IN THE UNITED STATES DISTRICT COURT
FOR THE ELEVENTH CIRCUIT

Appellate Docket No.: 20-13272-EE

ANNE GEORGES TELASCO,
Plaintiff/Appellant,

v.

THE FLORIDA BAR,
Defendant/Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

INITIAL BRIEF OF APPELLANT
CIVIL APPEAL

BY: ANNE GEORGES TELASCO
Pro Se Appellant
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U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

ANNE GEORGES TELASCO vs. THE FLORIDA BAR

Appeal No.: 20-13272-EE

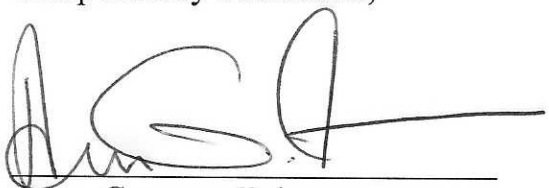
11th Cir. R. 26.1 (enclosed) requires that a Certificate of Interested Persons and Corporate Disclosure Statement must be filed by the appellant with this court within 14 days after the date the appeal is docketed in this court, and must be included within the principal brief filed by any party, and included within any petition, answer, motion or response filed by any party. **You may use this form to fulfill this requirement**. In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

The Supreme Court of Florida is the only entity that I am aware of that has an interest in the outcome of this appeal. I am not aware of any trial judge, attorneys, persons, associations of persons, firms.

Partnerships, or corporations that have an interest in the outcome of this appeal, including subsidiaries, conglomerates affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

Dated: November 11, 2020

Respectfully submitted,



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STATEMENT OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to the First Amendment of the United States Constitution Petition Clause and Federal Common Law.

The final judgment being appealed was entered in the lower court on August 19, 2020. (Doc. 80).

Appellant timely filed her Notice of Appeal on August 28, 2020. (Doc. 81).

STATEMENT OF THE ISSUES

I. Whether Sovereign immunity as deployed by *Welch v. Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 472 (1987), *Schopler v. Bliss*, 903 F.2d 1373, 1378 (11th Cir. 1990), *Uberoi v. Supreme Court of Fla.*, 819 F.3d 1311, 1313-14 (11th Cir. 2016), and *Kaimowitz v. The Fla. Bar*, 996 F.2d 1151, 1155 (11th Cir. 1993), on which the lower court relied upon in concluding that it does not have subject matter jurisdiction over the Florida Bar, are in contravention with the First Amendment Petition Clause "self-executing" command which guarantees access to the federal court.

II. Whether the Eleventh Amendment Sovereign Immunity protects the Florida Bar from suit where *The Florida Bar, on its own behalf as Plaintiff,* fraudulently *commenced* five disbarment proceedings against Appellant, secured an *ex parte* disbarment judgment which declares and brands Appellant a felon,

where Appellant *only* seeks redress from The Florida Bar's *ex parte,* felonious conviction.

III. Whether the Federal Court has jurisdiction over Appellant's case where Appellant *properly pleaded* and unequivocally shows that the Bar has defamed and stigmatized her for the past 20 years and *continuing* and that the felonious stigma deployed by said judgment has significantly and fatally altered her legal status.

IV. Whether Appellant may invoke the equitable powers of the federal court under Rule 54(c) of the Federal Rules of Civil Procedure, which states that *"[e]very final judgment [other than default judgments] should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings,"* where her complaint shows that The Florida Bar's defamation falls under the two-pronged framework of the "stigma plus" doctrine, and did not tag or frame her argument under the "stigma plus" doctrine before the lower court.

STATEMENT OF THE CASE

A. The District Court's Finding of Facts and Conclusion of Law

The Florida Bar filed its motion to dismiss (Doc. 66) Appellant's Second Amended Complaint (Doc. 53) *with prejudice*. Appellant filed her answer (Doc. 70).

The lower court, after reviewing Appellant's Second Amended Complaint, over 285 pages of direct unrefuted documentary evidence which supported each of her allegations, (Doc. 53, 78, 79), The Florida Bar's Motion (Doc. 66) and Appellant's Answer (Doc. 77), concluded that

> "The [Florida] Bar reissued this [defamatory] letter [to the New York Bar] ten years after it became aware that the judgment of disbarment for theft against Plaintiff [Appellant] was fraudulently obtained and was the product of fabricated charges. (Id.) Plaintiff has learnt that most state bars, including New York, will honor and accept The Florida Bar's judgment of theft against her. (*Id.* ¶ 235)." (Doc. 80, at pages 4-5).

However, the court concluded that based on The Florida Bar's claim of sovereign immunity under the Eleventh Amendment of the United States Constitution, it lacked subject matter jurisdiction. The court entered an order of dismissal *without prejudice.* (Doc. 80 at pages 5-6).

B. Pleaded Facts Relevant to this Appeal

Cause of Action: Appellant's causes of action are grounded in The Florida Bar's malicious, willful, and/or negligent publication of the *Grievance Letter dated March 23, 2018* which automatically incorporated the *ex parte* Amended Referee's Report dated April 29, 2002 and *ex parte* Judgment of Disbarment for *theft* dated July 11, 2002 to The New York Bar. (Doc. 53, ¶ 11).

Background: After five years working on 8 discrimination cases, the cases settled for $300,000. (Doc. 53, ¶¶ 56-67). Prior to Appellant's acceptance of the

cases, Mr. Baptiste and the other 7 clients had attempted to secure the services of another attorney, Jonathan D. Wald (a Caucasian attorney), who advised them that the case was a hard case to prove since EEOC had made a previous finding that there was no discrimination by Sheraton ITT and most importantly, he demanded $5,000.00 from each of the 8 clients as a retainer which they did not have. With Mr. Wald's decision not to represent them, the clients then sought Appellant's representation. After the case settled, Mr. Baptiste requested a higher payout and demanded to exclude the two clients who did not receive a money judgment at trial. Appellant refused. (Doc. 53, ¶¶ 74-76).

Thereafter, Mr. Baptiste took the itemized settlement statement he received from Appellant to Mr. Wald, who then demanded that Appellant provide him with a copy of the confidential settlement agreement and access to her files, claiming a need to review her costs and expenditures against the itemized settlement statements she had given to her 8 Haitian clients. Appellant refused his request. Mr. Wald sent a letter to The Florida Bar on November 24, 1999 demanding that a formal grievance be filed against Appellant. *Mr. Wald's letter propelled the investigation to disbar Appellant.* (Doc. 53, ¶¶ 77-79, 168-170).

The Florida Bar assigned its auditor, Mr. Carlos J. Ruga, who had been working with The Bar for over 15 years and had conducted over 500 audits for The Bar, to audit Appellant's financial records by reconciling her receipts, cashed

checks, expenses, and invoices with the costs and expenses outlined in the settlement statement. On July 14, 2000, Mr. Ruga issued his report which stated that all of the costs and expenses listed in the settlement statements had been incurred and properly paid for. The Bar ignored Mr. Ruga's report and refused to give a copy of the report to Appellant. The Bar's case against Appellant continued for another 16 months (1 year and 4 months) after it received Mr. Ruga's Report. (Doc. 53, ¶¶ 80-95).

On Friday, October 26, 2001, 28 months (2 years and 4 months) into the case, The Bar prepared and presented Appellant with a boiler plate Petition for Disciplinary Resignation and an Affidavit for Appellant's signature. Appellant was told by her attorney at that time, Mr. William Ullman, and Mr. Randolph Brombacher, Bar counsel, that all she needed to do was to sign the resignation documents in order to resign and signing the documents would end her troubles. The resignation documents made no mention of Mr. Ruga's report or the professional Creole translator's affidavit which exonerated Appellant (Doc. 53, ¶¶ 68), as the resignation documents recite the same charges the auditing report states were without merit, that is, "Appellant failed to properly disburse funds and allocate costs in the settlement to her former clients." (Doc. 53, ¶¶ 96-102). Paragraph 4 (b) of the petition for disbarment reflects that for the almost 10 years in practice at that time, Appellant had never been disciplined, reprimanded,

investigated, sued for malpractice nor prosecuted for any unethical or criminal behavior. (Doc. 53, ¶¶ 103).

Appellant informed Mr. Ullman that she would not sign the resignation documents. Mr. Ullman told her that her refusal to sign the resignation documents was like *"waving a red flag in front of a raging bull."* The stress of the 2 years and 4 months long investigation had taken its toll on Appellant's mental, emotional, physical wellbeing and had drained her finances. On Tuesday, October 30, 2001, two working days after The Bar presented Appellant with the resignation documents, she prepared her own resignation which included all of the depositions and pertinent documents she had generated in representing herself against Mr. Wald's claim and hand-delivered them to The Referee, Judge Robert N. Scola, and The Bar. (Doc. 53, ¶¶ 104-106).

During November 1 through November 5, 2001, South Florida was under hurricane Michelle watch. (Doc. 70, pages 23-24). On November 6, 2001, Appellant went to her bank, purchased the cashier's check from her trust account and thereafter closed her operating and trust accounts. Appellant hand-delivered the notice of filing settlement funds, the cashier's check payable to The Florida Supreme Court in the amount of $49,147.70, the sum owed to her former clients which had never been collected, to Judge Scola and The Bar. Judge Scola's Bailiff signed the delivery receipt. (Doc. 53, ¶ 107).

The Bar deliberately confiscated the check Appellant submitted for distribution to her 8 former clients and proceeded to lead Appellant's clients and the court to believe that Appellant stole these same settlement funds. (Doc. 53, ¶¶ 168-170).

The Bar falsified and doctored an affidavit which it claimed is a product of Mr. Ruga's audit and presented it to The Referee. This affidavit claimed that a) Appellant violated Section 812.014 of the Florida statutes, a second degree felony, because she misappropriated $80,000.00 of her clients' settlement funds when The Bar had actual possession and control of the same funds; b) that Appellant's conduct, characteristics, and condition are incompatible with the proper exercise of her legal profession when Appellant was in good standing with the Bar, the courts and her clients for the almost 10 years of practice; c) Appellant is not trustworthy as an individual and business associate; and d) Appellant is a clear and present danger to the public as a licensed and practicing attorney. (Doc. 53, ¶¶ 162-166).

Based on The Bar's actions and fraudulent representations to the court, the Referee entered an amended report on April 29, 2002 adopting and legitimizing The Bar's false claims and recommended that Appellant be *disbarred for theft.* (Doc. 53, ¶¶ 179-199). This *ex parte and by default Theft Judgment* has and continues to subject and expose Appellant to hatred, distrust, ridicule, contempt, disgrace and obloquy. (Doc. 53, ¶¶ 136-140, 159, 243, 257).

Timeline – The Bar and the Settlement Funds Appellant Submitted

On April 19, 2002, The Florida Bar sought and obtained an order to reissue the cashier's check it received from Appellant on November 6, 2001 to be made payable to the Clerk of Court, as that check was now-stale dated. (Doc. 53, ¶¶ 201). On April 24, 2002, The Bar deposited the reissued check using a different file it created in the circuit court. (Doc. 53, ¶¶ 166(d)). The Bar misnamed the file *The Florida Bar v. Petition for Inventory Attorney* so Appellant would never discover it if she had searched the circuit court data, and the case would remain under The Florida Supreme Court's radar since it reported to said court that Appellant stole all of her clients' funds and made no distribution to her clients. (Doc. 53, ¶¶ 202, 212-218). The Bar kept a copy of Mr. Wald's renewed petition to disburse funds which he filed in said case *using the proper case name* in Appellant's in-house bar file. This motion insinuates that there was a criminal case pending against Appellant by the state attorney's office because The Bar did not know the source of the funds Appellant submitted to it. (Doc. 53, ¶¶ 177(d)). The docket of this case was pulled 32 times as of September 2008 when Appellant discovered it. (Doc. 53, ¶¶ 207-218).

On April 29, 2002, ten (10) days after The Referee entered the order to reissue the stale-dated check, he filed his report recommending that Appellant be disbarred for theft. (Doc. 53, ¶¶ 200-202).

The Bar deliberately manipulated the dockets of each of the 5 cases it fabricated against Appellant in bad faith, with the motive and with the malicious purpose of giving the court, prospective clients and potential business associates of Appellant the *false impression* that Appellant is a thief, she is untrustworthy, shameless, unethical, unscrupulous, unprincipled and should be shunned and ostracized from all that is decent. (Doc. 53, ¶¶ 14, 206.)

In 2018, Appellant studied for The New York Bar exam and re-applied for admission to said Bar in order to clear her name. The New York Bar requested a grievance letter for Appellant from The Florida Bar. The purpose of this letter is to inform the requesting third party, The New York Bar, of any character flaws and/or grievance proceedings filed against Appellant, the nature of said proceedings, and their outcome. (Doc. 53, ¶¶ 230). The Bar is well aware of this procedure as it is customary for *all state bars*, including The Florida Bar, to make such a request from bar applicants. The Grievance Letter with its accompanying documents is The Florida Bar's response to The New York Bar's inquiry about Appellant's status. (Doc. 53, ¶¶ 247-248).

On or about March 27, 2018, Appellant received the grievance letter from The Florida Bar dated March 23, 2018. (Doc. 53, ¶¶ 230-232). This grievance letter was an exact match to the 2008 grievance letter (Doc. 79 pages 3-5) The Bar issued in response to The New York Bar's inquiry. The March 23, 2018 grievance

letter was issued 10 years after The Florida Supreme Court and The Florida Bar became fully aware, via Appellant's writ of certiorari filed with the United States Supreme Court on February 20, 2009, that its *judgment of disbarment for theft* against Appellant was fraudulently acquired and is the product of fabricated charges. (Doc. 53, ¶¶ 230-232, 255-257).

Detailed facts supported with undisputed direct documentary evidence of The Florida Bar's fraudulent actions and the gravamen of its judgment of disbarment *for theft* against Appellant, are delineated with specificity in paragraphs 50-218 of the Second Amended Verified Complaint. (Doc. 53, ¶¶ 50-218).

The Florida Bar's defamation caused severe harm to her "good name, reputation, honor, and integrity" ("stigmatic harm") and 2) The Bar's defamation altered her legal status and rights by taking her law license from her in a *degrading manner* (theft of her clients' funds) in order to ensure that all opportunities both outside of and within the legal community would be foreclosed to her ("alteration of legal status"). The Florida Bar's *ex parte* felonious judgment imposes on Appellant stigmatic harm and detrimentally alters her legal status, as it has foreclosed her freedom to take advantage of other employment opportunities." (Doc. 53, ¶¶ 134-140, 302-315).

SUMMARY OF ARGUMENT

The United States Supreme Court has applied and interpreted the First Amendment Petition Clause of the United States Constitution as overcoming *any* threshold of governmental immunity from suit for damages from defamation where the defamation causes "stigmatic harm" which severely injure and "alter the legal status" of the petitioning individual. Moreover, the Eleventh Amendment Sovereign Immunity does not extend to suits *commenced* by a State [Agency] where the target of the suit is the judgment the agency secured against the petitioner. Thus, Appellant's challenge of the *ex parte*, felonious judgment against her is simply a continuation of the suit commenced by The Florida Bar and therefore The Bar is not immune from suit.

ARGUMENT

I. CONSTITUTIONAL RIGHTS AT STAKE

A. The First Amendment's Fundamental Right to Petition.

The Supremacy Clause of the United States Constitution states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding." See *U.S. Const. Art. VI, Clause 2.*

The supremacy clause ensures that the Constitution trumps all other laws. The authority for Appellant's litigation and appeal against The Florida Bar is the

First Amendment Petition Clause. This "self-executing" clause commands access to federal courts and assures government accountability.

In *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 426 (1819), Chief Justice Marshall elaborated on the importance of the supremacy clause as follows: "this great principle is, that the constitution and the laws made in pursuance thereof are supreme; ..." The Florida Bar's claim of sovereign immunity makes the United States Constitution subordinate to its will. The First Amendment Petition Clause overcomes any threshold government immunity from suit because it guarantees to the individual the right to pursue judicial remedies for government's misconduct.

The Florida Bar's invocation of the doctrine places it beyond the reach of the constitution and defies the scheme of democratic freedom secured by the First Amendment. The supremacy of the constitution requires this court to recognize Appellant's right to petition the federal court for redress. This requirement *does not broaden* the court's jurisdiction and *would not create any new liability*.

B. Right of Access to Court under the Petition Clause is a Fundamental Element of our Democracy

The First Amendment of the United States Constitution states that "Congress shall make no law ... abridging ... the right of the people ... to petition the government for a redress of grievances." *U.S. Const. First Amendment.*

In *Marbury v. Madison,* 5 U.S. (1 Cranch) 137 (1803) the court recognized that a person who has suffered a legally cognizable injury has a right to obtain a remedy in court. The court explained:

> "The 'very essence of civil liberty' certainly consists in the right of every individual to claim the protection of the laws, whenever he [she] receives injury. One of the first duties of government is to afford that protection...
>
> ...it is a general and indisputable rule, that where there is a legal right there is also a legal remedy by suit or action at law, whenever that right is invaded.
>
> ... it is a settled and invariable principle in the laws of England, that every right when withheld, must have a remedy, and every injury its proper redress.
>
> 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 legal right." *Id* at 163.

In *Corfield v. Coryell*, 6 F. Cas. 546, 551-52 (E.D. Pa. 1823), the court held that the basic rights of all citizens include the right to file civil suits in court. In *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907), the court expressed and affirmed the importance of the right to go to court. The Court explained that access to courts is essential to orderly government as follows:

> "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens."

In *Hoeber v. Local 30, United Slate, Tile & Composition Roofers, Damp and Waterproof Workers Ass'n, AFL- CIO,* 939 F.2d 118, 126 (3d Cir. 1991), the court held that "The filing of a lawsuit carries significant constitutional protections, implicating the First Amendment right to petition the government for redress of grievances, and the right of access to courts." See *Monsky v. Moraghan*, 127 F.3d 243, 246 (2d Cir. 1997); and *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972).

In *Protect Our Mountain Env't, Inc. v. District Court for County of Jefferson*, 677 P.2d 1361, 1365 (Col. 1984) (en banc), the court held that "The right to petition the government for redress of grievances necessarily includes the right of access to the courts. Were it otherwise, the right to petition would have little significance in the constitutional scheme of things."

In *NAACP v. Button*, 371 U.S. 415, 433 (1963), the court held that First Amendment freedoms, including the right to petition, are "delicate and vulnerable, as well as supremely precious in our society" and demand exacting protection.

The Florida Bar lacks the power to circumvent Appellant's First Amendment right to petition the federal court for redress from its fraudulent, *ex parte,* felonious judgment against her because the right to petition is effectuated by the constitution and is not subjected to the Bar's claim of sovereign immunity.

C. The Aim of Judicial Petitioning is "Vindication" and "Compensation" for Legally Cognizable Winning Claims

The right of court access under the Petition Clause is narrow as it protects and *extends only to winning claims and legally cognizable wrongs*. See *Sure-Tan v. NLRB,* 467 U.S. 883, 897 (1984). "[T]he aim of judicial petitioning is "vindication" and "compensation" for violated rights and interests,..." See *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743 (1983).

The Lower Court's order finding that The Florida Bar committed the criminal acts that Appellant alleges in her complaint, that The Bar knowingly defamed Appellant and the fact that the court dismissed Appellant's action without prejudice, unequivocally shows that Appellant has a legally cognizable, winning claim against The Florida Bar, (Doc. 80, pages 1-5), deserving "vindication" and "compensation."

D. The Constitution Demands Government Accountability

The principle that the government must be accountable is embodied in the first words of the constitution, *"We the People,"* a phrase which makes the people sovereign.[1] Government accountability, coupled with the right to pursue claims

[1] Preamble of the U.S. Constitution "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common [defense] promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

against the government itself, is inherent in the structure of the constitution and define the core of the First Amendment's right to petition. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163, 176-77 (1803). The constitution mandates that those who suffer a loss of life, liberty, or property at the hands of the government are entitled to redress. See *Oestereich v. Selective Serv. Local Bd., No.11*, 393 U.S. 233, 243 (1968). Sovereign immunity does not insulate the activities of a state or a state agency like The Florida Bar when it *egregiously* violates the fundamental rights guaranteed under the constitution.

E. The Strict Scrutiny Standard is Applicable to Restrictions to Court Access

The Court has long applied "strict scrutiny" in judging regulation of First Amendment freedoms, including the right to petition. In *NAACP v. Button*, 371 U.S. 415,438-44 (1963), the Court explained:

> "[O]nly a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms... a state may not, under the guise of prohibiting professional misconduct, ignore constitutional rights."

This standard requires courts to look to whether the government has a compelling state interest in regulating the exercise of the right and whether the regulation is narrowly drawn to achieve that goal with minimal impact on the right.

In *Thomas v. Collins*, 407 U.S. 516 (1945), the court recognized that First Amendment freedoms, including the right of petition, get more protection from government intrusion than do other constitutional rights. *Id* at 530

The Florida Bar has foreclosed Appellant's access to state courts by failing to give Appellant notice and the opportunity to defend herself against its disbarment action where it secured an *ex parte,* felony conviction against Appellant. Now, it is attempting to foreclose access to the federal courts through by claiming that it has sovereign immunity. Appellant's right to court access is guaranteed by the First Amendment Petition Clause. Therefor, its violation is subject to the constitution's strict scrutiny standard which requires that The Bar must articulate a compelling state interest which justifies its violation. It's claim of sovereign immunity does not meet this constitutional standard.

II. SOVEREIGN IMMUNITY

A) Sovereign Immunity is not Applicable When a State Agency Commenced the Legal Proceedings

The Eleventh Amendment to the United States Constitution states that: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, *commenced* or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The text of the amendment poses no constitutional barrier to suits commenced by a state or state agency against a citizen.

In *Cohens v. Virginia* 19 U.S. (6 Wheat.) 264 (1821), Chief Justice Marshall held that:

> "the prosecution of a writ of error to review [challenging] a judgment of a state court alleged to be in violation of the Constitution .... *did not commence or prosecute a suit against the state but was simply a continuation of one commenced by the state, and thus could be brought* ...
>
> It [the judicial department] is authorized to decide all cases of every description, arising under the constitution or laws of the United States. ... If this writ of error be a suit, in the sense of the 11th amendment, it is not a suit commenced or prosecuted by a citizen of another state, or by a citizen or subject of any foreign state.
>
> It is not, then, within the amendment, but is governed entirely by the constitution as originally framed, and we have already seen, that in its origin, the judicial power was extended to all cases arising under the constitution or laws of the United States, without respect to parties." 19 U.S. at 412.
>
> The amendment, therefore, extended to suits *commenced* ... by individuals, but not to those brought by states."
> *19 U.S. at 406–407.*

The Florida Bar, in its own name and as plaintiff, commenced disbarment proceedings against Appellant. It fraudulently secured an *ex parte*, felonious judgment against Appellant. Appellant now seeks redress from this devastating and life changing judgment. This *ex parte* judgement is the predicate and legal target of Appellant's defamation action.

B) Constructive Waiver of Sovereign Immunity

In *In re Monongahela Rye Liquors, Inc.,* 141 F.2d 864 (3d Cir. 1944), the

court held that "when the United States or a State institutes a suit, it thereby submits itself to the jurisdiction of the court, [and] draws in ...such adverse claims as have arisen out of the same transaction which gave rise to the sovereign's suit." See *Federal Sav. & Loan Ins. Corp. v. Quinn*, 419 F.2d 1014, 1017 (7th Cir. 1969).

In *Gunter v. Atlantic Coast Line Railroad Company,* 200 U.S. 273 (1906), the Court explained constructive waiver as follows:

> "Although a State may not be sued without its consent, such immunity is a privilege which may be waived, and hence "where a State voluntarily becomes a party to a cause and submits its rights for judicial determination, it will be bound thereby and cannot escape the result of its own voluntary act by invoking the prohibitions of the Eleventh Amendment." *Id.* at 284 (citing) *Clark v. Barnard,* 108 U.S. 436, 447 (1883).

See also *Gardner v. New Jersey,* 329 U.S. 565 (1947); *Collage Savings Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 681 (1999); *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 395 (1998); and *Sutton v. Utah State Sch. for the Deaf and Blind,* 173 F.3d 1226, 1236 (10th Cir. 1999).

In *Lapides v. Bd. of Regents*, 535 U.S. 613, (2002), the court held that "whether a particular set of state laws, rules, or activities amounts to a waiver of the State's Eleventh Amendment immunity is a question of federal law, not state law." Id. 622-623. The court further held that the "judicial need to avoid ...

unfairness" trumps the "State's actual preference or desire, which might ...favor selective use of 'immunity' to achieve litigation advantages." *Id.* at 620.

Fundamental fairness of the judicial process requires waiver of sovereign immunity in circumstances where the State *commenced* the action. See *Schlossberg v. Maryland (In re Creative Goldsmiths of Washington D.C., Inc.),* 119 F.3d 1140 (4th Cir. 1997).

In *Department of Revenue v. Kuhnlein*, 646 So.2d 717, 721 (Fl. 1994), The Florida Supreme Court held that:

> "Sovereign immunity does not exempt the State from a challenge based on violation of the federal or state constitutions, because any other rule self-evidently would make constitutional law subservient to the State's will. Moreover, neither the common law nor a state statute can supersede a provision of the federal or state constitutions."

To allow The Florida Bar's claim of sovereign immunity to stand in the instant case would be to conclude that the constitution is subservient to The Florida Bar because it is the official arm of the Florida Supreme Court, and it can violate and override constitutional norms without repercussions.

C) Fundamental Fairness and The Petition Clause

The Petition Clause protects against practices and policies that violate the precepts of fundamental fairness. This Clause provides a constitutional anchor for the fundamental idea that the government may not infringe upon the right of the people to seek redress in court for their grievances.

In *United States v. Lee,* 106 U.S. 196 (1882), the court held that

> ". . . Under our system the *people* ... are the sovereign. . . When in one of the courts of competent jurisdiction, has established his right to property [liberty interest], there is no reason why deference to any person, natural or artificial, not even the United States, should prevent him from using the means which the law gives him for the protection and enforcement of that right. *Id.* at 208-209.

In *Rochin v. California*, 342 U.S. 165, 169 (1952), the court held that a claimed right is protected if the violation of the right "offend[s] those canons of decency and fairness which express the notions of justice ... even toward those charged with the most heinous offenses." See *Twining v. New Jersey*, 211 U.S. 78, 106 (1908); and *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

The Florida Bar, the official arm of the Florida Supreme Court has misrepresented facts to the courts, fabricated cases, doctored documents and secured an *ex parte,* felonious disbarment judgment for theft against Appellant, an attorney in good standing at the time with the agency. Appellant was not given notice nor the opportunity to present a defense against The Bar's claims. She was not provided with any copy of the *ex parte* felonious judgment of disbarment for theft. By the time Appellant discovered the judgment, the time to file her writ of certiorari to the United States Supreme Court challenging the *ex parte*, felonious judgment had elapsed. The Supreme Court rejected her request for review as untimely.

The Florida Bar, who is supposed to be the beacon of truth and justice, now seeks refuge under the sovereign immunity doctrine to escape accountability for its criminal behavior. The Florida Bar's actions "offend[s] those canons of decency and fairness which express the notions of justice." *Id.*

1) Judicial Access is the only Means to Resolve the *Ex Parte* Judgment of Disbarment for Theft – a felony conviction.

In *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971), the court held that "...the State owes to each individual that process which, in light of the values of a free society, can be characterized as due." In *United States v. Kras*, 409 U.S. 434 (1973), the Court emphasized that the due process right recognized in *Boddie* applied only to fundamental rights and only where judicial access is the exclusive means of resolving the issue. *Id* at 444-445. The factor *"exclusive means of resolving the dispute"* was crucial to the Court's holdings in *Boddie and Kras.*

In *Davis v. Passman,* 442 U.S. 228, 242 (1979), the court held that victims of constitutional wrongs, without other effective redress, "must be able to invoke the existing jurisdiction of the courts for the protection of their justiciable constitutional rights." Therefore, if a case is within the court's jurisdiction and the court finds that a federal right has been violated and there is a particular remedy essential to that right's protection, the spirit of the constitution not only authorize but compel the court to give effect to that remedy.

In the instant case, *judicial access* is the only means to resolve this unwarranted badge of shame which The Florida Bar has attached to Appellant for the past 20 years and counting. This fraudulent, *ex parte, felonious* judgment has and continues to cancel out all opportunities that would otherwise be available to an individual with Appellant's education and qualifications. This judgment follows her wherever she goes. Appellant's income is less than $20,000 per year for the past 20 years (Doc. 53, ¶ 49). Appellant's $80,000 student loan has increased to approximately $300,000 and continues to increase because of her inability to make any payments on said loan since 2002. In 2012, Appellant's home valued at $1,300,000 was foreclosed on and was gifted to Attorney Damian Matthew Narvaez for $103,000. Mr. Narvaez created 7320 Biscayne LLC, the address of Appellant's home on March 9th, 2011 which is over one year before Appellant's home was in foreclosure. (Doc. 53, ¶¶ 304-306; and Doc. 78, pages 1-19). This *ex parte* judgment has inflicted and continues to inflict severe reputational damage accompanied by an alteration in Appellant's legal status, her freedom to pursue a career as an attorney, her occupation of choice and the position she held before the judgment.

There is a difference between the legitimate interpretation of sovereign immunity and the purposeful and unwarranted obstruction of justice. It is not within the purview of The Florida Bar to commit such atrocities against Appellant

and then try to close the courts to Appellant, even though it knows Appellant has no other alternative means of redress.

2) The Judicial Power of Federal Courts

Federal courts are authorized to decide all cases of every description arising under the Constitution and to maintain the principles established in it. (*U.S. Const. Art. III, §2*). The Court's function is not merely to resolve disputes but to articulate and give effect to fundamental constitutional values.

In *Cohens,* the court placed great emphasis on the important role of the federal judiciary in the "preservation of the constitution ..." 19 U.S. at 175. The Florida Bar's action in securing an *ex parte,* criminal judgment against Appellant and then claiming that it has sovereign immunity and further requesting that Appellant's petition for redress be dismissed *with prejudice* undermines the principles of fundamental fairness and poses a substantial threat to constitutional principles.

III. THE STIGMA PLUS DOCTRINE

A) Appellant's Claim for Defamation *Per Se,* General Defamation, and Defamation by Implication against The Florida Bar meets the Two-Prong Test of the "Stigma Plus" Doctrine

The "Stigma Plus" doctrine is a principle that enables a plaintiff, in limited circumstances, to seek relief for government defamation under federal constitutional law. To prevail under this doctrine, *a plaintiff must plead* (1) the

utterance of a statement sufficiently derogatory to injure her reputation that is capable of being proved false, and that she claims is false, and (2) a material state-imposed burden or state-imposed alteration of the plaintiff's legal status or rights. See *Paul v. Davis*, 424 U.S. 693, 708-709 (1976); and *Hinkle v. White*, 793 F.3d 764, 767-768 (7th Cir. 2015).

Appellant's second amended complaint encompassed the standards outlined above as it shows that:

1) The Florida Bar's response to the New York Bar's inquiry about Appellant status was viciously derogatory since The Bar's claim that Appellant was disbarred for theft because the court found that she stole $80,000 of her clients' funds is a felony under Section 812.014 of the Florida statutes. In essence, The Bar has and continues to disseminate the false narrative that Appellant was convicted of a second degree felony. The *ex parte* disbarment judgment of conviction did not simply injure her reputation. It has completely destroyed it; and

2) The Florida Bar's *ex parte*, felonious judgment against Appellant has unleashed and continues to unleash hardship, despair and horror on Appellant and her family as it has completely destroyed her ability to continue to be self-employed, to obtain any meaningful employment, and to earn a living above the poverty level. (Doc. 53, ¶¶126-140).

The Florida Bar, has inflicted and continues to inflict severe reputational damage accompanied by a lethal alteration in Appellant's legal status. See *Khan v. Bland,* 630 F.3d 519, 534 (7th Cir.2010); *Mann v. Vogel*, 707 F.3d 872, 878 (7th Cir. 2013); and *Valmonte v Bane,* 18 F3d 992, 1000-1002 (2d Cir 1994).

1. Liberty Interest Defined

In *Allgeyer v. Louisiana*, 165 U.S. 578, (1897), the court held that a citizen has a right "... to live and work where he will; to earn his living by any lawful calling; and to pursue any livelihood or vocation." Likewise in *Ingraham v. Wright,* 430 U.S. 651(1977), the court held that "The liberty preserved from deprivation ... included the orderly pursuit of happiness ... *a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security.*" 430 U.S. at 673.

In *Wisconsin v. Constantineau,* 400 U.S. 433, 437 (1971) the court held that a plaintiff may prove a deprivation of a protected liberty interest by showing damage to his "good name, reputation, honor, or integrity." In *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972), the court held that a government employee's liberty interest would be implicated if he were dismissed based on charges that imposed "on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities." See *Paul v. Davis,* 424 U.S. 693, 708-712 (1976). Thus, *Roth* and *Davis* treat stigma and loss of employment accomplished together as

pleading a liberty interest. See *Doe*, 753 F.2d at 1106-1107; and *Hill v. Borough of Kutztown,* 455 F.3d 225, 237-238 (3d Cir 2006).

Appellant's argument to the lower court is that as a direct result of The Florida Bar's defamatory actions against her, she suffered both "stigmatic harm" accompanied by the "alteration of legal status." However, Appellant did not specifically state or tag her argument as meeting the mandate of the *"stigma plus" test.* Nevertheless, Appellant did plead that The Florida Bar deprived her of the freedom to pursue her legal career as an attorney, her occupation of choice *and* every other reputable business and employment opportunity that would not associate with a convicted felon. The Bar's *ex parte* felonious judgment of conviction against Appellant is still very active in the public realm, and continuously defames her. See *Mann v. Vogel* , 707 F.3d 872, 878, 878 (7th Cir. 2013); *Paul v. Davis* , 424 U.S. 693, 708–709 (1976); and *Hinkle v. White* , 793 F.3d 764, 767–68 (7th Cir. 2015).

In *Townsend v. Vallas* , 256 F.3d 661, 670 (7th Cir. 2001), the court held that Liberty interests are impinged when someone's "good name, reputation, honor or integrity [are] called into question in a manner that makes it virtually impossible for ... [her] to find new employment in his [her] chosen field." See *Lawson v. Sheriff of Tippecanoe Cty., Ind.* , 725 F.2d 1136, 1138 (7th Cir. 1984).

2. Property Interest Defined

In *Phillips Petroleum v. Shutts*, 472 U.S. 797, 807 (1985), the court held that "[A] *chose in action* is a constitutionally recognized property interest...." In *Mullane v. Central Hanover Trust*, 339 U.S. 306, 313 (1950), the court held that the right to have others "answer for negligent or illegal impairment of... interests" is a form of property right. Appellant's defamation claim against The Bar is a property interest deserving of protection from the court. See *Angle v. Chicago, St. Paul, M. & D. Ry.*, 151 U.S. 1 (1894).

The Florida Bar ignored Appellant's complaint; it has refused to perform corrective actions to stop its defamation of Appellant. It now seeks to prevent the federal court from entertaining Appellant's pleading which seeks redress from its lies and defamatory actions against her. This is the equivalent of a *prior restraint* on Appellant's First Amendment right to petition the court for redress. The Florida Bar's claim of sovereign immunity to enjoin the court from accepting and entertaining Appellant's action is tantamount to a denial of her constitutional right of access to the courts. This tactical maneuvering is fundamentally inconsistent with the structure and premise of the First Amendment Petition Clause.

IV. INVOCATION OF THE EQUITABLE POWERS OF THE COURT

Appellant invokes the equitable powers of this Court under the Federal Rules of Civil Procedure 54(c) and requests that this Court remand the case to the lower

court for Adjudication as Appellant has alleged facts that amount to constitutional violations by The Florida Bar.

Federal Rule of Civil Procedure 54(c) states that "[e]very final judgment [other than default judgments] should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." Appellant invokes the mandate of Rule 54(c) which is incorporated in paragraph 316 in her second amended complaint: – "Plaintiff [Appellant] demands that judgment be entered against The Bar …, as well as equitable relief as may be appropriate, and such other relief the Court may deem just and proper." (Doc. 53, ¶ 316).

In *Felce v. Fiedler* 974 F.2d 1484, 1501 (7th Cir. 1992), the court held that *Felce* had not alleged the necessary liberty interest. On appeal, the court concluded that Felce did have a liberty interest even though he did not assert it and did not request injunctive relief but instead asked for *"other and further relief as the court may deem to be just and equitable."* The *Felce* court used Rule 54(c) of the Federal Rule of Civil Procedure language as its authority to have the lower court address injunctive relief on remand. *Id.* at 1502. The seventh circuit crystalized its holding pursuant to the authority of Federal Rule of Civil Procedure 54(c) in *John Doe v. Purdue University*, 928 F.3d 652, 666 (7th Cir. 2019). In *John Doe*, the court, citing *Felce*, held that even though there was not a specific request for expungement from John so that a career in the Navy could be open to him, the court held "We do the

same here [as in Felce]: having determined that John has pleaded a liberty interest, we instruct the court to address the issue of expungement on remand." *Id* at 667.

In *Bush v. Lucas*, 462 U.S. 367, 374 (1983), the United States Supreme Court held that a federal court may "choose among available judicial remedies" to vindicate federal [constitutional] rights. Additionally, in *Bell v. Hood*, 327 U.S. 678, 684 (1946), the court held that where federal [constitutional] rights are invaded, courts will adjust remedies to grant [the] necessary relief.

Relief Requested: Appellant respectfully requests that this court remand her case to the lower court for adjudication. Granting Appellant's request is in compliance with the constitutional norm that state government may not infringe on the right of the people to seek redress in court for their grievances.

V. CONCLUSION

Granting Appellant's request would work no revolution in the law of government accountability nor frustrate the purpose of sovereign immunity. However, permitting The Florida Bar to bring an action against Appellant and then retreat behind a claim of Sovereign Immunity would be violative of our constitutional structure and the working of our system of accountability.

Dated: November 11, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

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This document complies with the word limit of FRAP 28 because, excluding the parts of the document exempted by FRAP 32 and this document contains **7,139 words and 30 pages**.

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Dated: November 11, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via CM/ECF on this 11th day of November 2020 and served upon the following:

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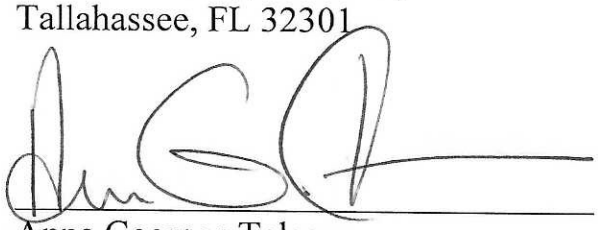

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