

No. _____

IN THE

Supreme Court of the United States

P. STEPHEN LAMONT, et al.

Petitioners,

v.

APPELLATE DIVISION FIRST DEPARTMENT DEPARTMENTAL
DISCIPLINARY COMMITTEE, et al.

Respondents.

**On Petition of a Writ of Certiorari to The United States Court of
Appeals for The Second Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Is a fundamental underpinning of Rooker-Feldman doctrine that the proper forum to appeal State court decisions is in State court (*Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005))?
2. Does §5 of the Fourteenth Amendment grant Congress the power to enforce, by appropriate legislation, the provisions of that Amendment, and if so, does this Amendment abrogate the immunity provided by the Eleventh Amendment?
3. Is the purpose behind the enactment of 42 U.S.C. § 1983 to secure the protection of Petitioners' constitutional rights against infringement by State governments and State actors who purportedly act under the authority of State law?

PARTIES TO THE PROCEEDING

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

For Petitioners:

Iviewit Shareholders: Barry Becker, Brett Howard, Kevin McKeown, Mitchell Welsch

For Respondents:

Thomas J. Cahill, in his official and individual

capacity, Joseph Wigley in his official and individual capacity, Catherine O'Hagen Wolfe in her official and individual capacity, Paul Curran in his official and individual capacity, Martin R. Gold in his official and individual capacity, Hon. Angela M. Mazzarelli in her official and individual capacity, Hon. Richard T. Andrias in his official and individual capacity, Hon. David B. Saxe in his official and individual capacity, Hon. David Friedman in his official and individual capacity, Hon. Luiz A. Gonzales in his official and individual capacity, Appellate Division Second Department Departmental Disciplinary Committee, Lawrence DiGiovanna in his official and individual capacity, Diana Maxfield Kearse in her official and individual capacity, James E. Peltzer in his official and individual capacity, Hon. A. Gail Prudenti in her official and individual capacity, Steven C. Krane in his official and individual capacity, Hon. Judith S. Kaye in her official and individual capacity, Kenneth Rubenstein, Estate of Stephen Kaye, Proskauer Rose LLP, Meltzer Lippe Goldstein & Breistone LLP, Lewis S. Meltzer, Raymond A. Joao, Foley Lardner LLP, Michael C. Grebe, William J. Dick, Douglas A. Boehm, Steven C. Becker, State of New York Commission of Investigation, Lawyers Fund for Client Protection of the State of New York, The Florida Bar, Lorraine Christine Hoffman in her official and individual capacity, Eric Turner in his official and individual capacity, John Anthony Boggs in his official and individual capacity, Kenneth Marvin in his official and individual capacity, Thomas Hall in his official and individual capacity, Deborah

Yarborough in her official and individual capacity, Virginia State Bar, Andrew H. Goodman in his official and individual capacity, Noel Sengel in her official and individual capacity, Mary W. Martelino in her official and individual capacity, and John Does.

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**CITATIONS OF THE OPINIONS AND ORDERS ENTERED IN THE
CASE BY COURTS**

Bernstein, et al v. Appellate Division First Department Disciplinary Committee, et al. (08-cv-4873, CA2 NY, filed October 3, 2008), Opinion and Order filed January 5, 2010 dismissing appeal, and appearing as Appendix A.

Bernstein, et al v. Appellate Division First Department Disciplinary Committee, et al. (07-cv-11196, S.D.N.Y filed December 12, 2007), Opinion and Order filed August 8, 2008 granting Defendants' Motion to Dismiss, and appearing as Appendix B.

Bernstein, et al v. Appellate Division First Department Disciplinary Committee, et al. (08-cv-4873, CA2 NY, filed October 3, 2008), Opinion and Order filed January 22, 2010 denying Motion for Reconsideration, and appearing as Appendix C

STATEMENT OF THE BASIS FOR JURISDICTION

The District Court had jurisdiction under U.S.C. 28 §1331, and issued its Opinion and Order on August 8, 2008. A Motion for Reconsideration was filed on August 18, 2008, and the District Court denied the Motion on August 19, 2008.

A Notice of Appeal was filed on September 4, 2008, and the Courts of Appeals for the Second Circuit has jurisdiction under U.S.C. 28 § 1291. The Court of Appeals dismissed the appeal on January 5, 2010. A Motion for Reconsideration was filed on January 12, 2010, and the Court of Appeals issued its final judgment on January 22, 2010.

This Court has jurisdiction under U.S.C. 28 §1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States

AMENDMENT XI

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.

AMENDMENT XIV

Section 1.

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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...

Section 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

The United States Code

U.S.C. 42 § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

STATEMENT OF THE CASE

A. Development and Sabotage of the Video and Imaging Technology

Beginning in 1997, Inventors of Iviewit Holdings, Inc. ("Iviewit") developed video and imaging technologies (the "Inventions") that use significantly less

bandwidth than other technologies, provide a way to "zoom almost infinitely on a low resolution file with clarity," and were quickly incorporated into almost every digital camera, DVDs, televisions, cable and satellite and terrestrial television broadcasting, certain websites, and application specific integrated circuits ("chips").

Proskauer Rose LLP, a New York law firm, was recipients of disclosures regarding the Inventions through Proskauer partner Christopher C. Wheeler. Several weeks later, Proskauer represented that partners Kenneth Rubenstein and Raymond A. Joao would secure patents for the Inventions.

Simultaneously, Rubenstein was also counsel to MPEG LA LLC, one of the largest benefactors of the Inventions. In fact, Petitioners allege that Rubenstein was part of a scheme to sabotage the Inventions so as to preserve and benefit MPEG LA LLC.

B. Discovery of the Sabotage.

Almost immediately after Joao began work on the patents, Iviewit discovered that Joao had made changes to the patent applications after they were signed. Iviewit replaced Joao with William J. Dick, Douglas A. Boehm, and Steven C. Becker of Foley & Lardner LLP ("Foley"); they too filed false papers.

In 2003, Petitioners filed a complaint with The Florida Bar that alleges Wheeler and Proskauer violated various ethical rules. The events involving Florida lasted from Spring 2003 to Spring 2004.

C. Further Conspiracy and Cover-up

Petitioners filed complaints with the New York Appellate Division, First Department Disciplinary Committee ("1st DDC") against Rubenstein, Joao, and Proskauer itself. But Proskauer arranged for Respondent Steven C. Krane, a partner at Proskauer and member of the 1st DDC, to have the complaints delayed and then dismissed. Petitioners discovered Krane's involvement on May 20, 2004. They filed a complaint against Krane with the 1st DDC.

In July of 2004, Petitioners filed a Motion with the New York State Supreme Court Appellate Division First Department ("First Department Court"). The First Department Court ordered the investigation of Rubenstein, Proskauer, Krane, MLG, and Joao and transferred the investigation to the Appellate Division Second Department Departmental Disciplinary Committee ("2nd DDC"), which refused to pursue the investigation in flagrant violation of the Order of the First Department Court. Similar inquiries with the Virginia State Bar regarding Respondent William J. Dick were unsuccessful.

REASONS FOR GRANTING THE WRIT

Petitioners maintain the following:

A. District Court's Reliance on Rooker-Feldman Doctrine

The District Court invoked the Rooker-Feldman doctrine as a means to support its Order in granting Respondents' Motions to Dismiss. A recent

decision of this Court *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), makes clear that claim preclusion is a separate doctrine entirely. *Exxon* stipulates the requisite elements that must be met for the Rooker-Feldman doctrine to apply (See also *District of Columbia Court of Appeals v. Feldman*, 460 US. 462,483 n. 16 (1983)). None of the factors of *Exxon* are present in the instant case; the Rooker-Feldman doctrine simply does not apply.

B. Immunity Analysis within the Order

Regarding Immunity, Petitioners' Complaint, Opposition Memorandums, and Appellant Brief pray for injunctive relief; this was clearly stated.

1. Eleventh Amendment Does Not Bar Suits for Declaratory or Injunctive Relief

The District Court's bald assertion that in the instant case the Complaint lacks any foundation upon which the District Court can grant legal relief is clearly erroneous. The Eleventh Amendment does not preclude suit against State officers for the kind of injunctive and declaratory relief at issue here. If a State official acts in contravention of the Constitution, pursuant to an unconstitutional statute, or in a manner that violates an individual's constitutionally protected rights, suit to enjoin the offending behavior is proper and does not run afoul of a State's sovereign immunity. (See *Ex Parte Young*, 209 U.S. 123, 160 (1908), *Edelman v. Jordan*, 415 U.S. 651 (1974)).

Additionally, *Ex Parte Young* and *Edelman v. Jordan* provide that the District Court could have provided retroactive monetary relief against an officer sued in his individual capacity, as bringing an action against an officer in his individual capacity does not implicate State sovereignty.

2. Explicit §5 Override

§5 of the Fourteenth Amendment grants Congress the power to enforce, by appropriate legislation, the provisions of that Amendment; courts have recognized that this new Amendment, again a consensus of the people, abrogates the immunity provided by the Eleventh Amendment.

In *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985), this Court said that Congress can use its Fourteenth Amendment power to override a State's Eleventh Amendment protection.

3. The District Court's Order Cannot Claim Judicial and Qualified Immunity.

Furthermore, the District Court cannot allow the Respondents to use the guise of State authority as a license for violating Petitioners' constitutional rights. Indeed, the entire purpose behind the enactment of U.S.C. 42 § 1983 was to secure the protection of individuals' constitutional rights against infringement by State governments and State actors who purportedly act under the authority of State law; Section 1983 creates a private cause of action for damages (as well as injunctive relief) against those "persons"

responsible for the deprivation (See *Mitchum v. Foster*, 407 U.S. 225,238-39 (1972)).

In *Kostok v. Thomas*, 105 F.3d 65, 69 (2d Cir. 1997), the court determined that declaratory and prospective injunctive relief are available, and that the plaintiffs' claims brought under 42 U.S.C. § 1983 need not be dismissed.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Date: June 24, 2010

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35 Locust Avenue
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No.

IN THE SUPREME COURT OF THE UNITED STATES

P. Stephen Lamont, et al. — **PETITIONERS**

VS.

Appellate Division First Department
Disciplinary Committee, et al. — **RESPONDENT(S)**

PROOF OF SERVICE

I, P. Stephen Lamont, do swear or declare that on this date, June 24, 2010, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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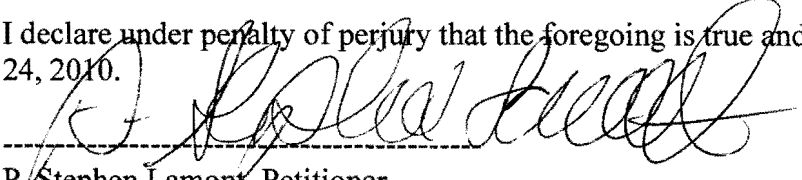
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I declare under penalty of perjury that the foregoing is true and correct. Executed on June 24, 2010.



P/Stephen Lamont, Petitioner

No.

IN THE SUPREME COURT OF THE UNITED STATES

P. Stephen Lamont, et al. — **PETITIONERS**

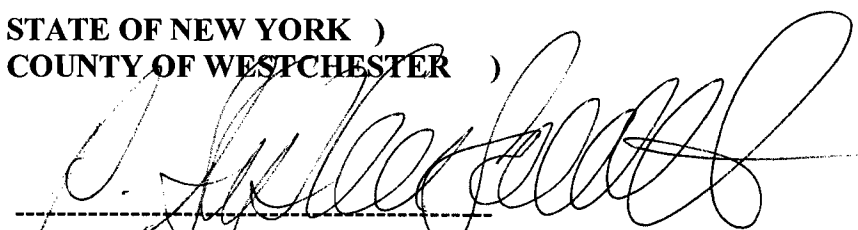
VS.

Appellate Division First Department
Disciplinary Committee, et al. — **RESPONDENT(S)**

CERTIFICATE OF WORD LIMITATION

I, P. Stephen Lamont, do swear or declare that on this date, June 24, 2010, as required by Supreme Court Rule 33.1 (H) the enclosed PETITION FOR A WRIT OF CERTIORARI contains 1367 words.

**STATE OF NEW YORK)
COUNTY OF WESTCHESTER)**



P. Stephen Lamont, Petitioner

Sworn to before me this
7th day of June, 2010


Notary Public

**Lucia P. Ferreira
Notary Public, State of New York
No. 01FE6130974
Qualified in Westchester County
Commission Expires July 25, 2013**

