

No. _____

IN THE

Supreme Court of the United States

In re P. STEPHEN LAMONT, et al.,) Proceedings below:
Petitioners)
) *Bernstein, et al. v. Appellate*
) *Division First Department*
) *Disciplinary Committee, et al.*
)
) United States Court of Appeals
) for the Second Circuit
)
) *Bernstein, et al. v. Appellate*
) *Division First Department*
) *Disciplinary Committee, et al.*
)
) United States District Court for
) the Southern District of New
) York

PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

P. Stephen Lamont, Pro se
35 Locust Avenue
Rye, N.Y. 10580
(914) 217-0038

QUESTION PRESENTED FOR REVIEW

1. Is a fundamental underpinning of the 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))? Under these circumstances, should the Court issue a writ of mandamus commanding the Court of Appeals to send the record in the lower courts' actions for review thereby preserving its appellate jurisdiction over decisions below?
2. Does the §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? Under these circumstances, should the Court issue a writ of mandamus commanding the Court of Appeals to send the record in the lower courts' actions for review thereby preserving its appellate jurisdiction over decisions below?
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? Under these circumstances, should the Court issue a writ of mandamus commanding the Court of Appeals to send the record in the lower courts' actions for review thereby preserving its appellate jurisdiction over decisions below?

4. PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in this Court whose judgment is the subject of this Petition is as follows:

For Petitioners:

Iviewit Shareholders: Caroline P. Rogers, Marc R. Garber, Simon L. Bernstein, Kenneth Anderson, United States Small Business Administration, James Osterling, James Armstrong, Guy Iantoni, Jill Iantoni, Andrew Dietz, Ed Butler, Kevin Roach, David Bernstein, Tony Chirino, Alan McKitrick, Daniel Preston, Joseph Ryan, Beverly Billotti, Patricia Daniels, Bettie Stanger, Lisa Friedstein, Zakirul Shirajee, Jude Rosario, Joan Stark, Anthony Frenden, Anthony Giordano, Jack Scanlan, Misty Morgan, Ginger Stanger, Joel Gonsalves, Gregory Gonsalves, Thaddeus Gonsalves, Robert Feigenbaum, Joseph Fischman, Sherri Frazier, Lorna Grote, Molly Todd Hale, Rafeal Hollywood, Karen Kiley, Beth Klein, Amanda Leavitt, Kevin Roach, Pamela Simon, Theodore Bernstein, Matthew Simpson, Crystal Simpson, William Slaby, Michael Stomp, Jane Valence, Robert Veneer, Dorothy Winters, Mitch Zamarin, Rocket Cargo Employee Pool, Air Apparent Employee Pool, Anderson Howard Employee Pool, Steven Selz, Mark W. Gaffney, Esq., Michele Mulrooney, Richard Rosman, Anthony Lewinter, David Colter, Kevin Lockwood, Alan Young, Tidal 4, Steve Sklar, Alanis Morissette, Happy Feet Living Trust, Heche Trust, Lauren Lloyd Living Trust, Scott Welch, Spencer Rogers, Paul Stanger, Dana Stanger, Jeffrey

Stanger, Tony Castro, Debbie Washington, Lisa Deleo, Stacey Ellis, Tuvia School, Douglas Chey, John Calkins, Chris Terri, Corri Perkiss, Brian Fritz, Paul Miller, Robert Roberman, Frank Burnham, Lyle McCullough, Sherry Stomp, Harmony Rousseaux, Sal Gorge, James Cohen, Monte Freidkin, Flip McCrirrick, Joshua Garber, Irell & Manella LLP, Lynn Stanger, Gregory B. Thagard, George DiBedart, Stephen Verona, Charles Brunelas, Courtney Jurcak, Tammy Raymond, Matthew Mink, Misty Morgan, Anthony Frenden, Jennifer Kluge, Barry Becker, Brett Howard, Kevin McKeown, Mitchell Welsch.

For Respondents:

New York State Supreme Court Appellate Division First Department Departmental Disciplinary Committee.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Thomas J. Cahill, in his official and individual capacity.

Former Chief Counsel of the New York State Supreme Court Appellate Division First Department Departmental Disciplinary Committee.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Joseph Wigley in his official and individual capacity.

Upon information and belief, a former case worker at New York State Supreme Court Appellate Division Departmental Disciplinary Committee.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment

to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Catherine O’Hagen Wolfe in her official and individual capacity.

Former Clerk of the Court of the New York State Supreme Court Appellate Division First Department.

Relief Sought Not Available Elsewhere: The District Court granted defendants’ Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Paul Curran in his official and individual capacity.

Former Chairman of the New York State Supreme Court Appellate Division Department Departmental Disciplinary Committee.

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Martin R. Gold in his official and individual capacity.

Special Counsel the New York State Supreme Court Appellate Division Department Departmental Disciplinary Committee.

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Hon. Angela M. Mazzarelli in her official and individual capacity.

Justice of the New York State Supreme Court Appellate Division First Department.

Relief Sought Not Available Elsewhere: The District Court granted defendants’ Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Hon. Richard T. Andrias in his official and individual capacity.

Justice of the New York State Supreme Court Appellate Division First Department.

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Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Hon. David B. Saxe in his official and individual capacity.

Justice of the New York State Supreme Court Appellate Division First Department.

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Hon. David Friedman in his official and individual capacity.

Justice of the New York State Supreme Court Appellate Division First Department.

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Hon. Luiz A. Gonzales in his official and individual capacity.

Justice of the New York State Supreme Court Appellate Division First Department.

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New York State Supreme Court Appellate Division Second Department Departmental Disciplinary Committee.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Lawrence DiGiovanna in his official and individual capacity.

Chief Counsel of the New York State Supreme Court Appellate Division Second Department Departmental Disciplinary Committee.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker

Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Diana Maxfield Kearse in her official and individual capacity.

Chief Counsel of the New York State Supreme Court Appellate Division Second Department Departmental Disciplinary Committee.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

James E. Peltzer in his official and individual capacity.

Clerk of the Court of the New York State Supreme Court Appellate Division Second Department.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Hon. A. Gail Prudenti in her official and individual capacity.

Justice of the New York State Supreme Court Appellate Division Second Department.

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Hon. Judith S. Kaye in her official and individual capacity.

Former Chief Judge of the New York State Court of Appeals.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Steven C. Krane in his official and individual capacity.

Former Public Officer of the New York State Supreme Court Appellate Division Departmental Disciplinary Committee.

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Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Proskauer Rose LLP.

Kenneth Rubenstein

Estate of Stephen Kaye.

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

An arm of the Florida Supreme Court charged with the discipline of Florida attorneys in the State of Florida.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Lorraine Christine Hoffman in her official and individual capacity.

Staff Attorney to The Florida Bar.

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Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Eric Turner in his official and individual capacity.

Staff Attorney to The Florida Bar.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

John Anthony Boggs in his official and individual capacity.

Upon information and belief, Chief Counsel to The Florida Bar.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Kenneth Marvin in his official and individual capacity.

Upon information and belief, Special Counsel to The Florida Bar.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Thomas Hall in his official and individual capacity.

Clerk of the Court of the Florida Supreme Court.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Deborah Yarborough in her official and individual capacity.

Former Clerk of the Court (Pro Se) of the Florida Supreme Court.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Virginia State Bar.

An arm of the Supreme Court of Virginia charged with the discipline of Virginia attorneys in the Commonwealth of Virginia.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Andrew H. Goodman in his official and individual capacity.

Upon information and belief, Chief Counsel to the Virginia State Bar.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Noel Sengel in her official and individual capacity.

Upon information and belief, Staff Counsel, to the Virginia State Bar.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

Mary W. Martelino in her official and individual capacity.

Upon information and belief, Staff Assistant to the Virginia State Bar.

Relief Sought Not Available Elsewhere: The District Court granted defendants' Motions to Dismiss based on, *inter alia*, reliance on the Rooker Feldman doctrine, failure to recognize the abrogation of the 14th Amendment to the immunity afforded by the 11th Amendment, and no reliance on 42 U.S.C. 1983; the Court of Appeals dismissed the Appeal.

John Does.

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**CITATIONS OF THE OPINIONS AND ORDERS ENTERED IN THE
CASE BY COURTS¹**

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

¹ Petitioners timely filed a Petition for a Writ of Certiorari on April 22, 2010 that was rejected by the Clerk of the Court for formatting errors, and on August 9, 2010, applied to the Associate Justice Ruth Bader Ginsburg, sitting as Circuit Justice for the Court of Appeals for the Second Circuit, to grant a liberal construction of the Rules of the Court for Pro se litigants and accept the timely filed and properly served June 24, 2010 Petition for a Writ of Certiorari, or grant Petitioners an enlargement of time to file a repaired Petition through a Supreme Court printing company (appearing as Appendix D). Petitioner believes that in the unusual posture of this case, both an application to the allotted Associate Justice for relief on its Certiorari Petition and the instant Petition for Mandamus are appropriate and alternative avenues for seeking relief. Hence, Petitioners make two alternative filings.

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). This Court has authority under the All Writs Act, 28 U.S.C. § 1651, to issue writs of mandamus to the court of appeals in order to prevent its appellate jurisdiction from being thwarted. Thus, the procedural posture of this action is ripe for mandamus intervention by this Court.

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...

FACTUAL BACKGROUND

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.

Subsequent to the filing of the Notice of Appeal to the Circuit Court, and on February 20, 2009, Petitioners filed a motion with the First Department Court requesting an order requiring the immediate investigation of Thomas

J. Cahill (former Chief Counsel of the 1st DDC was the subject of a 2005 attorney discipline complaint for failing to disqualify the Krane conflicted response in the Rubenstein complaint), whereby the Cahill complaint was immediately dismissed by Martin R. Gold, a Respondent in this action. On May 13, 2009, the First Department Court denied Petitioners' motion in a decision rendered by, among others, Hon. Richard T. Andrias and Hon. David B. Saxe both Respondents in this action. On May 22, 2009, Petitioners moved the First Department Court for an order vacating the Cahill disposition and the denied motion for conflicts of interest and appearances of impropriety which the First Department Court summarily denied on October 28, 2009.

REASONS FOR GRANTING THE WRIT

“Mandamus, prohibition and injunction against judges are drastic and extraordinary remedies.” *Ex parte Fahey*, 332 U.S. 258, 259 (1947). This case, however, presents traditional and clear-cut circumstances in which a writ is required to protect this Court's jurisdiction. The 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.

WHEREFORE, Petitioners respectfully request that a Writ of Mandamus issue out of this Court directed to the Circuit Court Judges of the United States Court of Appeals for the Second Circuit, Hon. Richard C. Wesley, Hon. Peter W. Hall, and Hon. Deborah Ann Livingston commanding them, as such Circuit Court Judges, to send the record in the instant Petition for review with a view towards: ruling that the Rooker-Feldman doctrine does not apply; ruling that §5 of the Fourteenth Amendment grants Congress the power to enforce, by appropriate legislation, the provisions of that Amendment, and that this Amendment abrogates the immunity provided by the Eleventh Amendment; and ruling that the purpose behind the enactment of 42 U.S.C. § 1983 is 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.

Respectfully submitted,

Date: September __, 2010

P. Stephen Lamont, Pro se
35 Locust Avenue

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No.

IN THE SUPREME COURT OF THE UNITED STATES

In re P. STEPHEN LAMONT, et al., PETITIONERS

PROOF OF SERVICE

I, P. Stephen Lamont, do swear or declare that on this date, September __, 2010, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF MADAMUS 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:

Gregg M. Mashberg
Proskauer Rose LLP
Counsel for the Proskauer Respondents
1585 Broadway
New York, NY 10036-8299

Patrick Walsh, Esq.
Office of the New York State Attorney General
Counsel for the New York State Respondents
120 Broadway — 25th Floor
New York, NY 10271

Kent K. Anker, Esq.
Friedman Kaplan Seiler & Adelman LLP
Counsel for the Foley Respondents
1633 Broadway
New York, NY 10019-6708

John W. Fried, Esq.
Fried & Epstein LLP
Counsel for Respondent Raymond A. Joao
1350 Broadway, Suite 1400
New York, NY 10018

Sydney E. Rab

Office of the Virginia State Attorney General
Counsel for the Virginia Bar Respondents
900 East Main Street
Richmond, Virginia 23219

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

P. Stephen Lamont, Pro Se

IN THE SUPREME COURT OF THE UNITED STATES

In re P. STEPHEN LAMONT, et al., PETITIONERS

CERTIFICATE OF WORD LIMITATION

I, P. Stephen Lamont, do swear or declare that on this date, September __, 2010, as required by Supreme Court Rule 33.1 (H) the enclosed PETITION FOR A WRIT OF MANDAMUS contains 1727 words.

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)

P. Stephen Lamont, Petitioner

Sworn to before me this
__ day of September, 2010

Notary Public