

COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

2025 JUN -5 PM 3:04

EDWARD J. SMITH
DORA L. PROSOLOW,

Petitioners,

V.

BARBARA J. HUMPHREY

Respondent,

CASE NO. 8:24CV41

PETITION FOR
WRIT OF MANDAMUS
AND PROHIBITION

NOTICE OF PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

TO: THE HONORABLE CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEBRASKA

COMES NOW, Petitioner' Edward J. Smith ("Petitioner Smith"), and Defendant Dora L. Prosolow ("Defendant Prosolow"), Pro Se Litigant, and respectfully petitions The Honorable Clerk Of The United States District Court For The District Of Nebraska ("United States Court"), to issue a Writ of Mandamus and Prohibition against the Douglas County, Nebraska District Court ("lower court"), with directions to compel and prevent Your Honorable Judge Duane C. Dougherty ("Judge Dougherty"), to immediately and unconditionally cease and desist from presiding over the scheduled sale of the Petitioner's real estate property as well as to compel Judge Dougherty from exceeding jurisdiction or knowingly, willingly and unlawfully taking further actions beyond its jurisdiction that would effectively aid and abet the Respondents' fraudulent sale of the Petitioner's real estate property obtained through fraud.

STATEMENT OF FACTS

1. That this Writ of Mandamus and Prohibition provide reasons and potential violations of Title 18 U. S. Code Section 242 Deprivation of Rights Under Color of Law which makes it federal crimes to willfully deprive American citizens of rights or privileges protected by the Constitution or laws of the United States, when acting under color of law. This includes individuals acting with authority or pretending to act under official authority, even if they exceed their legal bounds.
2. That Title 18 U. S. Code Section 241 Conspiracy against Rights is a federal law that criminalizes conspiracies to deprive individuals of their rights or privileges secured by the Constitution of laws of the United States. Specifically targeting two or more persons who

conspire to injure, oppress, threaten, or intimidate anyone in the exercise or enjoyment of these rights as both 18 U.S.C 241 & 242 are relevant or appropriate in this case.

3. That it is a deprivation of the Petitioners' rights for Judge Dougherty, acting under color of law, to legally hold the rightful owner's property obtained through fraud. This action violate Petitioner Smith's rights to property, due process, and equal protection under the law. The Fifth and Fourteenth Amendments to the Constitution protect individuals from being deprived of their property without due process of law.
4. That Nebraska attorney John C. Chatelain #15925 filed an Affidavit for Transfer of Real Property without Probate on behalf of the Respondent while knowing or reasonable should have known that in Nebraska, a small estate affidavit can be used to transfer personal property without probate, but it doesn't apply to real estate. This same scenario took place with the Court's invalid Writ of Restitution where the property's rightful owner was deprived of his property with the use of Nebraska's Residential Landlord and Tenants Act or Forcible Entry and Detainer that doesn't apply to a property's rightful owner.
5. That Judge Dougherty cannot use Nebraska's Forcible Entry and Detainer action against a property's rightful owner to enforce an invalid Writ of Restitution. The Forcible Entry and Detainer process is specifically designed to address disputes over possession of property, typically in landlord-tenant situations or other, but cannot be used to usurp the rights of the rightful owner.
6. That a Writ of Restitution is a court order that mandates the return of property to its rightful owner and in this case Petitioner Smith is that rightful and sole owner. If a Writ of Restitution is deemed invalid, it means the underlying legal basis for the court order has been challenged and found to be flawed. In this case, Judge Dougherty has himself worked against the Petitioner in an unfair manner and one example of this is when the Judge moved the trials conclusion date from five months away to one month and leaving the Petitioner without the appropriate time needed to obtain counsel or properly prepare a defense.
7. That the rightful owner has the right to challenge an invalid Writ of Restitution and retain possession of their property. The Forcible Entry and Detainer process cannot be used to forcibly remove the rightful owner from their property because this Act does not apply in this case.
8. That using an Forcible Entry and Detainer to enforce an invalid Writ of Restitution

would be a violation of the rightful owner's rights and would likely be overturned by the courts. The rightful owner can seek legal remedies, such as an order to invalidate the Writ of Restitution and a court order to stop the eviction process. In this case Judge Dougherty has disregarded everything legally applicable in this case while granting everything fraudulent.

9. That in December of 2024, under color of law the Court's referee James E. Reisinger unlawfully sold Petitioner Smith's real estate property. However, upon visiting with the purchaser and explaining why the property had been on the market in the first place, it is believed that the purchaser withdrew from the purchase.
10. That James E. Reisinger, as a "state referee acting under color of law" abused his power by acting under the guise of legal authority to violate the Petitioners' constitutional and other guaranteed legal rights including 18 U.S.C. § 242 deprivation of rights under color of law, property rights, and willfully depriving the Petitioner of rights and privileges protected by laws of the United States. Mr. Reisinger used his authority to harass and intimidate the Petitioners'.
11. That Mr. Reisinger used an invalid Writ of Restitution to deprive the property owners of their bundle of property rights, constituting a deprivation of rights under due process and potentially other constitutional rights. The Fourteenth Amendment of the US Constitution prohibits states from depriving individuals of property without due process of law. Due process requires that the government provide a fair and just legal process before taking away a person's property. An invalid Writ of Restitution, by definition, doesn't meet this requirement as it is not a valid legal instrument.
12. That when a state referee acts under color of law, they are acting on behalf of the state and are subject to the same constitutional limitations as the state itself. Using an invalid writ to take property is a misuse of that authority and a violation of rights.
13. That property ownership is a fundamental right, and the Petitioners' have a right to own, possess, and use their property free from wrongful interference by the state government. The use of an invalid writ to seize property violates these property rights.
14. That under 18 U.S.C. § 242 it was a deprivation of the Petitioners' rights for James E. Reisinger, acting under color of law, to willfully use an invalid Writ of Restitution to violate this statute.
15. That the Petitioners' property cannot be sold because it'd been obtained through an

invalid Writ of Restitution Ordered by the Court under the authority of the State of Nebraska. As of the end of May 2025 the property sits vacated and has been since James Reisinger vacated the rightful owners on October 21, 2024.

16. That at present and under color of law, Matthew Saathoff with the Saathoff Law Group in Omaha, Judge Dougherty and James Reisinger has violated 18 U.S.C. 241 and are legally holding the Petitioners' real estate property with hopes that the Statute of Limitations will expire on their criminal activities involving the State of Nebraska.
17. That it is a deprivation of the Petitioners' rights for Judge Dougherty to legally hold the rightful owners real estate property if it was obtained through fraud. Because the Due Process Clause of the Fourteenth Amendment protects individuals from government action that deprives them of life, liberty, or property without due process of law, and fraudulent acquisition of property is a violation of the rightful owner's property rights.
18. That if Judge Dougherty upholds the title to property obtained through fraud, it is a violation of the rightful owner's property rights. The rightful owners have been deprived of their property without a legitimate legal basis, which is a form of deprivation of rights.
19. That the government (Judge Dougherty acting for the state), cannot simply deprive someone of their property without a valid legal basis and fraudulent acquisition is not a valid legal basis.
20. That on September 26, 2018, a Barbara J. Humphrey (Respondent) filed an invalid Affidavit for Transfer of Real Property without Probate where a false statement was made under line 5 claiming: "I am entitled to the real property per the will of the deceased and I have made an investigation and have been unable to determine and subsequent will." (See): Exhibit 1 Affidavit for Transfer of Real Property without Probate – Sept 26, 2018
Humphrey v. Smith, 311 Neb. 632 (Neb.2022) May 27, 2022
Peterson v. Damoude, 145 N.W.847 (Neb. 1914)
21. That during the Respondents' trial testimonials' the Respondent contradicted this claim by testifying as follows:
656:12 Respondent: Your property is not in the will.
656:14 Respondent: That's correct. We don't want it in the will.
659:15 Respondent: That house was not in the will.
Eventually, Judge Dougherty admitted to not having the will.

765:2-5 The Court: Overruled. The Court does not have a will though, sir, so the contents of the will are not going to be considered by the Court because I don't have one.

(See): Exhibit 2 Excerpts from April 10th, 11th, 21st, and May 23rd, 2023 trial are available

22. That the Court (Judge Dougherty), cannot sell Petitioner Smiths' real estate property if the Respondent claimed Petitioner Smiths' real estate property was left to her in a will but then testifies at trial that the real estate property was not included in the will, based on that testimony Judge Dougherty could not sell Smith's property as the Respondents' testimony contradicts her initial claim and demonstrates that she has no legal right to the property under the will.
23. That the burden of proof rests upon Ms. Humphrey's claiming inheritance from the will and that the Respondent would need to provide substantial proof that the property was included in the will.
24. That selling the Petitioners' property after a contradictory affidavit and testimony from the Respondent constitutes a violation of the Petitioners due process rights. The Fifth and Fourteenth Amendments to the U.S. Constitution protect individuals from being deprived of property without due process of law. A fair trial requires that all relevant evidence be considered and this includes verifying whether a claimed will actually exists. Petitioners' have a right to this relevant evidence and Judge Dougherty's inactions deprived the Petitioners' of this crucial evidence.
25. That the Respondents' affidavit contradicted her trial testimony, creating a factual dispute that Judge Dougherty should've resolved based on the evidence presented. The Petitioners' were not given a fair opportunity to present evidence and arguments directly addressing the Respondent's contradictory claims and the sale of the Petitioners' property deprived the Petitioners of their ownership rights without a fair and impartial process to resolve the conflicting claims.
26. That Judge Dougherty's decision to sell the property without a fair hearing and resolution of the factual dispute violates procedural due process rights. Therefore, Judge Dougherty cannot sell the Petitioners' property based on contradictory evidence because the sale would be a violation of the defendant's due process rights, which are protected by the Fifth and Fourteenth Amendments of the U.S. Constitution.
27. That during trial on April 10th, 2023, the Respondent testified that the alleged will she claimed to have in her Affidavit was not a part of the case as follows:

241:16-17 Nebraska attorney Darnetta Sanders #22964: Okay. Have you presented the will as part of this case?

242:18 Respondent: No.

(See): Exhibit 2 Excerpts from April 10th, 11th 21st, and May 23, 2023 trial

28. That Judge Dougherty could not detain or sell Smith's real estate property if the Respondent claimed the property was included in a will that is not actually part of the court case. The matter should not have been brought before the court in the first place and would be considered a false claim. A will needs to be submitted to the court to be considered valid in a probate proceeding; **if the alleged will is not part of the case, it cannot be used to claim ownership of the Petitioners' property.**
29. That Judge Dougherty's selling Smith's property based on the Respondents' affidavit claiming the property was in a will, when the Respondent testified that the will is not part of the case is a deprivation of the Petitioners' rights, specifically due process rights. A Petitioner has a right to be heard and to have their side of the story presented in court. The Respondents' affidavit and trial testimony was conflicting, creating uncertainty about her claim.
30. That if the will is not part of the case and the Respondents' claim is not supported by other evidence, Judge Dougherty did not have a valid basis for selling Smiths' property. In essence, Judge Dougherty could not act based on the Respondents' potentially false or misleading information. The Petitioners' should have had an opportunity to present evidence to counter the Respondents' claim and protect their property rights.
31. That the Nebraska Supreme Courts' opinions and directions from May 27, 2022 writes: -642- The real controversy in this case is the issue of title, and the partition is incidental to the issue of title. **"If Barbara does not succeed in establishing her title, she has no right to partition."** With this finding the Nebraska Supreme Court reversed Judge Dougherty's Summary Judgment Order and sent the matter back to the District Court for trial with directions to have the Respondent establish ownership to title. (See): Exhibit 4 Nebraska Supreme Court May 27, 2022
32. That during trial dates April 10th, 11th, and May of 2023 Judge Dougherty disregarded the Nebraska High Court's directions to verify the Respondents' alleged will as well as disregarding consideration of perjury charges against the Respondent under Neb. Rev. Stat. 26-915(1) which writes: "A person is guilty of perjury if, in any official proceeding

he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true.”

33. That at trial the Respondent could not establish ownership to title because the will proved non-existent. Meaning that Judge Dougherty could not sell Smith’s real estate property if a fraudulent lawsuit claiming ownership of part of the Petitioners’ property is based on a non-existent will. The Court could not partition Smith’s property because there is no legal basis to establish co-ownership, meaning the Respondent has no ownership interest to partition.
34. That Judge Dougherty’s seizing Smith’s real property without a legal basis constitutes a deprivation of Smith’s rights. Judge Dougherty’s actions in selling Smith’s property was not justified by a valid legal basis.
35. That without the alleged will, there was no legal basis for the Respondent to establish co-ownership and therefore Judge Dougherty could not unilaterally seize the Petitioners’ property. Judge Dougherty’s actions under color of law deprived the Petitioners’ of their rights, including property rights which violated federal civil rights statutes Title 18 U.S.C. § 242 Deprivation of Rights Under Color of Law.
36. That Judge Dougherty’s vacating the Petitioners’ from their rightfully owned real estate property under Nebraska’s Residential Landlord and Tenant Act is a deprivation of the Petitioners’ rights, as it violates the fundamental right to ownership and possession of the owners property.
37. That the Landlord-Tenant Act does not extend to situations where the owner is also considered the tenant. These sorts of evictions are a deprivation of rights because within legal limitations, property ownership grants the owner the right to possess and use their property as they see fit and evicting an owner from their own property undermines this fundamental right.
38. That in short, Judge Dougherty couldn’t evict Smith from a property rightfully owned by Smith with the use of the Landlord-Tenant Act because this violates the owner’s fundamental right to ownership and possession.
39. That Judge Dougherty’s violating Smith’s fundamental rights were done under color of law or legal authority and therefore a deprivation of Smith’s rights under 18 U.S.C. § 242. This law makes it a crime for anyone acting pretense of law, including “state actors,” to

intentionally or willfully deprive a person of rights, privileges, or immunities protected by the Constitution of the United States.

40. That as in this case, willful deprivation required Judge Dougherty, Matthew Saathoff and James E. Reisinger to have acted with a conscious intent to violate the owners rights and not just negligence or by mistake. Under 18 U.S.C. § 241 Conspiracy Against Rights and 18 U.S.C. 242 Deprivation of Rights Under Color of Law, willful deprivation is present in this case.
41. That while a judge may have to make decisions related to property disputes, including those involving fraud, the ultimate outcome should uphold the rightful owner's rights. Judge Dougherty's duty had been to ensure justice, and that includes protecting property rights from fraudulent claims. To determine the rightful owner and issue a decision that reflect the true ownership, even if it means overturning a fraudulent transaction.
42. That in this case, in violation of 18 U.S.C. § 241 trial errors made by Judge Dougherty demonstrated bias and racial prejudice against Petitioner Smith. Willfully depriving Smith and Petitioner Prosolow of their constitutional or statutory rights by Ordering an invalid Writ of Restitution and obtaining Smith's real estate property through fraudulent means, under Nebraska's Residential Landlord and Tenant Act or Forcible Entry and Detainer.
43. That somewhere around August 5th, 2024 Judge Dougherty signed an Order to enforce an invalid Writ of Restitution and Ordered Douglas County Clerk Crystal Rhoades to prepare this legal document on August 11, 2024. On October 21, 2024 this Order carried with it serious consequences for the Petitioners' as this invalid Writ of Restitution was used to effectively vacate the Petitioners' from their real estate property.
44. That the Court's vacating an owner from their own property under a Landlord and Tenant Act is considered a deprivation of rights, as it violates the fundamental right to ownership and possession of the owner's property.
45. That the Landlord-Tenant Act does not extend to situations where the owner is also considered the tenant. These sorts of evictions are a deprivation of rights because within legal limitations, property ownership grants the owner the right to possess and use their property as they see fit and evicting an owner from their own property undermines this fundamental right.
46. That in short, a judge cannot evict an owner of their solely owned property under the Landlord-Tenant Act because it violates the owner's fundamental right to ownership and

possession. (See): Exhibit 12 Notice to Vacate & Writ of Restitution

47. That in potential violations of Title 18 U. S. Code Section 242 Deprivation of Rights Under Color of Law, Judge Dougherty demonstrated bias and prejudice against the Petitioners while willfully depriving Petitioners' of constitutional or statutory rights by holding the rightful owner's real estate property belonging to Petitioner Smith that was obtained through fraud.
48. That while a judge may have to make decisions related to property disputes, including those involving fraud, the ultimate outcome should uphold the rightful owner's rights. A judge's duty is to ensure justice, and that includes protecting property rights from fraudulent claims. A judge's role in such cases is to determine the rightful owner and issue a decision that reflects the true ownership, even if it means overturning a fraudulent transaction.
49. That Judge Dougherty showed bias and prejudice when violating the Petitioners' bundle of rights constituting a deprivation of the Petitioners' rights and infringing upon the Petitioners individual privileges and control over his property including: Right of Possession, Right of Control, Right of Exclusion, Right of enjoyment and Right of disposition, which is the right to sell, lease or otherwise transfer ownership of the property.
50. That in Smith's emergency effort to prevent Judge Dougherty's invalid Writ of Restitution from taking effect. Sometime in October of 2024 Smith filed a quitclaim deed in the Douglas County, NE Register of deeds office registering the property in his brother Willie Smith's name.
51. That on October 21, 2024, Smith removed this case from state jurisdiction to federal jurisdiction and although the state was required to immediately halt its involvement in this matter. Just as Judge Dougherty had disregarded the Nebraska Supreme Court directions to have the Respondent establish her ownership to title, here too Judge Dougherty disregarded the proper procedures of jurisdiction. Outside if the states jurisdiction Judge Dougherty had not only vacated the Petitioners' one hour after the state lost jurisdiction but on December 12th, 2024 at 2:01PM Judge Dougherty signed an Order Striking Smith's Quitclaim Deed. (See): Exhibit 14 Order Striking Quitclaim Deed
52. That once again Judge Dougherty acted under color of law to deprive Smith as the property's rightful owner from disposing of his property as the owner sees fit. A judge

blocking an owner from giving their property to a family member is a deprivation of the owner's property rights, potentially violating the Fifth and Fourteenth Amendments of the U.S. Constitution. These amendments guarantee the right to own property and protect against being deprived of property without due process of law. The U.S. Constitution recognizes and protects property rights and property owners generally have the right to use, enjoy, and dispose of their property as they see fit.

53. That deprivation occurs when people are unjustifiably deprived of property rights making it impossible for them to exercise their ownership privileges. By knowingly Ordering an invalid Writ of Restitution obtaining the Petitioners' real property through fraud, Judge Dougherty encroached upon Petitioner Smith's individual rights and deprived the Petitioners of ownership. (See): Exhibit 12 Notice to Vacate & Writ of Restitution

54. That in this case the Respondent, her daughter Elizabeth Humphrey ("Elizabeth"), and son-in-law Joseph Hendricks ("Joe"), conspired to commit real estate fraud and filed an invalid Affidavit for Transfer of Real Property without Probate that was not legally binding to further their cause.

55. That on this Affidavit, in violation of Neb. Rev. Stat. § 30-24,129 (a)(8) the conspirators included false statements that claimed an entitlement to 50% of Petitioner Smith's real property. Additionally, while the Affidavit only listed Respondent Barbara Humphrey as being responsible for filing the invalid Affidavit, Court Transcript of Proceedings records from **July 16, 2020** find counsel for the Respondent Matthew Saathoff admitting co-conspirator Elizabeth filed the Affidavit and stated as follows:

6:19-21 Matthew Saathoff: At this point in time, I would offer my affidavit, which is the Affidavit of Elizabeth Humphrey's, as Exhibit 1 in this matter.

8:18-20 Matthew Saathoff: Furthermore, she's not even a resident of the state of Nebraska. Pursuant to her affidavit, she's a resident of Texas.

(See): Exhibit 7 Excerpts from Transcript of Proceedings from July 16, 2020

56. That during the trial dates of April 10th through May 23, 2023, on April 21, 2023 the counsels for the Petitioners' abruptly withdrew. During this withdrawal Judge Dougherty showed bias and prejudice against the Petitioners', with sarcastic gestures and dismissive tone signaling sarcasm when abruptly rescheduling the trials conclusion date in a manner that deprived the Petitioners' of due process and a fair trial.

57. That on April 11, 2023 Judge Dougherty originally set October 3rd, 2023 as the date of

the trials conclusion as follows:

508:7-13 The Court: And that we agreed we'll begin cross with the Plaintiff on this witness at our next time of trial, which unfortunately is going to be several days two months down the road. So we need another day. So it's right now scheduled for October 3rd. The Court will always keep its mind open to move it up if we get an opportunity to do so.

Please note: the October 3rd date was six months from the initial April 11th, 2023 date. However, during the counsels for the Petitioners' April 21st, 2023 withdrawal, Judge Dougherty unfairly moved the trials conclusion date forward by five months as follows:

516:8-15 The Court: And then, Mr. Smith, I'm going to inform you—and I'll ask counsel for your last task, if you would, please, would you send an email, or however you're contacting Ms. Prosolow, and advise her that you have withdrawn, that I've approved it, I guess is what I'm getting at. And would you advise her that our new trial date is going to be the 23rd day of May. We have the whole day at 9:00.

516:21-25; 517:1 The Court: Tell her it's the 23rd of May at 9:00. We have the whole day and we're going to try it whether you have a lawyer or not. So hopefully you do for your benefit, but that's up to you. So we're going to go ahead and try it on that day and get this concluded.

517:18-19 The Court: All right. Mr. Smith, what would you like to tell me?

517:20-21 Petitioner Smith: Your Honor, I consider the May 23rd date as rushing this case. (See): Exhibit 2 Excerpts from April 10th, 11th 21st, and May 23, 2023 Trial

It is important to note: That Judge Dougherty had been an attorney before becoming a Judge. And he'd understood that no attorney would accept a five year old case that had already been before the Nebraska Supreme Court, sent back to District for trial with directions, and presently in the middle of the trial process. Judge Dougherty had known that no attorney would take such a case with only a month to prepare.

58. That additionally, Judge Dougherty placed unreasonable time limits on the Petitioners' time to offer evidence and render cross-examination. Judge Dougherty was fully aware that his rushing to conclude the trial in one month would only allow the Petitioners' one month of rushed free time before concluding the trial, and that his actions would deprive the Petitioners' of due process as well as a fair trial while benefiting the Respondent..

59. That a judge's not allowing a Petitioner efficient time to defend a case is a deprivation of rights, particularly violating the Fourteenth Amendments guarantee of due process. The Sixth Amendment also guarantees the right to counsel including effective assistance of counsel. The Fourteenth Amendment guarantees due process of law, meaning the government must act fairly and justly towards individuals. A judge's not allowing a defendant sufficient time to prepare a defense is seen as an unfair, unjust act violating due process.
60. That a judge's actions can be considered a deprivation of rights if they interfere with the defendant's ability to effectively defend themselves. This includes restricting their access to counsel, or preventing them from presenting a full and fair defense. Judge Dougherty's allowing the Petitioners' inefficient time to defend their case was in violation of 18 U.S.C. 242 Deprivation of Rights Under Color of Law.
61. That in violation of Neb. Rev. Stat. § 30-24,129 (a)(8) this case began on September 26, 2018 with the attorney for the Respondent Nebraska attorney John C. Chatelain #15925 filing an invalid Real Estate Transfer Statement along with an invalid Affidavit containing false statements. Both of these filings failed to meet legal requirements and therefore could not be used in court.
62. That line 5 under this affidavit had claimed: "I am entitled to the real property per the will of the deceased and I have made an investigation and have been unable to determine any subsequent will..." This had been a false statement leaving the affidavit non-binding. Trial evidence from May 23rd, 2023 found the Respondents' testimonials contradicting this initial false claim as follows:
- 656:12 Respondent: Your property is not in the will.
- 656:14 Respondent: That's correct. We don't want it in the will.
- 659:15 Respondent: That house is not in the will.
- (See): Exhibit 2 Excerpts from April 10th, 11th 21st, and May 23, 2023 Trial
63. That although Judge Dougherty could not sell the Petitioners' real estate property if the Respondents' claimed the Petitioners' property was left to her in a will but then testified at trial that the property was not included in the will. That based on that testimony Judge Dougherty could not sell Smith's property as the Respondents' testimony had contradicted her initial claim and demonstrated that she has no legal right to the property under the will.

64. That with the illegal usage of Nebraska's Residential Landlord and Tenant Act and Forcible Entry and Detainer. Under color of law Judge Dougherty Ordered Smith's real estate property sold anyway. The law prohibits a Judge from forcing an owner to vacate from their own property under a Landlord and Tenant Act because it's considered a deprivation of the owners rights and violates the fundamental rights to ownership and possession of the owners property as the Landlord-Tenant Act does not extend to situations where the owner is also considered the tenant.
65. That the Respondents' claim was fraudulent and violated Neb. Rev. Stat. § 30-24,129 (a)(8) which writes: "the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material."
66. That although State Supreme Court decisions are binding on lower courts, including District Courts. On May 27, 2022 the Nebraska Supreme Court reversed Judge Dougherty's erred Order on Respondent's Motion for Summary Judgment and sent the case back to District Court with directions to have the Respondent establish her title or she had no rights to a partition. However, Judge Dougherty disregarded the Supreme Court's directions that were written as follows:
- 642- The real controversy in this case is the issue of title, and the partition is incidental to the issue of title. "If Barbara does not succeed in establishing her title, she has no right to partition." (See): Exhibit 4 Nebraska Supreme Court May 27, 2022
67. That during trial on May 23, 2023 Matthew Saathoff, the counsel for the Respondent, questioned Petitioner Smith concerning his relationship with Petitioner Prosolow. At some point Petitioner Smith turned to Judge Dougherty and made the statement "Your Honor, the Nebraska Supreme Court did not send us here to have our privacy invaded, it sent us here to have Ms. Humphrey establish her ownership to title or she'd had no right to a partition. At which point Judge Dougherty made the sarcastic remark "they're down there I'm up here." Referencing the Nebraska Supreme Court's being down in Lincoln, NE and himself being up in Omaha, NE.
68. That unless Smith has repeatedly overlooked Judge Dougherty's sarcastic remark in the trials transcripts, it is possible that **Court Reporter Victoria Retzlaff** intentionally and illegally deleted these verbal exchanges from the Court's Trial Records.
69. That U.S. Law states that if a court reporter tampers with trial records, it's a serious offense with potentially severe consequences. Falsifying court records or transcripts can

lead to the court reporter losing their certification. Human transcription services offer 99%+ accuracy, confidentiality and ability to certify transcripts for court admissibility and tampering with court records is a serious crime under 18 U.S.C. § 1506, which addresses theft, alteration, or falsification of court records.

70. That it was a deprivation of Petitioner Smith's bundle of rights for Judge Dougherty to use the Residential Landlord and Tenant Act to evict this owner from his own property because Smith was not acting as a tenant. In this case Judge Dougherty willfully used Nebraska's Residential Landlord and Tenant Act and Forcible Entry and Detainer to force Petitioners' Smith and Prosolow to vacate their rightfully owned property.
(See): Exhibit 12 Notice to Vacate & Writ of Restitution

71. That, the Residential Landlord and Tenant Act is not designed to evict property owners from their own property and does not apply to this case. An owner's right to possess and control their own property is a fundamental right, distinct from a tenant's right to occupy a rental unit. By Smith not acting as a tenant, there was no landlord-tenant relationship and the Residential Landlord and Tenant Act did not apply to this case. Using this Act to evict Smith who was not acting as a tenant, was a deprivation of Petitioner Smith's rights.

72. That in potential violations of 18 U.S.C. 242 Deprivation of Rights Under Color of Law, Judge Dougherty showed bias and prejudice while depriving the Petitioners' of constitutional, civil and statutory rights to due process and a fair trial.

73. That during trial dates of April 10th, April 11th and May 23rd 2023, Judge Dougherty disregarded the Nebraska Supreme Court's directions to have the Respondent establish her title to the property. In a direct violation of the 14th Amendments due process clause and therefore a deprivation of the Petitioners' constitutional rights. Judge Dougherty never required the Respondent to present verifiable proof of her initially alleged will, or proof that this will ever existed or included the Petitioners real property.

74. That in this case, Judge Dougherty appears to have conspired with Matthew Saathoff and James E. Reisinger to commit the crime of real estate fraud and obstructed justice by interfering with the proper functioning of this case. This conspiracy took the forms of intentional witness tampering, disregarding the Nebraska Supreme Court's directions and other forms of intent to obstruct and impede the administration of justice.

75. That CASE NO. 8:24CV411 has come before this United States Court for reasons of proving violations of the Petitioners' Civil and Constitutional Rights resulting in the lost

of Petitioner Smith's real estate property known as:

**Lot 16, Dillons 11th addition, an addition to the City of Omaha, as surveyed,
Platted and recorded in Douglas County, Nebraska 97205 North Ridge Drive,
Omaha, Nebraska 68112-2522)**

76. That in potential violations of 18 U.S.C. 242 Deprivation of Rights Under Color of Law, Judge Dougherty deprived the Petitioners' of constitutional or statutory rights by disregarding the Respondent's May 23, 2023 trial testimonials where the Respondent, testified that the Petitioners real estate property was not in the deceased person's will as initially claimed and testified:

656:12 Respondent: Your property is not in the will.

656:14 Respondent: That's correct. We don't want it in the will.

659:15 Respondent: That house was not in the will.

(See) Exhibit 1 Affidavit for Transfer of Real Property without Probate – Sept 26, 2018

(See): Exhibit 2 Excerpts from April 10th, 11th and May 23, 2023 Trial

Worthy of note: Judge Dougherty's disregarding this testimony significantly altered the outcome of this case, proving deprivation and potentially constituting judicial misconduct. Denial of due process and denying the Petitioners rights to a fair trial and just outcome.

77. That a fair trial requires that all relevant evidence be considered, and ignoring key testimony is a deprivation of rights because it undermines the entire process. Here, a fair trial had been out of the question because Judge Dougherty completely ignored and did not take the Respondent's testimonials into consideration and these actions deprived the Petitioners' of due process, a fair trial and altered the outcome of this case.
78. That Judge Dougherty's disregarding critical evidence appeared to have been based on his personal bias or prejudice in the commission of a crime. This was a form of judicial misconduct and based on the Hate Crime Statistics Act of 1990 the FBI defines bias and prejudice based on race to commit a crime constitutes a hate crime.
79. That ignoring testimony that could have a material impact on the case is a deprivation of rights because it can lead to an unfair or unjust result for the parties involved
80. That although due process tolerates variances in procedure appropriate to the nature of a case, it's possible to identify its core goals and requirements. First, procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.

81. That in this case, the burden of proof rests upon the Respondent's claiming inheritance from a will, the Respondent would need to provide substantial proof that the property was included in the will.
82. That Judge Dougherty cannot sell Smith's real property if the Respondent claimed the Petitioners' real estate property was left to her in a will but then testifies at trial that the real estate property was not included in the will; based on this the Respondent's testimony contradicts her initial claim and demonstrates that she has no legal right to the property under the will.
83. That it constitutes a deprivation of the Petitioners' property rights if a Respondent falsely claim on an affidavit that the Petitioner's property is listed in a will, and then contradicts this claim at trial and the judge still orders the property sold.
84. That, an invalid Writ of Restitution was Ordered by Judge Dougherty to force the sell of Smith's real estate property and sealed by said Court and signed by said Court's Clerk Crystal Rhoades on October 11th, 2024...
85. That on October 21, 2024 the Petitioners removed the case from state to federal jurisdiction, but on December 17, 2024, being outside of the states jurisdiction the Court sent emails to the involved parties confirming the sale of Smith's property, including the Court's Order Confirming Report of Referee and Directing Sale stamped on 12/13/2024.
(See): Exhibit 12 Notice to Vacate & Writ of Restitution
(See): Exhibit 11 Order Confirming Report of Referee and Directing Sale
86. That the following scenarios constitutes a deprivation of the Petitioners' property rights and potentially violate the Petitioners' due process rights.
87. That despite the will being absent from the case Judge Dougherty ordered the sell of Petitioner Smith's property, and the Respondents' initial claim to ownership, infringed upon the Petitioners' right to own and control his own property.
88. That the Petitioners' ownership of the property is a fundamental property right, protected by both the U.S. Constitution and State Laws. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee due process, ensuring that individuals are not deprived of life, liberty, or property, without a fair legal process. Meaning that in this case Judge Dougherty should have provided the Petitioners' with a fair hearing and an opportunity to be heard before taking away the Petitioners' real estate property. Therefore, Judge Dougherty deprived the Petitioners' of these guaranteed rights.

89. That the Respondent's affidavit claiming a will had been a statement of belief, not proof. A will's validity and its effect on property ownership must be established with proper evidence (like the will itself). **Without such evidence, the Petitioners' claim of ownership remains unchallenged.**
90. That Judge Dougherty's role had been to apply the law to the evidence presented. If the will was not part of the evidence, Judge Dougherty could not reasonably order Smith to sell his property based on the affidavit alone.
91. That the Petitioners' should have had opportunities to present evidence supporting ownership, including any relevant documentation (like the will) to the court. Without this opportunity, the court's order to sell the property is a violation of due process. In this case, on April 21, 2023 Judge Dougherty intentionally and willfully placed time limits on the Petitioners while knowing that his actions would deprive the Petitioners' of due process, a fair trial and a just outcome. Allowing the Petitioners' 30 days to find an attorney and one day to conclude the trial which provided the Respondent with an unfair advantage.
92. That during trial dates April 10th, 11th, 21st, and May 23rd, 2023, Trial Transcripts show no evidence of Judge Dougherty requiring the Respondent to establish her ownership to title. The Nebraska Supreme Court's May 27, 2022 directions had written:
-642- "If Barbara does not succeed in establishing her title, she has no right to partition." (See): Exhibit 4 Nebraska Supreme Court May 27, 2022
93. That during trial, Judge Dougherty disregarded the Nebraska High Court's directions to have the Respondent to establish her ownership to the property's title and showed bias and prejudice against the Petitioners while willfully depriving the Petitioners' of their constitutional or statutory rights, while disregarding the Respondent's trial testimonials from April 10, 2023 as follows:
241:16-17 attorney Darnetta Sanders: Okay. Have you presented the will as part of this case?
241:18 Respondent: No.
(See): Exhibit 2 Excerpts from April 10th, 11th, 21st, and May 23rd, 2023 trial
Please note: Judge Dougherty's disregarding the Respondent's testimony significantly altered the outcome of the trial by depriving the Petitioner's rights to due process, a fair trial and a just outcome while constituting judicial misconduct.

94. That Judge Dougherty could not force the sell of Smith's real estate property if the Respondent claimed the property was included in a will that is not actually part of the case itself. The matter should not have been brought before the court in the first place and would be considered a false claim. A will needs to be submitted to the court to be considered valid in a probate proceeding; if the alleged will is not part of the case, it cannot be used to claim ownership of the Petitioners' property.
95. That in potential violations of 18 U.S.C. 241 Conspiracy Against Rights, Judge Dougherty, Matthew P. Saathoff and James E. Reisinger demonstrated bias and prejudice in the commission of a crime under color of law. What's important is that the Petitioners' prove the existence of a conspiracy with intent.
96. That some civil rights laws like 42 U.S.C. § 1983, require that a "state actor" or (government official) be involved in the conspiracy to prove a Section 241 violation, the prosecution needs to demonstrate: An agreement between two or more persons. An intent to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of a constitutional right. That the defendant's acted in furtherance of the conspiracy.
97. That in this case, evidence proving an agreement is present, proving an intent to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of a constitutional right is present, and proving the defendant's acted in furtherance of the conspiracy as well as the overt act itself is present.
98. That 18 U.S.C. 241 specifically prohibits conspiracies to interfere with constitutional rights, and proving a violation requires demonstrating the agreement, intent, and acts in furtherance of the conspiracy. In this case, the agreement, intent, and acts in furtherance resulted in the conspirators successfully committing a White Collar Government Real Estate scam resulting in the lost of Smith's real estate property.
99. That the Petitioners' intend to establish Matthew Saathoff's recruitment of Judge Dougherty (a state employee), to act under color of law in assisting him with tampering with witnesses Elizabeth Humphrey and Joe Hendricks significantly altering the outcome of this case.
100. That the Petitioners' intend to establish Matthew Saathoff's recruitment of James E. Reisinger to be assigned by Judge Dougherty to act under color of law (as a state actor), while performing the duties of the referee responsible for illegally carrying out the sale of Smith's real estate property.

101. That the Petitioners' intend to show evidence proving Judge Dougherty authorized Matthew Saathoff to draft the Court's Bench Trial Order that was used by the court to order its invalid Writ of Restitution against the Petitioners', and that with this authority Matthew Saathoff is acting under color of law as a (state actor).
102. That the Court's involvement in this process is what positioned Matthew Saathoff as a state actor. Judge Dougherty was directly involved in the decision to allow Mr. Saathoff to draft the Bench Trial Order used by Judge Dougherty to issue the invalid Writ of Restitution under the non applicable Residential Landlord and Tenant Act or Forcible Entry and Detainer and this makes Matthew Saathoff's actions directly linked to the State's actions against the Petitioner's rights as the owner.
(See): Exhibit 8 Excerpts from Bench Trial Order
(See): Exhibit 12 Notice to Vacate & Writ of Restitution
103. That the Writ of Restitution is a legal order issued by the state and Matthew Saathoff's drafting this legal document is facilitating the execution of Nebraska's State's Power. This process started with Judge Dougherty's allowing, and Matthew Saathoff's drafting the Bench Trial Order, which both are considered official acts of the Court and the state of Nebraska.
104. That the status of a "state actor" comes with legal implications, as a state actor can be crucial in civil rights lawsuits. Therefore, if Matthew Saathoff's actions were to violate the Petitioners' constitutional rights, the State of Nebraska could be held liable. Mr. Saathoff's actions also fall under scrutiny of due process requirements, as the issuance of the Writ of Restitution could impact the Petitioners' property and other rights. Evidence will show proof of Matthew Saathoff's misinterpretations of Neb. Rev. Stat. 30-24,129
105. That the key is Judge Dougherty's involvement, (the Court), and Matthew Saathoff's role in facilitating the Court's actions. Because without Judge Dougherty's allowance and his ultimate authority over this process, Mr. Saathoff's role would not necessarily be considered State action. In essence, Matthew Saathoff is a state actor and acting under color of law because he is acting at the direction of Judge Dougherty and his actions are directly linked to the state's authority to issue the Writ of Restitution.
106. That on behalf of the State of Nebraska, Judge Dougherty appointed attorney James E. Reisinger to the position of acting as a state actor. Mr. Reisinger's role was to illegally vacate the Petitioners' from their real estate property, plaster no trespassing signs on the

property and illegally sell the property by using the invalid Writ of Restitution. James E. Reisinger's actions are also directly linked to the State of Nebraska's authority.

107. That James E. Reisinger and Judge Dougherty placed others under color of law, authorized to perform duties of "state actors" including the Douglas County, NE Sherriff's Department, Sherriff's Deputy Peter Coffey, and a locksmith company carried out the states order to vacate the Petitioners' before locking the premises. RE/MAX Realty Co and its agent Michael Lewis were authorized as state actors acting under color of law to sell the Petitioners' real property. Through Judge Dougherty, all of these state actors are directly linked to the State of Nebraska's authority as is bailiff Karen Knapp and Court reporter Victoria Retzlaff.

Witness Tampering:

108. That an agreement between two or more persons being "state actors" or (government officials) must be involved in the conspiracy to prove a 18 U.S.C. 241 violations. Elizabeth and Joe are co-conspirators and key witnesses with knowledge of this case and the Respondents' Answers to Defendants' Interrogatories dated June 20, 2019 proved the importance of these witnesses as they were listed as having said knowledge of this case.
(See): Exhibit 9 Plaintiff's Answers to Defendants' Interrogatories
109. That since Elizabeth and Joe resides in Texas, whenever they'd visited Omaha they'd stayed at the Respondent's residence. Meaning, that whenever these witnesses were in Omaha, NE the Respondent would have knowledge of their visits. However, state actor and counsel for the Respondent, Matthew Saathoff had issues with the arrangements of these witnesses and sought to keep Elizabeth and Joe from contradicting his client at trial.
110. That as the Respondent increasingly struggled with contradicting herself she'd admitted that the Petitioners real estate property had not been in the will as initially claimed on her Affidavit. The Respondent had also pretended not to know that her daughter Elizabeth was responsible for creating the forged amortization schedule used to file her mother's lawsuit.
111. However, in an email exchange between Matthew Saathoff and Nebraska attorney Kevin O'Keefe and dated August 21, 2019 Mr. O'Keefe spoke of Elizabeth's creating the amortization schedule as follows: "I know you didn't prepare the discovery responses. I'm still trying to talk my client off his range. Section1 of this attached was not in your discovery documents. Instead the Amortization schedule your client made was attached.

My client is under the impression this is a scheme to pass off the amortization schedule dated 10/5/2018 as a document he made. In an effort to deceive the Court.”

(See): Exhibit 10 Email We are your shield

112. That this offers evidence of the importance of Elizabeth and Joe as witnesses. And in showing the depth of Matthew Saathoff and Judge Dougherty’s success in tampering with these witnesses, three years before this case had gone to trial on April 10th, 11th and May 23, 2023.

113. That on July 16th 2020 Matthew Saathoff had already informed Judge Dougherty of not wanting Elizabeth to testify at trial. Even though Elizabeth had been responsible for filing the fraudulent affidavit and not the her mother, the Respondent.

114. That proof of this can be found in the Court’s July 16, 2020 Transcript of Proceeding records where Judge Dougherty stated as follows:

7:22-24 The Court: It’s offered in support of his motion that he doesn’t want Elizabeth to testify, that’s correct.

115. That during this same hearing Matthew Saathoff unconsciously disclosed to the Court that Elizabeth had been responsible for filing the Respondent’s invalid affidavit:

6:19-21 Matthew Saathoff: At this point in time, I would offer my affidavit, which is the Affidavit of Elizabeth Humphreys, as Exhibit 1 in this matter.

8:18-20 Matthew Saathoff: Furthermore, she’s not even a resident of the state of Nebraska. Pursuant to her affidavit, she is a resident of Texas.

(See): Exhibit 7 Excerpts from Transcript of Proceedings from July 16, 2020

116. That the Respondents’ having been ignorant to Matthew Saathoff’s aiding and abetting his client by tampering with witnesses to assist Elizabeth and Joe to avoid contradicting the Respondent at trial. Petitioner Smith’s trial questions centered on whether Elizabeth’s voice could be heard on a recording that Joe offered to the Court as evidence.

117. That on March 9th, 2023 state actor and counsel for the Respondent Matthew Saathoff filed a Motion to Determine Witness Unavailable & To Allow Testimony Virtually.

118. That as soon as five days later on March 14th, 2023 Judge Dougherty rushed to Order on this Motion to Determine Witness Unavailable & To Allow Testimony Virtually.

(See): Exhibit 13 Motion To Determine Witness Unavailable & To Allow Testimony Virtually

(See): Exhibit 15 Order on Witness Unavailable & To Allow Testimony Virtually

119. That on May 23, 2023 the Respondent accidentally testified that Elizabeth and Joe were supposed to be there at the trial and the following offers evidence of these two witnesses having been in Omaha, NE on the dates of trial but did not attend the trial.

743:17 Respondent: She was there.

743:18 Petitioner: Was Joe Hendrix saying anything much?

743:19-21 Respondent: He was there too. As a matter of fact, they were supposed to be here to testify. They were both there.

(See): Exhibit 2 Excerpts from April 10th, 11th, 21st, and May 23rd, 2023 trial

120. That this evidence prove an agreement between Judge Dougherty and Matthew Saathoff did exist to conspire and tamper with these witnesses. Without the Respondent's knowledge, approximately a month before the trial began. On March 9th, 2023 Matthew Saathoff had filed this Motion to Determine Witness Unavailable & To allow Testimony Virtually with the District Court's Clerk's Office falsely claiming that Joe had brain injuries and that both Joe and Elizabeth had been in California and wouldn't be able to fly back in time to testify.

121. That on March 14, 2023 Judge Dougherty had granted an Order in favor of this Motion and yet, here at trial the Respondent unconsciously testified that these witnesses were supposed to be here at trial.

743:19-21 Respondent: He was there too. As a matter of fact, they were supposed to be here to testify. They were both there.

(See): Exhibit 2 Excerpts from April 10th, 11th, 21st, and May 23rd, 2023 trial

122. That for proving a conspiracy existed between Judge Dougherty and state actor Matthew Saathoff, on July 16, 2020 Judge Dougherty had stated for the records that Matthew Saathoff did not want Elizabeth to testify. Thirty days before the trials beginning on April 10th 2023; on March 9th, 2023 Matthew Saathoff filed a Motion to Determine Witness Unavailable & To allow Testimony Virtually. Again, Mr. Saathoff had filed this Motion without the Respondent's knowledge. Then five days after Matthew Saathoff filed this Motion, on March 14th, 2023 Judge Dougherty Ordered in favor of this Motion.

123. That the Respondent had no idea that she wasn't suppose to testify in a manner that disclosed Elizabeth and Joe were in Omaha during the trial dates and therefore testified "as a matter of fact, they were supposed to be here to testify." This prove a conspiracy was in place between Judge Dougherty and Matthew Saathoff for a common cause and for the

records, neither Elizabeth nor Joe testified in person nor virtually.

124. That in violation of 18 U.S.C. § 241 Conspiracy Against Rights, Judge Dougherty and state actor Matthew Saathoff acted under color of law with intent to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of a constitutional right was present.

125. That in violation of 18 U.S.C. § 242 Deprivation of Rights Under Color of Law is present. That the defendant's acted in furtherance of the conspiracy as the furtherance in this matter is undeniable as these crimes of real estate fraud led to the lost of the Petitioners' property.

It is important to note: that this is the same State actor Matthew Saathoff given state authority by Judge Dougherty to draft the Court's Bench Trial Order that led to the state's issuance of an invalid Writ of Restitution against the Petitioners' under Nebraska's Residential Landlord and Tenant Act and Forcible Entry and Detainer Act where neither of these laws applied to rightful owner being evicted from his own property as a tenant..

126. That although it'd been September 26, 2018 when the Respondent first filed the invalid Affidavit for Transfer of Real Property without Probate falsely claiming "I am entitled to the real property per the will of the deceased and I have made an investigation and have been unable to determine any subsequent will." As far back as June or July of 2019 state actor Matthew Saathoff had known about the Respondent's absent will being non-existent and Mr. Saathoff had also shared this information with Nicole Seckman Jilek with the Abrahams, Kaslow & Cassman Law Firm.

127. That approximately one year afterwards, Matthew Saathoff disclosed this information to Nicole, Nicole shared this information with the Petitioners. The following are verbal exchanges between Nicole and Petitioner Smith as follows:

Just so you know. We, even when I talked to Barbara's attorney this week, no one has found a signed will for Don. So one of the things I addressed in the auh, tentative agreement - - that I sent to you for your review. Is having Barbara do - - do a new Affidavit transferring title from Don to her - - cause in the original Affidavit she says he has a will and she gets whatever is under the will while they have not found a signed will yet. They have an unsigned copy but that's not enforceable under Nebraska Law. So there is no will.

Well her attorney say's - - and auh - - I can only tell you what I know - - from the

communications I had and - - cause one day I went over to her attorney's office cause I wanted to review it. They have a copy of - - auh-auh document but no but no signature on it which is not enforceable. So it's a will, that someone drafted for Don, but it doesn't - - Don doesn't - - doesn't have his signature on it. And - they don't even have - - so - - in Nebraska when you do Probate a will, you're suppose to Probate the original, with the original signature on it. There're exceptions, that you can sometimes - - auh - - for certain reasons, Probate a copy, if you claim that the original was lost. They don't even have a copy of the signed - - will.

So, if - - and like I said, **I did double check that this week when I called to give Barbara's attorney an update,** let him know that we've put the documents together - - auh - - we're reviewing, after we're done reviewing we'd send them to him. **But, I asked him - - again - - that - - if they had located a signed - - either original or copy of Don's will, he said no.**

(See) Exhibit 3 Nicole and Ed Recording January 14, 2020 (This recording is available).

Please Note: This is the same Matthew Saathoff who drafted the Court's Bench Trial Order that lead to the Court's invalid Writ of Restitution against the Petitioners'. Matthew Saathoff had been knowledgeable of this alleged will being non-existent in early 2019 and yet, his aiding and abetting continuously furthered this case. This offers convincing evidence of why Judge Dougherty disregarded the Nebraska Supreme Court's directions to have the Respondent establish title. Disregarded the Respondents' trial testimonials admitting the will wasn't a part of the case and that the Petitioners' property wasn't in the will, and his decision to not be willing to consider the will at trial, even though the will had been the sole reason for the trial. It appears Judge Dougherty made a decision to aid and abet Matthew Saathoff with aiding and abetting his client(s). The Bench Trial Order was a criminal action performed under color of law.

128. That in its review of this case, the Nebraska Supreme Court studied the three classes of Peterson v Damoude and applied the third class to this case where everything depended on the title and wrote:

-641- On appeal, we determined that the case came within the third Peterson class,

because "[t]he decree settling the question of title in the case at bar 'determined the whole controversy.'"In making this determination, we recognized that the real controversy in the action was the issue of title and that a partition prayed for was

only incidental, because “[i]f the plaintiffs did not succeed in establishing their title, they would have no right to partition.”

-642- The real controversy in this case is the issue of title, and the partition is incidental to the issue of title. “If Barbara does not succeed in establishing her title, she has no right to partition.” With this finding the Nebraska Supreme Court reversed Judge Dougherty’s Summary Judgment Order and sent the matter back to the District Court for trial.

(See): Exhibit 4 Nebraska Supreme Court May 27, 2022

129. That during trial on April 10th, 2023 the Respondent testified that the will was not a part of the case.

241:16-17 Nebraska attorney Darnetta Sanders: Okay. Have you presented the will as part of this case.

241:18 Respondent: No.

(See): Exhibit 2 Excerpts from April 10th, 11th, 21st, and May 23rd, 2023 trial

130. That during trial on May 23rd, 2023 the Respondent testified the Petitioners’ real property was not in the will as initially claimed.

656:12 Respondent: Your property is not in the will.

656:14 Respondent: That’s correct. We don’t want it in the will.

659:15 Respondent: That house is not in the will.

131. That Judge Dougherty himself admitted that the Court did not have the will.

765:2-5 The Court: Overruled. The Court does not have a will though, sir, so the contents of the will are not going to be considered by the Court because I don’t have one.

(See): Exhibit 2 Excerpts from April 10th, 11th, 21st, and May 23rd, 2023 trial

So it is important to note: that four years before the trial had ever been necessary Matthew Saathoff has long before known of this absent will having been non-existent and orchestrated a conspiracy for personal financial gains.

132. That this is the same state actor Matthew Saathoff given state authority by Judge Dougherty to draft the Court’s Bench Trial Order that led to the state’s issuance of a fraudulent Writ of Restitution against the Petitioners’.

133. That during trial dates of April 10th, 11th, 21st and May 23, 2023 Judge Dougherty disregarded the Nebraska High Court’s directions to require the Respondent to establish

her ownership to the title.

134. That it is considered a deprivation of property rights if a judge disregards a Supreme Court's direction to have a Respondent establish title to a property as this would violate the Fourteenth Amendment's due process clause, which protects against the deprivation of property without due process of law.
135. That the Nebraska Supreme Court is the ultimate authority on constitutional matters in the state and its decisions are binding over the lower courts and this includes judges. The Fourteenth Amendment guarantees that no state shall deprive any person of property without due process of law. Meaning that Judge Dougherty could not take Petitioner Smith's property without following the proper legal procedures which evidence show the Judge did not follow.
136. That establishing title to a property is a fundamental aspect of property ownership and generally considered a protected property right. The Nebraska Supreme Court's directions to have the Respondent establish her title is a procedural requirement designed to protect this right. Therefore, Judge Dougherty's disregarding these directions was a violation of the due process clause, and effectively deprived the Petitioners' of their property rights without following the proper legal procedures outlined by the Nebraska Supreme Court.
137. That in this case, Judge Dougherty's refusal to follow the Nebraska Supreme Court's directions played a significant role in altering the outcome of this case, and offers evidence of deprivation that constitutes judicial misconduct as well as a denial of the Petitioners' rights to due process, a fair trial and their rights to a just outcome.
138. That based on a fraudulent lawsuit claiming part ownership through a non-existent will, Judge Dougherty could not partition Petitioner Smith's property because there is no legal basis to establish co-ownership, meaning the Respondent has no ownership interest to partition. A fair trial requires that all relevant evidence be considered and this includes verifying whether a claimed will actually exists. Petitioners' have a right to this relevant evidence and Judge Dougherty's inactions deprived the Petitioners' of this crucial evidence.
139. That for purposes of clarity, Matthew Saathoff's mannerisms are unmistakable. Mr. Saathoff discriminates through demonization and his defamations are exaggerated far beyond reality. This is what assures the Petitioner's of Mr. Saathoff's acting under color of law in drafting the Court's Bench Trial Order under the State of Nebraska's authority.

Examples of Matthew Saathoff's defamation through demonization:

140. That under 8:20-25 of the Court's Transcript of Proceedings from **July 16, 2020** Matthew Saathoff augurs: "She did not provide her address in there, because, if you read in the attached deposition testimony, Mr. Smith has had thoughts of violence against Elizabeth Smith - - or Elizabeth Humphrey. He actually saw and sought psychiatric help to help him control his anger and violence towards her.

(See): Exhibit 7 Excerpts from Transcript of Proceedings from July 16, 2020

141. That Mr. Saathoff failed to inform the Court of a critical fact that Petitioner Smith's deposition was taken in April of 2020; nearly two years after the Respondent and Elizabeth filed their fraudulent affidavit in 2018. Therefore, Elizabeth hadn't feared including her address at that early stage.

142. That in the Brief for the Appellee Barbara J. Humphrey filed on November 19, 2021 with the Nebraska Supreme Court / Court of Appeals as Case No. A-21-131 Mr. Saathoff along with assistant Katherine A. Rehan's made the argument **"Moreover, why would Smith be secretly recording someone who was dying and apparently thereafter forgave the loan?"**

Please Note: this had also been a defamation of Petitioner Smith's character but shows an unethical attorney who's respect for the higher authority was none-existent. A Nebraska attorney who'd lied on his brief to the Nebraska Supreme Court / Court of Appeals.

However, what Matthew Saathoff failed to include on the Appellee's Brief had been that there'd actually been two of these recordings. One from March 9th, 2016 and the other from August of 2017. Matthew Saathoff failed to inform the Nebraska High Court that Donald Humphrey had not died until August of 2018; or that these recordings were made when Donald had been very much alive and not on his death bed.

143. That as for defamation through demonization included in the Court's Bench Trial Order. It is undeniable that Matthew Saathoff drafted this document. In the final paragraph on page 2 was written: Second, the Court gives little to no weight to the testimony that Mr. Humphrey forgave the loan in June or July of 2018. Defendant Smith and Defendant Prosolow testified that this occurred in June or July of 2018. As to this issue, the Court finds Defendant Smith's testimony to lack credibility. Defendant Smith was combative as a witness and frequently sought to fight with Plaintiff's counsel. As such, the Court gives his testimony little weight. Defendant Prosolow's testimony lacked credibility concerns.

but other evidence discredits the idea that the loan was forgiven.

(See): Exhibit 8 Excerpts from Bench Trial Order

144. That when in deep conversations, millions of people point their fingers towards one another for purposes of expressions. Unfortunately, during the Respondent's May 29, 2020 deposition this unethical attorney Matthew Saathoff considered Petitioner Smith's accidental finger pointing towards him as a serious threat:

26:22 Mr. Saathoff: I'll ask you not to point at me.

26:23 Petitioner: I apologize.

26:24-25 Mr. Saathoff: I take that as a threat. And I'll ask the record to reflect that you –

27:1 Reporter: Stop

27:2-4 Mr. Saathoff: The record will reflect that you pointed at me, and I take that as a threat in an aggressive manner.

(See) Exhibit 6 Excerpts from Barbara Humphrey's May 29, 2020 Deposition

Please note: It appears that Matthew Saathoff has serious credibility issues of his own and yet, Judge Dougherty allowed this attorney to draft the Court's Bench Trial Order leading to Judge Dougherty's invalid Writ of Restitution through Nebraska's Residential Landlord and Tenant Act or Forcible Entry and Detainer which does not apply to an owner and his own real estate property.

145. That in the Court's Bench Trial Order drafted by state actor Matthew Saathoff, it is undisputed that Mr. Saathoff's continuous exaggerations are meant to defame Smith and show bias and prejudice in the commission of a felony White Collar Real Estate scam. Whenever bias and prejudice is practiced in the commission of a crime, the practiced conspiracy is considered by the FBI as being a hate crime.
146. That this is the same Matthew Saathoff authorized as a state actor and involved with the Court's drafting of its Bench Trial Order dated August 3rd, 2023. This shows Judge Dougherty's direct involvement in the decision to allow Mr. Saathoff to draft a Bench Trial Order that was then used by Judge Dougherty to issue an invalid Writ of Restitution obtaining Smith's real estate property under false pretense and not actual facts, and this makes Mr. Saathoff's actions directly linked to the State of Nebraska's actions against the Petitioner's Smith and Prosolow.
147. That the invalid Writ of Restitution is a legal order issued by the State of Nebraska and Matthew Saathoff's drafting this legal document is facilitating the execution of the State's

Power. This process started with Judge Dougherty's allowing Mr. Saathoff's to draft this Bench Trial Order and both are considered official acts of the Court and the State.

148. That the key point here is Judge Dougherty's involvement, (the Court), and Matthew Saathoff's role in facilitating the Court's actions. Because without Judge Dougherty's allowance and his ultimate authority over this process, Mr. Saathoff's role would not necessarily be considered state action. In essence, Matthew Saathoff is a state actor in this situation and acting under color of law because he is acting at the direction of the Court or Judge Dougherty, and his actions are directly linked to the state's authority to issue the invalid Writ of Restitution which legally, is incorrect and unenforceable.

Removal to Federal Jurisdiction:

149. That on October 21, 2024, once the Petitioners' removed this case from state to federal jurisdiction Judge Dougherty should have halted all further activities on this matter immediately. Unfortunately, just as Judge Dougherty had disregarded the Nebraska Supreme Court's directions to have the Respondent to establish her ownership to the title. Just as Judge Dougherty had disregarded the Respondent's trial testimony testifying that the Petitioners property had not been in the will as initially claimed. Just like Judge Dougherty had argued that the Court was not going to consider the will; even though this entire case had been filed because of the absent will. Here too Judge Dougherty, Matthew Saathoff and referee James E. Reisinger failed to follow proper procedure.
150. That since the adoption of § 1446, it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court. This happens as soon as the notice of removal is filed in federal court and a copy is served on the state court. The state court's jurisdiction is not restored unless and until the federal court remands the case back to the state court. Any objection to removal must be presented to the federal court by way of a timely-filed motion, usually 30 days.
151. That in this case, federal records show the Petitioners' removed Case No. 8:24-CV-411 from state to federal jurisdiction by filing a Notice of Removal at 9:37AM on Oct. 21, 2024. Unfortunately, no differently than violating 18 U.S.C 241 and 242, here too is found violations of 28 U.S. Code § 1446 – Procedure for removal of civil actions. Although the Petitioners' properly filed their notice of removal with the federal district Court and a copy with the state court, Judge Dougherty, Matthew Saathoff, and referee James E.

Reisinger, all authorized by the State of Nebraska under color of law, disregarded the proper procedure rules and within an hour after the Petitioners removal the case James Reisinger moved forward with the enforced of the Court's invalid Writ of Restitution, forcing the Petitioners' to vacate their rightfully owned real estate property.

152. That the Douglas, County Sherriff's Department, Deputy Peter Coffey, the locksmith, RE/MAX Realty and its agent Michael Lewis were all authorized by Judge Dougherty to act under color of law to carry out the State's authority to vacate the Petitioners'.

Loving v. Virginia (1967)

153. That Matthew Saathoff had known or reasonably should have known that interracial couple's relationships are protected under the Constitution giving them the right to marry is a fundamental right guaranteed by the Fourteenth Amendment. Specifically the Equal Protection Clause and Due Process Clause as per the landmark case Loving v. Virginia (1967), which struck down state laws banning interracial marriage, affirming this right.
154. **That** the U. S. Supreme Court has consistently held that laws discriminating based on race, including laws prohibiting interracial marriage, are unconstitutional. However, as the defendants in this Douglas County, Nebraska District Court Case CI 18-9530 and the Petitioners in the United States District Court for the District of Nebraska CASE NO. 8:24CV411. Matthew Saathoff violated the U.S. Constitution's Invasion of Privacy Rules under Loving v. Virginia (1967) while discriminating against Petitioners' Smith and Prosolow. Trial testimonials offer evidence proving that not only had Matthew Saathoff discriminated against the Petitioners' but succeeded in invading the Petitioners' privacy. What's worst, had been Matthew Saathoff's successful impeachment of the Petitioners' for attempting to protect their Constitutional Rights. Under 344:9-11 state actor Matthew P. Saathoff impeached Petitioner Smith for simply attempting to guard rights to privacy as follows:
- 343:17-19 Mr. Saathoff: Sir, I specifically asked you do you have a significant other in the deposition, Line 18. Do you know what your answer was?
- 343:20 Petitioner Smith: What was it?
- 343:21 Mr. Saathoff: Do you know what the answer was?
- 343:22 Petitioner Smith: I don't remember.
- 343:23-24 Mr. Saathoff: Okay. Your answer was Dora Prosolow. How long have you and Ms. Prosolow been together? 24 years.

343:25; 344:1 Petitioner Smith: We've been together - - oh, that's what you're asking there. Go ahead.

344:2-5 Mr. Saathoff: So yesterday you testified you weren't significant others. Today you again support that. In your deposition you testified that you guys were significant others.

344:6 Petitioner Smith: Can I explain that? "Yes" or "no"?

344:7 Mr. Saathoff: No, sir.

344:8 Petitioner Smith: That's what I thought.

344:9-11 Mr. Saathoff: Your Honor, I would offer for **impeachment** purposes Exhibit 112. Page 13, Lines 18 through 21.

344:12-13 Ms. Sanders: I'll renew the objection as far as improper impeachment, Your Honor.

344:14-15 The Court: Overruled. It will be received.

(See): Exhibit 2 Excerpts from April 10th, 11th, 21st, and May 23rd, 2023 trial

Please note: Other than being meant to run out the already limited amount of time allowed the Petitioners' by Judge Dougherty, the relevance of these questions had nothing to do with this case. Mr. Saathoff's impeachment was improper and only meant to unfairly influence Judge Dougherty's decision-making process. Resulting with an invalid Writ of Restitution and Notice to Vacate as well as in violation of the U.S. Constitution's Invasion of Privacy Rules under Loving v. Virginia (1967).

155. That the Respondent's May 23rd, 2023 trial testimonials support the Petitioner's arguments that Donald forgave Smith of the remainder of the loan before Donald died:

776:15-25 Respondent: Again, as stated before, it was the \$10,000 for the truck that kind of ticked me off because you guys already had the house back in 2015, you had been living in there for three years. So now with the old truck dying, we had to take the \$5,000 and then add \$5,000 more to it and then get you guys a truck. So it was just more out of our pocket, and I'm thinking, oh, boy. How can I afford all this? And that's what I was mad about, you know, **you had a house for three years** now, you're getting a newer truck, and I just kind of went out of the door.

(See): Exhibit 2 Excerpts from April 10th, 11th, 21st, and May 23rd, 2023 trial

What's important to note: is the Respondent's testifying "you guys already had the

house back in 2015. This had taken place before Donald's death, and Donald's giving the Petitioners' the extra \$10,000 to purchase the truck had been the reason for ticking the Respondent off and the reason behind the Respondent filing her lawsuit.

156. That this offers proof that the Respondent, Matthew Saathoff, John Chatelain and Judge Dougherty had known that this case had never been about the house. Barbara filed her invalid Affidavit out of a strong desire for revenge, vindictiveness.

Included Attorneys

157. That besides co-conspirators Joe Hendricks and Elizabeth Humphrey, other attorneys assisting Mr. Saathoff with aiding and abetting the Respondent included: Jacob A. Acers #26001 with the Saathoff Law Group and Donald Emery Louder III #26230 with the Saathoff law Group. Additionally, although Judith A. Wells #23090 and Darnetta Sanders #22964 represented the Petitioners', their unwarranted withdrawal eventually aided and abetted the opposing parties. As had Nicole Seckman Jilek and Kevin O'Keefe with the Abrahams, Kasslow & Cassman Law Firm.

MISINTERPRETATIONS OF NEBRASKA NEB. REV. STAT. 30-24,129

158. That herewith this documented information, lies the aftermath of Matthew Saathoff's unethical practices and abuse of process. Being attorneys Matthew Saathoff and John C. Chatelain had known or reasonably should have known an Affidavit alone is insufficient to change the ownership of real estate property.
159. That, in the Court's Bench Trial Order from August 3, 2023, Matthew Saathoff focused exclusively on the Respondent's fraudulent Affidavit that'd initially claimed "I am entitled to the real property per the will of the deceased and I have made an investigation and have been unable to find any subsequent will."
160. That although the Respondent's trial testimonials had admitted the will was not a part of the case and that the Petitioners' house was not in the will as initially claimed, as well as Judge Dougherty's admitting to not having the will so the will would not be considered by the Court because didn't have a will, four questions still remain.
- (1) How could Judge Dougherty have disregarded the Nebraska Supreme Court's directing him to have the Respondent to prove her ownership to title or she'd had no right to a partition, (2) How could Judge Dougherty have disregarded the Respondents' own testimonial's concerning the non-existent will, (3) How could Judge Dougherty have disregarded the Respondents' own testimonial's that the Petitioners' property hadn't been

in the will, (4) How could Judge Dougherty ignore his own admittance that the Court did not have a will and still order the Petitioners' property taken by the state of Nebraska and sold.

161. That in the State of Nebraska's Bench Trial Order Matthew Saathoff misinterpreted Neb. Rev. Stat. 30-24,129, both intentionally and effectively separating this law for the sole purpose of misinterpretation and manipulation of the judicial system. In this Nebraska rule Mr. Saathoff carefully chose to apply rule (a)(4) benefiting the Respondent while not considering rule (a)(8) that would benefit the Petitioner's.

162. That on the state's Bench Trial Order, Mr. Saathoff argued that the present version of this statute revised in 2022, requires that anyone claiming an interest in real property via the will to attach the will to the affidavit filed with the Register of Deeds. Arguing that the Plaintiff / Respondent, "filed her complaint four-and-a-half years ago before section (a)(4) was amended to include this requirement. Thus, Plaintiff was not legally obligated to include the will in her affidavit. Further, other statutes indicate that a will is unnecessary for Plaintiff to establish her title."

Please note: As a state actor authorized under color of law; on this issue of Neb. Rev. Stat. 30-24,129 state actor Matthew Saathoff neglected to consider section (a)(8) in his personally drafted Bench Trial Order under this same rule as this section write: the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person to penalties relating to perjury under section 28-915.

163. That in this case, the Respondent was legally obligated to be truthful on her affidavit but instead included false statements on the affidavit. Legally, the Respondent couldn't just have her daughter to forge an amortization schedule and then use information from this forged document to add the Respondent's name to the Petitioner's real estate property through an invalid affidavit. Because the affidavit alone doesn't carry enough legal weight to change a property's ownership without the rightful owner's consent. Unfortunately, in this case the rightful owner did not give consent.

164. That being this, Judge Dougherty could not sell the Petitioners' real estate property if the lawsuit claiming ownership of part of the Petitioners' property was based on a non-existent will.

165. That a judge cannot partition a Petitioners' property because there is no legal basis to

establish co-ownership, meaning Ms. Humphrey has no ownership interest to partition.

Legally holding a rightful owners real estate property

166. That outside of the states jurisdiction, on October 21, 2024 James E. Reisinger used the Court's invalid Writ of Restitution to vacate the rightful owners from their real estate property and at present the Court's holding the property for an illegal sell.
167. That it is a deprivation of the Petitioners' rights if a judge acting under color of law, legally holds a rightful owner's property that was obtained through fraud. This action can violate the individual's rights to property, due process, and equal protection under the law. The Fifth and Fourteenth Amendments to the Constitution protect individuals from being deprived of their property without due process of law.
168. That the Fourteenth Amendment also guarantees that states cannot deprive individuals of property without due process of law, meaning they must be given notice, a hearing, and a fair chance to be heard. The Fourteenth Amendment ensures that all individuals within a state's jurisdiction are treated equally under the law.
169. **That** when a judge, acting under color of law (meaning they are exercising authority on behalf of the state), upholds a fraudulent transfer of property, it can be seen as a deprivation of rights because they are acting as a government actor and are bound by constitutional protections.
170. That federal law section 1983 allows individuals to sue government officials for violating their constitutional rights, including property rights. In essence, while the legal system is designed to protect property rights, a judge's decision to uphold a fraudulent transfer, even with legal formalities, can violate these rights and be seen as a deprivation. Matthew P. Saathoff, James E. Reisinger and Judge Duane C. Dougherty violated the Petitioners' Constitutional Rights.
171. That the same Matthew P. Saathoff who Judge Dougherty authorized to act under color of law on behalf of the State of Nebraska when drafting the Court's Bench Trial Order, is the same Matthew P. Saathoff Judge Dougherty authorized to act under color of law to use two laws that did not apply to property owners to draft the States Writ of Restitution; the Nebraska Residential Landlord and Tenant Act or Forcible Entry and Detainer Act.
172. That under 656:12 of the trial records the Respondent testified: Your property is not in the will. 656:14 Respondent: That's correct. We don't want it in the will. 659:15 Respondent: That house was not in the will. Being attorneys Matthew P. Saathoff and

James E Reisinger and John C. Chatelain had known or reasonably should have known an Affidavit alone is insufficient to change the ownership of real estate property.

PROPERTY OWNERSHIP

1. That the Douglas County, NE Register of Deeds office has Petitioner Edward J. Smith listed as the rightful and sole owner of this subject property, while the Respondent is only claiming ownership through an invalid Affidavit while not being listed on the property's title as an owner nor co-owner.
2. That a Respondent cannot claim ownership to real estate property solely under an affidavit. Affidavits are used to declare facts under oath and not to transfer ownership of real estate property. Official deeds and titles are typically required to demonstrate ownership and to transfer property. In Nebraska, a small estate affidavit can be used to transfer personal property without probate, **but it doesn't apply to real estate.**
3. That once again conspiracy theories are present as the Respondents' initial attorney John C. Chatelain used a small estate affidavit and filing an Affidavit for Transfer of Real Property without Probate which can be used to transfer personal property without probate, **but it doesn't apply to real estate.** Add this to the state's illegal enforcement of its Writ of Restitution filed under Nebraska's Residential Landlord and Tenant Act or (Focible and Detainer) which **doesn't apply to property owners** but under color of law had been used for vacating the Petitioners and rightful owners of this subject real estate property.
4. That if real estate is involved, the affidavit must be filed with the Douglas County, NE Register of Deeds, office along with a certified copy of the death certificate and the will (if any). In essence, **an affidavit is a tool that can support a claim of ownership, but it doesn't create ownership or replace the need for official documentation like a deed.**
5. That in this case, the Respondents' affidavit is invalid because it contained false and misleading information and therefore failed to meet legal requirements. On her Affidavit the Respondent claimed to be entitled to the real property "per the will of the deceased," only to contradict her false statement during trial when testifying "that property is not in the will;" unfortunately the will was non-existent
6. That the Nebraska Supreme Court recognize that "when a partition action involves a dispute over ownership or title as well as a dispute over the method of partition, the parties have a right to have title determined first." Supreme Court: "if the plaintiff did not succeed in establishing their title, they would have no right to partition."

7. That during trial the Respondent never established her title and the Court never verified the absent will claimed under the Respondent's Affidavit. The Respondent testified that Donald Humphrey acted as the Bank in loaning the Petitioner's \$25,219.92 and did not purchase co-ownership in the property. Without establishing title the Respondent did not prove and ownership interest in the real estate property.
8. That as the sole owner, Petitioner Smith has a legal right to possess, control, and to use the entire property as allowed by the Constitution to make decisions about the property, including its use, transfer, and disposal, subject to legal constraints.
- (See): Exhibit 4 Nebraska Supreme Court May 27, 2022
- (See): Exhibit 2 Excerpts from April 10th, 11th and May 23, 2023 Trial

PENDING SALE'S ACTION

9. That outside the State's jurisdiction, state referee James E. Reisinger willfully and knowingly appointed RE/MAX Results, 11212 Davenport St. Omaha, NE 68154 and its agent Michael Lewis to act under color of law to sell the Petitioners' real estate property. A real estate company and agent appointed by a court-appointed referee to sell a property are also acting under color of law.
10. That referee James E. Reisinger is acting under the court's authority, and his actions, including the appointment of the real estate professionals RE/MAX Results and agent Michael Lewis, are considered state action. Therefore, any actions taken by the real estate company and agent, such as marketing and selling the property, are also considered state action and fall under "color of law".
11. That somewhere around December 2024 RE/MAX Results agent Michael Lewis illegally sold Petitioner Smith's real estate property to a John Vincentini. Petitioner Smith reached out to Mr. Vincentini and explained to Mr. Vincentini that the real estate property had been listed on the market because the State of Nebraska had Ordered and invalid Writ of Restitution and obtained the property through fraud. As of late May to early June of 2025 the Pending Sales Action unlawfully remains open and pending.

PROCEDURAL ERRORS

12. That during trial on April 10th, 11th and May 23rd, 2023, Judge Dougherty failed to follow the established legal procedures by intentionally making errors in handling evidence, witnesses and trial testimonials given under oath by the Respondent.
- (1) One example had been the Respondents' May 23rd trial testimonials where she'd

testified that the Petitioners' house was not in the will; a direct contradiction from her affidavit which had claimed "I am entitled to the reap property per the will of the deceased," impacted the outcome and a failure by the Court.

(2) A second example had been the Respondents' April 10th, 2023 trial testimony where she'd testified that the will was not a part of the case, impacted the outcome and a failure by the Court.

(3) A third example had been Judge Dougherty's disregard of the Nebraska Supreme Court's direction to have the Respondent to establish her ownership to title or that she'd had no right to partition, impacted the outcome and a failure by the Court.

13. That the Court's mishandling of the trial and procedural errors during the trials proceeding had significant affects on the fairness of the trial and the ultimate outcome that lead to an unfair judgment.

14. That the Court's showing favoritism towards the Respondent unbalanced failed to protect the rights of the Petitioners' to be heard and therefore the right to a fair trial. That Judge Dougherty's incorrect handling of evidence deprived the Petitioners' from offering inadmissible evidence while excluding relevant evidence, failing to preserve evidence and witness tampering.

15. That Judge Dougherty's April 21, 2023 decision to move the trial from October 3, 2023 back to May 23rd, 2023 failed to provide the Petitioners' with adequate time to hire an attorney which affected to outcome of the case.

16. That a courts aim should be to ensure that legal decisions are based on accurate information and a fair consideration of all relevant factors. In this case, although it'd been the Respondents' false claim of having a will that entitled her to the Petitioners' real property, before contradicting this false claim during trial. Judge Dougherty's failure to consider this relevance evidence impacted the outcome of the case as these actions led to an invalid and illegal Writ of Restitution.

IMMINENT SALE

17. That an imminent sale of property obtained through fraud could potentially violate the property's rightful owner's constitutional rights, specifically their right to due process and the right to own property. The Fifth and Fourteenth Amendments protect property rights and require due process before a person can be deprived of property.

18. That if a property is transferred through fraud; the original owner's rights to the

property are likely violated. The sale of the property obtained through fraud could be considered an unfair and unjust taking of property, potentially violating the owner's right to due process and right to own property. The person who committed the fraud may face criminal penalties.

19. That property rights are fundamental, and the Constitution and laws are designed to protect them. Fraudulent transactions undermine these protections, and the legal system provides avenues for the defrauded party to seek redress.
20. That on December 9, 2024 state referee James E. Reisinger sent by email a Motion To Confirm Report Of Sale signed by Judge Dougherty. Effectively and fraudulently selling the Petitioner's real estate property without Smith's consent.
21. That James E. Reisinger had known or reasonably should have known that it is illegal to sell or purchase real estate property obtained through fraud and for this reason the Court cannot sell the Petitioners' real property without consent.
22. That upon the Petitioners learning of a John Vincentini's purchasing of the property, Petitioner Smith visited with Mr. Vincentini's sister and explained how the property ended up on the market. Leaving with her a copy of the Respondent's Affidavit claiming that she'd had a will giving her 50% of the property, along with a copy of the Nebraska Supreme Court's Opinions and directions excerpts from trial disclosing the Respondents testimonials of the properties not being in the will. Including with this evidence Judge Dougherty's not having the will and never verifying the Respondent's ownership interest.
23. That this information appears to have cause John Vincentini to back away from this purchase and for this reason Petitioner Smith does not believe that his real estate property can be or will be sold.

(See): Exhibit 11 Order Confirming Report of Referee and Directing Sale

ARGUMENT

24. That the Petitioners' argue they are entitled to a Writ of Mandamus because the lower court has a clear legal duty to correct the errors made in the trial proceedings and to prevent the wrongful, illegal and fraudulent sale of the Petitioner's real estate property and that the lower court is refusing to do so.
25. That the Petitioners' argue they are entitled to a Writ of Mandamus because the lower court disregarded the Nebraska Supreme Court's directions to have the Respondent to establish her title and that the lower court disregarded these directions and refused to

verify the Respondents' alleged will as claimed in her Affidavit for Transfer of Real Property without Probate. The lower court has a legal duty to correct its errors and refuse to do so.

26. That the petitioner must demonstrate a clear right to the relief they are seeking, and that the lower court's actions are a denial of these rights. The Petitioners' argue that the lack of action by the lower court has created extraordinary and irreparable harm, justifying the use of mandamus.
27. That the Petitioners' argues that they have no other effective legal means to obtain the relief they seek because the lower court has demonstrated bias and prejudice in the handling of this matter that has never favored the Petitioners'.
28. That the Petitioners' argue the lower court is acting outside its jurisdiction, and a writ of prohibition is necessary to stop it. And this includes the sale of the subject real estate property which was sold on December 12, 2024 while this case was removed to federal jurisdiction on October 21, 2024.
29. That the lower court in interfering with the jurisdiction of the United States District Court for the District of Nebraska and a Writ of Prohibition is necessary to prevent this and to vacate all of the lower court's activities outside its jurisdiction dated back to October 21, 2024 at 9:37AM.
30. That the lower court continues to violate the law by illegally selling the subject property and a Writ of Prohibition is necessary to prevent these violations.
31. That the lower court's actions would result in material prejudice to the Petitioners' if allowed to proceed and or continue.

MEMORANDUM IN SUPPORT

32. That the Petitioner argue that the district court's actions (or inaction) are erroneous and require intervention and seek relief. A clear and concise summary of the relevant facts in the underlying case has been provided to explain reason for relief. Clear statements and arguments and evidence of legal questions are being presented for review. Detailed analysis of applicable laws, including relevant statutes, case law and legal principles are herein. The Petitioner offer's compelling arguments for why a Writ of Mandamus and Prohibition is necessary and should be issued.

RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests this United States District Court for the

District of Nebraska to issue an **emergency** Writ of Mandamus, compelling the lower court to immediately release Petitioner Smith's real estate property back to its rightful owner and if necessary or required, to immediately vacate or modify its Writ of Restitution Ordered under Nebraska's Residential Landlord and Tenant Act or Forcible Entry and Detainer because the Residential Landlord and Tenant Act only addresses disputes between Landlords and Tenants and does not address situations where an individual is the rightful owner of the property, while the Forcible Entry and Detainer Act is the legal process used to remove a person from a property when they are not a tenant. This Act addresses situations where someone is wrongfully occupying the premises, such as a trespasser or an individual who never had a right to be there. Neither of these Acts apply in this case while using the Nebraska Residential Landlord and Tenant Act or Forcible Entry and Detainer to vacate a property's rightful owner constitutes a deprivation of the owners property rights.

Please Note: That the Parties listed under the Certificate of service will not receive copies of (Exhibits 1 through 15) because in most cases these parties already have access to these filings.

WHEREFORE, Petitioners' respectfully requests this United States District Court for the District of Nebraska to issue an emergency Writ of Mandamus as is warranted because the lower court has a legally required duty that they have failed and refused to perform.

WHEREFORE, Petitioners' respectfully requests this United States District Court for the District of Nebraska to issue an emergency Writ of Prohibition, preventing the lower court from taking any further actions to sell the rightful owner Petitioner Smith's real estate property, to stop the lower court and its authorized person's from continuing to act beyond its/their jurisdiction or authority, or from issuing further Orders beyond its/their powers against the Petitioners and real estate property.

WHEREFORE, Petitioner Smith views this case, extraordinarily, exceptional circumstances, pray the Court agrees, and pray for this United States District Court's discretion while considering an extension of the statute of limitations involving all present and pass parties involved with this case without the Petitioners filing a formal motion. The Petitioners believe this document speaks for itself, in showing "good cause" for delay and clearly set forth reasons for this prayed for statute of limitations extension and asks this Court to act outside any prescribed timeframes to grant this request dating back from 2019 to 2028 which would allow the Petitioners much needed time to access relief. The Petitioners believe that other than to escape liability, that the involved parties are abusing Nebraska's system of justice to legally

hold the Petitioners real estate property without
cause.

Dated this 5th day of June in this year 2025

Respectfully submitted,

Petitioner Edward J. Smith / Signed:

7205 North Ridge Drive, Omaha, NE 68112-2522

(402) 210-2558 eddiesmittyz@live.com

A handwritten signature in black ink, appearing to read 'Edward J. Smith', written over a horizontal line.

CERTIFICATE OF SERVICE

As the undersigned Pro se/litigant I Edward J. Smith hereby certify that on _____ that true and correct copies of this Petition for Writ of Mandamus and Prohibition were sent through email and/or First Class Mail to the following parties as listed:

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