NO._____

In the
SUPREME COURT OF THE UNITED STATES

ANNE GEORGES TELASCO,
Petitioner,
v.

THE FLORIDA BAR,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED

I. Whether Sovereign Immunity as deployed by *Welch v. Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 472 (1987) and its progeny, are inapplicable to Telasco's Defamation Action where The Florida Bar knowingly made a false criminal report against her to the court which resulted in an *ex parte* felony conviction for theft against her.

II. Whether Telasco has a viable Defamation Action against The Florida Bar for falsely reporting and securing an *ex parte* judgment of conviction for theft, a second-degree felony, against Telasco.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties.

The Petitioner appearing *pro se* is Anne Georges Telasco.

The Respondent is the Florida Bar.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioner Anne Georges Telasco states that there are no corporate parties.

STATEMENT OF RELATED CASES

Petitioner Anne Georges Telasco is not aware of any related cases.

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FLORIDA STATUTES

PETITION FOR WRIT OF CERTIORARI

The issues in this case go to the heart of the integrity and impartiality of our justice system and as such, merit this court's review.

In 1999, The Florida Bar began an investigation against Telasco at the request of one of its favored members, Attorney Jonathan D. Wald. (App.179a-184a). Pursuant to Mr. Wald's request, The Bar assigned its auditor to audit all of Telasco's expenses in a series of cases which Telasco settled on behalf of eight clients against Sheraton hotel. The audit cleared Telasco of any wrong doing. (App.185a-189a). The Bar did not close the case, but kept it open. On October 26th, 2001, 28 months after opening the case and 15 months from the date its auditor issued his report, The Bar presented Telasco with resignation documents predicated on the same charges she had been cleared of by its auditor. (App.212a-221a). Telasco refused to sign the resignation documents. Instead, she prepared her own resignation package and delivered it to The Bar and the Referee with a cashier's check representing the settlement proceeds for distribution to her former clients. (App.190a-

211a, App.222a-225a). The Bar did not submit the resignation package or the check to the court. Instead, it removed all pertinent documents, depositions, and its auditor's report from the resignation package, filed an unreadable copy of it as a letter (App.240a-254a) and hid the check for 17 months before it gave the check to Mr. Wald. (App.229a-230a).

After Telasco submitted her resignation, The Bar opened 4 more cases against Telasco without giving her any notice and all predicated on the same falsehood that Telasco had failed to account for her expenses in the contingency fee cases for her 8 clients. Seeking to disbar Telasco, The Bar filed a request for admission on February 28, 2002 and an order deeming Telasco's admission to its claim of theft. This default and ex parte order of admission was executed by the court on March 4, 2002. (App.271a-276a).

Thereafter, The Bar scheduled an ex parte hearing, where its attorney mendaciously advised the court that notice had been provided to Telasco and she deliberately failed to attend the hearing. The Bar also reported to the court that Telasco

had committed a second-degree felony by stealing $80,000.00 from her clients. (App. 137a-152a). To bolster its false claim of theft, The Bar produced a falsified affidavit of its auditor to the court and failed to advise the court that Telasco had provided a cashier's check for the settlement funds due to her clients 16 months before it secured the ex parte order of admission to theft. (App.172a-176a).

The Bar also advised Telasco's former clients that she stole their settlement money. This prompted her clients to file a complaint against Telasco with the Bar on March 18, 2002 (App.231a-232a), 15 months after The Bar officially opened its cases in1999 against Telasco for theft on behalf of these clients. (App.182a-184a). When the Bar made this false presentation, it was in possession of and had complete control over these same funds, Telasco allegedly stole. (App.281a-283a).

To cover the fact that The Bar obtained its theft order ex parte and by default, The Bar filed all of the documents that were attached to Telasco's resignation package in its disbarment case and noted in the docket of said case that it had generated 7 volumes of

record/transcript in said proceedings. (App.259a-261a).

Telasco's defamation action is a challenge of the ex-parte felony judgment of conviction for theft, which led to her disbarment. (App. 18a-319a).

OPINIONS BELOW

The District Court for the Southern District of Florida entered it judgment on August 19, 2020. (App.9a-17a). The Eleventh Circuit issued its opinion on April 28, 2021. (App.1a-8a).

JURISDICTION

Telasco is a naturalized American citizen from Haiti. She resided in Florida for 34 years and is currently a resident of the State of New York for the past 14 years. The Florida Bar is the official arm of the Florida Supreme Court.

This Court has jurisdiction over Telasco's petition pursuant to: The United States Constitution, Article III, §2, clause 1; 28 U.S.C. §1332, Diversity Jurisdiction; The First Amendment to the United States

Constitution Petition Clause; and 28 U.S.C. §1254 (1).

CONSTITUTIONAL, STATUTORY AND FEDERAL PROVISIONS INVOLVED

Preamble of the U.S. Constitution

We the People of the United States, … Secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

U.S. Constitution, Article III, § 2, clause 1

The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, … or which shall be made, under their Authority; … between a State and Citizens of another State;...

The First Amendment to the U.S. Constitution, Petition Clause

Congress shall make no law ..; abridging … the right of the people … to petition the government for a redress of grievances.[1]

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[1] In *Cantwell v. Connecticut*, 310 U.S. 296, (1940) this court held that the fundamental concept of liberty, embodied in the fourteenth amendment embraces the

U.S. Constitution, Amendment XIV

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. … nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Article VI, Clause 2

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, …

Diversity Jurisdiction,
28 U.S.C. § 1332 (a)(1)

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and

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liberties guaranteed by the First Amendment. *See Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

costs, and is between— (1) citizens of different States;

The Eleventh Amendment to the U.S. Constitution, Sovereign Immunity

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, …

28 U.S.C. § 1254 (1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; …

Federal Rules of Civil Procedure 54(c)

… Every other final judgment [except a default judgment] should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

Rules Regulating The Florida Bar (February 8, 2001 & April 15, 2021)

RULES 3-7.1(b) The public record shall consist of the record before a grievance

committee, the record before a referee, the record before the Supreme Court of Florida…

Florida Statutes §812.014 (6)

A person who individually, … committing theft under this section where the stolen property has a value in excess of $3,000 commits a felony of the second degree, …

Florida Statutes §768.28(9)(a)

No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, …in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property…

STATEMENT OF THE CASE

A) The District Court's Findings of Facts and Conclusion of Law

The statement of the case is taken verbatim from the District Court Judge's finding of facts and conclusion of law order,

(App.9a-15a). This order meticulously condenses Telasco's Second Amended Complaint (App.18a-319a) containing over 230 pages of unrefuted documentary evidence and case law which support each of the 318 paragraphs of her complaint.

The Judge's Order:

I. BACKGROUND

In her 318-paragraphs-long Second Amended Complaint, Plaintiff alleges claims against The Florida Bar for defamation per se, defamation, and defamation by implication. In deciding this Motion, the Court accepts all allegations in the Second Amended Complaint as true.

Plaintiff passed The Florida Bar exam in 1992 and became a licensed member of the Bar. (Sec. Am. Compl. ¶ 23.) She opened her own law firm in 1993, focusing her practice on family law, discrimination law, and civil rights litigation. (*Id.* ¶ 24.) In 1994, Plaintiff filed employment discrimination actions against an international hotel chain on behalf of eight employees ("the Litigation"). (*Id.* ¶ 56.) Five years into the Litigation, one case was dismissed after a full administrative

evidentiary hearing and, in two other cases, jury trials resulted in a finding of discrimination but gave no monetary award. (*Id.* ¶ 62.) Before the start of the third trial, the parties to the Litigation settled all eight cases for $300,000, agreeing to a payment plan of six payments of $50,000 over the course of six months. (*Id.* ¶¶ 63-64.)

Plaintiff sent a letter to all eight clients informing them of the time and date to collect their settlement checks. (*Id.* ¶ 73.) One client decided he no longer wanted to share settlement proceeds with the client whose case was dismissed and the clients who failed to recover at trial. (*Id.*) This dissatisfied client took his settlement statement to another attorney, Jonathan D. Wald, for review. (*Id.*) Upon receiving the settlement statement, Mr. Wald demanded that Plaintiff provide him with a copy of the confidential settlement agreement and access to her files, claiming he needed to review Plaintiff's costs and expenditures against the itemized settlement statements she had given to the clients. (*Id.* ¶ 77.) When Plaintiff refused his demand, Mr. Wald sent a letter to The Florida Bar purportedly on behalf of the dissatisfied

client, asking the Bar to file a formal grievance against Plaintiff. (*Id.* ¶ 78.)

Around December 1999, the Bar opened an investigation into the validity of costs and expenses Plaintiff incurred in the eight cases. (*Id.* ¶ 79.) The Bar hired Carlos J. Ruga to audit Plaintiff's financial records. (*Id.* ¶ 80.) Mr. Ruga issued his findings ("Report") on July 14, 2000, concluding that all costs and expenses were incurred and properly paid and finding no violation of The Florida Bar Rules. (*Id.* ¶¶ 83-84.) The Bar ignored the Report and refused to give Plaintiff a copy of the Report. (*Id.*) Instead, the Bar immediately appointed Joseph Ganguzza, then- Chairman of the Bar's Grievance Committee and a friend of Mr. Wald, to determine whether probable cause existed for Plaintiff's disbarment. (*Id.*) Upon appointment, Mr. Ganguzza advised Plaintiff he would close the investigation if she agreed to give the $300,000 in settlement funds to Mr. Wald, which Plaintiff refused to do. (*Id.* ¶¶ 87-88.) Following this discussion, Plaintiff retained attorney William Ullman to represent her. (*Id.* ¶ 95.)

Mr. Ullman brokered a settlement with the Bar, resulting in the Bar sending a Petition for Disciplinary Resignation and an Affidavit to Mr. Ullman for Plaintiff's signature. (*Id.* ¶¶ 96-97.) Mr. Ullman advised Plaintiff to sign the Petition, which would have made Plaintiff eligible to apply for readmission to the Bar after three or five years and would have allowed her to work as a paralegal in the interim. (*Id.* ¶¶ 100-101.) Instead of signing this Petition, on October 30, 2001, Plaintiff prepared her own resignation packet, which she submitted to the Bar at some point. (*Id.* ¶¶ 105, 108, 111-112.) Around this time, she asked Mr. Ullman to withdraw from her case. (*Id.* ¶ 106.) Additionally, on November 6, 2001, Plaintiff hand delivered to the judge apparently presiding over her disbarment proceedings a notice of filing settlement funds and a cashier's check payable to the Florida Supreme Court in the amount of $49,147.70––the sum owed to the clients she represented in the Litigation. (*Id.* ¶¶ 107-108.)

Following her resignation, Plaintiff moved to New York in early 2002. (*Id.* ¶ 130.) In September 2008, Plaintiff decided to apply to the New York Bar. (*Id.* ¶ 141.) Plaintiff

requested a letter of good standing and a grievance letter from The Florida Bar. (*Id.* ¶ 142.) The Florida Bar did not issue a letter of good standing, but around September 24, 2008, Plaintiff received a grievance letter. (*Id.* ¶¶ 142, 144.) This grievance letter (and a similar version issued by the Bar in 2018) forms the basis of Plaintiff's defamation claim. The grievance letter is defamatory because it reflects cases The Florida Bar fabricated against Plaintiff; that is, instead of the one case that led to Plaintiff's resignation, the grievance letter lists a total of four cases against Plaintiff, all stemming from the Litigation. (*Id.* ¶¶ 144-161.) The Bar did not provide Plaintiff with notice of these actions. (*Id.*) The grievance letter also fails to mention that Plaintiff submitted the settlement funds to the Bar, it attaches an incomplete copy of Plaintiff's resignation packet, and gives the false impression that the judgment of disbarment for theft entered against Plaintiff was not obtained *ex parte* and by default. (*Id.*) The grievance letter also incorporates an amended, "doctored" version of the auditor's Report. (*Id.* ¶¶ 178-199.) Based on this amended Report, the Florida Supreme Court entered a judgment of disbarment for theft

against Plaintiff on July 11, 2002. (*Id.* ¶ 203.) The Florida Bar failed to disclose to the Florida Supreme Court that Plaintiff submitted the settlement funds to Bar on November 6, 2001. (*Id.* ¶¶ 200-206.) Later, Plaintiff discovered a fifth fabricated case, which was not listed in the grievance letter and was viewable only by pulling Plaintiff's Florida Bar file. (*Id.* ¶¶ 207-218.)

Upon discovering these five fabricated cases, on February 20, 2009, Plaintiff filed a Petition for Writ of Certiorari with the United States Supreme Court. (*Id.* ¶ 219.) The Supreme Court denied the Petition for Writ of Certiorari as untimely. (*Id.*) The ruling sent Plaintiff into a 10-year long battle with depression. (*Id.* ¶¶ 219-227.)

In 2018, Plaintiff reapplied for admission to the New York Bar. (*Id.* ¶¶ 230-236.) She reapplied not to practice law but hopefully to clear her name; she hoped New York would review all the evidence pertaining to her Florida disbarment and would view the Florida judgment of theft as a fabrication by The Florida Bar. (*Id.*) Needing to provide updated material to the New York Bar, Plaintiff requested a grievance letter from

The Florida Bar. (*Id.*) Around March 27, 2018, Plaintiff received a grievance letter from The Florida Bar that was an exact match of the letter the Bar sent her in 2008. (*Id.*) The Bar reissued this letter ten years after it became aware that the judgment of disbarment for theft against Plaintiff 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.) In this suit, Plaintiff seeks $75,000 in compensatory and actual damages and $75,000 in punitive damages against The Florida Bar for defamation. (*Id.* ¶¶ 316-317.)

The court concluded that The Bar was aware that the ex parte judgment of conviction for a second-degree felony it secured against Telasco was the product of fabricated charges. (App.15a).

However, the court dismissed Telasco's action *without prejudice* for lack of subject matter jurisdiction because it concluded that The Bar has sovereign immunity under the Eleventh Amendment.

B) The Appellate Court's Finding of Facts and Conclusion of Law

Armed with judicially-confirmed evidence of The Bar's egregious misconduct against her, (App.9a-17a), Telasco appealed the judgment on grounds that the cases that the District Court used which espoused blanket immunity on The Bar are not applicable to Telasco's defamation case. (App.382a-386a).

The Appellate Court affirmed the District Court Judgment that The Bar was immune from suit because it has sovereign immunity.

However, the Court's order included a short statement of the facts which completely ignored the undisputed evidence on the record which clearly show the Bar's misconduct against Telasco and upon the court. The Court's nutshell statement adopted The Bar's *false narrative* which gives and maintains the *false appearance* that The Bar was fair, impartial and conducted itself with the utmost propriety when it doctored documents, misrepresented facts to the court, and fraudulently secured an ex parte default

judgment convicting Telasco of theft, a second-degree felony. (App.1a-8a).

C) The 2009 Petition for Writ of Certiorari

The facts that comprise Telasco's defamation action against the Bar are the same facts that embodied her 2009 petition for corrective relief to this Court. (App. 290a-297a).

When Telasco filed her petition with this court in 2009, her main concerns were the lifelong social and psychological stigma, limited employment possibilities, and other civil disabilities that flow in consequence of the felony conviction. (App.290a-297a).

It has been 12 years since Telasco filed her 2009 petition. She is now again before this court with an order from the district court, confirming The Bar's egregious misconduct against her and in the courts. Telasco's complaint further referenced the carnage that this ex parte felony conviction has had and continues to have on her life. (App.121a-129a).

REASONS FOR GRANTING THE WRIT

The Bar's egregious misconduct against Telasco has severely compromised the integrity of state bars, the judiciary, and our legal system. The Appellate court's decision to ignore facts in the record which give clear optics of The Bar's misconduct undermines public confidence in the judiciary.

If this court ignores the Bar's misconduct and allow the Appellate Court's adoption of the Bar's narrative to be the last word from the federal judiciary, this court will in effect sanction The Bar's actions of not seeing, hearing and giving absolutely no value to attorneys in good standing who uphold the law, look like Telasco, and share the same culture as Telasco.

Not accepting Telasco's petition will further erode the very nature of what the American judicial system stands for: 'A system which seeks truth no matter where it leads. A system which renders justice and relief to those who come before it without regard to the seekers status, power or connection.'

I. Sovereign Immunity as Deployed by *Welch v. Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468,

472 (1987) and its Progeny, are Inapplicable to Telasco's Defamation Action where The Florida Bar Knowingly Made a False Criminal Report Against her to The Court which Resulted in an *Ex Parte* Felony Conviction for Theft Against her.

In *Cohens v. Virginia* 19 U.S. (6 Wheat.) 264, 406-407 (1821) Chief Justice Marshall held:

"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 …

The amendment, therefore, extended to suits commenced … by individuals, but not to those brought by states."

In *Lapides v. Bd. of Regents*, 535 U.S. 613, 622-623 (2002) this 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." 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 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 *Rochin v. California*, 342 U.S. 165, 169 (1952) this 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 Bar created Telasco's defamation action when it 1) commenced disbarment proceedings, in its own name and as plaintiff, against her, 2) failed to give her notice of the disbarment proceeding and final hearing, 3) falsely reported to the court that Telasco stole $80,000.00 from her clients' even though it

was in possession and had complete control over these same funds, 4) secured an order of admission to theft ex parte and by default against her, and 5) secured an *ex parte* second degree felony conviction for theft against Telasco. This devastating *ex parte* felony judgment is the legal target of Telasco's defamation action. The Bar's claim of Eleventh Amendment immunity vis-à-vis the facts of Telasco's defamation action is not applicable because the Bar effectuated Telasco's action. The Bar's claim of entitlement to immunity in this case offends the canons of decency, fundamental fairness, impartial and social justice.

a) Liberty Interest as Defined by this court

This court has continuously held that a person's liberty interest is impinged upon when her 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 her chosen field. *See Townsend v. Vallas*, 256 F.3d 661, 670 (7th Cir. 2001); *Lawson v. Sheriff of Tippecanoe Cty., Ind.*, 725 F.2d 1136, 1138 (7th Cir. 1984);

Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897); *Ingraham v. Wright,* 430 U.S. 651, 673 (1977); *Board of Regents v. Roth*, 408 U.S. 564, 573, (1972); and *Paul v. Davis,* 424 U.S. 693, 708-712 (1976).

b) Property Interest as Defined by this Court

In *Phillips Petroleum v. Shutts*, 472 U.S. 797, 807 (1985) this 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) this court held that the right to have others "answer for negligent or illegal impairment of... interests" is a form of property right.

Thus, this court has characterized The Bar's defamation of Telasco as an act impinging on her Liberty interest. It has also characterized Telasco's defamation action against The Bar for illegally stigmatizing her and foreclosing her freedom to take advantage of new employment opportunities as a protected property interest. *See Angle v. Chicago, St. Paul, M. & D. Ry.*, 151 U.S. 1 (1894).

Both of these interests triggers The First Amendment Petition Clause which protects "the right of people to petition the Government for a redress of grievances." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 382 (2011). In *Guarnieri*, this court held that "This Court's precedents confirm that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes. "[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government." *Id* at 387

Thus, The Petition 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. *See Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907); *NAACP v. Button*, 371 U.S. 415,433 (1963)*; and Thomas v. Collins*, 407 U.S. 516, 530 (1945); *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); *Protect Our Mountain Env't, Inc. v. District Court for*

County of Jefferson, 677 P.2d 1361, 1365 (Col. 1984) (en banc); *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 *Davis v. Passman,* 442 U.S. 228, 242 (1979) this 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." If a case is within the court's jurisdiction and the court finds that a federal right has been violated and a particular remedy essential to that right's protection, the Constitution may not only authorize but compel the Court to give it effect. This requirement does not broaden the court's jurisdiction. It would not disrupt the law of government accountability and it would not frustrate the purpose of sovereign immunity.

c) The Strict Scrutiny Standard

The Court has long applied "strict scrutiny" to judge regulation of First Amendment freedoms. In *NAACP v. Button*, this Court held that,

> "[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."

Id. 371 U.S. at 438-44.

This standard requires courts to look to whether the government has a compelling state interest in regulating the exercise of core First Amendments rights and whether the regulation is narrowly drawn to achieve that goal with minimal impact on said rights. *See In re Primus*, 436 U.S. 412, 422, 432-33 (1978); *See United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n*, 389 U.S. 217, 222-23 (1967); and *Baird v. State Bar of Ariz.*, 410 U.S. 1 (1971).

The Bar's reason for its misconduct is that Telasco failed to attend a "noticed" final hearing. Even if The Bar did give Telasco notice, which it did not, this reason does not justify its actions nor satisfy the strict scrutiny standard announced by this court.

II. Telasco has a Viable Defamation Action against The Florida Bar for Falsely Reporting and Securing an Ex Parte Judgment Convicting her of a Second-Degree Felony.

A) Defamation Defined

General Defamation is defined as "the unprivileged publication of false statements which naturally and proximately result in injury to another." *See Wolfson v. Kirk*, 273 So. 2d 774, 776 (Fla. 4th DCA 1973); and *Jews for Jesus, Inc. v. Edith Rapp,* 997 So.2d 1098, 1106 (Fla. 2008).

Defamation *Per Se*: "[A] publication is libelous *per se* or actionable *per se*, if, when considered alone without innuendo: (1) it charges that a person has committed an infamous crime; (2) it charges a person with having an infectious disease; (3) it tends to subject one to hatred, distrust, ridicule, contempt, or disgrace; … or (4) it tends to injure one in his trade or profession." *See Blake v. Giustibelli,* 182 So.3d 881, 884 (Fla. 4th DCA 2016).

In *Kirvin v. Clark,* 396 So.2d 1203 (Fla. 1st DCA 1981) the defendant accused plaintiff of

violating Section 836.05 of the Florida statutes which is a felony of the second degree. Defendant alleged that the defamatory words were absolutely privileged because they were published in the course of a judicial proceedings. The court held that the allegations that Plaintiff violated the Florida Statute which amounted to the commission of a felony of the second degree is sufficient to state a cause of action for defamation per se.

Defamation by Implication "arises, not from what is stated, but from what is implied when a defendant (1) juxtaposes a series of facts so as to imply a defamatory connection between them, or (2) creates a defamatory implication by omitting facts, …the defamatory language must affirmatively suggest that the author intends or endorses the inference." *See* *Jews for Jesus* at 1106-1107.

1) The Bar's false report to the court that Telasco committed a second-Degree felony.

In defamation cases, truth and good motives are integral requirements for sovereign immunity to attach.

In *Int'l Sec. Mgmt. Grp., Inc. v. Rolland*, 271 So.3d 33, 48 (Fla. 3rd DCA 2018) the court quoting *Valladares v. Bank of Am. Corp.*, 197 So.3d 1, 10 (Fla. 2016) held that: "[A] cause of action is available to one injured as a result of a false report of criminal behavior to law enforcement when the report is made by a party which has knowledge or by the exercise of reasonable diligence should have knowledge that the accusations are false or acts in a gross or flagrant manner in reckless disregard of the rights of the party exposed,."

In *Claridy v. Golub*, 632 Fed. Appx. 565 (11th Cir. 2015) the state attorney relied on the falsified report of arrest in deciding to prosecute Plaintiff and in defining the charges against him. The court held a person who reports a crime acts maliciously when he "knows the report is false or recklessly disregards whether the report is false." The court quoted *Lloyd v. Hines*, 474 So. 2d 376, 379 (Fla. 1st DCA 1985) which held that an officer's use of fraud or corrupt means to obtain a warrant gives rise to individual liability.

The *Golub* court further indicated that in deciding whether the defendant is entitled to immunity under the plaintiff's version of the facts, the inquiry is whether "certain given facts demonstrate that defendant's conduct violates clearly established law or rights at the time of the incident of which a reasonable person would have known (*See Crenshaw v. Lister*, 556 F.3d 1283, 1289 (11th Cir. 2009) and *Dalrymple v. Reno*, 334 F.3d 991, 994 (11th Cir. 2003)) or …whether the state of the law at the time of an incident provided fair warning to the defendant…" *See Terrell v. Smith*, 668 F.3d 1244, 1256 (11th Cir. 2012).

At the time The Bar reported to the Court that Telasco had stolen $80,000.00 from her clients, 1) this accusation was and is currently classified as a second-degree felony under section 812.014(6) of the Florida statutes; and 2) The Bar knew its theft report was false.

The Bar has never denied that it secured an ex parte felony conviction against Telasco; and it has never denied that when it advised The court and Telasco's former clients that Telasco stole their money, it was in

possession of and had complete control over the same funds. (App.320a-343a).

Telasco made numerous requests to The Bar for the bank statement that it claims prove that Telasco stole $80,000 from her clients' on August 25, 2008, September 5, 2008 and September 9, 2008. These requests were made immediately upon Telasco discovering the ex parte felony judgment against her. In 2008, The Bar informed her that it did not have it (App.297a) and referred her to the grievance letter it issued. (App.134a-136a). Upon filing of her defamation action with the District Court, Telasco made two more requests for this statement on September 19, 2019 and on March 19, 2020. (App.387a-389a, 392a-404a). The Bar did not respond to Telasco's requests. Instead, it filed two motion to stay discovery on November 27, 2019 and April 7, 2020 on the ground that it is immune from suit and does not have to comply with her discovery requests. (App. 390a-391a, 405a-408a). The Bar also states in its grievance letters that it keeps the files of cases in which it issued disciplinary sanctions. (App.131a-136a).

Thus, The Bar referring Telasco to the grievance letter it issued does not satisfy Telasco's request for documents or its policy that it keeps records of cases in which it issues disciplinary sanctions.

In *Axelrod v. Califano*, 357 So.2d 1048, 1052 (Fla. 1st DCA 1978) the defendant's publication branded Axelrod a thief and forger. The court held that the publication was actionable per se because it falsely and maliciously charges Axelrod with the commission of a crime. The court concluded that "In all…civil actions for defamation the truth may be given in evidence. .... the truth of the publication is a good defense if the matter charged as defamatory is true and was published with good motives." *See Drennen v. Westinghouse Elec. Corp.*, 328 So.2d 52, 54-55 (Fla. 1st DCA 1976); and *Ramos v. Miami Herald Media Co.*, 132 So.3d 1236 (Fla. 3rd DCA 2014).

It is also well settled that Florida Courts have established the rule that a government official or agency who asserts the defense of absolute or sovereign immunity bears the initial burden of showing that it was acting within the scope of its authorized

powers. *See Moore v. Sheriff of Seminole City*., No. 17-14779, 2018 WL 4182120, at *2 (11th Cir. 2018); and *Cassell v. India*, 964 So.2d 190, 194 (Fla. 4th DCA 2007).

In *DelMonico v. Traynor,* 116 So.3d 1205, 1213 (Fla. 2013) The Florida Supreme Court held that

> "Florida's absolute privilege [sovereign immunity] was never intended to sweep so broadly as to provide absolute immunity from liability to an attorney for alleged defamatory statements …
>
> The person whose good name suffers has, or ought to have, the right to vindicate his reputation by an appeal to the courts, … The person accused may have suffered great financial loss by the slander published under the protection of the law ….where the trial court determines that the alleged defamatory statements, … are not connected with or related to the subject of inquiry, then the defendant to a defamation action would be afforded no privilege at all,.."

See *Fridovich v. Fridovich,* 598 So.2d 65 (Fla.1992).

The Bar's actions against Telasco were not activated in furtherance of its official purpose. *See Thomas v. Tampa Bay Downs, Inc*, 761 So.2d 401, 404 (Fla. 2nd DCA 2000) and *Zavadil v. Fla. Bar*, 197 So.3d 596, 597 (Fla. 4th DCA 2016). The Bar acted beyond the scope of its duties and the sovereign immunity it assumes to be available does not attach.

2) Third Party Publication by The Florida Bar

In *Tyler v. Garris*, 292 So. 2d 427, 429 (Fla. 4th DCA 1974) the court held that the only requirement for publication is that "the defamatory matter must have been communicated to some third person in order for same to be actionable."

In *Sirpal v. University of Miami*, 684 F. Supp.2d 1349, 1361 (S.D. Fla. 2010) Sirpal alleges that Defendant Dr. Potter defamed him when he falsely told a University of Florida official that Sirpal stole protein samples from the University's lab and had altered the image in the *JBC* article

("predicament"). Defendant's argue that "because Sirpal fully disclosed all the facts of his predicament to the University of Florida, the element of third-party publication is missing." The court held that "Sirpal does not allege that Dr. Potter committed defamation when Sirpal disclosed his situation to the University of Florida, but that Dr. Potter committed defamation when Dr. Potter spoke with the University of Florida. Thus, an official at Sirpal's former university made a statement —a publication—to an official at a prospective university." The court concluded that the fact that "Sirpal may have fully disclosed the facts underlying his predicament before Dr. Potter spoke with the University of Florida is irrelevant: each repetition of a defamatory statement is a publication." The court held that Sirpal's defamation count states a claim and he has met the publication requirement.

In *Dupuy v. Samuels*, 397 F.3d 493, 504, 510 (7th Cir. 2005) the court held that third party publication requirement is satisfied when the plaintiff's status is disseminated to his potential employer *by operation of law* during the hiring process.

In *Matthews v. Deland State Bank,* 334 So.2d 164, 166 (Fla. 1st DCA 1976) the court held that a disregard for the truth in reporting …, especially when coupled with the failure to correct the inaccuracies, constitutes libel per se.

In *Zavadil* the court held that "maintaining an *accurate* public listing of attorneys, including whether or not they are in good standing and able to practice, is an integral part of the [Florida] Bar's duties, as is *responding* to inquiries regarding an attorney's status." *Id.*

In the instant case, Telasco alleges that she made an application for membership to The New York State Bar. As a condition to admission, Telasco had to give authorization to The New York Bar to conduct a background investigation on her. This investigation included a request for a grievance letter from The Florida Bar inquiring into Telasco's status with said Bar. The purpose of this letter is to inform the requesting third party, The New York Bar, of any character flaws, grievance proceedings, the nature of said proceedings, if any, and their outcome. The grievance letter is mandated by the rules and

laws regulating admission to all state bars to include The Florida Bar. The Florida Bar defamed Telasco when it published its letter to the New York Bar advising of Telasco's felony conviction for theft of her clients' settlement funds which led to her disbarment.

3) Telasco suffered a legally cognizable injury.

In *Marbury v. Madison, 5 U.S. (1 Cranch)* 137, 163 (1803) this court held that

> "... 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.
>
> ... 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."

The principle that the government must be accountable is embodied in the first words of the constitution, *"We the People,"* a phrase which make the people sovereign.[2] Government accountability, coupled with the right to pursue claims against the government itself is inherent in the structure of the constitution and define the core of the First Amendment 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).

In *Smith v. Clinton*, 687 F. Supp. 1310, 1312- 13 (E.D. Ark. 1988) the court articulates the necessity for meaningful relief where the

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[2] 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."

injury is perpetual in nature. In *Smith*, the Plaintiffs brought suit to vindicate their voting rights and to ensure that the voting power of African Americans in Alabama is no longer diluted under Alabama's congressional district map in violation of the Voting Rights Act. The district court held that an injury to voting rights is continuing, suffered anew each time an election is held. The essence and continuing nature of Telasco's harm is parallel to Smith's harm. The Bar's defamation of Telasco which has severely damaged her for over 20 years is continuing and she suffers anew each time someone inquire into the reason for her disbarment, googles her name, reviews her Florida Bar file or reviews the docket of the fabricated court files. Like the *Smith* Plaintiffs, Telasco's interest in obtaining timely relief in her defamation case is significant, and The Bar should not be permitted to deny her that relief.

B) Telasco's proven allegations and injuries meet 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 and common 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 plaintiff claims is false, and (2) a material state-imposed burden or state-imposed alteration of the plaintiff's legal status or rights she previously held. *See Paul v. Davis*, 424 U.S. at 708– 09; *Hinkle v. White*, 793 F.3d 764, 767–68 (7th Cir. 2015); *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).

Telasco's second amended complaint shows that 1) The Bar's ex parte felony judgment convicting Telasco for theft has caused and continues to cause severe harm to her "good name, reputation, honor, and integrity" **("stigmatic harm")** and it has and continues to alter her legal status and rights as it has destroyed her career and foreclosed all employment opportunities both outside of and within the legal community **("alteration of legal status")**.

Rule 54(c) of the Federal Rules of Civil Procedure provides 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." Paragraph 312 and 316 of Telasco's second amended complaint channel the wording and spirit of Rule 54(c) whereby "Telasco 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." (App.126a,127a, 129a). *See Bush v. Lucas*, 462 U.S. 367, 374 (1983); *Bell v. Hood*, 327 U.S. 678**,** 684 (1946); *Felce v. Fiedler* 974 F.2d 1484, 1501 (7th Cir. 1992); *John Doe v. Purdue Univ.*, 928 F.3d 652, 666-667 (7th Cir. 2019); and *U.S. Const. Art. III, §2***.**

CONCLUSION

For the foregoing reasons, The Court should grant the petition for certiorari.

Respectfully submitted,

Anne Georges Telasco,
Pro Se Petitioner
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