigned recused for cause.[2] He further motioned that each judge of the district court be recused for cause and requested that a referee instead be assigned to the case. Hammann requested that the referee be a law school senior chosen mutually by the parties according to a set of procedures Hammann suggested in a proposed order which tracked Minnesota's statutory language relating to judicial referees. When the judge denied the recusal motion, Hammann requested review, and requested that review be conducted by a layperson panel instead of by a judge according to a set of procedures Hammann suggested in a proposed order which tracked case law interpreting Minnesota procedural rules regarding recusal. However, Hammann proposed changing the review from that of a judge imagining what an informed layperson might find to actually having one or more informed laypersons make findings. These motions were denied and Hammann sought a writ of prohibition which was denied by the appellate court. App. 3a. A petition for review by the state supreme court was denied on February 18, 2020. App. 1a.

In the A19-1304 case, Hammann's conduct was similar. Since the state district housing court sua sponte rejected Hammann's claims and sanctioned him, there was no substantive district court activity. Before any appellate panel was assigned, he unsuccessfully motioned that each court of appeals judge be recused for cause and requested that a panel of non-judicial referees instead be assigned to the case according to a set of procedures Hammann suggested in a proposed order. Hammann again proposed using

---

[2] Hammann's reasons for seeking recusal will be detailed below shortly.

referees at the appellate stage, tracking the language of the referee statute. After the panel was assigned, Hammann individually motioned for the recusal of each assigned panel member. When each panel member denied their respective recusal motion, Hammann requested review, and requested that review be conducted by a layperson panel instead of by a judge according to a set of procedures Hammann suggested in a proposed order which again tracked case law interpreting Minnesota procedural rules regarding recusal. This motion was denied. An adverse Opinion issued that declined to acknowledge – or to even acknowledge Hammann's argument – that the order and judgment being appealed from the housing court was void for lack of authority and subject matter jurisdiction. App. 5a. Hammann then motioned (with an accompanying proposed order) to create a new procedure permitting review of the Opinion by a layperson panel to precede review by the Supreme Court. The layperson panel would have the power to vacate the Opinion if it determined that the Opinion issued is inconsistent with the rights to equal protection under the law, to due process of law, or to a trial or jury trial in all civil cases. This motion was also denied. The Minnesota Supreme Court declined discretionary review in the A19-1304 action on May 19, 2020. App. 2a.

Over the course of the two cases, four district court judges and one referee, along with seven appellate court judges, had the opportunity to hear or review the various motions. Not one single person from among these twelve and not one single appellate panel addressed the evidence presented in Hammann's motions.

The evidence presented by Hammann follows:

Federal civil terminations data reveal a fundamental change in court behavior beginning in 1986. Researchers Alexandra Lahav and Peter Siegelman documented that in the third quarter of 1985, federal court plaintiffs won almost 70% of federal cases that were adjudicated to completion. Ten years later in 1995, plaintiff win rates in federal courts dropped to 30%.[3] Lahav's and Seigelman's research relies upon the Administrative Office of the US Courts Civil Terminations dataset (1980-2009). Plaintiffs' win rates vacillated in the 30%-47% range from 1995 to 2009, averaging around 35% with a moderate downward trend. Id. "As you've probably realized, the elephant in the room (or, in this case, the study) is judicial attitudes."[4] This Civil Terminations data demonstrates that, since 1995, the federal courts have been more likely to intentionally deny equal protection and due process rights to plaintiffs than to respect them. More than half of plaintiffs who would have prevailed had their action been brought in 1985 or prior are now no longer receiving the due process – the justice – to which they are entitled. Indeed, the fundamental change in court behavior was and is that federal judges stopped caring about providing equal

---

[3] Lahav, Alexandra D. and Siegelman, Peter, The Curious Incident of the Falling Win Rate (July 7, 2017). Accessible at SSRN: https://ssrn.com/abstract=2993423 or http://dx.doi.org/10.2139/ssrn.2993423.

[4] Frankel, Allison; "Stunning drop in federal plaintiffs' win rate is complete mystery – new study" Reuters, June 28, 2017. Accessible at www.reuters.com/article/us-otc-mystery/stunning-drop-in-federal-plaintiffs-win-rate-is-complete-mystery-new-study-idUSKBN19J2MB.

justice under the law and instead are intentionally providing unequal justice.

What statistics show occurred and occurs within the federal courts also occurred and occurs within the Minnesota State Courts. As one example, research conducted by Hammann shows that Wells Fargo has not lost a single contested state court case since prior to 2014, despite participating in 4,765 cases as a first-named plaintiff or first-named defendant during the five-year time period from January 1, 2014, through December 31, 2018. App. 14a-29a. Hammann discovered numerous instances where the Minnesota District and Appellate Courts made seemingly intentional judicial errors to prevent litigants from prevailing against Wells Fargo. App. 24a-29a. Wells Fargo, having numerous opportunities to contest Hammann's research and conclusions, has remained silent. As is evident from the Lahav research, this phenomenon has likely been going on for a great deal longer than the 5-year period Hammann researched.

Not only is it clear that large corporations like Wells Fargo have been the beneficiaries of the unequal protection practiced by the federal and state courts, but it is also clear that unrepresented litigants are one class of victims of this practice. As one example, research conducted by Luke Grundman and others documented the outcomes of eviction actions presided over by the Hennepin County Housing Court. They discovered that represented litigants and litigants receiving limited representation prevailed against their eviction actions at twice the rate of unrepresented litigants (compare 28 litigant wins over 129 cases (equaling 22%) to 24 unrepresented

litigant wins over 219 cases (equaling 11%)).[5] 73.2% of Minnesota civil court system cases disposed of in 2018 had at least one unrepresented litigant.[6]

Recognizing this outcomes disparity, the city of Minneapolis, Hennepin County, and the Pohlad Family Foundation recently provided significant additional financial support to provide some form of representation to more litigants who would otherwise participate in eviction proceedings unrepresented. Id. Not able to change the judiciary, these entities are instead spending money on trying to reduce a source of judicial and judicial process bias.

Not only has the judiciary been intentionally suppressing equal protection rights, but it has also been intentionally suppressing trial and jury trial rights. In 1938, the civil trial rate was 18.16% for all federal court cases.[7] From 1962-1968, civil trial rates occurred within the 11%-12% range for all federal court cases.[8] For the 12-month period ending September 30, 2019, the total federal civil trial rate

---

[5] Grundman, Luke, et. al. "In eviction proceedings, lawyers equal better outcomes." Bench & Bar of Minnesota (February 2019).

[6] N. Waters, K. Genthon, S. Gibson, & D. Robinson, eds. Last updated 20 November 2019 Court Statistics Project DataViewer. Accessible at www.courtstatistics.org.

[7] Burbank, Stephen B., "Keeping our Ambitions Under Control: The limits of Data and Inference in Searching for the Causes and Consequences of Vanishing Trials in Federal Court. 1 J. Empirical Legal Stud. 571, 575 (2004).

[8] Galanter, Marc, and Angela M. Frozena, "A Grin without a Cat: The Continuing Decline & Displacement of Trials in American Courts," 143 Daedalus 115, 117 Fig. 1 (2014).

was 0.7% and the civil jury trial rate was 0.5% of the 0.7%.[9]

In December 2003, the Civil Justice Initiative Task Force of the American Bar Association's (ABA) Litigation Section sponsored a symposium on the "vanishing trial," revealing results from its Vanishing Trial Project study. The ABA's intensive research and organized focus on the judiciary's suppression of trial and jury trial rights did not change judiciary conduct, and the suppression only continued to worsen.

Like with the suppression of equal protection rights, what occurred and occurs within the federal judiciary also occurred and occurs within the Minnesota state judiciary. The civil trial rate is the sum of the civil jury trial rate and the civil bench trial rate. In 1992, the Minnesota State Court civil jury trial rate was approximately 6.8%. At that time, the average bench trial rate for 10 reporting states (including Minnesota) was 4.3%.[10] By 2002, Minnesota's civil jury trial rate had declined to approximately 4.3%, representing a 38% decline over 10 years. [11] In 2018, Minnesota reported disposing of

---

[9] Accessible at https://www.uscourts.gov/statistics/table/c-4/judicial-business/2019/09/30.

[10] Brian J. Ostrom, Shauna M. Strickland, and Paula L. Hannaford-Agor, "Examining Trial Trends in State Courts: 1976-2002," Journal of Empirical Legal Studies 1, no. 3 (November 2004): 755-782, Figs. 11, 13.

[11] Id. Fig. 13.

1,792 (1.03%) civil cases though bench trial and 201 (0.12%) cases through jury trial.[12]

Hammann's research has uncovered that the actual number of civil jury trials is less than the reported number. For the 42 Contract and Other Civil case types where jury trial activity was indicated in 2018, 8 of these cases did not actually have any jury trial activity (i.e., the Register of Actions stated, "Jury Trial (Held)", but no jury trial was actually held). Hammann also discovered that for 2 of these cases, a jury trial began but did not reach a verdict (1 settled and 1 was dismissed by the judge during trial). App. 30a. Actual jury trial activity appears to be 24% (considering jury trials begun) - 31% (considering jury trials completed) overstated, meaning that a more accurate count of jury trial activity would be 139 (0.08%) to 153 (0.09%) jury trials for calendar year 2018 (denominator of 174,450).[13] It is highly probable that the bench trial statistics are similarly overstated, suggesting that the total 2018 state civil trial rate is 0.79%-0.87%. In summary, since 1992, Minnesota civil trial rates have declined 93% and civil jury trial rates have declined 99%. If trials were an organism, they would be classified as "Extinct in the Wild".[14]

---

[12] N. Waters, K. Genthon, S. Gibson, & D. Robinson, eds. Last updated 20 November 2019 Court Statistics Project DataViewer. Accessible at www.courtstatistics.org.

[13] See Footnote 12.

[14] See www.nationalgeographic.org/media/endangered/.

REASONS FOR GRANTING THE PETITION

I. STATE COURT WILL AND DID DENY PETITONER'S INDIVIDUAL CONSTITUTIONAL RIGHTS

"The Constitution, by its terms, does not mandate any particular remedy for violations of its own provisions." *United States v. Gonzalez-Lopez*, 548 U. S. 140, 157 (2006). However, "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 397 (1971), citing *Marbury v. Madison*, 1 Cranch 137, 163 (1803). At the federal level, 28 U.S. Code § 1331 empowers the federal courts to address civil injuries "arising under the Constitution of the . . . United States." And 28 U.S. Code § 1257 empowers this court to review state court decisions "where any title, right, privilege, or immunity is specially set up or claimed under the Constitution."

The rights or privileges specially set up to Hammann under the Constitution that are in question within this petition are: (a) to have his case presided over by an impartial decision-maker; (b) to not have his case marred by the unequal protection afforded favorably towards Wells Fargo; (c) to not have his case marred by the unequal protection afforded disfavorably against unrepresented parties; (d) to have the right to a trial; and, (e) to have the right to a jury trial.

"The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due

process of law,' and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process." *Bolling v. Sharpe*, 347 US 497, 499 (1954). The conduct of partial decision-makers, decision-makers favoring Wells Fargo, decision-makers disfavoring unrepresented litigants, decision-makers disfavoring persons wishing to have a trial, and decision-makers disfavoring persons wishing to have a jury trial is not reasonably related to any proper governmental objective, and thus this conduct imposes upon Hammann a burden that constitutes an arbitrary deprivation of his property rights in violation of the Due Process Clause.

"Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective." Id. at 500-01. The conduct described immediately above also imposes upon Hammann an unfair burden to protect his property rights and this burden constitutes an arbitrary deprivation of his liberty in violation of the Due Process Clause.

Hammann's right under the Constitution: (a) to have his case presided over by an impartial decision-maker; (b) to not have his case marred by the unequal protection afforded favorably towards Wells Fargo; and, (c) to not have his case marred by the unequal protection afforded disfavorably against unrepresented parties, constitutes a violation of the Equal Protection Clause.

Hammann's right under the Constitution to have a jury trial and to not have his case handled

differently because he has requested the right to a jury trial constitutes a violation of his right to a Civil Jury Trial.

II. AVAILABLE REMEDIES TO PROTECT CONSTITUTIONAL RIGHTS HAVE BEEN EXHAUSTED

Hammann exhausted his available remedies before the Minnesota state court system. Not only did he exhaust them, but he proposed several new remedies at the district and appellate level that these courts also rejected.

To summarize Hammann's motion practice in both cases, every time a judge would have presided over a non-removal-related motion, Hammann proposed that the referee statute instead be applied to permit the parties to mutually-select a law school senior to act as a referee and preside. Every time the law called for a judge to evaluate judicial conduct based on the perspective of a reasonable layperson, Hammann proposed that actual reasonable laypersons instead perform the evaluation. And finally, Hammann proposed a supplementary appellate procedure (and he would have proposed an analogous supplementary district court procedure if his supplemental claims had not been summarily rejected) for litigants to have the option to have a constitutional rights assessment performed by laypersons prior to (and which would temporarily stay) appellate or supreme court review.

"[J]uries in our constitutional order exercise supervisory authority over the judicial function." *United States v. Haymond*, 139 S. Ct. 2369, 2376 (2019). However, the Minnesota State Court System

has driven civil jury trials below 0.1%, effectively eliminating any supervisory authority over their collective conduct. This elimination of supervisory authority has permitted the Minnesota State Court System to select winners and losers in civil actions not based on the merits of their arguments, but instead based simply on the characteristics of the litigants themselves. Wells Fargo should have lost some of its contested cases before the court, and yet it remains undefeated. In contrast, unrepresented litigants fare twice as poorly as represented ones. Hammann should win his present case against Wells Fargo, but he will not. In fact, he may have already lost despite his efforts to obtain a writ of prohibition.

By both exhausting his available remedies and further, by exhausting remedies that are currently not available, Hammann demonstrates that not only are available remedies inadequate to preserve the rights and privileges specially set up to him under the Constitution, but he demonstrates that the current structure within which these remedies are adjudicated is inadequate to preserve the rights and privileges specially set up to him under the Constitution.

III. A NEW STRUCTURE MUST BE CREATED SO AVAILABLE REMEDIES AND ANY NEW REMEDIES TO PROTECT CONSTITUTIONAL RIGHTS MAY PROPERLY FUNCTION

"Enforcing the Constitution always bears its costs. But when the people adopted the Constitution and its Bill of Rights, they thought the liberties promised there worth the costs." *Gamble v. United States*, 139 S. Ct. 1960, 2009 (2019) (Gorsuch dissent). The very

few current means that exist to enforce the Constitution to protect individual constitutional rights are ineffective.

Appellate review often does not result in the protection of individual constitutional rights. The systemic suppression of trial and jury trial rights has been evident since at least 1968. Clear evidence of the systemic suppression of equal protection rights has existed at least since 1996. If appellate review could be relied upon to protect individual constitutional rights, these trends would never have even arisen. Moreover, once these trends arose, the appellate courts could have reversed these trends on a case-by-case basis. However, as was found specifically in relation to Wells Fargo, if any party appeals an adverse substantive ruling favoring Wells Fargo, the Minnesota Court of Appeals always finds a way to uphold the judgment. App. 22a-23a. The courts of appeals have been accomplices in the ongoing suppression of individual constitutional rights.

Judicial recusal also does not result in the protection of individual constitutional rights. There are two fundamental structural flaws in the current procedures associated with judicial recusal. First, recusal motions are reviewed by the very same persons who are orchestrating the suppression of these individual constitutional rights. Second, while many of the evaluative standards for recusal are objective standards,[15] some judges nonetheless feel that the standards or their application are subjective.

---

[15] *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252, 2255 (2009): "the objective standards implementing the Due Process

A "right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right." *District Attorney's Office v. Osborne*, 129 S.Ct. 2308, 2319 (2009). Because the very few current means that exist to protect individual constitutional rights are ineffective, Hammann proposed the creation of new means. The Voting Rights Act of 1965 has been called the single most effective piece of civil rights legislation ever passed by Congress. Local election officials claimed that they were discharging their duty to register voters according to the law without bias or prejudice and yet statistics and abundant additional evidence unambiguously showed that these claims were untrue. As a result of the passage of the Voting Rights Act, federal examiners began conducting voter registration – bypassing the biased local election officials – and black voter registration began a sharp increase.[16] The Act restored the right to vote guaranteed by the Fourteenth and Fifteenth Amendments. Id.

Hammann proposes that the court borrow from the most successful civil rights legislation ever. The proposed order included with Hammann's motion to the Minnesota State Courts provides for a limited bypass solution utilizing the tools available within existing Minnesota statutory law. Using the Referee statute (Minn. Stat. § 484.70 (Referee Positions, Rules.)), Hammann proposes that referees be selected

---

Clause do not require proof of actual bias, [instead employing] a realistic appraisal of psychological tendencies and human weakness." (internal quotations omitted).

[16] See www.justice.gov/crt/introduction-federal-voting-rights-laws-0.

from the graduating class of one of the three local law schools. Each of Hammann and Wells Fargo shall be permitted up to three objections pursuant to Minn. Stat. §484.70(6). All functions of the referee shall be as provided in the statute.

Notably, when the Hennepin County Chief Judge issued the Standing Order, the provision for referees was included in the Order. App. 12a-13a. All Hammann's proposed order does in this respect is change who selects the referees, from the Chief Judge who uses referees as a tool to enforce the continued suppression of individual constitutional rights, to the parties themselves who may use referees as a tool to begin to remediate the suppression of individual constitutional rights at the state district court level. Same means. Different ends.

In addition to a new means for addressing the suppression of individual constitutional rights, Hammann also proposes the addition of a new test. Within the ineffective existing means described above exist multiple evaluative standards for protecting individual federal constitutional rights. In the context of recusal motions, two are described in *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252 (2009): (a) whether the average judge in a similar position likely would be or would have been neutral in drafting the order, judgment, or opinion; and, (b) whether the order, judgment, or opinion would be, or reflects that it is, the product of an unconstitutionally-high probability of bias. [17]

[17] In relation to protecting individual state constitutional rights, the Code of Judicial Conduct often applies, specifically its

For all of the federal and state evaluative standards, the evaluation is from the perspective of an objective, unbiased layperson. *State v. Pratt*, 813 NW 2d 868, 876 fn.7 (Minn. 2012) ("When applying the 'reasonable examiner' test . . . we apply the test from the perspective of a 'reasonable examiner' who is 'an objective, unbiased layperson with full knowledge of the facts and circumstances.'. The Code is concerned with public perception and public trust and confidence.") (citation omitted). See also, e.g., *In re Wilkins*, 780 N.E.2d 842, 848 (Ind.2003); *State v. Logan*, 236 Kan. 79, 689 P.2d 778, 784 (1984); *Petzold v. Kessler Homes, Inc.*, 303 S.W.3d 467, 473 (Ky.2010); *Blevens v. Town of Bow*, 146 N.H. 67, 767 A.2d 446, 449 (2001); *State v. McCabe*, 201 N.J. 34, 987 A.2d 567, 572 (2010); and, *Sherman v. State*, 128 Wash.2d 164, 905 P.2d 355, 378 (1995).

In 1982, an important amendment was made to the Voting Rights Act, changing the test for determining an Act violation from an "imposed . . . to deny or abridge" standard to a "totality of circumstances" standard. This represented a substantial improvement in the Act because testing the totality of circumstances rather than the intent makes it easier to preserve the constitutional right.

Hammann proposes that the court again borrow from the most successful civil rights legislation ever by adding a "totality of circumstances" test to the evaluative tests described above. This test may be formulated as follows: whether the totality of the circumstances likely would or likely did result in an

---

sections 1.1, 1.2, and 2.11(A). See also Comment 5 to Code of Judicial Conduct Canon 1.

order, judgment, or opinion that suppresses an individual constitutional right.

One challenge with the existing evaluative tests is their focus on the judge, when the judge is only one source of the structural defects which suppress individual constitutional rights. The second of the two federal tests differs from this focus, but includes the word "bias" in its text. Bias is defined as: "Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair."[18] Hammann demonstrates above that three separate individual constitutional rights are being suppressed: equal protection, jury trial, and due process. The use of the word "bias" in the second federal test may create a tendency for an objective evaluator to overemphasize the first of these three individual constitutional rights and underemphasize the other two. Since each is equally important, this possible tendency itself may produce the unintended potential for bias.

Hammann proposes that this additional standard apply to all circumstances when a party asserts a violation of individual constitutional rights. Any motion. Any defense. Any appeal. Any time.

IV. COURT ERRED IN DECLINING TO GRANT PROHIBITION

As more fully described at I. above, Hammann is entitled under the Constitution: (a) to have his case presided over by an impartial decision-maker; (b) to not have his case marred by the unequal protection

[18] Lexico.com.

afforded favorably towards Wells Fargo; (c) to not have his case marred by the unequal protection afforded disfavorably against unrepresented parties; (d) to have the right to a trial; and, (e) to have the right to a jury trial.

"Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective." *Bolling* at 500-01. Like the petitioners in *Bolling*, Hammann is being refused his Constitutional rights by reason not of the merits of his claims, but by reason of who he is, who he has asserted those claims against, and what he has requested, namely his right to a jury trial. There is no proper governmental objective for any of these bases in refusal.

Indeed the conduct which Hammann attempted to prevent through prohibition nonetheless occurred in the form of the A19-1304 action. Even in seeking a writ of prohibition, Hammann could not delay the inexorable misconduct of the courts.

The courts' conduct imposes upon Hammann an unfair burden to protect his property rights and this burden constitutes an arbitrary deprivation of his liberty in violation of the Due Process Clause. Forcing Hammann to run the gamut of partial decision makers all the way through to the United States Supreme Court, even if ultimately successful, has already deprived him of his liberty.

Therefore, the lower courts erred in declining to grant the writ of prohibition.

V. COURT ERRED IN DECLINING TO FIND UNDERLYING ORDERS AND JUDGMENTS VOID

As more fully described above, in direct response to the *Colfax* ruling, the Hennepin County District Court Chief Judge issued the Standing Order. The Standing Order identifies nine (9) separate types of cases impacted by *Colfax.* App. 11a-13a. The sixth listed type is "public nuisance" enforcement, which is the immediate subject matter of the *Colfax* ruling. The eighth listed type is "mortgage foreclosures." However, the dominant legal form of mortgage foreclosure in Minnesota is known as foreclosure by advertisement. Minn. Stat. §580. Therefore, most legal issues involving foreclosures don't reach the court until any foreclosed residential housing eviction proceedings occur. However, the Standing Order does not identify foreclosed residential housing and related cases, which appear to be the largest category type of cases wherein the housing court's authority and subject-matter jurisdiction was clarified by the *Colfax* ruling. Based on Hammann's own cursory review of the listed plaintiffs in housing court cases, he believes that foreclosed residential housing eviction and related cases are substantially larger in number than all of the listed nine categories combined. These cases number in the thousands to the low tens of thousands if one goes back from the late 2000's mortgage crisis to the date of the Standing Order.

Like the nine listed case types in the Standing Order, foreclosed residential housing eviction and related cases are also outside the authority and jurisdiction of the housing courts. Therefore, Court Administration prevents any new housing court cases

of this type and prevents any new filings in existing cases, without disclosing why, other than to refer persons complaining to the Standing Order.

These facts lead to the rather unremarkable conclusion that the orders and judgments entered in all of these prior foreclosed residential housing eviction and related cases are void.

Orders and judgments issued by the HCP which are outside of its authority are void. See *Colfax*. "Rule 60.02(4) . . . may be used to vacate judgments that are void due to a court's lack of jurisdiction. . . [When a court] act[s] completely outside its authority . . . its judgment [i]s tantamount to one rendered despite a lack of subject matter jurisdiction." *Park Elm Homeowner's Ass'n v. Mooney*, 398 NW 2d 643, 646-47 (Minn.App. 1987); cited by *Kulinski v. Medtronic Bio-Medicus, Inc.*, 577 NW 2d 499, 502-03 (Minn. 1998) ("a judgment entered by a court without subject matter jurisdiction is void ab initio"). "A lack of statutory authority betokens a lack of jurisdiction." *Senior Citizens Coal. of Ne. Minn. v. Minn. Pub. Utils. Comm'n*, 355 N.W.2d 295, 302 (Minn. 1984).

Despite these facts, not only would the appellate court in the A19-1304 action not acknowledge that the underlying judgment it was being asked to review is void, it would not even acknowledge Hamman's *argument* that the underlying judgment it was being asked to review is void.

It strains credulity that this is by accident. In this very same underlying case to which Case No. A19-1304 relates (i.e., Hennenpin County Case No. 27-cv-hc-16-719), Wells Fargo prevailed because each of the

district and appellant courts would not even acknowledge *the argument* that Hammann was entitled to the benefit of the 90-day notice-to-vacate requirement provided by the Protecting Tenants at Foreclosure Act of 2009, Pub.L. No. 111-22, § 702, 123 Stat. 1632, 1661 (codified at 12 U.S.C. § 5220 note (Supp.V.2012))("PTFA") and Minnesota Statute §504B.285, Minnesota's own version of the PTFA. See MN Appellate Case Nos. A16-0737 and A16-1161; 138 S.Ct. 482 (2017) (certiorari denied). This pervasive pattern of completely ignoring the central argument of cases the courts do not to wish to rule favorably upon significantly harms the adversely-affected parties before it, as well as the public perception of, and the public trust and confidence in, the judiciary. For the above reasons, the court erred in declining to find the orders and judgments void and erred in declining to even acknowledge the central argument.

VI. COURT ERRED IN EVALUATING THE DEEMED DISMISSAL RULE

Relatively unique among the states – only Minnesota and North and South Dakota currently follow this practice – Minnesota provides for commencement-by-service of legal complaints rather than commencement-by-filing. With commencement-by-service, a complaint may be served upon a defendant, thereby triggering the rules of civil procedure relating to discovery. With the accelerated docket procedures implemented by the Hennepin County Housing Court, cases are usually fully-resolved by the district court before the 60-day initial disclosure deadline (Minn.R.Civ.P. 26.01), within the 30-day deposition leave requirement period (Minn.R.Civ.P. 30.01), and before the 30-day

discovery response periods for interrogatories, document requests, and requests for admissions (Minn.R.Civ.P. 33.01(b), 34.02(c)(1), and 36.01). And since a district court judgment ends discovery, it usually simply isn't permitted to ever occur. As evident, the court's pronouncement in *Fulminante* at 309-310 that "the entire conduct of the [civil case] from beginning to end is obviously affected by . . . the presence on the bench of a judge who is not impartial" applies equally to a partial system of adjudication, and not merely a partial judge. Through commencement-by-service, however, one can trigger the initiation of the discovery rules to conduct discovery before the housing court takes supervision over the case and terminates it, provided a defendant does not elect to file the complaint themselves. Hammann employed this method to engage in discovery with Wells Fargo relating to his personal property repossession claims.

Discovery was fruitful in some respects. Hammann discovered that one of the reasons Wells Fargo ignored his Minnesota Statute § 504B.271(2) request for the return of his personal property was because it no longer possessed it. Rather than safely storing it as required by Minnesota Statute (or initiating a sale and informing Hammann of the sale date), Wells Fargo simply disposed of it by letting Hammann's personal property be taken by others without compensation.

Discovery also revealed Wells Fargo's intended primary defense: that Hammann abandoned his residential premises before it locked him out of these premises.

> "Wells Fargo admits only that it had no need to schedule Hammann's removal from the premises because Hammann had abandoned the same on or before the date the locks were changed and prior to the need to enforce the writ of recovery entered in favor of Wells Fargo on November 25, 2015, in the matter of Wells Fargo v. Jeffrey Busch, Pamela Busch, John Doe, and Mary Roe, Case No. 27-cv-13-7239."

Wells Fargo's July 18, 2018, Response to Hammann's First Discovery Requests, Response to Request for Admission #18.

However, since Hammann lived at the premises up to and including the day of the illegal lockout, Hammann sought to obtain from Wells Fargo and its attorney agents any evidence they possessed to support this defense that Hammann abandoned the premises. And here's where things go sideways in a very predictable manner. Wells Fargo declined to provide any documents not in its possession, and Wells Fargo's attorney agents claimed attorney client privilege prevented them from providing any documents. A claim of attorney client privilege requires:

> (b) Claims of Privilege.
>
> (1) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or

> things not produced that is sufficient to enable the demanding party to contest the claim.
>
> Minn. R. Civ. 45.04(b)(1).

Hammann objected to the attorney responses, arguing that to claim attorney client privilege, they first needed to provide "a description of the nature of the documents, communications, or things not produced." Since Hammann believed they had no evidence to support this defense, complying with the discovery requirements would have revealed the lack of evidence.

Each attorney agent promised to amend their responses, but neither did. Like their federal counterparts, the Minnesota rules of civil procedure have built-in delays before filing discovery-related motions. The first is the requirement for a good faith conference. Minn.R.Civ.P. 37.01(b)(2). The second is the requirement for a 21-day notice period before seeking Rule 11 sanctions. Minn.R.Civ.P. 11.03(a)(1). Hammann first requested a pre-hearing good-faith conference on February 20, 2019, which he re-iterated on March 6, 2019. Rather than agree to conference, each attorney agent again promised to amend their responses, but neither did. Finally, the attorney agents agreed to meet and confer on April 23, 2019, a date they requested, which not coincidentally marked the one-year anniversary of Hammann's service of the supplemental claims. Each attorney agent again promised to amend their responses, but neither did. When Hammann served discovery and sanctions motions upon them, they finally responded, arguing that Hammann had violated the one-year deemed

dismissal rule, and therefore they would no longer respond to discovery.

Previously unchanged since the Minnesota Territorial Statutes of 1851, the judiciary modified the commencement-by-service structure effective July 1, 2015, by amending the Minnesota Rules of Civil Procedure:

> 5.04. Filing; Certificate of Service
>
> (a) Deadline for Filing Action. Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period. This paragraph does not apply to family cases governed by rules 301 to 378 of the General Rules of Practice for the District Courts.

This has come to be known as the "deemed dismissal" rule. However, the Minnesota Legislature intended that personal property repossession claims be supplemental claims to already-filed eviction actions. Minn. Stat. §504B.365(4) ("The court hearing the eviction action shall retain jurisdiction in matters relating to removal of personal property under this section."). Hammann's 27-cv-hc-16-719 action was filed on February 5, 2106. The date of service of his supplemental complaint was not part of the record on appeal because the deemed dismissal rule was never

considered by the district court, but was on or around April 23, 2018, more than two years later.[19]

In raising the deemed dismissal rule for the first time on appeal in its responsive filing, Wells Fargo acknowledged that Hammann's "quarrel insofar as the subject Orders are concerned is solely with the housing court and its staff." A19-1304 Oct. 11, 2019, Response at 4-5. Moreover, because the deemed dismissal rule was never considered by the district court, Hammann was unable to present other additional evidence-supported defenses to the rule, including: (a) equitable estoppel; (b) fraud on the part of Wells Fargo's agents; (c) unclean hands; and, (d) mistake, inadvertence, or excusable neglect.[20]

"The Nation's adversarial adjudication system follows the principle of party presentation. In both civil and criminal cases, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *United States v. Sineneng-Smith*, __ U.S. ___, (2020) (internal citations and quotations omitted).

Here, the district court made sua sponte findings which were ignored by Wells Fargo on appeal in favor of a new argument and which were not considered by

---

[19] The appellate opinion references a "civil cover sheet." But the civil cover sheet in 27-cv-hc-16-719 was filed on February 5, 2016, with the original complaint. Therefore, contrary to the contention in the opinion, it does not reveal the service date of the supplemental complaint which was served more than two years later. See also footnote 20.

[20] Notably, a motion by Hammann to enlarge the record on appeal was denied because "our review is limited to the existing record." A19-1304 Aug. 29, 2019, Order.

the appellate court. The proper action of the appellate court was to reject the sua sponte arguments and remand the case to the district court for further proceedings, whereupon Wells Fargo could have raised its new argument and Hammann his defenses. Absent electing the proper course, the court could have found that Hammann's 27-cv-hc-16-719 action was filed on February 5, 2106, and therefore the deemed dismissal rule could not apply to supplemental claims served two years later.

For the above reasons, the appellate court both erred in considering the argument, erred in enlarging the appellate record (see fn. 19-20), and erred in its findings relative to the argument.

CONCLUSION

On June 11, 1963, President John F. Kennedy addressed the nation on the most pressing domestic issue of the day, the struggle to affirm civil rights for all Americans:

> "We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution. The heart of the question is — whether all Americans are to be afforded equal rights and equal opportunities."

President Kennedy's speech was followed up by action. Legislation passed Congress and the Courts (or, at least, some courts) acted to uphold the new laws. But social progress does not follow an unchanging pattern. It ebbs and flows like a river's current, sometimes rushing forward in a torrent,

sometimes moving lazily forward, and sometimes even caught in a back eddy. The courts currently operate within a back eddy. Petitioner has brought these issues to this Court's attention in numerous prior petitions without success.

Fate may have this time be different. A man set himself on fire on the streets of Tunisia and four Arab World leaders were later toppled. A man died on the streets in Hammann's community in Minneapolis, sparking protests across the world demanding equal rights and equal opportunities. We stand today in a torrent of societal change. We simply don't know when and how the torrent will slow back down, and whether, before it does, the courts will get caught in its maelstrom. To realize equal rights and equal opportunities, they necessarily must. Today, America can't breath. Our system of justice is suffocating us.

The courts suppress individual constitutional rights. A person has little available means to protect these individual constitutional rights against this suppression. These suppressive trends only get worse with each passing year. We need action. Today. The Supreme Court must do its part. Petitioner respectfully prays that the Court grant this petition.

Respectfully submitted,

JERALD A. HAMMANN
1566 Sumter Avenue N.
Minneapolis, MN 55427
jerrympls@gmail.com
(612) 290-7282
Petitioner, pro se