Exhibit

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WILLIAM M. WINDSOR, Plaintiff v. Christopher Huber, Sally Quillian Yates, William S. Duffey, Thomas Woodrow Thrash, Orinda D. Evans, Julie E. Carnes, Steve C. Jones, Timothy C. Batten, Clarence Cooper, J. Owen Forrester, Willis B. Hunt, Harold L. Murphy, William C. O'Kelley, Charles A. Pannell, Marvin H. Shoob, Richard W. Story, G. Ernest Tidwell, Amy Totenberg, Robert L. Vining, Horace T. Ward, Janet F. King, Susan S. Cole, Alan J. Baverman, Gerrilyn G. Brill, C. Christopher Hagy, Linda T. Walker, Walter E. Johnson, E. Clayton Scofield, Russell G. Vineyard, James N. Hatten, Anniva Sanders, Joyce White, Beverly Gutting, Margaret Callier, Douglas J. Mincher, B. Grutby, Jessica Birnbaum, Vicki Hanna, John Ley, Joel F. Dubina, Ed Carnes, Rosemary Barkett, Frank M. Hull, James Larry Edmondson, Stanley Marcus, William H. Pryor, Gerald Bard Tjoflat, Susan H. Black, Charles R. Wilson, James C. Hill, Beverly B. Martin, Peter T. Fay, Phyllis A. Kravitch, R. Lanier Anderson, Emmett Ripley Cox, Paul Howard, Jr., Neeli Ben-David, John A. Horn, and Unknown Does, Defendants.	)	CIVIL ACTION NO. 2011CV202457

MEMORANDUM OF LAW ON JUDICIAL IMMUNITY

1. William M. Windsor ("Windsor" or "Plaintiff") hereby files this MEMORANDUM OF LAW ON JUDICIAL IMMUNITY ("Memorandum"). Defendants in this Civil Action include federal judges sued personally. Windsor has thoroughly researched "judicial immunity," and Windsor shows the Court as follows:

CONCEPT OF JUDICIAL IMMUNITY

2. Since the seventeenth century, common law has immunized judges from suit for judicial acts within the jurisdiction of the court. Lord Coke's opinion in ***Floyd v. Barker***, 77 Eng. Rep. 1305 (Star Chamber 1607), ushered in the modern era of judicial immunity by establishing the immunity of judges of courts of record, thereby preserving the independence of those courts from review by the Star Chamber, which was under control of the king. Lord Coke refined the doctrine in The Marshalsea, 77 Eng. Rep. 1027 (Star Chamber 1612), which held that actions taken by a court lacking subject matter jurisdiction were coram non judice -- before a person who was not a judge -- see ***Bowser v. Collins***, Y.B. Mich. 22 Edw. 4, f. 30, pl. 11 (1483), and rendered a judge liable for the consequences of his judicial acts. Subsequent cases further refined the doctrine of judicial immunity. See ***Peacock v. Bell***, 85 Eng. Rep. 84 (K.B.1667); ***Hamond v. Howell***, 86 Eng. Rep. 1035, 1037 (C.P.1677); ***Gwinne v. Poole***, 125 Eng. Rep. 858 (C.P.1692). (See generally ***Block, Stump v. Sparkman and the History of Judicial Immunity***, 1980 Duke L.J. 879.)

3. As early as 1806, the Supreme Court in ***Wise v. Withers*** had recognized a right to sue a judge for exercising authority beyond the jurisdiction authorized by statute. In 1869, one year after passage of the Fourteenth Amendment and long before due process had assumed its modern contours, the Supreme Court made its first effort to define the limits imposed on state judges. The Court held that state judges possessing general powers were not liable "unless perhaps when the acts ... are done maliciously or corruptly."

4. Then in 1872, one year after the civil rights laws were passed, the Supreme Court overruled its earlier dictum and announced that judges would not be liable even for malicious or corrupt acts. (***Bradley v. Fisher***, 80 U.S. (13 Wall.) 335, 347, 20 L. Ed. 646 (1872).) This 1872

expansion of the immunity doctrine was an abrupt departure even from the common law recognized by a majority of the states in the Civil War era. By the time civil rights legislation passed in 1871, only 13 states had granted their judges a broad form of judicial immunity, while six states had found judges unquestionably liable for malicious acts in excess of jurisdiction. Eighteen other states had not addressed the issue at all, although many recognized English common law as binding precedent. Thus, from 1869 to 1872 the Supreme Court extended a sweeping form of immunity to state-court judges that a majority of the states themselves would not have recognized under their own law. (***Judicial Immunity vs. Due Process***, Robert Craig Waters, *Cato Journal,* Vol.7, No.2 (Fall 1987).)

5. The concept of immunity established by The Supreme Court was that "a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequence to himself." (***Bradley v. Fisher***, supra.)

6. This is **NOT** the issue in this Civil Action. Defendants have not acted upon their own "convictions." There has been no act or process of forming an opinion after consideration or deliberation. (***Houghton Mifflin Dictionary*** – convictions.) These Defendants have not made mistakes or "errors" of law. They have CONSCIOUSLY committed crimes and intentional torts for the purpose of damaging Windsor and shielding fellow Defendants from conviction and disbarment. The proof is in the record before the courts.

7. Immunity was not established to enable judges to repeatedly commit illegal activities as Defendants have done. The intent has never been to excuse judges or government employees for illegal activities.

"The current American immunity doctrine not only was a serious departure from its common law antecedents but also broke with early American case law." (***Judicial Immunity vs. Due Process***, Robert Craig Waters, *Cato Journal,* Vol.7, No.2 (Fall 1987).)

8. The words of Chief Justice Marshall in ***Marbury v. Madison***, 5 U.S. 137 (1803), must be heeded:

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested right." *Id.*, at p. 163.

CONFLICT BETWEEN THE CONCEPT OF JUDICIAL IMMUNITY AND THE GUARANTEE OF CONSTITUTIONAL AND LEGAL RIGHTS

9. Our founding fathers expressed noble principles in the Constitution -- freedom, justice, and the protection of individual rights. However, in the administration of the laws, something has gone dreadfully wrong. The lofty principles have been usurped by officials with improper intentions. The United States of today is not the benign society that the founding fathers aspired to create.

10. Two sets of standards have developed in the execution of the laws – one set of standards applicable to the general public, the other applicable to those in the federal judiciary.

11. Our founding fathers did not intend for judges to be able to lie, cheat, and help others "steal" from parties they are sworn to protect through fairness and impartiality.

"Few more serious threats to individual liberty can be imagined than a corrupt judge. Clothed with the power of the state and authorized to pass judgment on the most basic aspects of everyday life, a judge can deprive citizens of liberty and property in complete disregard of the Constitution. The injuries inflicted may be severe and enduring." (***Judicial Immunity vs. Due Process***, Robert Craig Waters, *Cato Journal,* Vol.7, No.2 (Fall 1987).)

12. Judges who abuse their positions and the law are being allowed to do so with impunity. This has become the norm, and there is currently no effective recourse available to the common man. The judicial system and certain laws protect the abusers from accountability. This encourages even more corrupt behavior.

13. In reality, officers of the courts who break the law at the expense of the common man are unassailable because of the lack of honesty and decency by the other officers of the courts who must be approached in an attempt to seek justice. The guarantee of Constitutional rights is being illegally revoked.

14. Officials who are tasked with administering the laws simply fail to take action against offenders in their midst. They protect their lawbreaking peers. This collusion amongst officialdom to protect colleagues from criminal and civil accountability is widespread throughout the federal judiciary – at least in Fulton County Georgia.

15. This sweeping immunity doctrine is at odds both with American legal history and the Constitution.

> "Congress never intended to exempt state judges from suit when it passed the 1871 Civil Rights Act. Moreover, the judiciary is wrong when it asserts that immunity was a settled doctrine, incorporated into the 1871 Act by implication. To the contrary, the doctrine in its present form did not exist in the United States or England when the civil rights legislation was passed in 1871. Moreover, the immunity doctrine is inconsistent with the due process clause of the Fourteenth Amendment. Even if the doctrine had existed in common law, constitutional supremacy dictates that it must bow before the American idea of procedural justice embodied in the guarantee of due process." (***Judicial Immunity vs. Due Process***, Robert Craig Waters, *Cato Journal,* Vol.7, No.2 (Fall 1987).)

16. Windsor has tried tirelessly for years to obtain justice. In *every instance* Windsor's appeals for justice and protection of the laws have been rejected in favor of a cover up of attorney and judicial wrongdoing and protection of the lawbreaking officers of the court. In *every instance* Windsor's rights, ostensibly protected by the Constitution and the laws, have been

scorned, and Windsor's appeals to the authorities have been ignored or rejected with contempt. In *every instance* where legal actions were filed with the courts, the courts have ignored the crimes. The courts have failed to allow Windsor to be heard and to present his evidence or examine the evildoers. Previous courts have never even considered the facts and the overwhelming evidence that Windsor has amassed.

17. Although evidence of the crimes was provided to various authorities of the federal government, officers from these authorities failed to perform their legal duties to investigate. Each official to whom the crimes were presented had a statutory duty, the capacity, and the authority, to address the crimes. Each official willfully failed to act and instead covered up the crimes.

18. It simply isn't right to grant judges immunity in a case where the judges have intentionally violated a party's Constitutional rights and have intentionally committed crimes in order to do so.

THIS CASE HAS A DIFFERENT SET OF FACTS FROM EVERY CASE REGARDING JUDICIAL IMMUNITY THAT WINDSOR HAS REVIEWED. THERE IS NO PRECEDENT.

19. This Court must recognize that this case is different from the many cases where judges have been granted judicial immunity, so this case must be viewed on its own.

20. This is not a case where "a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequence to himself."

21. Crimes were first reported to Defendant judges and law enforcement agencies in 2007. Since then, no investigations have taken place; no arrests have been made; no trials are

pending; ongoing crimes have not been terminated; and the conspiracy by officials to conceal the crimes has not been exposed and dealt with.

22. There is significant national ramification when the courts sanction acts to defeat the ends of justice. It is of national interest that judges be compelled to abide by the Constitution and by the law, and that the criminals are dealt with decisively.

23. Windsor argues for a modification to laws, should it be needed. Do not allow immunity in egregious cases such as this. Do not allow these judges to avoid answering for their illegal acts.

THIS IS A CASE OF DEFENDANTS COMMITTING INTENTIONAL TORTS AND DEFENDANTS COMMITTING INTENTIONAL CRIMES.

24. The traditional concept of judicial immunity does not apply in this case because Defendants have intentionally violated both civil and criminal laws.

25. Crimes committed include: Perjury; Obstruction of Justice; Witness Tampering; False Swearing; Subornation of Perjury; Conspiracy; Conspiracy to Suborn Perjury; and Accessory after the Fact. These crimes are detailed in the Amended Verified Complaint. All Defendants would understand these crimes violate clear statutory and Constitutional rights. Providing protection to criminals is a crime, and failure to have them identified is a crime. Defendant judges have provided protection to criminals, as have other Defendants in this Civil Action.

26. Statutes obligate the officials to deal with felonies and other crimes that have been brought to their attention. The officials should either have initiated the investigations or prosecutions on their own volition, or alternatively, they should have passed the information on to somebody in authority who would have addressed the crimes. Each official failed to perform that legal duty and violated multiple counts of misprision of felony.

27. Similarly, each official obstructed and impeded the due and proper administration of the law and violated the statutes on obstruction of justice. Every official was thus a principal offender due to his own substantive violations of law. By their criminal conduct, each official, knowing that an offense had been committed, assisted the offenders in order to hinder or prevent their apprehension, trial, and punishment, and became accessories after the fact.

THIS IS A CASE OF JUDGES VIOLATING THEIR OATHS OF OFFICE AND VIOLATING THE CODE OF JUDICIAL CONDUCT

28. Judges violate the Code of Judicial Conduct.

29. The judges have violated their Oaths of Office taken when they were sworn in as federal judges.

30. That oath was: I, _________, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as judge under the Constitution and laws of the United States. So help me God

31. These judges have been totally biased and have performed their duties in violation of the Constitution and laws of the United States

KEY PRECEDENTS REGARDING JUDICIAL IMMUNITY

32. In ***Pulliam v. Allen***, 456 U.S. 522 (1984), the court held that judicial immunity does not bar an award of attorney fees against a judge when a plaintiff wins a suit against that judge for injunctive or declaratory relief. In ***Pulliam***, the Supreme Court ruled that a magistrate was liable for over $80,000.00 in legal fees and costs because her conduct caused private injury to Plaintiff Allen. The Court held in this fashion even though her actions were indisputably judicial acts within her subject matter jurisdiction. The court held that the doctrine of judicial immunity does not preclude injunctive relief as opposed to money damages against a judicial

officer acting in a judicial capacity and, judicial immunity does not preclude a statutory award of attorney's fees generated in obtaining that injunctive relief. After this "death blow" for absolute judicial immunity, numerous efforts have been attempted in Congress pushed primarily by the American Bar Association to re-institute absolute judicial immunity. All have failed.

33. Following on ***Pulliam*** in 1984, the Court took up ***Forrester v. White***, 44 U.S. 219, 108 S.Ct. 538 (1988). In ***White*** a former probation officer filed an action against a state court judge alleging that she was demoted and discharged on account of her sex in violation of the Equal Protection clause of the Fourteenth Amendment. After a jury found in favor of the former probation officer, the District Court for the Southern District of Illinois entered summary judgment for the judge on the grounds of "absolute" judicial immunity. The Court of Appeals for the Seventh Circuit applied the two prong Stump test and logically concluded that the firing of the probation officer was a judicial act within the judge's jurisdiction. 792 F2d 647 (7th Cir. 1986). Following a Writ of Certiorari, the United States Supreme Court unanimously reversed. Writing for the court, Justice O'Connor offered that the court "has generally been quite sparing in its recognition of claims to absolute official immunity" 44 U.S. at 224. Holding that the actions of Judge White in firing Ms. Forrester were not entitled to judicial immunity, the court refused to apply even quasi-judicial immunity. See also, ***Guercio v. Brody***, 814 F2d 1115 (1987). Reversing the District and 7th Circuit Court of Appeals, ***Forrester*** like ***Pulliam*** make it quite clear that absolute judicial immunity is dead in American jurisprudence.

34. Our courts have extended **partial** immunity for "official and necessary acts" to sheriffs, ***Doe v. McFaul***, 599 F.Sup. 1421 (N.D. Ohio 1984); prosecutors ***Imbler v. Pachtman***, 424 U.S. 409 (1976); coroners, ***Lambert v. Garlo***, 19 Ohio App 3rd 295, 484 NE2d 260 (1985); court reporters, ***Brown v. Charles***, 309 F.Sup. 817 (E.D. Wis. 1970); clerks of the court, ***Wiggins***

v. New Mexico State Supreme Court Clerk, 664 F2d 812 (10th Cir. 1981); jurors, ***White v. Hegerhorst***, 418 F2d 894 (9th Cir. 1969); grand jurors, ***Turpen v. Booth***, 56 Cal. 65 (1880); witnesses, ***Briscoe v. LaHue***, 460 U.S. 325 (1983); bailiffs, ***Wolf v. Flanagan***, No. 14746 (Ohio Ct. App. Oct. 2, 1980); and arbitrators, ***Hill v. Aro Corp.***, 263 F.Sup. 324 (N.D. Ohio 1967).

35. Not even the Sergeant-at-Arms of the United States House of Representatives has been granted immunity. In ***Kilbourn v. Thompson***, 103 U.S. 168 (1881):

> "the Sergeant-at-Arms of the House of Representatives arrested the plaintiff under a warrant issued by the House. Plaintiff refused to testify in a congressional investigation and the House issued a contempt citation against him. The court held that the House did not have jurisdiction to conduct the particular investigation. The Sergeant at Arms, therefore, was liable for false arrest and could not assert the issuance of the warrant as a defense."

36. In ***Nixon v. Herndon***, 273 U.S. 536 (1927) the Court held that state officials would be personally liable in damages for denying plaintiff his right to vote by enforcing a racially discriminatory election law. In ***Monroe v. Pape***, 365 U.S. 167 (1961) the Supreme Court held that police officers may be held liable under section 1983 for infringing upon the constitutional rights of others even when their actions are not shown to be willful. In ***Bivens v. Six Unknown Named Agents***, 304 U.S. 388 (1971) the Court held that in the absence of a federal statutory remedy for unconstitutional searches, the Constitution itself provides for a damage action against the offending federal officers.

37. Even the Superintendent of Public Documents and the Public Printer for Congress could not sustain an immunity claim when republishing a libel as the Court in ***Doe v. McMillan***, 412 U.S. 306 (1972) reasoned, republishing a libel is not an essential part of the legislative process.

38. Calling the partial immunity granted to many of these officials "qualified immunity," the Court extended common law immunity for "reasonable" acts in "good faith."

When lower courts became confused as to whether qualified immunity involved a subjective or objective inquiry, the Court explained in ***Wood v. Strickland*** , 420 U.S. 328, 95 S. Ct. 992 (1975) that the qualified immunity analysis necessarily contains both objective and subjective elements. The analysis is subjective, said the Court in that the defendant official, to receive protection, must have acted "with a belief that he [was] doing right." ***Wood***, 420 U.S. at 321. The analysis is objective, the Court reasoned, in that officials could not receive protection where they ignorantly believed their actions to be appropriate when in fact their actions violated "settled" and "indisputable" law.

39. As citizens and their counsel began to utilize 42 U.S.C. § 1983 actions to redress grievances, the Court began to articulate its sense of the statute:

> "The purpose of the statute was to deter public officials from using the badge of their authority to violate persons' constitutional rights and to provide compensation and other relief to victims of constitutional deprivations when that deterrence failed." (***Carey v. Piphus***, 435 U.S. 247, 253 (1978).)

40. In ***Stump v. Sparkman***, 435 U.S. 349, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978), the Supreme Court established a test of two somewhat overlapping parts for determining whether a judge enjoys absolute immunity from money damages in a suit under § 1983. The initial inquiry is whether the judge dealt with the plaintiff in his judicial capacity, i.e., whether his acts were judicial acts. Id. at 362. If not, the judge is not absolutely immune. The second part of the test, assuming the judge was acting in his judicial capacity, is whether he was acting in "clear absence of all jurisdiction." Id. at 357. In such case there also is no absolute immunity. The partial overlap occurs because an action "in clear absence of all jurisdiction" very frequently cannot be classified as judicial.

41. In ***Gomez v. Toledo***, 446 U.S. 635 (1979) the Court spoke to the concern among plaintiffs that they had an impossible burden to meet by showing in their pleadings that the acts

of the defendants were both unreasonable and in bad faith. The Court offered that "Nothing in the language or legislative history of Sec. 1983, however, suggests that in an action brought against a public official..... a plaintiff must allege bad faith in order to state a claim for relief." ***Gomez*** at 640. The Court went on to instruct: "Since qualified immunity is a defense, the burden of pleading it rests with the defendant. See FRCP 8(c) (defendant must plead any "matter constituting an avoidance of affirmative defense")" Id. The Court went on to quote from ***Wood v. Strickland*** and instructed:

> "The applicable test focuses not only on whether the official has an objectively reasonable basis for that belief, but also on whether "[t]he official himself [is] acting sincerely and with a belief that he is doing right." (***Gomez***, 641.)

42. The Court informed that:

> "The existence of a subjective belief will frequently turn on factors which a plaintiff cannot reasonably be expected to know. For example, the official's belief may be based on state or local law, advice of counsel, administrative practice, or some other factor of which the official alone is aware. To impose the pleading burden on the plaintiff would ignore this elementary fact and be contrary to the established practice in analogous areas of the law." (***Gomez***, 641.)

43. In ***City of Newport v. Fact Concerts, Inc.***, 453 U.S. 247.259 (1981) the Court characterized its process of determining the degree of immunity to which a particular official was entitled as a "careful inquiry into considerations of both history and policy."

44. In 1981, the Court also faced some of the aftermath of the Nixon administration in ***Harlow et al v. Fitzgerald***, 457 U.S. 800. In that case, plaintiff Fitzgerald claimed Bryce Harlow and Alexander Butterfield, two Nixon administration aides, conspired to have him discharged from his position with the Air Force. H.R. Halderman, John Ehrlichman, Ronald Zeigler, and Richard Nixon were all heard on the infamous Nixon tapes, discussing Fitzgerald's demise. In their concurrence, Mr. Justice Brennan wrote for himself and Justices Marshall and Blackmun and said:

> "I agree with the substantive standard announced by the Court today, imposing liability when a public-official defendant "knew or should have known" of the constitutionally violative effect of his actions.... This standard would not allow the official who *actually knows* that he was violating the law to escape liability for his actions, even if he could not "reasonably have been expected" to know what he actually did know.......Thus the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes." (***Harlow et al v. Fitzgerald***, 457 U.S. 800, 820-821 (1981) emphasis in original, citations omitted.)

45. The ***Harlow*** Court reasoned that qualified or "good faith" immunity is an affirmative defense that must be plead by a defendant official. (***Gomez v. Toledo***, 446 U.S. 635 (1980).) The Court cited to ***Wood v. Strickland***, 420 U.S. 308, 322 (1975) and offered: "Decisions of this Court have established that the "good faith" defense has both an "objective" and a "subjective" aspect. The objective element involves a presumptive knowledge of and respect for "basic unquestioned constitutional rights." (***Harlow et al v. Fitzgerald***, 457 U.S. 800 (1981).)

46. In 1984, the Court took up the case of Billy Irl Glover. Mr. Glover, a pro se litigant, sued Bruce Tower the Douglas County, Oregon Public Defender and a number of others from his prison cell. Billy Irl alleged that Tower and other conspired to secure a conviction in violation of his Constitutional rights. The Federal District Court threw his case out, but the Court of Appeals reversed and the Supreme Court granted certiorai. The Court reasoned:

> "We do not have a license to establish immunities from Sec. 1983 actions in the interests of what we judge to be sound public policy. It is for Congress to determine whether Sec. 1983 litigation has become too burdensome to state or federal institutions and, if so, what remedial action is appropriate." (***Tower v. Glover***, 104 S. Ct. 2820, 2826 (1984).)

47. That being said, the Court reviewed its immunity decisions and the history of the Civil Rights Act of 1871 [also known as the Klu Klux Klan Act]. Quoting from ***Imbler v. Pachtman***, 424 U.S. 409 at 421 (1976), the Court noted that § 1983 immunities are "predicated upon a considered inquiry into the immunity historically accorded the relevant official at

common law and the interests behind it." If an official was accorded immunity from tort actions at common law when the Civil Rights Act was enacted in 1871, the Court offered that it next considers whether Civil Rights Act history or purposes nonetheless counsel against recognizing the same immunity in § 1983 actions. In ***Tower***, the Court concluded: "Using this framework we conclude that public defenders have no immunity from § 1983 liability for intentional misconduct of the type alleged here." (***Tower v. Glover***, 104 S. Ct. 2820, 2825 (1984).)

48. In 1985, the Court took up more of the Nixon administration backwash in ***Mitchell v. Forsyth***, 472 U.S. 511 (1985) and reasoned: "The danger that high federal officials will disregard constitutional rights in their zeal to protect the national security is sufficiently real to counsel against affording such officials an absolute immunity." (***Mitchell***, supra, at 523.)

49. In 1987, the Federal Court of Appeals for the Ninth Circuit reviewed the Supreme Court's partial immunity decisions and reasoned: "In spite of the benefits of immunity for certain decision makers, the balance might not be struck in favor of absolute immunity were it not for the presence of safeguards build into the judicial process that tend to reduce the need for private damage action." (***Meyers v. Contra Costa Cy. Dep't of Social Servs***., 812 F2d 1154, 1158 (9th Cir. 1987).) The following year, 1988, the Eleventh Circuit took up ***Goddard v. Urrea***, 847 F2d 765 (11th Cir. 1988). In ***Goddard***, the plaintiff brought a civil suit claiming that the defendants, agents of the Bureau of Alcohol, Tobacco and Firearms, had conducted an unlawful search and seizure of her property. The defendants filed a motion for summary judgment, claiming qualified immunity. The district court denied the motion and the defendants appealed. The Eleventh Circuit held that the denial of summary judgment for qualified immunity was justified because genuine issues of fact remained, which would impact upon a finding of good faith or reasonableness. The same year, the Sixth Circuit rejected a plea to dismiss because of "qualified

immunity" and declared it an "affirmative defense" which the defendant had to plead and prove. (***Duncan v. Peck***, 844 F2d 1261 (1988).)

50. In 1991 in ***Mireles v. Waco,*** 502 U.S. 9,112 S. Ct. 286 (1991), the Court issued a per curiam opinion and disavowed the functional approach articulated in ***Forrester*** and returned to the ***Stump v. Sparkman*** two-pronged judicial act test. As the law stands, there is no "absolute judicial immunity" and our Supreme Court requires the two-prong tests: (1.) Does the court have subject matter jurisdiction; (2.) Is the act a judicial act. Then and only then, according to ***Mireles*** (1991) does judicial immunity apply.

51. It was this very test and the extra-judicial acts of Judge G. Michael Hocking, of Michigan's 56th Circuit Court that led the federal court for the western district of Michigan to enter a directed verdict against the judge. In ***McPherson v. Kelsey, et al***. U.S. District Court case number 5:93-cv-166, Judge Hocking ordered an attorney jailed for contempt when she argued against his unlawful conduct in a custody and visitation matter. The attorney was literally dragged from the courtroom where deputies beat her. She sustained brain damage from the assault. Her client, the father involved in the visitation dispute, protested the action. At one point the Judge ran from the Courtroom, instructed his deputies to seize the father, search him at gunpoint and expel him from the courthouse. The father and attorney filed separate 42 U.S.C. § 1983 actions. On June 23, 1995 Judge Richard A. Enslen of the U.S. District Court for the Western District of Michigan entered a directed verdict against Judge Hocking on First, Fourth and Fourteenth Amendment claims and four days later, the jury found against Judge Hocking on these claims and awarded the father money damages. So in this case, a judge was performing judicial functions but performed a non-judicial criminal act and was denied immunity. (***McPherson v. Kelsey***, No. 95-2234 (6th Cir. 10/01/1997).)

52. ***Mireles*** recognized that a judge is not absolutely immune from criminal liability, ***Ex parte Virginia***, 100 U.S. 339, 348-349 (1880), or from a suit for prospective injunctive relief, ***Pulliam v. Allen***, 466 U.S. 522, 536-543 (1984). Windsor's Verified Complaint includes criminal liability under RICO and prospective injunctive relief.

53. ***Mireles*** also says: "First, a judge is not immune from liability for nonjudicial actions, i.*e*., actions not taken in the judge's judicial capacity. (***Forrester v. White,*** 484 U. S., at 227-229; ***Stump v. Sparkman,*** 435 U. S., at 360.) Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Id.*, at 356-357; ***Bradley v. Fisher,*** 13 Wall., at 351." Windsor presented many nonjudicial actions by Judge Evans in the Verified Complaint and Amended Verified Complaint, and he has alleged the absence of jurisdiction.

54. Justices Stevens, Scalia, and Kennedy dissented in ***Mireles***. They stated that "ordering police officers to use excessive force is 'not a 'function normally performed by a judge.'" (quoting ***Stump v. Sparkman***, *435* U. S., at 362).

55. Similarly, committing perjury, making hundreds of false statements in orders, and committing obstruction of justice, as Defendant judges have done, are not functions to EVER be performed by a judge.

56. These are functions never to be performed by a judge: Perjury, Obstruction of Justice, Witness Tampering, False Swearing, Subornation of Perjury, Conspiracy to Suborn Perjury, Accessory after the Fact, and more. No criminal offense is a function to be performed by a judge.

57. In 1993, the Court made explicit its wish to circumscribe immunity claims recently in ***Antoine v. Byers & Anderson, Inc***. 508 U.S.429, 113 S. Ct. 2167, 2170 N4 (1993),

saying that the courts have "been quite sparing in [their] recognition of absolute immunity and have refused to extend it any further than its justification would warrant".

58. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" Id. at 356-57 (quoting ***Bradley v. Fisher***, 80 U.S. (13 Wall.) 335, 351, 20 L. Ed. 646 (1872).)

59. Malice is defined as "doing any act injurious to another without a just cause." Just cause is defined as "a legally sufficient reason." So, maliciously means injurious to another without a legally sufficient reason. According to the 'Lectric Law Library, malice "as applied to torts, does not necessarily mean that which must proceed from a spiteful, malignant, or revengeful disposition, but a conduct injurious to another, though proceeding from an ill-regulated mind not sufficiently cautious before it occasions an injury to another."

60. What the judges and Defendants have done in the underlying cases is far more serious than malice. These judges did not lack "a legally sufficient reason;" they knew there was no legal basis for what they were doing. They intentionally committed crimes to commit fraud upon the courts and to damage Windsor.

61. ***Windsor v. Huber*** should establish a key new precedent regarding judicial immunity. There are nine (9) categories of reasons why judicial immunity must be denied in this Civil Action.

REASON #1: JUDGES DO NOT HAVE IMMUNITY FOR NON-JUDICIAL ACTS.

62. The judges' actions in engaging in the conspiracy are not part of a function normally performed by judges, and thus are non-judicial. Judges do not have immunity for non-judicial acts.

63. Defendant judges have committed many acts that are not judicial. Judges have no authority whatsoever to commit the crimes they have committed, including perjury, suborn perjury, obstruct justice, and more. Judges have no authority to violate their oath of office and the Code of Judicial Conduct. When their actions are not the actions that a judge is permitted to do, those actions are not judicial.

64. Decisions since ***Bradley v. Fisher*** have consistently adhered, either explicitly or implicitly, to the proposition that official immunity, whether absolute or qualified, extends only so far as the affected government official's authority. (See, e.g., ***Scheuer v. Rhodes***, 416 U.S. 232, 250, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974); ***Apton v. Wilson***, 165 U.S. App. D.C. 22, 506 F.2d 83, 90-95 (1974).) A government employee is not to be protected merely by virtue of his official position for conduct undertaken outside the scope of his authority. In ***John Briggs, Et Al. v. Guy Goodwin, Individually***, No. 75-1642 (DC Circuit, 09/21/77), government employee Goodwin allegedly perjured himself. The court found that perjury is never within a government employee's authority and was wholly outside his authority. (Maj. op. at 19, 21.) The Court ruled that the appellant was entitled only to a qualified consideration of immunity; his protection from liability would require a showing that he entertained a good-faith, reasonable belief in the truth of his response to the federal district judge in Florida. Absent that, there would be no immunity.

65. When a judge did not deal with someone in his judicial capacity, then judicial immunity does not lie. (***Stump v. Sparkman,*** 435 U.S. 349at 362, 98 S. Ct. at 1107.)

66. Judicial immunity does not bar prospective injunctive relief against a judicial officer acting in his judicial capacity. (***Pulliam v. Allen***, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984).)

67. Judges should not be given immunity when the independence of the judiciary is not an issue.

> In ***Shore v. Howard***, 414 F. Supp. 379 (N.D. Tex. 1976), the court reasoned that when the "initiative and independence of the judiciary is not effectively impaired," the doctrine of judicial immunity does not apply. Accord ***Clark v. Campbell***, 514 F. Supp. 1300 (W.D. Ark. 1981).

68. The Supreme Court says it is the character of the act that is key, not the position of the actor. So, it is what the judge does, not the fact that he/she is a judge.

> In ***Exparte Virginia***,100 U.S. 339, 342, 343, 25 L. Ed. 676, the Supreme Court declined to extend immunity to a judge who was criminally prosecuted. The Court determined that whether the act was judicial depends on the character of the act and not the character of the actor. (See ***Lynch v. Johnson***,420 F.2d 818 (6th Cir. 1970); ***Richardson v. Koshiba***, 693 F.2d 911 (9th Cir. 1982).) The ***Richardson*** court noted that a balance existed between the need to protect citizens from constitutional violations and the need to protect officials in the performance of their duties.

69. Defendant judges do not have immunity for non-judicial acts. (***Shore v. Howard***, 414 F.Supp 379 (N.D.Tex. 05/20/1976).)

> We are not persuaded that ... absolute judicial immunity from federal criminal prosecution is a necessary complement to the Constitution's explicit protections. Indeed, the miniscule increment in judicial independence that might be derived from the proposed rule would be outweighed by the tremendous harm that the rule would cause to another treasured value of our constitutional system: no man in this country is so high that he is above the law. "It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy." ***United States v. Lee***, 106 U.S. 196, 220, 1 S. Ct. 240, 261, 27 L. Ed. 171 (1882). A judge no less than any other man is subject to the processes of the criminal law. ***United States v. Isaacs***, 493 F.2d at 1133; ***Dennis v. Sparks***, 449 U.S. 24, 28 n.5, 101 S. Ct. 183, 187 n.5, 66 L. Ed. 2d 185 (1980); ***Imbler v. Pachtman***, 424 U.S. 409, 429, 96 S. Ct. 984, 994, 47 L. Ed. 2d 128 (1976); ***O'Shea v. Littleton***, 414 U.S. 488, 503, 94 S. Ct. 669, 679, 38 L. Ed. 2d 674 (1974). (See also ***Chandler v. Judicial Council of the Tenth Circuit***, 398 U.S. 74, 140, 90 S. Ct. 1648, 1682, 26 L. Ed. 2d 100 (1970) (Douglas, J., dissenting); id. at 141-42, 90 S. Ct. at 1682-83 (Black, J., dissenting); ***Braatelien v. United States***, 147 F.2d 888, 895 (8th Cir. 1945); ***Strawbridge v. Bednarik***, 460 F. Supp. 1171, 1173 (E.D.Pa.1978).) (***United States v. Hastings***, 681 F.2d 706 (11th Cir. 07/12/1982).)

> Where officials seek absolute exemption from personal liability for unconstitutional conduct, the "bear the burden of showing that public policy requires an exemption of that

scope." Id. at 501 (quoting ***Butz v. Economou***,438 U.S. 478, 506, 57 L. Ed. 2d 895, 98 S. Ct. 2894). The application of immunity is based on function, the nature of the responsibilities and acts. (See ***Malley v. Briggs***, 475 U.S. 335, 106 S. Ct. 1092, 89 L. Ed. 2d 271; ***McMillan v. Svetanoff***, 793 F.2d 149 (7th Cir. 06/10/1986).)

Qualified immunity was rejected by the Eighth Circuit in ***Goodwin v. Circuit Court of St. Louis County***, 729 F.2d 541, 545-546 (8th Cir. 1984), where the court held that because intentional discrimination was necessary for liability under § 1983, it was illogical to argue "good faith" for purposes of qualified immunity.

"The law of immunity in a ***Bivens*** claim against a federal official mirrors that in a section 1983 claim against a state official." ***Moore v. Valder***, 65 F.3d 189, 192 (D.C. Cir. 1995) (citing ***Butz***, 438 U.S. at 504). Absolute prosecutorial immunity, like judicial immunity, turns on the function performed by the prosecutor. (***Atherton v. Dist. of Columbia Office of the Mayor***, 567 F.3d 672 (D.C.Cir. 06/02/2009).)

REASON #2: THESE JUDGES HAVE NO IMMUNITY FOR THEIR CRIMINAL ACTS

70. Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since acts complained of in the Verified Complaint are criminal acts, Defendant judges have no immunity to engage in such acts. (***O'Shea v. Littleton***, 414 U.S. 488, 503 (1974).)

Judges have no immunity for crimes committed by them during the terms of their office or prior thereto. ***United States v. Isaacs***, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976 (1974). (See also ***Imbler v. Pachtman***, 424 U.S. 409, 429, 47 L. Ed. 2d 128, 96 S. Ct. 984 (1976); ***Gravel v. United States***, 408 U.S. 606, 627, 33 L. Ed. 2d 583, 92 S. Ct. 2614 (1972); ***United States v. DiCarlo***, 565 F.2d 802, 806 (1977); ***In re Grand Jury Subpoenas***, supra at 581, ***United States v. Craig***, supra; ***United States v. Anzelmo***, 319 F. Supp. 1106, 1118-19 (E.D. La. 1970).

No federal official has ever been held exempt from prosecution for his commission of a federal crime. (***United States v. Manton***, 107 F.2d 834 (2d Cir. 1938).)

71. Defendant judges have excluded evidence of crimes. They have pretended the evidence doesn't exist, and they have told the appellate courts that the evidence doesn't exist.

Nor have judges any privilege to exclude evidence of crimes committed by them. In ***Manton***, supra, the judge did not even question evidence showing that his opinions favored bribers.

72. Defendant judges have violated criminal statutes.

73. When Defendant judges acted as they have, they went way past the point at which judicial immunity could be justified. Actions were criminal, and they were intentional. This Civil Action appears to be the only way that the legal or judicial system will ever do anything about it.

74. Windsor submits that judges should not be given immunity when they violated criminal laws as part of a scheme to in essence steal One and a Half Million Dollars from Windsor.

75. Judges do not have immunity from the crime of Misprision of a Felony, 18 U.S.C. § 4. Defendants were given knowledge and/or proof of the actual commission of felonies, and they have not made these known to some judge or other person in civil authority under the United States as required by law.

76. Windsor has sued for RICO, and Windsor has identified a number of predicate criminal acts in the Verified Complaint, including perjury, subornation of perjury, and conspiracy. In a 2005 cocaine case, Judge Mary Waterstone has been charged with conspiracy, perjury, subornation of perjury, and misconduct in office. Judge Waterstone's attorney filed a motion to dismiss the charges on the ground that a judge's rulings during a trial, even if wrong, cannot be the basis for a criminal prosecution. That argument would have merit under most circumstances. If a judge could be prosecuted for getting the law wrong, nearly all judges would be criminals. Judges have immunity from civil liability for decisions they make from the bench, and Waterstone's lawyers argue that the policy underlying immunity -- protecting judicial independence -- should apply to criminal prosecutions that are based on a judge's judicial rulings. But Waterstone didn't just make a bad ruling; she conspired with a prosecutor who suborned perjury to conceal the perjury, and in the process assured the violation of an accused person's

due process right to a fair trial and to the disclosure of exculpatory evidence. The government's position is the fact that she wore a robe while doing so should not excuse her criminal conduct. The integrity of the criminal justice system depends upon lawyers and judges playing by the rules -- particularly rules that prohibit the knowing submission of untruthful testimony to juries. If anything, it is more detrimental to justice for a judge, whose duty is to remain impartial, to conspire to suborn perjury than it is for a lawyer, whose job is to act as an advocate. (http://www.foxnews.com/story/0,2933,510391,00.html)

77. Defendant judges have suborned perjury.

78. Under Georgia law O.C.G.A. 17-1-4 and the court's inherent powers, orders and judgments can be set aside due to perjury. Defendant judges blocked Windsor's legal right to this relief by ignoring the perjury and refusing to have it considered. This is obstruction of justice.

REASON #3: THERE IS NO IMMUNITY FOR INJUNCTIVE RELIEF.

79. There can be no immunity for injunctive relief.

Claims for injunctive relief are not barred by judicial immunity. (***Pulliam v. Allen***, 466 U.S. 522, 528-43, 80 L. Ed. 2d 565, 104 S. Ct. 1970 (1984).) For such a showing, the judicial officer must "know that he lacks jurisdiction, or act despite a clearly valid statute or case law expressly depriving him of jurisdiction." ***Mills v. Killebrew***, 765 F.2d 69, 71 (6th Cir. 1985) (citing ***Rankin v. Howard***, 633 F.2d 844, 849 (9th Cir. 1980)).)

REASON #4: THERE CAN BE NO IMMUNITY
FOR FRAUD UPON THE COURTS.

80. In an action for Fraud Upon the Courts by judicial officers including the judge, there can be no immunity for the judicial officers. The judges are indispensable parties to this litigation. Based upon Windsor's research, he believes there is no case law based upon similar facts that says immunity is allowed in a case such as this.

81. Defendants have committed fraud upon the courts. FRCP Rule 60(d) gives Windsor the legal right to file this independent action for relief from a judgment and orders due to fraud upon the courts. Defendant judges cannot be given judicial immunity for this fraud because Windsor's entire case depends upon his ability to prove the fraud by these officers of the court. Lawmakers did not intend for the "officers of the court" applicable to FRCP Rule 60(d) to exclude the primary officers – the judges. If lawmakers intended FRCP Rule 60(d) to pertain only to attorneys and staff members of judges, that is what the lawmakers would have said.

82. Judges are officers of the court. (***The Law Encyclopedia***.) A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. *A judge is not the court.* (***People v. Zajic***, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).) FRCP Rule 60(d) says nothing about granting the primary officer of the court immunity.

83. Fraud upon the courts has been specifically identified to include cases "where the judge has not performed his judicial function." Windsor has alleged that Defendants have failed to perform judicial functions.

84. The judicial functions that they failed to perform are listed in the Verified Complaint.

85. ***Bulloch v. United States*** makes it **CLEAR** that fraud upon the courts is a proper action against a judge:

> In the court stated "Fraud upon the courts is fraud which is directed to the judicial machinery itself. It is where the court or a member is corrupted or influenced or influence is attempted **or where the judge has not performed his judicial function** --- thus where the impartial functions of the court have been directly corrupted." (***Bulloch v. United States***, 763 F.2d 1115, 1121 (10th Cir. 1985).) (See also ***United States v. Smiley***, 553 F.3d 1137 (8th Cir. 01/26/2009); ***Weese v. Schukman***, 98 F.3d 542, 552 (10th Cir. 1996); ***Campbell v. Meredith Corp.***, No. 09-3067 (10th Cir. 08/24/2009).) [**emphasis added**.]

86. Officers of the court have committed fraud. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the courts."

> "Fraud upon the courts" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court** so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." (***Kenner v. C.I.R.***, 387 F.3d 689 (1968); 7 ***Moore's Federal Practice***, 2d ed., p. 512, ¶ 60.23.) (See also ***Lockwood v. Bowles***, 46 F.R.D. 625, 631 (D.D.C. 1969).) [**emphasis added**.]
>
> Under Federal law, when any officer of the court has committed "fraud upon the courts", the orders and judgment of that court are void, of no legal force or effect. ***Cobell v. Norton***, 226 F.Supp.2d 1 (D.D.C. 09/17/2002).)
>
> "Fraud upon the courts" makes void the orders and judgments of that court. It is also clear and well-settled law that **any attempt to commit "fraud upon the courts" vitiates the entire proceeding**. ***The People of the State of Illinois v. Fred E. Sterling***, 357 Ill. 354; 192 N.E. 229 (1934); ***Allen F. Moore v. Stanley F. Sievers***, 336 Ill. 316; 168 N.E. 259 (1929); ***In re Village of Willowbrook***, 37 Ill.App.2d 393 (1962); ***Dunham v. Dunham***, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); ***Skelly Oil Co. v. Universal Oil Products Co.***, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); ***Thomas Stasel v. The American Home Security Corporation***, 362 Ill. 350; 199 N.E. 798 (1935); ***Manufacturers Hanover Trust Co. v. Yanakas***, 7 F.3d 310 (2nd Cir. 10/18/1993).) [**emphasis added**.]

REASON #5: JUDGES SHOULD HAVE NO IMMUNITY FOR VIOLATION OF CONSTITUTIONAL RIGHTS

87. Windsor's Constitutional rights have been violated: First Amendment right to petition; Fifth Amendment right to due process; Sixth Amendment right to a fair trial; Seventh Amendment right to a trial by jury; Ninth Amendment right to fundamental rights; Fourteenth Amendment right to due process.

88. Defendants have committed crimes for the purpose of depriving Windsor of his Constitutional rights. There is no immunity.

> In ***O'Shea v. Littleton***, supra at 503, the Supreme Court stated: **we have never held that the performance of the duties of judicial, legislative, or executive officers, requires or contemplates the immunization of otherwise criminal deprivations of constitutional rights**. Cf. *Ex parte Virginia*, 100 U.S. 339, 25 L. Ed. 676 (1880). On the

contrary, the judicially fashioned doctrine of official immunity does not reach "so far as to immunize criminal conduct proscribed by an Act of Congress...." (***Gravel v. United States***, 408 U.S. 606, 627, 33 L. Ed. 2d 583, 92 S. Ct. 2614 (1972); ***United States v. Gillock***, 587 F.2d 284 (6th Cir. 11/01/1978).) [**emphasis added**.]

REASON #6: JUDGES SHOULD HAVE NO IMMUNITY FOR DENIAL OF DUE PROCESS

89. Windsor has been denied due process.

90. Windsor's civil and Constitutional rights are being violated under color of law.

Windsor has biased judges at the District Court and Eleventh Circuit committing criminal acts.

"The Due Process Clause serves two purposes...One is to produce, through the use of fair procedures to prevent the wrongful deprivation of interests; ...the other is a guarantee of basic fairness, i.e.: to make people feel that they have been treated fairly."

"[t]rial before an 'unbiased judge' is essential to due process." ***Johnson v. Mississippi***, 403 U.S. 212, 216 (1971); accord ***Concrete Pipe & Prods. V. Constr. Laborers Pension Trust***, 508 U.S. 602, 617 (1993). (See ***Marshall v. Jerrico, Inc.,*** 446 U.S. 238, 100 S.Ct 1610 (1980); ***Mathews v. Eldridge***, 424 U.S. 319, 344 (1976).)

"justice must give the appearance of justice" ***Levine v. United States***, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing **Offutt v.** ***United States***, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954); ***Peters v. Kiff***, 407, U.S. 493, 502 (1972).

91. In this case, Windsor has been deprived of his property interests in over $1,500,000, and more.

See ***Town of Castle Rock v. Gonzales***, 125 S.Ct. 2796, 2803 (2005) (citation and internal quotation marks omitted); ***Bd. of Regents of State Colls. v. Roth***, 408 U.S. 564, 577 (1972); see also ***Bloch v. Powell,*** 348 F.3d 1060, 1068 (D.C. Cir. 2003); ***Roth v. King***, 449 F.3d 1272 (D.C.Cir. 06/09/2006).)

92. Windsor has been denied due process.

See ***Butera v. District of Columbia***, 235 F.3d 637, 645 n.7 (1987). The Fifth Amendment Due Process Clause protects individuals from deprivations of "life, liberty, or property, without due process of law." U.S. Const. amend. V. A procedural due process violation occurs when an official deprives an individual of a liberty or property interest without providing appropriate procedural protections. Liberty interests may either be located in the Constitution itself or "may arise from an expectation or interest created by state laws or policies." ***Wilkinson v. Austin***, 545 U.S. 209, 221 (2005).

Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. ***United States v. Sciuto***, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.")

93. Windsor was never given the opportunity to be heard.

"[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." ***Armstrong v. Manzo***, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). ***Garraghty v. Va. Dep't of Corr.***, 52 F.3d 1274, 1282 (4th Cir. 1995); ***Mathews v. Eldridge***, 424 U.S. 319, 335 (1976); ***Atherton v. Dist. of Columbia Office of the Mayor***, 567 F.3d 672 (D.C.Cir. 06/02/2009).)

REASON #7: JUDGES SHOULD HAVE NO IMMUNITY FOR DENIAL OF EQUAL PROTECTION

94. Denying Windsor access to important records, evidence, and witnesses and mistreating Windsor as a pro se party are violations of Equal Protection.

95. Pro se parties are a distinct minority class in judicial proceedings. Defendants have denied equal protection to pro se Windsor.

REASON #8: JUDGES SHOULD HAVE NO IMMUNITY FOR RICO VIOLATIONS.

96. The Defendants are members of an enterprise involved in RICO violations. The judges are indispensable parties to this litigation.

97. Congress specifically directed that the provisions of RICO "shall be liberally construed to effectuate its remedial purposes." (Pub. L. 91-452, Title IX, Section 904, 84 Stat. 941.) The Courts have interpreted RICO in accordance with this Congressional mandate. (See, e.g., ***United States v. Altese***, 542 F.2d 104 (2d Cir. 1976), cert. denied, 429 U.S. 1039, 97 S. Ct. 736, 50 L. Ed. 2d 750 (1977); ***United States v. Campanale***, 518 F.2d 352 (9th Cir. 1975), cert. denied, 423 U.S. 1050, 96 S. Ct. 777, 46 L. Ed. 2d 638 (1976).) The legislative intent was to make RICO violations **dependent upon behavior, not status**. See ***United States v. Mandel***, 415

F. Supp. 997, 1018 (D. Md. 1976). Section 1962(c) prohibits **any person** from engaging in the proscribed conduct, and defines the term "associated with" as direct or indirect participation in the conduct of the enterprise. (***United States v. Forsythe***, 560 F.2d 1127 (3rd Cir. 06/17/1977).) In this case, the Third Circuit denied immunity to a magistrate. "...because the district court judge's interpretation of RICO as applied to these facts was contrary to congressional intent in enacting the statute, as well as for all the reasons stated in this opinion, we reverse and remand." [**emphasis added**.]

98. In ***United States v. Vignola***, 464 F. Supp. 1091 (E.D.Pa. 01/8/1979), the defendant argued that Congress did not intend RICO to apply to the judiciary, and, in enacting RICO, was not concerned with corruption of that branch of government. The court disagreed.

> "RICO was enacted as Title IX of the Organized Crime Control Act of 1970; the over-all purpose of that Act is to combat so-called 'organized crime,' which Congress viewed as a spreading cancer in American society. (See ***Congressional Statement of Findings and Purpose***, Pub.L. No. 91-452, 84 Stat. 922-923 (1970).) The major thrust of the 1970 Act is to rid the American economy and the channels of interstate commerce from the influences of 'organized crime.' Congress has chosen to accomplish this objective not by proscribing the elusive status of "organized crime", but by prohibiting certain behavior, such as syndicated gambling and racketeering, which it has concluded is commonly engaged in by members of 'organized crime.' (***United States v. Forsythe***, 560 F.2d 1127, 1136 (3d Cir. 1977) ("The legislative intent was to make RICO violations dependent upon behavior, not status."); ***United States v. Mandel***, 415 F. Supp. 997, 1018 (D.Md.1976).) Congress has given 'enterprise' the broad definition previously quoted. This definition makes no exception for public entities such as the judiciary, nor do we find any basis in the legislative history for implying one."
>
> "Indeed, in adopting the 1970 Act, Congress expressed a particular concern for the subversion and corruption of 'our democratic processes.' ***Congressional Statement of Findings and Purpose***, Pub.L. No. 91-452, 84 Stat. 923. (We note also that Congress has included within the definition of racketeering activity the offense of bribery, a crime which is peculiar to public officials, including judges.) Congress has specifically directed that RICO be 'liberally construed to effectuate its remedial purposes . . . ' Pub.L. No. 91-452, § 904, and the courts have recognized and given effect to that mandate. They have been in near-unanimity in rejecting challenges to the characterization of a particular entity as an 'enterprise.'"

"In trying to cleanse the American economy of the subversive influence of racketeering activity, there is no reason why Congress should have excluded the judiciary from its protective and remedial statutory scheme. The judiciary is as vulnerable to the evils of corruption as any other entity, public or private. We see no reason to read into RICO an exception for that branch of government, nor do we believe Congress intended to create one." (***United States v. Vignola***, 464 F. Supp. 1091 (E.D.Pa. 01/8/1979).)

99. Judges do not have immunity in a RICO action in which the judges have committed crimes and are named as enterprise participants.

REASON #9: JUDGES HAVE NO IMMUNITY WHEN A JUDGE LACKS JURSIDICTION.

100. According to Windsor's research, "jurisdiction" means a lot of things in the legal world. Jurisdiction is defined as "power constitutionally conferred upon a judge or magistrate, to take cognizance of and decide causes according to law and to carry his sentence into execution." (***L'ectric Law Library***.) "The right and power to interpret and apply the law." (***West's Encyclopedia of American Law***.)

101. Based upon these definitions, judges do not have "jurisdiction" to take acts that were not Constitutionally conferred upon them. Judges do not have jurisdiction to decide cases in criminal disregard of the law. Everything that a judge is authorized to do is related to law. This automatically means that judges have no authority to take actions that they know violates the law.

102. ***Stump*** says "a judge is not acting in the "clear absence of jurisdiction" when "the action he took was in error, was done maliciously, or was in excess of his authority." (***Stump***, 435 U.S. at 356.) He retains his immunity "even if his exercise of authority is flawed by the commission of grave procedural errors." Id. at 359. The actions of Defendant judges consisted of far more than committing "procedural errors." Some committed crimes repeatedly. They had no jurisdiction.

103. Evil intent or motive does not transform a judicial act into a nonjudicial one. (***O'Neil v. City of Lake Oswego***, 642 F.2d 367, 370 (9th Cir. 1981).) In ***Harper v. Merckle***, 638 F.2d 848 (5th Cir.), cert. denied, 454 U.S. 816, 70 L. Ed. 2d 85, 102 S. Ct. 93 (1981), the Fifth Circuit relied on the improper motives of the judge to find that the judge's actions were nonjudicial. Id. at 859. However, criminal intent is clearly non-judicial.

104. Denial of immunity is justified on grounds that Defendant judges committed perjury. Judges do not have judicial authority to commit perjury.

> "...not every action by a judge is in the exercise of his judicial function. ... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse. When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect." (***Yates v. Village of Hoffman Estates, Illinois***, 209 F. Supp. 757 (N.D. Ill. 1962).)

105. Judicial Defendants violated mandatory statutes.

106. Judicial Defendants acted in excess of their authority; they acted in ways that no legislature contemplated any judge to act.

107. Judicial Defendants acted criminally.

108. Judicial Defendants intentionally discriminated against Windsor.

109. Judicial immunity is not only logically indefensible and shameful, it is unconstitutional.

110. Mr. Justice Douglas's eloquent dissent in ***Pierson*** noted that the **Congressional Globe** revealed that §1983 applied to "any person" and that "[t]here was no exception for members of the judiciary." The honorable justice also invoked quotations from ***Gregoire v. Biddle***, ***Baker v. Carr***, ***Monroe v. Pape***, and an English case, ***Dawkins v. Lord Paulet***, quoting Chief Justice Cockburn. (***Pierson v. Ray***, 386 U.S. 547, 18 L. Ed. 2d 288, 87 S. Ct. 1213 (1967).)

111. This is not the case of someone making unsubstantiated accusations. Windsor has provided the proof of the criminal acts. His affidavits have not been controverted.

112. The Eleventh Circuit expressed appropriate concern for criminal violations by federal judges in ***United States v. Hastings***, 681 F.2d 706 (11th Cir. 07/12/1982):

> "The rule of absolute immunity from criminal prosecution of active federal judges for acts committed in their official capacities poses too great a threat to the public interest in the rule of law to be adopted by this court. Indeed, the miniscule increment in judicial independence that might be derived from the proposed rule would be outweighed by the tremendous harm that the rule would cause to another treasured value of our constitutional system: no man in this country is so high that he is above the law. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy."

113. Windsor's reading of the statutes indicates that Defendant judges lost jurisdiction when they ignored motions for recusal.

114. A trial court has a ministerial duty to consider and rule on motions properly filed and pending before the court. Defendant judges have ignored their ministerial and judicial duties. (See ***Safety-Kleen Corp. v. Garcia***, 945 S.W.2d 268, 269 (Tex. App.San Antonio 1997); Canon 3 B. (8) of the CJC: "A judge shall dispose of all judicial matters promptly, and efficiently, and fairly.") Promptly is defined as "with little or no delay; immediate; quick; speedy; swift."

115. Defendant judges have violated this Canon to damage Windsor. (See ***U.S. v. Joyeros***, 204 F.Supp.2d 412 (E.D.N.Y. 05/09/2002).)

116. Windsor's Constitutional rights have been violated.

117. Defendant judges have erroneously and maliciously made absolutely false claims.

118. The Supreme Court has expressed that judges should have proceeded no further in such cases.

> Upon the filing of an affidavit of a party to a case in the district court… averring the affiant's belief that the judge before whom the case is to be tried has a personal bias or prejudice against him, and stating facts and reasons, substantial in character and which, if true, fairly establish a mental attitude of the judge against the affiant which may prevent impartiality of judgment, it becomes the duty of the judge to retire from the case." (***Berger v. United States***, 255 U.S. 22 (1921).)

119. Windsor has articulated facts and legally cognizable grounds to disqualify judges, but none of them have done so.

120. 28 U.S.C. § 455, says a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The same section also provides that a judge is disqualified "where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

121. ANY doubt regarding whether recusal is required must be resolved in favor of recusal. Section 455 creates a "**self-enforcing obligation**" for judges to recuse themselves, and doubt regarding whether recusal is required must be resolved in favor of recusal. (***Murray v. Scott***, 253 F.3d 1308, 1310 (11th Cir. 2001); ***United States v. Garrudo***, 869 F. Supp. 1574 (S.D.Fla 09/9/1994); ***United States v. Bosch***, 951 F.2d 1546 (9th Cir. 12/09/1991); ***United States v. Kelly***, 888 F.2d 732 (11th Cir. 09/29/1989); ***United States v. State of Alabama***, 828 F.2d 1532 (11th Cir. 10/06/1987).)

> In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. ***Liteky v. U.S.***, 114 S.Ct. 1147, 1162 (1994).

> Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. ***Liljeberg v. Health Services Acquisition Corp.***, 486 U.S. 847, 108 S.Ct. 2194 (1988); ***United States v. Balistrieri***, 779 F.2d 1191 (7th Cir. 1985); ***Taylor v. O'Grady***, 888 F.2d 1189 (7th Cir. 1989); ***Pfizer Inc. v. Lord***, 456 F.2d 532 (8th Cir. 1972); ***Levine v. United States***, 362 U.S. 610, 80 S.Ct. 1038 (1960); ***Offutt v. United States***, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).).

> Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. ***United States v. Sciuto***, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.")

122. Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce." (18 U.S.C. § 1951.) The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he/she is not a judge).

123. The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in Treason to the Constitution. (***Taylor and Marshall v. Beckham***, 20 S. Ct. 890, 178 U.S. 548 (U.S. 05/21/1900).) If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

124. The whole idea of justice requires a fair trial with an impartial judge. When the judge is so obviously biased that the judge ignores the facts and the law, invents facts that do not exist in the record, completely ignores charges of hundreds of counts of perjury, ignores the laws regarding summary judgments, consistently violates its own rulings to favor of one party, has extensive ex parte dealings with that party's attorneys, and does the many other things that judges have done in matters involving Windsor, it really shouldn't matter where the bias comes from.

> Under 28 U.S.C. § 455(a), the standard is whether an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality." (***Christo v. Padgett***, 223 F.3d 1324, 1333 (11th Cir. 2000), cert. denied, 531 U.S. 1191, 121 S. Ct.

1190, 149 L. Ed. 2d 106 (2001). ***United States v. Patti***, 337 F.3d 1317, 1321 (11th Cir. 2003) (citation omitted). ***Summers v. Singletary***, 119 F.3d 917, 920 (11th Cir. 1997). ***United States v. Alabama***, 828 F.2d at 1541 (internal quotation marks omitted) (quoting ***Potashnick v. Port City Constr. Co.***, 609 F.2d 1101, 1111 (5th Cir. 1980)).)

125. Applying the reasonable person analysis to this situation, any reasonable person would question the impartiality of Defendant judges. They have violated Windsor's civil and Constitutional rights under color of law.

> "Judges cannot invoke judicial immunity for acts that violate litigants civil rights." ***Robert Craig Waters. Tort & Insurance Law Journal***, Spr. 1986.

126. For the many reasons detailed above, the Defendants, including the judges, must not be given immunity.

Respectfully submitted, this 28th day of June, 2011.

William M. Windsor
Pro Se

PO Box 681236
Marietta, GA 30068
Telephone: 770-578-1094
Facsimile: 770-234-4106
Email: williamwindsor@bellsouth.net

VERIFICATION OF WILLIAM M. WINDSOR

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, William M. Windsor, who after being duly sworn declares under penalty of perjury that this affidavit is true and correct based upon his personal knowledge, except as to the matters herein stated on information and belief, and that as to those matters he believes them to be true.

This 28th day of June, 2011.

William M. Windsor

Sworn and subscribed before me this 28th day of June, 2011.

____

Notary Public