

**IN THE SUPREME COURT OF THE STATE OF UTAH**

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MARK CHRISTOPHER TRACY

Petitioner,

v.

THE HONORABLE MARK S. KOURIS,

Respondent,

SIMPLIFI COMPANY, JENNIFER  
HAWKES, and ERIC HAWKES

Real Parties in Interest and  
Respondents Below.

Supreme Court No.

Appellate Court No. 20210743

District Court Case No. 200905074

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**PETITION FOR WRIT OF CERTIORARI**

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*On Petition for Writ of Certiorari to the Utah Court of Appeals*

*Appeal from the Order of the Utah Court of Appeals Denying Petition for Writ of  
Extraordinary Relief from Amended Judgment, Orders of Filing, Minute Entries, and  
Writ of Execution Issued by of the Honorable Mark S. Kouris, Presiding Judge of the  
Utah State Third District Court*

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Brent M. Johnson  
[brentj@utcourts.gov](mailto:brentj@utcourts.gov)  
Administrative Office of the Courts  
450 South State Street, 3rd Floor  
Salt Lake City, Utah 84111  
Tel: 801-578-3800

*Attorney for Respondent  
Utah State Third District Court  
Presiding Judge Mark S. Kouris*

Mark Christopher Tracy  
[m.tracy@echo-association.com](mailto:m.tracy@echo-association.com)  
1160 E. Buchnell Dr.  
Salt Lake City, Utah 84094  
Tel: 929-208-6010

*Pro Se Petitioner*

Continued Following Page

Jeremy R. Cook

[jcook@ck.law](mailto:jcook@ck.law)

COHNE KINGHORN, P.C.

111 E. Broadway, Suite 1100

Salt Lake City, Utah 84111

Tel: 801-363-4300

*Attorney for Real Parties in Interest and Respondents Below  
Simplifi Company, Jennifer Hawkes, and Eric Hawkes*

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[brentj@utcourts.gov](mailto:brentj@utcourts.gov)  
Administrative Office of the Courts  
450 South State Street, 3rd Floor  
Salt Lake City, Utah 84111  
Tel: 801-578-3800

*Attorney for Respondent  
Utah State Third District Court  
Presiding Judge Mark S. Kouris*

Mark Christopher Tracy  
[m.tracy@echo-association.com](mailto:m.tracy@echo-association.com)  
1160 E. Buchnell Dr.  
Salt Lake City, Utah 84094  
Tel: 929-208-6010

*Pro Se Petitioner*

Continued Following Page

Jeremy R. Cook

[jcook@ck.law](mailto:jcook@ck.law)

COHNE KINGHORN, P.C.

111 E. Broadway, Suite 1100

Salt Lake City, Utah 84111

Tel: 801-363-4300

*Attorney for Real Parties in Interest and Respondents Below  
Simplifi Company, Jennifer Hawkes, and Eric Hawkes*

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## Introduction

Upon submittal to this Court and subsequent referral for disposition,<sup>1</sup> a panel of the Utah Court of Appeals denied the Petition for Writ of Extraordinary Relief (“Petition”), two (2) motions for Emergency Relief and a Request for Rehearing filed by Mark Christopher Tracy (“Mr. Tracy”) based on a single issue not preserved in the district court, not advanced by the parties during appellate proceedings, and facts contradicted by the court record, and not within the jurisdiction of the district court.

The Utah Court of Appeals further ruled that it was “entirely discretionary” if it considered and/or resolved any claim for error regarding the jurisdictional limits of Respondent Utah Third District Court Presiding Judge Mark S. Kouris (“Respondent Kouris”) (i) to modify judgement during appellate review, (ii) to willfully suppress notice of appeal, objections, and motions from the court docket, and (iii) to expedite execution of a patently defective judgment without judicial notice and hearing.

By denying the Petition, the Utah appellate court allowed the purported seizure of a cause of action belonging to the United States of America, federal appellate proceedings pending before the United States Court of Appeals for the Tenth Circuit, and a water right of an unincorporated association as “personal property” of Mr. Tracy thereby facilitating forced sale to the Real Parties in Interest as judgement creditors.<sup>2</sup>

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<sup>1</sup> Utah R. App. P. 42(a).

<sup>2</sup> As intended, the Real Parties of Interest have now motioned both state and federal courts to substitute themselves as plaintiffs and dismiss appellate litigation against themselves contrary to the Court of Appeals’ requirement articulated in *Pugh v. Dozzo-Hughes*, 2005 UT App 203.

The instant Petition for Writ of Certiorari asks if the Utah Court of Appeals may (i) sua sponte treat an issue that was not preserved in the district court, not raised on appeal, and not within the district court's jurisdiction (ii) disregard uncontested facts and supplement the appellate record with a narrative contradicted by the court record, and (iii) deny a Petition for Extraordinary Relief without addressing and/or resolving any claim of jurisdictional error when reviewing court ordered seizure and forced sale of personal and real property.

This Court should vacate dismissal of the Petition and instruct the Utah Court of Appeals to address and resolve all claims of jurisdictional error.

### **Questions Presented for Review**

**Question No. 1:** Did the Utah Court of Appeals violate the due process clause of the XIV Amendment, United States Constitution, and this Court's rulings on procedural regularity and fairness when it treated an issue not preserved in the district court, not raised on appeal, and not within the jurisdiction of the district court?

**Question No. 2:** Did the Utah Court of Appeals violate Due Process clause of the XIV Amendment, United States Constitution, to include this Court's ruling on procedural regularity and fairness when it disregarded uncontested facts and constructed its own narrative contradicted by and not apparent in the court record?

**Question No. 3:** Does the Due Process Clause of the XIV Amendment, United States Constitution require a Utah appellate court to address and resolving all claims of jurisdictional error when reviewing the court ordered seizure and forced sale of personal and real property in the State of Utah?

## **Opinion Below**

The unpublished opinion of the Utah Court of Appeals in *Tracy v. Kouris*, and the denied Request for Rehearing in Case No. 20210743-CA are attached as Addenda A and B.

## **Jurisdiction**

The Utah Court of Appeals denied the Petition and Motion for Emergency Relief on November 2, 2021. (Add. A.) Mr. Tracy's Petition for Rehearing and Second Motion for Emergency Relief was filed on the same day and rejected by the Utah Court of Appeals on November 5, 2021, without comment. (Add. B.)<sup>3</sup> This Court has jurisdiction pursuant to Utah Code Ann. § 78A-3-102(3)(a) and Utah R. App. P. 45.

## **Controlling Provisions**

Amendment XIV, United States Constitution, Utah R. Civ. P. 83, and Utah R. App. P. 4(g), are attached as Addendum C.

## **Statement of the Case**

The instant Petition documents the Utah Court of Appeals' approval of Respondent Kouris' willful prevention of direct appeal of a patently defective judgment while simultaneously expediting execution without judicial notice and hearing.

In a case perhaps appropriately titled "Olympic Judicial Dodgeball," Respondent Kouris declined to respond to the Petition arguing that the "real-parties-in-interest in the

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<sup>3</sup> Due a likely clerical error, the Clerk of the Court of Appeals certified that the Order was transmitted on November 3, 2021, although the Order was recorded as docketed on November 5, 2021, and Mr. Tracy did not receive electronic transmission of the Order until November 5, 2021. (Add. B at Certificate of Service.)

best position to make the appropriate arguments” regarding his judicial conduct, while the Utah Court of Appeals created its own narrative contrary to the uncontested facts of the appellate record without addressing and/or resolving any claim of jurisdictional error. A copy of Respondent Kouris’ Notice to Court and Real-Parties-of-Interest is attached as Addendum D.

The instant Petition for Writ of Certiorari to the Utah Court of Appeals is necessary and appropriate.

### **Statement of Facts**

#### **I. Petition for Disclosure of Government Records of Lead Contamination of Drinking Water and Groundwater Mining in Emigration Canyon.**

In September 2014, Mr. Tracy commenced legal action under the federal False Claims Act (“FCA) against Real Party of Interest Eric Hawks (“Defendant Hawkes”), Emigration Improvement District (“Defendant EID”), and private land-developers Kem Gardner, Walter J. Plumb III and the former CEO of Energy Solutions, Inc., and Defendant EID Advisory Committee Chairman R. Steve Creamer *et. al.*, in what has alleged to be the longest, most lucrative, and perhaps most economically destructive water grabs in the history of the State of Utah.<sup>4</sup>

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<sup>4</sup> See *e.g.*, audio-video recording entitled “Aerial and Ground Recording of the Emigration Oaks PUD (YouTube)” available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=3310](https://echo-association.com/?page_id=3310); *United States of America ex rel. Mark Christopher Tracy v. Emigration Improvement District et al.*, No. 21-4059 & 21-4059 (10th Cir., Response Order November 29, 2021) and *Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District*, No. 20200295 (Utah Ct. App., filed February 25, 2019).

To secure government records relevant to pending state and federal litigation against Defendant EID, Defendant Hawkes and current legal counsel Jeremy R. Cook of the Salt Lake City law firm Cohne Kinghorn P.C. (“Utah Attorney Cook”)<sup>5</sup> *et al.* in the sole custody of the Real Parties of Interest Simplifi Company, Defendant Hawkes and Jennifer Hawkes as the designated “EID Public Records Office” (collectively hereafter “Simplifi Respondents”),<sup>6</sup> Mr. Tracy submitted lawful requests under the Utah Government Records Access and Management Act (“GRAMA”) to the same.

Upon refusal to disclose lead contamination laboratory test results of public drinking water (“Lead-Contamination GRAMA”) and following receipt of a duplicitous data file from Defendant Hawkes believed to conceal Groundwater Mining of Emigration Canyon aquifers (“Groundwater-Mining GRAMA”), Mr. Tracy filed two (2) Petitions for Judicial Review of Denied Request for Disclosure of Public Records, Injunction for Violations of the Utah Government Records Access and Management Act (“GRAMA”), Award of Attorney Fees and Cost against Simplifi Respondents.<sup>7</sup>

Contrary to the prevailing view of state and federal authorities including express provisions of the federal Safe Drinking Water Act of 1974 requiring lead contamination records to be maintained on the premises of Simplifi Respondents for inspection and review, Utah State Third District Court judge Robert P. Faust ruled that a private Utah

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<sup>5</sup> *Tracy v. Simplifi et al.*, No. 2:21-cv-444-RJS-CMR (D. Utah, filed July 7, 2021).

<sup>6</sup> *See* Utah Code Ann. § 63G-2-103(11)(b)(i).

<sup>7</sup> As Defendant EID does not retain public records per Utah Code Ann. § 63G-2-204(1)(a) it was neither a named nor necessary party to the proceedings below.

corporation and controlling shareholders in sole possession of government records are exempt from GRAMA provisions.

Mr. Tracy appealed.<sup>8</sup>

Following subsequent service of process of the Groundwater-Mining GRAMA lawsuit, and upon motion to dismiss by Simplifi Respondents, Respondent Kouris refused to stay proceedings during appellate review of the Lead-Contamination GRAMA lawsuit, granted dismissal, and awarded attorney fees against Mr. Tracy in the amount of \$5,758.50 for Mr. Tracy having requested government records from Simplifi Respondents, despite Simplifi Respondents being designated as the EID Public Records Office.

Mr. Tracy appealed.<sup>9</sup>

## **II. Modification of Judgement During Appellate Review.**

During appellate review of the Lead-Contamination and Groundwater-Mining GRAMA lawsuits, Respondent Kouris modified the judgement increasing the award of attorney fees from \$5,758.50 to \$9,029.00 ruling Mr. Tracy to be a “vexatious litigant” for having requested public documents from the designated EID Public Records Office thereby requiring leave of Respondent Kouris prior to Mr. Tracy filing future litigation in a Utah State court (“Amended Judgement”).

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<sup>8</sup> *Tracy v. Simplifi Company et al.*, No. 20210754 (Utah, Petition for Writ of Certiorari filed October 14, 2021). Simplifi Respondents failed neither response nor opposition to the petition.

<sup>9</sup> *Tracy v. Simplifi Company et al.*, No. 20210227 (Utah Ct. App., Corrected Order to Stay Proceedings, May 18, 2021).

Respondent Kouris issued no prefiling order in pending litigation and granted Mr. Tracy neither judicial notice nor hearing of the same.<sup>10</sup> A copy of the Decision and Order and Amended Judgment are attached as Addenda E and F.

Mr. Tracy submitted objection to the Amended Judgment for lack of jurisdiction. (Pet. at Add. 5.) Respondent Kouris withheld Mr. Tracy's objection from the court record and returned the same to Mr. Tracy on May 3, 2021. (Pet. at Add. 6.)

The following day Mr. Tracy filed *Motion to Vacate Order of Filing* as Respondent Kouris had not issued a prefiling order in pending litigation. (Pet. at Add. 5.) Unbeknownst to Mr. Tracy, Respondent Kouris executed the Amended Judgment over Mr. Tracy's objection and withheld Mr. Tracy's motion 122 days before returning the same via United States postal service on September 3, 2021 (Pet. at Add. 10.)

### **III. Prevention of Direct Appeal of the Amended Judgment.**

Both Respondent Kouris and Utah Attorney Cook failed to served Mr. Tracy a copy of the executed Amended Judgment and failed to Mr. Tracy of its existence prior to the status hearing before Respondent Kouris on June 10, 2021, upon Mr. Tracy's express request. (Rehear. at Add. 2.)

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<sup>10</sup> In both the *Decision and Order Denying Motion to Vacate, Awarding Attorney Fees and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* [Pet. Add. 2] and the *Amended Judgment* [Pet. Add. 3], Respondent Kouris incorrectly cited Utah R. Civ. P. 83(b)(4) and not subsection (b)(5) when the district court ordered Mr. Tracy to obtain leave of the court "prior to filing *any future claim for relief* in a Utah State court" (emphasis added). (Add. C.)

Upon learning that Respondent Kouris had executed the Amended Judgment over Mr. Tracy's objection, and had failed to certify service, Mr. Tracy submitted Notice of Appeal of the Amended Judgment to Respondent Kouris the same day and provided all certifications required of a prefilng order in pending litigation despite Respondent Kouris having not issued any such order under Utah R. Civ. P. 83(b)(4). (Pet. at Add. 9.) A copy of the Notice of Appeal of Amended Judgment is attached as Addendum G.

Unbeknownst to Mr. Tracy, Respondent Kouris instructed the court clerk to withhold the Notice of Appeal of the Amended Judgment from the district court docket.

Mr. Tracy submitted docketing statement and a request for transcript with this Court, which therein would have perfected appeal of the Amended Judgment had Respondent Kouris not withheld Notice of Appeal of the Amended Judgment from the district court docket. (Pet. at page 19, no. 26.)

Devoid of jurisdiction to amend judgement during appellate review, having failed to issue a prefilng order in pending litigation, and contrary to Mr. Tracy's compliance with Utah R. Civ. P. 83(b)(4) Respondent Kouris continued to withhold Mr. Tracy's Notice of Appeal of the Amended Judgment for 85 days returning the same to Mr. Tracy via United States postal service on September 3, 2021. (Pet. at Add. 10.) A copy of the Notice of Appeal of Amended Judgment is attached as Addendum G.

On September 29, 2021, this Court returned the docketing statement to Mr. Tracy (Pet. at Add. 11.)

Mr. Tracy filed Petition for Extraordinary Relief on October 11, 2021.



#### **IV. Order to Deny Joinder in Parallel Litigation for Disclosure of Public Drinking Water Lead Contamination Records.**

In parallel litigation to the Lead-Contamination GRAMA lawsuit filed by Mr. Tracy against Simplifi Respondents, Dr. Steven J. Onyksko (“Dr. Onysko”) filed for court ordered disclosure of the same government records from Defendant EID and the Utah Division of Drinking Water pending before Utah State Third District Court judges Keith Kelly<sup>11</sup> and Adam T. Mow. The records are believed to evidence lead contamination of public drinking water system UTAH18143 owned by Defendant EID and operated by Defendant Hawkes and Simplifi Respondents.<sup>12</sup>

Upon learning that Mr. Tracy had motioned for permissive joinder, Respondent Kouris issued Minute Entries in both proceedings incorrectly informing the courts that prefiling order in pending litigation had been entered against Mr. Tracy.

Judge Kelly denied Mr. Tracy’s Joinder Motion based upon Respondent Kouris misrepresentation. (Pet. Add. 6.) Judge Mow<sup>13</sup> instructed the court clerk to withhold Mr. Tracy’s *Request to Submit for Decision* from the court docket but failed to issue and/or serve Mr. Tracy an Order of Filing or return the *Request to Submit for Decision* to Mr. Tracy. A copy of the email correspondence of Utah district court clerk Emily Brown is attached as Addendum H.

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<sup>11</sup> *Onysko v. Patricia Smith-Mansfield et al.*, No. 200906661 (Utah 3rd Jud. Dist., filed October 20, 2020).

<sup>12</sup> *Onysko v. Patricia Smith-Mansfield et al.*, No. 200907218 (Utah 3rd Jud. Dist., filed November 19, 2020).

<sup>13</sup> Although Dr. Onysko had requested documents directly related to pending FCA litigation, judge Mow failed to inform Dr. Onysko of judge Mow’s former representation of Carollo Engineers in the same legal action.

**V. Expedited Execution of the Amended Judgement.**

On July 9, 2021, Utah Attorney Cook filed Application for Writ of Execution listing therein “Appeal in the Tenth Circuit Court of Appeals in the ... matter UNITED STATES OF AMERICA Ex Rel Mark Christopher Tracy” and “Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District” as “causes of action” under the rubric “personal property” and “Water Right 57-8947 (a16183) deeded to the Emigration Canyon Home Owners Association as “real property” of judgement debtor Mr. Tracy. (Pet. at Add. 20.)

Utah Attorney Cook executed the Application for Writ of Execution as an “Attorney or Licensed Paralegal Practitioner of record” although a month prior thereto Utah State Third District Court Judge Su Chon ruled that the Emigration Canyon Home Owners Association is an unincorporated association and not a dba entity of Mr. Tracy, as argued by Utah Attorney Cook himself during the evidentiary hearing before Judge Su Chon on December 22, 2021. (Pet. at Add. 8, Exhibit A.)

Under direction of Respondent Kouris, the district court clerk issued a Writ of Execution the same day.

Upon receipt of the writ by the Salt Lake County Sheriff, Mr. Tracy transmitted *Reply and Request for Hearing – Writ of Execution (Utah Rule of Civil Procedure 64E)* to Respondent Kouris on August 10, 2021. (Pet. at Add. 8.) Contrary to the statutory

requirement to conduct an evidentiary hearing within 14 days,<sup>14</sup> Respondent Kouris withheld Mr. Tracy's objection for 24 days and returned the same to Mr. Tracy on September 3, 2021, via United States postal service based upon a non-existent prefilng order in pending litigation. (Pet. at Add. 10.)

The Salt Lake Sheriff conducted forced sale on November 10, 2021, awarding Simplifi Respondents through Utah Attorney Cook the FCA claim of the United States of America and pending federal appellate review. A copy of the Certificate of Sale is attached as Addendum I. All monies submitted to the Salt Lake County Sheriff by Simplifi Respondents were returned to Simplifi Respondents as judgement creditors.

The Certificate of Sale issued to Defendant Hawkes and the Simplifi Respondents, attests to a judgment date of February 24, 2021 (*id.*), although the Application for Writ of Execution signed by Utah Attorney Cook, and the corresponding writ executed by Respondent Kouris, documents the date of the Amended Judgement as April 30, 2021, in the amount of \$9,215.00, and not the amount of the original judgement namely \$5,758.50 entered on February 24, 2021. (Pet. at 20.)

The Writ of Execution issued by Respondent Kouris and Certificate of Sale states that the judgment debtor is "Mark Christopher Tracy" and not the United States of America as the real party of interest in FCA litigation. (*Id.*)

The Writ of Execution did not list United States of America as having an interest in FCA litigation against Defendant Hawkes and Defendant EID. (*Id.*). Utah Attorney Cook

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<sup>14</sup> Utah R. Civ. P. 64E(d)(2).

failed to transmit a copy of the Writ of Execution to the United States of America as the Real Party of Interest in FCA litigation. (*Id.*)

## **VI. Disposition of the Utah Court of Appeals.**

Simplifi Respondents did not contest that Mr. Tracy had timely submitted, and the Respondent Kouris had received the Notice of Appeal of the Amended Judge the same day Mr. Tracy was informed of its existence, namely June 10, 2021. Although Respondent Kouris had instructed the district court clerk to withhold the same from the court record for 85 days, the Utah Court of Appeals denied the Petition with the cursory conclusion that “[w]hile the district court rejected [Mr.] Tracy’s notice of appeal for failing to comply with the requirements imposed on a vexatious litigant, that notice of appeal, if accepted, would have been untimely as it was *filed* more than thirty days after entry of the final order Tracy seeks to review” (emphasis added). (Add. A.)

The Utah Court of Appeals further noted that “[Mr. Tracy] is now seeking to use this petition for direct appeal, which is not allowed” whereby extraordinary relief for jurisdictional errors is “entirely discretionary” under the purported ruling in *Newman v. Behrens* 1999 UT App 90. (*Id.*)

The Utah Court of Appeals neither addressed nor resolved Mr. Tracy’s claim of error regarding Respondent Kouris’ jurisdiction to amend judgment during appellate proceedings; the ordered seizure of pending state and federal litigation with judicial notice to the United States of America, and mandatory evidentiary hearings; execution of incorrect Minute Entries issued in parallel litigation pending before Utah Judge Kelly and

Mow; and the suppression of the notice of appeal, objections, and motions from the court docket.

## **VII. Motions to Dismiss State and Federal Appeals.**

On November 22, 2021, Defendant EID, Defendant Hawkes and Simplifi Respondents through Utah Attorney Cook moved the Utah Court of Appeals to substitute the Emigration Canyon Home Owners Association as party, and dismiss appellate review of the decision and order of the Utah State Engineer allowing construction of over 500 additional homes in Emigration Canyon despite groundwater mining and surface water depletion. This irreversible damage is substantiated in the very same government records requested by Mr. Tracy in the Groundwater-Mining GRAMA and by Dr. Onykso in litigation pending before Utah judges Mow and Kelly. *See Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District*, No. 20200295 (Utah Ct. Reset Briefing Notice October 19, 2021).

Utah Attorney Cook filed similar motion to the United States Court of Appeals for the Tenth Circuit. *United States ex rel. Mark Christopher Tracy v. Emigration Improvement District et al.*, Nos. 21-4059 & 21-4143 (10th Cir., Order November 22, 2021).

Mr. Tracy filed opposition to both motions for lack of jurisdiction, public policy considerations, and lack of identity of interests articulated by both this Court and the Utah Court of Appeals. *See ASC Utah, Inc. v. Wolf Mt. Resorts, L.C.*, 2013 UT 24 and *Pugh v. Dozzo-Hughes*, 2005 UT App 203.

## Argument

### **I. Summary of Argument.**

The Court of Appeals may not treat an issue not presented in the trial court, not advanced by the parties during appellate proceedings and outside the jurisdiction of the district court. Prior to dismissing a petition for extraordinary relief, the Utah Court of Appeals must address and resolve all claims of jurisdictional error when reviewing court order seizure and forced sale of personal and real properties under Amendment XIV, United States Constitution, and this Court rulings of procedural fairness.

### **II. Sua Sponta Treatment of an Issue Not Preserved in the District Court, Not Presented by Respondents During Appeal, and Not Within the Jurisdiction of the District Court to Adjudicate.**

The Utah Court of Appeals ruled that the Notice of Appeal was “untimely” due to the fact that it was “filed more than thirty days after entry of the final order [Mr.] Tracy seeks to have reviewed.” (Add. A.)

Simplifi Respondents failed to present such an argument to Respondent Kouris, and neither Simplifi Respondents nor Respondent Kouris advanced such a proposition in response to the Petition filed with this Court.

The cursory recital of the Utah Court of Appeals that the refusal of Respondent Kouris’ to “accept” the notice of appeal was appropriate fails to withstand legal scrutiny. Specifically, devoid of jurisdiction to amend judgement during appellate review and without a pre-filing order in pending litigation, Respondent Kouris had no judicial authority to “accept” or “reject” any notice, motion or objection submitted to the district court by Mr. Tracy.

In *State v. Johnson*, 2017 UT 76, this Court recognized that the Utah appellate system is founded on the premise that parties are in the best position to select and argue the issues most advantageous to themselves, while allowing an impartial tribunal to determine the merits of those arguments. Citing *Patterson v. Patterson*, 2011 UT 68, ¶ 16, ("Under our adversary system, the responsibility for detecting error is on the party asserting it, not on the court."). Moreover, when a party fails to raise and argue an issue in the trial court, it has failed to preserve the issue, and an appellate court will not typically reach that issue absent a valid exception to preservation. *Id.*

The exceptions to this rule are however allowed in instances of plain error, ineffective assistance of counsel, and exceptional circumstances.

In the present case, no exceptions are documented in the trial and/or appellate record and the district court also lacked jurisdiction to withhold notice of appeal even if untimely.<sup>15</sup>

### **III. Dismissal on Ground Not Apparent in the Court Record.**

The Court of Appeals ruled that the Petition “would have been untimely as it was *filed* more than after entry of the final order [Mr.] Tracy seeks to have reviewed” (emphasis added). (Add. A.)

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<sup>15</sup> Under Utah R. App. P. 4(g), the district court “shall” reinstate the thirty-day period, if by a preponderance of evidence, Mr. Tracy lacked actual notice of the entry of judgment, had exercised reasonable due diligence, the opposing party did not promptly serve a copy of the signed judgement. As Mr. Tracy must file a motion with Respondent Kouris to reinstate the thirty-day period under subsection (g)(2), and Respondent Kouris lacks jurisdiction to rule on such a motion until the case is remanded back down from the Utah Court of Appeals, the notice of appeal submitted on June 10, 2021, was neither untimely nor did Mr. Tracy have any plain, speedy, or adequate remedy per Utah R. App. P. 19(b).

This recital of fact is not supported by the record.

This Court has held that the Court of Appeals may affirm decision of the district court on alternative grounds, ““if it is sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, and this is true even though such ground or theory is not urged or argued on appeal by appellee, was not raised in the lower court, and was not considered or passed on by the lower court.” *Bailey v. Bayles*, 2002 UT 58, ¶10.

In the present case, it is undisputed that the Notice of appeal was intentionally withheld from the court record by Respondent Kouris and thus not “filed” in the district court.

#### **IV. Failure to Address and Resolve Jurisdictional Claims of Error.**

The Court of Appeals cited that a decision to grant Petition for Extraordinary Relief is “entirely discretionary” pursuant to *Newman v. Behrens*, 1999 UT App 90. However, in that case, the court’s ruling was confined to a petition in the form of a Writ of Mandamus and not a claim of jurisdictional error.

In *State v. Geukgeuzian*, 2004 UT 16, this Court expressly remanded to the Utah Court of Appeals for consideration of unresolved claims for error. As the present case is not in the form of Writ of Mandamus and instead concerns the jurisdictional limits of the presiding judge of Utah Third District Court to order seizure of personal and real property without judicial notice and hearing required under Amendment XIV, United States Constitution, the Court of Appeals lacks discretion to leave any claim of jurisdictional error unresolved.



## CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari, vacate the order of the Utah Court of Appeals and remand to address and resolve all claims of jurisdictional error.

DATED this 6th day of December 2021.

MARK CHRISTOPHER TRACY

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Mark Christopher Tracy  
*Pro Se* Petitioner

## CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December 2021, a true and correct copy of the foregoing **PETITION FOR WRIT OF CERTIORARI** was sent via electronic mail pursuant to Utah R. of App. P. 26(b) to the following counsel of record. Two (2) paper copies will be provided upon request:

Brent M. Johnson  
[brentj@utcourts.gov](mailto:brentj@utcourts.gov)  
Administrative Office of the Courts  
450 South State Street, 3rd Floor  
Salt Lake City, Utah 84111

*Attorney for Respondent  
Utah State 3rd District Court Judge Mark S. Kouris*

Jeremy R. Cook  
[jcook@ck.law](mailto:jcook@ck.law)  
COHNE KINGHORN, P.C.  
111 E. Broadway, Suite 1100  
Salt Lake City, Utah 84111

*Attorney for Real Parties in Interest and Respondents Below  
Simplifi Company, Jennifer Hawkes, and Eric Hawkes*

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Mark Christopher Tracy