

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEL FROM CHARLESTON COUNTY
Danial Hall, Circuit Court Judge

MAR 26 2021

SC Court of Appeals

Case No. 2015-CP-10-4166
Appellant Case No 2018-001125

Theodore Wagner.....Appellant

v.

Designa Print and Mike Davis including anyone who is Complicit or Enabled protecting Mike Davis....Respondent

MOTION WITH DIMINISHED CAPACITY

VI. Rules Governing the Administration of the Courts

S.C. App. Ct. R. 608

RULE 608 APPOINTMENT OF LAWYERS FOR INDIGENTS and

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

(a) Purpose. This rule provides a uniform method of managing the appointment of lawyers to serve as counsel for **indigent persons in the circuit** and family courts pursuant to statutory and **constitutional mandates. Protection of Constitutional Rights is in Transcript and Filed in Lower Court.**

(Order Granting Motion to Proceed Informa Pauperis included)

S.C Constitution and Supremacy Clause of the U.S. Constitution

South Carolina RULE 1.14: CLIENT WITH DIMINISHED CAPACITY(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or

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entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

Please forgive my Pro-Se presentation as I am Mentally Unable to Present my case on my own anymore and was Denied a A Court Appointed Attorney. As I rant about the Government turning against God and the Supreme Law of the Land in every section to my mental counselor she counseled me that I should still try and File something or I will regret Giving Up.

My Record on Appeal will be based and refer to Documents, Transcripts, on Record from Court, Date May 7, 2018, May 8, 2018 Constitutional Challenge State and Federal Constitutions, All part of the Record. Messed up as I am I will have use copy and paste of Filings already Filled mostly to write this so forgive my Post Dramatic Stress Disorder and Panicking Fried Brain.

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

When Judge Hall on May 8, 2018, (Transcript p, 2, Line 17 – 19) “Under Rule 41 (b) of our rules of Procedure, I am going to dismiss this case under the 41 (b) dismissal action.” This violates the Supremacy Clause of the U.S. Constitution protected in **ARTICLE I, DECLARATION OF RIGHTS,**

Court Reporter Karen V. Andersen let me have 1 Transcript for each day May 7, and May 8, 2018 and the few Pages are included are referenced. From Motion Included. Judge Hall knowingly violated my Constitutional Rights as an Court Granted Indigent person, judgment entered on July 15, 2015. (Copy Included) Judge Hall said because of the Medication I was given I was rambling and incoherent and so on. May 8, 2018, (Transcript page 4, Line 13 – 25 and page 5, Lines 1 and 2)

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Because of Mike Davis's campaign of Terror against me I could only survive with the medication. I am much worse now and can not function. I take more medication.

Just because of my **Mental DIMINISHED CAPACITY Judge Hall** I had the same Civilly protected Rights as someone who is not. I was to have my Grievances heard by a **Trial By Jury Demanded**. Judge Hall in the Transcript knowing I am to have a Lawyer to protect my Civil Rights states May 8, 2018, (Transcript page 5, Lines 1 and 2) "I'm going to dismiss the case procedurally under Rule 41 (b)".

Judge Hall still took the Lawyers Oath and the Judges Oath to discharge those duties and will preserve, protect, and defend the Constitution of this State and of the United States;.... I will assist the defenseless or oppressed by ensuring that justice is available to all citizens. Judge Hall had a responsibility once he reasonably believes that I am of diminished capacity to protect my Civil Rights he took an Oath to Preserve and not Oppress by postponing the case and **appointment of a guardian ad litem**.

The felling of being Raped of my Civil Rights in Court, by the Courts has cause me more Trauma than Mike Davis. The more I read the babble in this Petition to have The Civil Liberties that the Court and Government Cover up that I have presented Brought to light the more Panic and throwing up I do.

I have a Constitutional Right to a Full and Fair Redress of the Truth, of my Grievances. The Ninth Amendment of the U.S. Constitution protects my Right to the Truth as I clearly Challenged to have it put before the people, a Jury in 4 time on 4 of 4 of my Constitutional Challenge for a Full and Fair Redress of the Truth. Judge Hall Raped me of my day in Court after all those hearings after the day before saying I would have my day in Court with a Trial by Jury Demanded.

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Once Judge Hall reasonably believes that I am in a diminished capacity to protect my Civil Rights he took an Oath to Preserve and not Oppress by postponing the case and **appointment of a guardian ad litem.**

I Pray this Court Grant this Motion so the Court can Protect my Constitutional Rights and have this write without all the babble Judge Hall did cause.

Dated and Signed at bottom.

I Claim, Reserve and Preserve my Civil Rights denied me despite my Mental DIMINISHED CAPACITY.

I, Theodore Wagner respond to the Order received on March 2, 2021, Filed February 23 2021. Reason Case was Filed, This Appeal is now for the Oppression of Constitutional Right of Redress of the South Carolina Constitution and the Supremacy Clause of the United States Constitution.

This case started because of Mike Davis,s years of attacking me and breaking into my residence, opening my bedroom door where he contemplated killing me, *his words*, and many years of torture towards me personally that has caused my mental disorders, not Mike Davis's attacks against my roommate that happened separately and sometimes at the same time.

1. Ninth Amendment guarantees me the right to the truth, the whole truth and nothing but the truth and I reserve that right. "Part of the Record in Lower Court"

In this Case on December 19, 2016 I Filed and properly served on all a Filed Constitutional Challenge for a Full and Fair Redress of the Truth etc. "TRIAL BY JURY DEMANDED". A protected Right under the Ninth Amendment of the U..S. Constitution. This Right does fall under the Supremacy Clause of Article 6 of the United States Constitution.

On page 3 of 4 I stated in Filed Challenge on December 19, 2016 I stated to be heard in Court “I Theodore Wagner retain the Right to have the Government tell the Truth, the whole Truth, and nothing but the Truth about me.” **Properly Stated and Retained.**

Properly Stated and Retained in Court on May 7, 2018, (Transcript p, 68, Line 11 - 15) Ninth Amendment, Supremacy Clause, in front of Judge Hall on page 68 of the Transcript I stated “**I didn't want anything of mine oppressed because the Ninth Amendment guarantees me the right to the truth, the whole truth and nothing but the truth and I reserve that right. And that's what I'm trying to get on the record on everything.**”

The South Carolina Constitution, **ARTICLE I., DECLARATION OF RIGHTS, SECTION 3.** Privileges and immunities; due process; equal protection of laws. “The privileges and immunities of citizens of this State **and of the United States under this Constitution shall not be abridged**, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” The S.C. Constitution Guarantees that the U.S. Constitution will not be abridged.

This Ninth Amendment Right was properly challenged and when I said in May 7, 2018, (Transcript p, 68, Line 14) “**And I reserve that right**” in Court I invoked the Supremacy Clause of the Ninth Amendment protected in **ARTICLE I., DECLARATION OF RIGHTS, SECTION 3.** Protected by the South Carolina Constitution. As a Layman of the Law I made it clear that I Retained this Right for Truth for myself Protected in the Ninth Amendment.

Question: Does this Ninth Amendment Right that I have Lawfully reserved for myself in Court belongs to every American who Invokes and Reserves this Right under the Supremacy Clause of the U.S. Constitution and the South Carolina Constitution? You should not have to say

it so clearly as I did. As an American it is implied as of Right.

2. "TRIAL BY JURY DEMANDED" " Part of the Record in the Lower Court"

I put at the top of all my Filling, "TRIAL BY JURY DEMANDED". This does fall under the Supremacy Clause of the United States Constitution in the Seventh Amendment. No part of any Constitution of any state can override it and "the right of trial by jury shall be preserved". As I did not want a Judge to rule on facts that included Federal Crimes by Federal and State Employees, Contractors, and / or Agencies, I demanded a Trial by Jury. This also falls under the Supremacy Clause of the U.S. Constitution and the South Carolina Constitution?

Anton v. South Carolina Coastal Counsel, 469 S.E. 2d. 604 at 605 (S.C. 1996)

"Where there is a conflict between the statute and the State Constitution, the Constitution overrides the Statute."

The South Carolina Constitution, **ARTICLE I, DECLARATION OF RIGHTS, SECTION 3.** Protects the Trial by Jury and can not be oppressed. This also falls under the Supremacy Clause of the U.S. Constitution and the South Carolina Constitution?

When Judge Hall on May 8, 2018, (Transcript p, 2, Line 17 – 19) "Under Rule 41 (b) of our rules of Procedure, I am going to dismiss this case under the 41 (b) dismissal action. " This violates the Supremacy Clause of the U.S. Constitution protected in **ARTICLE I, DECLARATION OF RIGHTS, SECTION 3.** Protected by the South Carolina Constitution.

I Clearly Invoked my Right under the Supremacy Clause of the Seventh Amendment for a "Trial by Jury" when I stated on May 8, 2018, (Transcript p. 8, Line 2) when I said "it's cost me way over \$20." Rule 41 (b) clearly violated the Supremacy Clause as no State can make a Law, Rule, Case

Law, or Procedure that Oppresses the Supreme Law of the Land, Article 6, U.S. Constitution..

The Seventh Amendment states,

In Suits at common law, **where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved**, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**3. Rule 41 (b) of our rules of Procedure, 41 (b) dismissal action Violates the Supremacy Clause of the U. S. Constitution and the The South Carolina Constitution, ARTICLE I.,
DECLARATION OF RIGHTS, SECTION 3.**

The South Carolina Constitution, **ARTICLE I., DECLARATION OF RIGHTS, SECTION 3.** Privileges and immunities; due process; equal protection of laws. "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." **The S.C. Constitution Guarantees that the U.S. Constitution will not be abridged.**

Filed in the Lower Court as Record on December 19, 2016 I Filed "Constitutional Challenge for a Full and Fair Redress of the Truth etc.", "TRIAL BY JURY DEMANDED"

In this Constitutional Challenge "made in Violation of Article 1, Section 2 of the South Carolina Constitution and / or actions used in Violation of Article 1, Section 2 of the South Carolina Constitution's 5th Mandate that states "**5) The General Assembly shall make no law respecting the right of the people to peaceable petition the Government or any department thereof for a redress of grievances**". " This would include Wrongs Sustained against them.

This Challenge is a Challenge of all Laws, Rules Regulation, or Procedures or the lack of that Oppress the **Constitutionally Protected Rights of Redress of Grievances of The People** in Violation of Article 1, Section 2 of the South Carolina Constitution and as **Commanded in The First Amendment of the U.S. Constitution.**

I reserve this Challenge not only to those named but also to those not named as part of this Ongoing Conspiracy Against Civil Rights.”

I added this statement to put the Supremacy Clause of the First Amendment before the Jury of the People and not any Government Entity. It proves Rule 41 (b) of our rules of Procedure, 41 (b) dismissal action Violates the Supremacy Clause of the U. S. Constitution and the The South Carolina Constitution, ARTICLE I., DECLARATION OF RIGHTS, SECTION 3.

This Challenge is a Challenge of all Laws, Rules Regulation, or Procedures or the lack of that Oppress the Constitutionally Protected Rights of Redress of Grievances of The People in Violation of Article 1, Section 2 of the South Carolina Constitution and as Commanded in The First Amendment of the U.S. Constitution. This was intentional to invoke the Fifth Sentence of the First Amendment also. **Lack of was for the Ninth Amendment Challenge.**

Proof you can't have it both ways. The U.S. Constitution was Ratified in 1788. **Slavery was legal.** The Thirteenth Amendment in 1865 Rectified that. **Slavery was outlawed.**

SCHICK VS. UNITED STATES, 195 US 65 (1904) If there be any conflict between these two provisions, the one found in the Amendments must control, under the well-understood-rule that the last expression of the will of the lawmaker prevails over an earlier... .

You can't have it both ways. Either Slavery is still legal or as of 1791 the Fifth Sentence of the First Amendment Voided Article 3, Section 2, the last sentence of paragraph 2, **with such Exceptions, and under such Regulations as the Congress shall make. Or Slavery is Legal.** For the South

Carolina's Court of Appeals to decide. It proves Rule 41 (b) of our rules of Procedure ar VOID along with all other Laws made to OPPRES Redress of Grievances.

The Bill of Rights was Ratified in 1791. The First Amendment is in the Bill of Rights. As Marbury vs. Madison, 1 CRANCH 137 states any **“law repugnant to the constitution is void”** Marbury vs. Madison, 1 CRANCH 137, state that all laws that are repugnant of the Fifth Mandate of the First Amendment, the Supreme Law of the Land, are Void and protected by - The South Carolina Constitution, ARTICLE I., DECLARATION OF RIGHTS, SECTION 3.... **“and of the United States under this Constitution shall not be abridged.”**

The First Amendment has five parts, and the Government wants to hide one of them from you.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The First amendment can be broken down into Five distinct sentences just as The South Carolina Constitution, ARTICLE I., DECLARATION OF RIGHTS, SECTION 3

- 1) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof:
- 2) Congress shall make no law abridging the freedom for speech.
- 3) Congress shall make no law abridging the freedom of the press.
- 4)Congress shall make no law respecting the right of the people peaceable to assemble.
- 5) Congress shall make no law respecting the right of the people to peaceable petition the Government for a Redress of grievance.**

As of 1791 the Fifth Sentence of the First Amendment Voided Article 3, Section 2, the last sentence of paragraph 2, with such Exceptions, and under such Regulations as the Congress shall

make. As of the Ratifying of the First Amendment no part of Congress or any part of any Government Under the Supremacy Clause of the United States could make any law Oppressing a Full and Fair Redress, Relief of Remedy of the People's Grievances. This would include Rule 41 (b) of South Carolina's Court Rules.

Part of the Record on Constitutional Challenge in Lower Court so is Record on Appeal.

ARTICLE VI. OFFICER, SECTION 5. Form of oath.

Members of the General Assembly, and all officers, before they enter upon the duties of their respective offices, **and all members of the bar**, before they enter upon the practice of their profession, **shall** take and subscribe the following oath: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, **and preserve, protect, and defend the Constitution of this State and of the United States. So help me God.**"

Some of the Cases demanding this petition be heard like Marbury vs. Madison, 1 CRANCH 137 can be found in Initial Brief, Dated August 31, 2018. I am Panicking to bad to Copy and Paste that much. I am #%&*^# Freaking out. Xanax does not help!

Conclusion; Questions to be answered and put on the Record.

1 - Does Ninth Amendment guarantees me the right to the truth, the whole truth and nothing but the truth and as I reserve that right. "Part of the Record in Lower Court"?

2 - "TRIAL BY JURY DEMANDED" " Part of the Record in the Lower Court" As I placed on all Filings "TRIAL BY JURY DEMANDED" and I even stated in court as a Layman I Clearly Invoked my Right under the Supremacy Clause of the Seventh Amendment for a "Trial by Jury" when I stated

on May 8, 2018, (Transcript p. 8, Line 2) when I said **“it's cost me way over \$20.** The South Carolina Constitution, **ARTICLE I, DECLARATION OF RIGHTS, SECTION 3.** “The privileges and immunities of citizens of this State **and of the United States under this Constitution shall not be abridged,** Invoke the Supremacy Clause of Article 6 “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”?

3 – Does Rule 41 (b) dismissal violates the Supremacy Clause of the U.S. Constitution protected in ARTICLE I, DECLARATION OF RIGHTS, SECTION 3 Protected by the South Carolina Constitution. As of 1791 the Fifth Sentence of the First Amendment Voided Article 3, Section 2, the last sentence of paragraph 2, **with such Exceptions, and under such Regulations as the Congress shall make.** As of the Ratifying of the First Amendment **no part of Congress or any part of any Government** Under the Supremacy Clause of the United States could make any law Oppressing a Full and Fair Redress, Relief or Remedy of the People's Grievances. This would include Rule 41 (b) of South Carolina's Court Rules?

Rule on the Fifth Sentence of the First Amendment Voided The United States Constitution's Article 3, Section 2, the last sentence of paragraph 2, **with such Exceptions, and under such Regulations as the Congress shall make** as clearly presented or rule Slavery is Legal?

Did the Supremacy Clause void the right of the State of South Carolina to Make Rule (41) and Rape me of my Day in Court?

4 – Reinstate the Court Hearing and the Court Except all Cost to bringing all the Truth, the whole

MOTION

Truth, and nothing but the Truth as the Supremacy Clause of the Seventh Amendment Guarantees me to be placed on the Record with all Witness Present including Andrea with no Federal Support at in a State Civil Court.!

Because of the Courts Complicity and Enabling of this Ongoing Conspiracy against Civil Rights and that Frying my Brain into a Babble the State of South Carolina is to appoint me a guardian ad litem of the best Constitutional Lawyer such as Sidney Powell etc who understands the Criminal behavior of Government in the Country and assume all cost.

I have given notice to this Court and Petitioned for the Appointment of a Lawyer in the Ongoing Conspiracy to Cover Up the Truth of the Federal Felony Crimes by the persons of the Federal and State Government to Cover Up that My Wife Andrea was 20 years, 1 month, 16 days old on June 25, 1999 and Mike Davis's knowledge of these Felony Crimes and his Complicity and Enabling in the Facilitation of these Federal Crimes to Cause Permanent Pain and Trauma. To always be part of the Record the Record! This one day of my Adult Wife's life and the Government Conspiracy has left me unable to function as I should.

I need a Lawyer!

I AM UNABLE TO AVAIL MYSELF TO MY CIVIL RIGHTS.

Date: March 24, 2021

Theodore Wagner
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Pro Se for the Appellant

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4 Carriage Lane, Suite 204
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Attorney for Respondent

MOTION

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APPEL FROM CHARLESTON COUNTY
Danial Hall, Circuit Court Judge

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Case No. 2015-CP-10-4166
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Theodore Wagner.....Appellant

v.

Designa Print and Mike Davis including anyone who is Complicit or Enabled protecting Mike Davis....Respondent

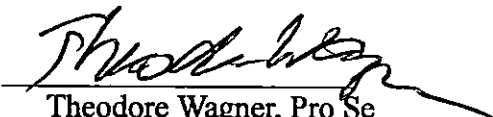
Affidavit of Service

I, Theodore Wagner on this day did place in the to all the same copies of **Record on Appeal, MOTION WITH DIMINISHED CAPACITY, Index for Record of Appeal, Statement of Case for Court of Appeals, Cover Letter to Honorable Jenny Abbott Kitchings, Clerk of Court, Affidavit of Service**, at the U.S. Post Office to:

Clerk, South Carolina Court of Appeals
Jenny Abbott Kitchings, Esquire
Post Office Box 11629
Columbia, South Carolina, 29211

Kenneth G. Goody, Jr., Attorney
4 Carriage Lane, Suite 204
Charleston , South Carolina 29407
Attorney for Respondent

Date: March 24, 2021


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To: Clerk, South Carolina Court of Appeals
The Honorable Jenny Abbott Kitchings
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Re: Stamping extra copies – S.A.S.E. Included.
Appellant Case No. 2018-001125

RECEIVED
MAR 26 2021
SC Court of Appeals

March 24, 2021

To: The Honorable Jenny Abbott Kitchings

In response to the letter I received from this Court on March 12, 2021. It was Dated Filed on February 23, 2021. I am mentally unable to cope with the Panic or read the papers of this case. In my regular counseling I get concerning the Post Dramatic Stress Disorder and Panic caused from this case I Panic bad when I think of the Horror of Mike Davis so I can not read most of what happened back then. I pulled up pages of Fillings and Copy and Paste until I had a **Record of Appeal** that was of the violations of the Supremacy Clause that had been on the Transcript or on Filed Documents of the Lower Court. I hope this sacrifices. I only addressed the South Carolina Constitution is in violation of the Supremacy Clause of the U.S. Constitution. I have Tried to put things in Oppressed Both Constitution's Right of Redress of my Grievances.

As **Judge Hall** was Clear in the Transcript Included of May 8, 2018 on page 4 that Judge Hall **reasonably believes that the client has diminished capacity and I am way worse now** and I was under Indigent Status. I should have had been **appointment of a**

guardian ad litem. Because of the trauma cause by the Defendant I am way more medicated now. My File must be a huge jumble of incoherent papers. Please point out if you are aloud to the included Transcripts and papers that were file in the lower Court. I feel like I am being denied access to have Grievance because of my porvity and Diminished Mental Capacity to think. Cut and paste will only do so much.

Please make sure this Motion, Pieces of Transcripts, other papers Piled with the lower Court are presented. I am so messed up now all the rest of those piles of papers are irrelevant.

I have included copies of of the Fillings and a S.A.S.E. for copies of same to be returned to me.

Thank you for your and putting up with my **Post Dramatic Stress Disorder and Panic Disorder with agoraphobia** that was caused by Mike Davis, the defendant in this case. I am Freaking out so bad I do not know what to Copy and Paste. In not a Lawyer.

Thank you for putting up with my Mental Disabilities.

**CC: Clerk, South Carolina Court of Appeals
The Honorable Jenny Abbott Kitchings
Case No 2018-001125**



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