No. _____

In The
Supreme Court of the United States

PHILLIP B. LEISER;
CREATIVE LEGAL SOLUTIONS, PLLC,
f/k/a The Leiser Law Firm, PLLC,
***Petitioners*,**

v.

CHIEF JUSTICE DONALD W. LEMON,
in His Official Capacity as Chief Justice
of the Supreme Court of Virginia;
THE HONORABLE J. MARTIN BASS,
in His Official Capacity as Judge,
Pro Tempore of the Circuit Court of
Fauquier County, Virginia,
***Respondents*.**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *Rooker-Feldman ("R-F")* abstention doctrine applies to deprive the lower federal courts of subject matter jurisdiction ("SMJ") when a state-court loser, seeking *only declaratory* (*i.e.,* non-coercive) relief, files a federal § 1983 complaint, alleging injury resulting from a state-court judgment.

LIST OF PARTIES

Petitioner, Phillip B. Leiser, Esq., is a Virginia-licensed attorney who was one of the named defendants in the underlying state-court lawsuit which formed the basis of his 42 U.S.C. § 1983 action filed in the United States District Court for the Eastern District of Virginia (Alexandria Division) ("EDVA"); and was therefore one of the plaintiffs in that federal action, as well as one of the appellants in the appeal of EDVA's adverse judgment to the United States Court of Appeals for the Fourth Circuit ("USCA-4").

Petitioner, Creative Legal Solutions, PLLC is a law firm organized as a professional limited liability company under the laws of the Commonwealth of Virginia,[1] and was one of the defendants in the underlying state-court lawsuit, as well as one of the plaintiffs in the § 1983 action filed in EDVA, and one of the appellants in the appeal of that judgment to USCA-4.

Respondent, The Honorable J. Martin Bass (Ret.) ("Judge #2") succeeded Judge #1 in presiding over the state trial court proceedings conducted in the Circuit Court of Fauquier County, Virginia. His rulings were the subject of Leiser's § 1983 lawsuit which generated this appeal, and he was therefore a defendant in that action, and one of the appellees in Petitioners' appeal of EDVA's adverse judgment to

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[1] The law firm was formerly known as The Leiser Law Firm, PLLC, and prior to that, as Leiser, Leiser & Hennessy, PLLC. It will be referred to herein as "the law firm," or, collectively the individual Petitioner, as "Leiser."

USCA-4. Judge #2 was sued in his official capacity as the trial court judge, *pro tempore*.

Respondent, Chief Justice Donald W. Lemons[2] was one of the defendants in the § 1983 lawsuit which generated this appeal, and one of the appellees in Petitioners' appeal of EDVA's adverse judgment to USCA-4. He was sued in his official capacity as the Chief Justice of the Supreme Court of Virginia ("VSC").

[2] Both EDVA and USCA-4 incorrectly named him as Donald W. *Lemon*, notwithstanding Leiser's timely and proper request that EDVA correct that misnomer.

CORPORATE DISCLOSURE STATEMENT

There are no parent corporations or publicly held companies owning 10% of the stock of Petitioner, Creative Legal Solutions, PLLC, which is solely owned by Petitioner, Phillip B. Leiser, Esq., who also serves as its single member/manager.

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Petitioners, *pro se* and by counsel, respectively, respectfully ask this Court to grant a writ of *certiorari* to review the judgment of USCA-4 affirming the judgment of EDVA, dismissing, without prejudice, Petitioners' § 1983 action, for lack of SMJ, under the *Rooker-Feldman* abstention doctrine. The opinions and orders entered in this case include: the decision of USCA-4 in *Leiser v. Lemon*, 744 Fed.Appx. 841 (Mem) (4th Cir. 12/13/18), No. 18-1829, 2018 WL 6574983 (4th Cir. 12/13/18), reproduced at Appx. 1a-3a; and EDVA's order in *Leiser v. Lemon*, No. 1:18-cv-349 (E.D. Va. 6/21/18), reproduced at Appx. 4a-8a.

JURISDICTION

The Judgment below was entered on 12/13/18. No petition for rehearing was filed. Petitioners invoke the Court's jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

This case involves the interpretation of the due process clause of the Fourteenth Amendment, which declares, "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1. It also turns on the interpretation of 42 U.S.C. § 1983, which states, in pertinent part,

> 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, *except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable . . . . Id.* (emphasis added).

INTRODUCTION

This case asks the Court to reconsider the beleaguered *Rooker-Feldman* abstention doctrine in light of the Federal Courts Improvement Act of 1996 which amended § 1983 by adding the italicized language quoted above, and thereby essentially eliminated injunctive relief against a judicial officer acting in his judicial capacity, while retaining the remedy of declaratory relief in such circumstances. Both eponymous cases comprising the doctrine, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia v. Feldman*, 460 U.S. 462 (1983) were decided before the 1996 amendment to § 1983, and significantly, the petitioners in both cases had sought not only declaratory relief, but also *injunctive* relief against the judicial officers whom they had sued under that statute. Recognizing the distinction

between the non-coercive nature of declaratory relief and the coercive nature of injunctive relief, Petitioners contend that § 1983—enacted as the enforcement mechanism of the 14th Amendment ("A-14")—as amended by the Federal Courts Improvement Act of 1996 to significantly curtail the availability of injunctive relief against judicial officers acting in their judicial capacity, should be construed as an exception to the *R-F* doctrine, in order to preserve the indispensible role of the lower federal courts as guardians of the Constitution, so as to enable them to fulfill their historic role as standing between the people and the tyranny of state action—the abuse of governmental power through its arbitrary exercise—whether manifested by the executive, legislative, or judicial branch.

STATEMENT OF THE CASE

A. State court proceedings

1. McCarthy's and Hawes' state court intentional tort complaint against Leiser and his demurrer and plea in bar filed in response

Leiser was named as a defendant in a Virginia state court intentional tort lawsuit filed by his former employee, McCarthy, through McCarthy's counsel, Hawes. Their complaint alleged causes of action of defamation, barratry, and civil conspiracy, and demanded $2.5 million in compensatory and punitive damages, along with injunctive relief. From the face of their complaint, it is apparent that Leiser's allegedly actionable statements were

published during the course of judicial proceedings,[3] rendering them subject to an absolute privilege recognized in Virginia in precedents dating back more than a century.[4] The barratry claim sought damages for, *inter alia*, Leiser's filing of a breach of contract case that had been tried to a jury and ultimately resulted in a judgment in his favor.[5] The civil conspiracy claim was subject to the absolute defense of intra-corporate immunity.[6] Finally, McCarthy sought to permanently enjoin Leiser from "filing, maintaining, or promoting lawsuits against McCarthy, and from making *any* statements regarding him to *any other* person; and [requiring Leiser to] cause apologies to be transmitted to the courts . . . ." (emphasis added).[7]

Leiser filed a demurrer and a plea in bar, which, with respect to the barratry claim argued that no such private right of action is cognizable in Virginia, on the grounds that the Virginia statutes proscribing barratry and maintenance are criminal statutes which, on their face, delegate enforcement authority to either the Commonwealth Attorney or the Virginia Attorney General, through the imposition of criminal penalties and/or injunctive relief.[8] But

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[3] Appx. at 21a-22a

[4] *Mansfield v. Bernabei,* 727 S.E.2d 69, 73 (2012); *Spenser v. Looney*, 82 S.E. 745, 747 (1914).

[5] Appx. at 18a-20a

[6] Appx. at 23a

[7] Appx. at 21a

[8] VA. CODE ANN. § 18.2-451 - 455

none of those statutes authorizes a suit for damages, let alone, a private right of action, and there is not a single decision by any Virginia court remotely suggesting any precedent for such a private right of action. Leiser's opposition to McCarthy's request for injunctive relief was grounded in the alternative arguments that the injunction McCarthy sought would constitute an overbroad and unconstitutional prior restraint on speech; and that such extraordinary relief was unwarranted because McCarthy had an adequate remedy at law—the availability of a suit for damages for any speculative future actionable defamatory speech.[9]

Without explanation, Judge #1 overruled Leiser's dispositive motions to McCarthy's intentional tort claims, but acknowledged that his barratry claim presented an issue of first impression. Yet, prior to issuing his bench ruling overruling Leiser's demurrer to that claim, Judge #1 readily admitted he had not bothered to read either the barratry statutes or an appellate decision of a sister state which was the only authority cited by either side, and which served as persuasive authority supporting the trial court's rejection of the recognition of a private right of action for barratry.[10]

2. Leiser's motion for sanctions

As part of his responsive pleadings, and, pursuant to Virginia's sanctions statute,[11] Leiser had

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[9] Appx. at 23a-24a

[10] Appx. at 24a-25a

[11] VA. CODE ANN. § 8.01-271.1

also filed a motion for sanctions against McCarthy. The basis for that motion was his mere filing of the complaint, itself, which Leiser contended was frivolous and vexatious, on its face and as a matter of law. The sanctions statute expressly *requires* the imposition of sanctions against an attorney and/or a party who signs a pleading in violation of *any* of its three proscriptions—including the filing of any pleading not well-grounded in fact, without a good faith basis in law, or if filed for an improper purpose such as to harass, delay, or unnecessarily increase the cost of litigation.[12] Yet, without ever conducting a hearing on Leiser's motion for sanctions, Judge #1 denied the motion, albeit, without prejudice. Subsequently, he entered several orders—including an order scheduling a hearing on Leiser's motion for sanctions—expressly indicating his intent to conduct a hearing on a motion for sanctions by Leiser against both McCarthy and his counsel, Hawes. But after recusing himself from further proceedings in the case, and after Leiser re-filed a motion for sanctions against both McCarthy and Hawes, notwithstanding the pendency of *four* orders overtly expressing the intent of Judge #1 to conduct a hearing on such a motion, Judge #2, declined to conduct a hearing on the motion **and ultimately denied it with prejudice.**

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[12] See also, *Northern Virginia Real Estate, Inc. v. Martins*, 720 S.E.2d 121, 130 (2012); (holding, "if this [sanctions] rule is violated, the court 'shall impose' an appropriate sanction upon the attorney, a represented party, 'or both' . . . ."

B. Judge #2 violated Leiser's procedural and substantive due process rights, guaranteed by A-14, when he denied his timely-filed motion for sanctions without first conducting a hearing on the merits, and when he declined to exercise *in personam* jurisdiction over McCarthy's attorney, Hawes, for the purpose of adjudicating his liability as a respondent to that motion.

1. The four trial court orders relevant to Leiser's due process claims

The following four orders are at issue with respect to Leiser's due process claims:[13]

(i) 6/23/14 order declaring Leiser's motion for sanctions to be "premature," and ordering it "removed from the docket but *not* dismissed." (emphasis in original).

(ii) 5/4/15 order entered without first conducting a hearing, and stating at ¶ 4, "[Leiser's] motion for sanctions, prematurely filed, be and hereby is, denied without prejudice."

(iii) 2/10/16 scheduling order setting a date-certain "for a contested hearing on Leiser's motion for sanctions against McCarthy *and* Hawes." (emphasis in original).

(iv) 2/24/16 suspending order, which reads,

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[13] Appx. at 25a-31a.

> *. . . WHEREAS, it is this Court's specific intent to afford [Leiser] the opportunity to be heard concerning [the] pending motion for sanctions against [McCarthy] and his former counsel of record, . . . Hawes;* WHEREAS, on [2/10/16] this Court scheduled Leiser's motion for sanctions for a full-day hearing on 4/7/16 . . . ; WHEREAS, the Court needs sufficient time to consider the arguments of the parties and to render its decision on [Leiser's] motion for sanctions; IT IS HEREBY . . . ORDERED that . . . the entry of the non-suit order is hereby suspended until further order of this Court, and shall become a final order only after more than [21] days have elapsed from the entry of an order by this Court disposing of the merits of Leiser's motion for sanctions against *McCarthy and Hawes*. (emphases added).

2. Judge #2 ignored familiar canons of construction which militate in favor of adopting an interpretation of a writing that does not render it meaningless or absurd.

When interpreting *someone else's* writing—such as a statute, a contract, or a will, Virginia courts are charged with ascertaining the drafter's *intent*. Familiar canons of construction dictate that whenever possible, that intent should be gleaned through application of the "plain meaning rule,"[14]

[14] *Supinger v. Stakes*, 495 S.E.2d 813 (1998) (statutes).

which dictates that a court should endeavor to ascribe the plain meaning to every word employed by the draftsman, *unless* doing so would render the writing meaningless or absurd.[15] Those canons also require courts to adopt, whenever possible, a reasonable interpretation that upholds the enforceability of the writing.[16] Significantly, those canons of construction are employed when a court is essentially powerless to *modify* the writing at issue, because the writing is not its own.

A fortiori, when, as here, a court is called upon to interpret *its own order*, it is patently absurd, when faced with a choice between two alternative interpretations, to select the interpretation that renders that order meaningless. Yet, Judge #2 disingenuously ignored every other reasonable consideration, and adopted an interpretation of the suspending order that made it nonsensical, by singularly focusing on the presence in the 2/24/16 suspending order of the one and only occurrence in any of the four orders, of the sole extraneous word, "pending." He reasoned that since no motion for sanctions was technically pending when that suspending order had been entered, that order was meaningless.[17] Consequently, Judge #2 struck Leiser's sanctions pleadings he had re-filed after his

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[15] *Hensel Phelps Constr. Co. v. Thompson Masonry Contractor, Inc.*, 791 S.E.2d 734 (2016) (statutes).

[16] *Pedersen v. City of Richmond*, 254 S.E.2d 95, 98 (1979), *citing United States v. Harriss*, 347 U.S. 612, 618 (1954) (statutes).

[17] And necessarily, so were the other three entered by Judge #1 and identified, *supra.*, in § B(1), all of which had facilitated Leiser's placement of his motion for sanctions on the court's docket for its adjudication.

initially filed motion for sanctions had been removed from the docket but not dismissed, denied without prejudice, and then ultimately scheduled for a full-day hearing, unambiguously reflecting the intent of Judge #1 to conduct a hearing on a motion for sanctions by Leiser against both McCarthy and Hawes. Judge #2 did so, notwithstanding that the suspending order could have *reasonably* been interpreted to omit that extraneous word, "pending," so as to avoid rendering it—along with the other three orders—utterly meaningless, and thereby deprive Leiser of the meaningful opportunity to be heard on his motion for sanctions, to which he was constitutionally *entitled*, and which had already been formally recognized by Judge #1. Moreover, even assuming, *arguendo*, no reasonable interpretation existed because of that pesky word, "pending," that order was still subject to the jurisdiction of Judge #2 to *modify*, by, for example, striking that extraneous adjective.

The interpretation by Judge #2 of his court's suspending order, and his resulting decision to grant McCarthy's motion to strike Leiser's pleadings related to his re-filed motion for sanctions, were subject to the *sound* exercise of his discretion, as was his decision not to further suspend the nonsuit order and grant Leiser leave to re-file his improperly denied (because never adjudicated) motion for sanctions. His interpretation of that suspending order was erroneous and an abuse of discretion because it failed to consider that the *reason* Leiser's motion for sanctions was no longer "pending" was because Judge #1 had improperly removed it from the docket as "premature," and had subsequently improperly, and *sua sponte*, denied it, albeit, without prejudice. But it is axiomatic that a trial court

cannot constitutionally exercise its discretion, consistent with the dictates of the due process clause of A-14, to construe its own orders in such a way as to render them meaningless or absurd, resulting in the deprivation of a hearing on a litigant's timely-filed motion for sanctions, *particularly when* an obvious alternative interpretation would not only respect the clear intent to conduct such a hearing, previously evinced by the trial court through each of the four orders entered by Judge #1, but would also preserve the dignity of all four orders. Indeed, that familiar canon of construction known as the "plain meaning rule" mandates application of the plain meaning of the text of a writing *unless* doing so would result in a manifest absurdity. In the context of the underlying state court sanctions litigation, the misapplication of the plain meaning rule by Judge #2 resulted in the manifest absurdity of the spectacle of a trial court having entered several utterly meaningless orders.

3. The conclusion by Judge #2, that his court could not exercise *in personam* jurisdiction over Hawes, was a radical departure from well-settled principles of constitutional law, and thereby deprived Leiser of his substantive due process right to the application of those principles, while simultaneously denying him procedural due process by depriving him of a meaningful opportunity to be heard concerning his request for the imposition of sanctions against Hawes.

Notwithstanding the Fauquier County Circuit Court's status as a court of general jurisdiction in

Virginia, Judge #2, presiding over that tribunal, ruled—without citing to any legal authority—that it could not exercise *in personam* jurisdiction over Hawes, a Virginia-licensed attorney who was not only a resident and domiciliary of the Commonwealth, but also of the very county in which the court seeking to exercise jurisdiction is situated; who maintains his law office in and regularly practices law in that jurisdiction—and specifically, before the very court seeking to exercise jurisdiction over him; who, 4.5 months earlier had been *personally* served with process in that very county; where that process—a motion for sanctions and related pleadings—pertained specifically to a complaint that had been filed *by that very attorney in that very court* in a case that was then still active on that court's docket; and where, that attorney, himself, appeared in court to personally argue that the court could not exercise jurisdiction over him.[18] Judge #2 reached

[18] Hawes claimed to be making a "special appearance" on his own behalf, to contest the court's exercise of personal jurisdiction over him. Notably, although he had been served with Leiser's sanctions motion and accompanying pleadings and exhibits on 5/31/16, Hawes waited 4.5 months, until the day before the scheduled 10/13/16 hearing, to file a "Notice of Special Appearance" ("NSA"), and waited until Leiser walked into the courtroom that morning, before serving him with a copy—a fact brought to the attention of Judge #2. Hawes' NSA argued, *sans* any legal authority, that the trial court could not exercise *in personam* jurisdiction over him, for the simple reason that he had withdrawn as counsel of record in the case. Hawes had in fact withdrawn as McCarthy's counsel, but not until *after* Leiser had filed his initial motion for sanctions against McCarthy—thereby placing Hawes on actual notice that the complaint he had filed on McCarthy's behalf was very likely going to be the subject of a hearing on a motion for sanctions—and before Leiser re-filed his motion naming both McCarthy and Hawes as respondents thereto. Appx. at 33a – 34a.

the conclusion that his court was impotent to hold Hawes accountable for any sanctionable misconduct he might have committed before it, by counter-balancing against that plethora of facts militating in favor of his court's exercise of personal jurisdiction over Hawes, the single fact that Hawes, the attorney whose sanctionable misconduct in that very court was at issue, had previously been granted leave to withdraw as counsel in the case. The absurdity of that ruling and the reasoning behind it is manifest—particularly, in light of the "minimum contacts" analysis that (supposedly) governs questions concerning a court's proper exercise of *in personam* jurisdiction,[19] and which analysis overwhelmingly compels the conclusion that Hawes had sufficient minimum contacts with the forum court such that its exercise of *in personam* jurisdiction over him did not offend traditional notions of due process of law. Oh well, so much for the "long arm" of the law. Judge #2 amputated it at the shoulder.[20]

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[19] See, *e.g., Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310 (1945).

[20] More revealing about the true agenda of Judge #2, however, is the fact that he insisted Leiser produce some legal authority in support of his contention that a court does not have the discretion to afford one of its own orders an interpretation that renders that order—and several others—meaningless, particularly when an obvious and reasonable alternative interpretation would have preserved the dignity of those four orders; but by contrast, required no citation to legal authority from Hawes (and cited to none, himself) in support of his argument that his having withdrawn as counsel of record in the case, *ipso facto*, nullified the multitude of jurisdictional facts articulated above, and thereby insulated him from the court's exercise of jurisdiction over him, so as to prohibit its consideration of the imposition of sanctions against him for his having filed a frivolous lawsuit in that very court. Appx. at 47a-48a

C. VSC's refusal of Leiser's petition for appeal, and its characterization of that denial as a decision "on the merits," violated Leiser's right to substantive due process of law, and that dispositive decision, handed down without explanation, violated Leiser's right to procedural due process, both of which rights are secured by A-14.

1. Leiser's appeal to VSC

Leiser timely perfected his appeal to VSC, on the issue of whether the trial court's denial, with prejudice, of his motion for sanctions, without ever having conducted a hearing on that motion, constituted a violation of his substantive and procedural right to due process. VSC issued a boiler-plate, perfunctory, conclusory order refusing his petition for appeal because the court "is of the opinion there is no reversible error in the judgment complained of." It subsequently similarly denied Leiser's petition for a rehearing, as well.[21] That denial, unaccompanied by a reasoned explanation articulating the legal and factual bases for the decision that was dispositive of Leiser's rights, was in violation of his right to procedural due process.

Moreover, under Virginia's sanctions statute, if sanctionable misconduct occurs, sanctions *shall be* imposed.[22] Reasonable minds could not differ that the complaint filed by McCarthy and Hawes was indeed sanctionable. And all of the procedural

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[21] Appx. at 38a

[22] See § A(3), *supra.*

obstacles to the adjudication of that sanctions motion had been created by the trial court—not by Leiser, and all remained within the power of the trial court to remove. Its refusal to do so unquestionably constituted reversible error.

2. VSC cannot constitutionally exercise discretionary appellate review while simultaneously characterizing its decisions denying appellate review as decisions that are "on the merits."

VSC can exercise discretionary appellate review, *or* it can characterize its decisions denying appellate review as decisions that are "on the merits." But it *cannot* constitutionally do both. To conclusively demonstrate that, consider a hypothetical timely-filed petition for a writ of *certiorari* clearly identifying unambiguous reversible error in the lower court proceedings, and containing no technical defects that would warrant dismissal of on purely procedural grounds. If such a petition were to come across *this Court's* desk, could it exercise its discretion and deny that petition? The answer is clearly, yes. That is because this Court's decisions denying discretionary appellate review are *not* decisions on the merits of the case. *Boumediene v. Bush*, 550 U.S. 1301 (2007). When this Court denies discretionary appellate review, even when the Record of the proceedings below reflects clearly identified unambiguous reversible error, its denial is not a commentary on the underlying merits of the case; it simply reflects this Court's decision, presumably, because its resources are limited and it has bigger fish to fry, to stay out of that particular controversy, leaving it to its inferior federal

tribunals, in the context of a "proper proceeding," to declare the constitutional rights of the parties. The lower federal courts are vested with the authority, and have the expertise, to interpret the Constitution. And so long as they are armed with only non-coercive relief, in the form of issuing declaratory judgments, principles of sovereignty, federalism, supremacy of federal law, and comity, are all kept in proper balance.

By contrast, when VSC refuses a petition for appeal, its decision is one that is "on the merits." *Sheets v. Castle*, 559 S.E.2d 616, 619 (2002)[23] (emphasizing that, "a decision to grant or refuse a petition for [appeal] is based upon . . . the merits of the case."). *Id.* Thus, VSC's refusal of a petition for appeal indicates that it "found the petition without merit." *Id.* And ". . . the effect of a denial [of a petition for appeal] is to affirm the judgment . . . on the merits." *Id.* That critical distinction, between this Court's characterization of its decisions denying discretionary appellate review and VSC's characterization of its parallel decisions, is fatal to that court's ability to constitutionally exercise *discretionary* appellate review when there has been reversible error below. Because according to *Sheets,* VSC's refusal of our postulated procedurally pristine petition for appeal that clearly identified unambiguous reversible error by the trial court below, would constitute a tacit affirmance of the decision below *on the merits*. But that contradicts

[23] There are some exceptions to this general rule, including, *inter alia*, cases with procedural defects, *Id.*, but they are irrelevant to the hypothetical scenario of the proposed thought experiment.

the very premise with which we began—that the postulated petition clearly identified reversible error in the trial court proceedings.

And so for VSC to arrogate to itself the authority to exercise *discretionary* appellate review, while simultaneously characterizing its decisions denying appellate review as decisions that are "on the merits," is tantamount to that court's declaration that in any particular case, it can arbitrarily and on an *ad hoc* basis, decide to abandon well-settled legal doctrines—whether procedural, evidentiary, or substantive—and can do so, *sub silentio*—without ever informing the hapless litigant it is abandoning legal principles that ought to govern his case; and without ever informing him what it is substituting in their place. But litigants have a vested right in their expectation that relevant settled legal principles will govern their disputes. That is what distinguishes a justice system governed by the rule of law from one governed by the whim of individual judges. Those legal principles inhere in every claim and affirmative defense to a claim, both of which VSC has expressly recognized as property rights in Virginia,[24] and which, for that reason, cannot be arbitrarily and summarily extinguished by the judicial branch of government, without doing violence to the substantive and procedural due process clause of A-14.

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[24] *Huaman v. Aquino*, 630 S.E.2d 293 (2006); (characterizing a lawsuit as a personal property right); *Starnes v. Cayouette*, 419 S.E.2d 669, 674 (1992) (characterizing a statute of limitations affirmative defense as a property right).

In the case at bar, Leiser had a vested right to invoke the protections of Virginia's sanctions statute after being served with McCarthy's complaint that was frivolous on its face. Under those circumstances, the state trial court was statutorily compelled to impose sanctions against McCarthy and his counsel. Instead, that court created phony procedural obstacles to the imposition of those sanctions—obstacles that at all times remained within its power to remove. That it refused to do so, and that VSC tacitly affirmed that decision as correct "on the merits," was utterly devoid of support in Virginia's jurisprudence. Moreover, each of those state court's failures to articulate the legal and factual bases for its decisions that were dispositive of Leiser's substantive rights, violated his procedural due process right, as well. Therefore, VSC was complicit in the deprivation of Leiser's substantive and procedural due process rights.

D. Leiser's § 1983 claim

1. EDVA proceedings

Leiser filed his § 1983 complaint on 3/28/18 but did not serve it immediately. Prior to his deadline to effectuate service of process, and while that process was in progress, EDVA declined to issue the summonses Leiser had requested, and instead, *sua sponte*, entered its 6/21/18 final order dismissing Leiser's complaint, without prejudice, for lack of SMJ under the *R-F* doctrine. Appx. at 4a – 8a.

2. USCA-4

Leiser timely perfected his appeal of EDVA's final order to USCA-4, which issued an unpublished *per*

curiam opinion, summarily affirming EDVA's order, and added in a footnote, as an independent grounds for dismissal, that Leiser had failed to demonstrate standing.[25] Appx. at 1a – 3a.

3. Appeal from VSC to SCOTUS

On 1/22/18 Leiser filed a petition for a writ of *certiorari* from VSC's final orders denying his petition for rehearing and refusing his petition for appeal. *Leiser v. McCarthy*, 138 S.Ct. 1442 (Mem) (4/2/18), No. 17-1045. That petition remained pending on 3/28/18, when Leiser filed his § 1983 complaint seeking a declaratory judgment against both Judge #2 and VSC.[26]

ARGUMENT

A. Standard of Review

USCA-4's affirmance of EDVA's dismissal of Leiser's §1983 complaint, on the grounds that it lacked SMJ over the complaint under the *R-F* abstention doctrine, presents a pure question of law, and is therefore subject to this Court's *de novo* review. *Davani v. Virginia Dept. of Transp.*, 434 F.3d 712, 715 (4th Cir. 2006)*; Burrell v. Virginia*, 395 F.3d 508, 511 (4th Cir. 2005).

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[25] Leiser contends that his complaint did adequately demonstrate standing, and that he should be afforded the opportunity to address that issue at the district court level.

[26] This Court ultimately denied Leiser's *cert.* petition, on 4/2/18, *after* Leiser had filed his § 1983 action that is the subject of this appeal.

B. The *Rooker-Feldman* abstention doctrine does not apply to deprive the lower federal courts of SMJ over Leiser's § 1983 action

First, a plain reading of § 1983 as amended by the 1996 Federal Courts Improvement Act demonstrates that by rendering declaratory relief uavailable, USCA-4 has necessarily revived the much more intrusive remedy of injunctive relief against state court judges acting in their judicial capacities. As amended, that statute reads, in pertinent part, ". . . injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable . . . ." *Id.*

Second, the *R-F* doctrine is not applicable to a § 1983 claim, such as Leiser's, that seeks only declaratory relief, because unlike appellate review, declaratory relief is non-coercive, and thus, does not implicate the concern of that doctrine, which was to prevent the lower federal courts from usurping this Court's exclusive role in exercising *appellate* review over the highest state court to reach a decision that involves the interpretation and application of federal law. Careful analysis of the language of the few *R-F* cases decided by this Court, along with the history of A-14, the legislative history of §1983, and the statutory language resulting from its 1996 amendment that effectively eliminated all but declaratory relief against state-court judges, leads to the unassailable conclusion that allowing lower federal courts to declare, when appropriate, state-court judicial acts as unconstitutional, but without overturning them, properly balances the competing interests of the supremacy of federal law, comity,

and federalism. The issue for this Court to decide distills to this: Does a federal district court plaintiff, who meets the first three *Exxon-Mobil* criteria for application of the *R-F* doctrine, but who seeks *only declaratory* (*i.e.*, non-coercive) relief, thereby ask that court to engage in an impermissible "review and rejection" of the state-court judgment that is the subject of that federal lawsuit? As will be demonstrated, the answer to this inquiry is unhesitatingly, "no."[27]

1. Purpose of the *Rooker-Feldman* doctrine

The *R-F* doctrine is rooted in the principle that the federal question jurisdiction created by 28 U.S.C. §1331 confers strictly original jurisdiction on the district courts. As such, those courts may not be conscripted into service as *de facto* appellate tribunals, by disappointed "state court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced, and inviting district court *review and rejection* of those judgments." *Lance v. Dennis*, 546 U.S. 459, 464 (2006), quoting *Exxon Mobil Corp. v. Saudi Basic Industries Corp.,* 544 U.S. 280, 284 (2005). (emphasis added).

Phrased a different way, "the [*R-F*] doctrine forbids claims that 'seek redress for an injury caused by the state-court decision itself' because they 'ask

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[27] ". . . [W]hen the relief sought by the plaintiffs would not reverse or "undo" the state-court judgment, [*R-F*] does not apply." *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1237 (10th Cir. 2006).

the federal district court to conduct an *appellate review* of the state-court decision.'" *Adkins v. Rumsfeld*, 464 F.3d 456, 464 (4th Cir. 2006), *quoting Davani* at 434 F.3d 712, 719 (emphasis added). "In other words, the doctrine applies 'where a party *in effect seeks to take an appeal* of an unfavorable state-court decision to a lower federal court.'" *Id.* (emphasis added). "[T]he test is . . . whether the relief [sought] would *'reverse or modify'* the state court decree." *Id.* "A party losing in state court is barred from seeking what in substance would be *appellate review* of the state judgment in a [federal] district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Id.* (emphasis added).

The italicized phrases in the preceding paragraph bring sharply into focus the issue presented by this appeal—for purposes of the *R-F* doctrine, what constitutes appellate review? Judicial remedies fall broadly into two categories—coercive and non-coercive. Damages awards and injunctive relief are clearly coercive remedies, while declaratory relief is non-coercive. But appellate review is the *most* coercive remedy. An appellate court can vacate, reverse, or modify a lower-court decision, and remand it with instructions as to how to proceed. And even when the appellate court is in full agreement with the decision of the lower court, its affirmance of the lower court's judgment supplants that judgment with its own. Thus, even in affirming a lower court's judgment, the appellate court acts in a coercive manner.

The challenge then, for this Court, is to determine whether *R-F* should be construed

narrowly, to prohibit the lower federal courts from reviewing state-court judgments that raise constitutional questions, *only* when the state-court loser asks a lower federal court for either injunctive, or for truly appellate relief—as where he asks the lower federal court to "reverse," "modify," or "vacate" a state-court judgment; or, whether the doctrine should be construed broadly, to require abstention by the lower federal courts even when the state-court loser asks the federal court for *only declaratory* relief—"an alternative to the strong medicine of the injunction"[28]—from the state-court judgment. For the following reasons, this Court should construe *R-F* narrowly, to exclude from its purview federal claims that seek only declaratory relief from state-court judgments, where the state-court judgments, themselves, are alleged to suffer from some constitutional infirmity.

2. *R-F* doctrine is the product of a negative inference, rather than a positive command

The *R-F* doctrine is a product of the negative inference arising from SCOTUS' congressional grant of appellate jurisdiction, pursuant to 28 U.S.C. § 1257(a), under which a decision of a state's highest court raising a federal question is subject, exclusively, to the discretionary appellate jurisdiction of SCOTUS. By negative implication, then, the lower federal courts may not exercise appellate jurisdiction over such state-court decisions.

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[28] *Steffel v. Thompson,* 415 U.S. 452, 466 (1974).

Lawrence v. Welch, 531 F.3d 364, 368 (6th Cir. 2008); *accord, Mo's Express* at 441 F.3d at 1233 (same analysis).

In *Adkins*, 464 F.3d 456, USCA-4 emphasized that only this Court had been vested by Congress with jurisdiction to review state-court decisions. *Id.* at 464 F.3d 456, 463, *citing* 28 U.S.C. § 1257. It characterized the *R-F* doctrine as a corollary to that rule, prohibiting "lower federal courts . . . from exercising *appellate jurisdiction* over final state-court judgments[,]" *Id.* (emphasis added), but underscored that [*R-F*] is a "narrow doctrine." *Id.* That *R-F* is derived from a negative implication, as opposed to a positive command, and one that derogates from the federal courts' presumptive jurisdiction, under Article III, §2, over controversies raising constitutional issues, militates in favor of a narrow interpretation of the doctrine.

3. This Court has applied *R-F* only twice to deprive a lower federal court of SMJ

The narrowness of *R-F* is underscored by the fact that SCOTUS has deployed it only twice to deprive a federal district court of SMJ —the first time, in 1923 (*Rooker*), and the second—and last—time, sixty years later, in 1983 (*Feldman).* As noted by the *Exxon* court in 2005, "[s]ince *Feldman* [1983], this Court has never applied [*R-F*] to dismiss an action for want of jurisdiction. The infrequency of its application by this Court speaks to the truly unusual circumstances that summon its assistance.

4. The *Exxon* court itself admonished the lower federal courts to interpret *R-F* narrowly

In its *unanimous* decision, the *Exxon* court admonished the lower federal courts, noting they had "sometimes . . . construed [the *R-F* doctrine] to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts . . . ." *Exxon* at 544 U.S. 280, 283. The *Exxon* court recounted the jurisprudential underpinnings of the doctrine, noting that, "*Rooker* was a suit commenced in [district court] to have a judgment of a state court, adverse to the federal court plaintiffs, 'declared null and void.'" *Exxon* at 544 U.S. 280, 283-84.[29] It went on to explain that the *Rooker* and *Feldman* suits were

> impermissible, . . . emphasiz[ing] that *appellate jurisdiction to reverse or modify* a state-court judgment is lodged, initially by § 25 of the Judiciary Act of 1789, . . . and now by 28 U.S.C. § 1257, exclusively in this Court. Federal district courts, we noted, are empowered to exercise original, not appellate jurisdiction. Plaintiffs in *Rooker* and *Feldman* had litigated and lost in state court. Their federal complaints, we observed, essentially invited federal courts of first instance *to*

[29] In both places where it discussed *Rooker*, the *Exxon* court neglected to mention that the *Rooker* plaintiffs sought *injunctive* relief, as well as declaratory relief.

> *review and reverse* unfavorable state-court judgments. We declared such suits out of bounds, *i.e.,* properly dismissed for want of [SMJ]. *Id.* (emphasis added).

The *Exxon* court reasoned,

> If the state-court decision [in *Rooker*] was wrong, . . . 'that did not make the judgment void, but merely left it open to *reversal or modification in an appropriate and timely appellate proceeding.*' Federal district courts . . . lacked the requisite *appellate* authority, for their jurisdiction was 'strictly original.' . . . Among federal courts . . . Congress had empowered only this Court *to exercise appellate authority 'to reverse or modify'* a state-court judgment. . . . *Id.* at 284-85, *quoting (in various places), Rooker* at 414-17. (emphasis added).

More directly, the *Exxon* court explained,

> *Rooker* and *Feldman* exhibit the limited circumstances in which this Court's appellate jurisdiction over state-court judgments, 28 U.S.C. §1257, precludes a . . . district court from exercising [SMJ] in an action it would otherwise be empowered to adjudicate . . . . In both cases, the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court

> judgment and seeking review and rejection of that judgment. Plaintiffs in both cases, alleging federal-question jurisdiction, *called upon the District Court to overturn an injurious state-court judgment.* Because §1257, as long interpreted, vests authority to review a state court's judgment solely in this Court, . . . the District Courts in *Rooker* and *Feldman* lacked [SMJ]. *Exxon* at 291-92. (emphasis added).
>
> The [*R-F*] doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise *appellate jurisdiction* over state-court judgments which Congress has reserved to this Court. . . . § 1257(a). *Id.* at 292. (emphasis added).

5. Like Leiser, the *Rooker* and *Feldman* federal-court plaintiffs sought declaratory relief; but unlike Leiser, they also sought *injunctive* relief.

(a) Analysis of *Rooker*

In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), plaintiffs, who lost in state-court, filed suit in federal district court, seeking a declaration that the state trial court judgment was null and void, "*and to obtain other relief dependent on that outcome.*" *Id.* at 263 U.S. 413, 414 (emphasis added). SCOTUS affirmed the district court's decision that it lacked SMJ. The language of its opinion is critically important. It held,

> . . . [T]he [state trial court] judgment was rendered in a cause wherein [that court] had jurisdiction of both the subject-matter and the parties, . . . a full hearing was had therein, . . . the judgment was responsive to the issues, and . . . it was affirmed by the Supreme Court of the state on an appeal by the plaintiffs . . . . If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to *reversal or modification* in an appropriate and timely appellate proceeding. Unless and until so *reversed or modified*, it would be an effective and conclusive adjudication. (emphasis added).
>
> . . .
>
> Under the legislation of Congress [Judicial Code, § 237],[30] no court of the [U.S.] other than [SCOTUS] could entertain a proceeding *to reverse or modify* [a state court] judgment for [constitutional] errors . . . . To do so would be an exercise of *appellate jurisdiction*. The jurisdiction possessed by the District Courts is strictly original. *Id.* at 416. (emphasis added).

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[30] This jurisdictional statute was an antecedent to § 1257(a).

(b) Analysis of *Feldman*

In 1983, sixty years after its *Rooker* decision, this Court decided *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In that case, two applicants for admission to the D.C. Bar (collectively, "Feldman") were rejected by the D.C. Court of Appeals, and "sought a 'declaration that [that court's] actions . . . violated the Fifth Amendment . . . *and . . . an injunction requiring [that court] either to grant [them] immediate admission to the [D.C.] bar or to permit [them] to sit for the bar examination as soon as possible.*" *Feldman* at 460 U.S. 462, 468-469, quoting from his complaint. (emphasis added). The *Feldman* court held, even where challenges to such state-court judicial proceedings are constitutionally based, review of the final determinations of state courts rendered in judicial proceedings are reserved to this Court. U.S. District Courts do not have jurisdiction to review them. *Feldman* at 476 and 486, *citing* 28 U.S.C. § 1257.

6. The legislative history of §1983 supports the district court's exercise of SMJ in this case

The legislative history of §1983 was recounted in *Mitchum v. Foster*, 407 U.S. 225 (1972), in which the Court stated,

> Section 1983 was originally § 1 of the Civil Rights Act of 1871 . . . . It was 'modeled' on § 2 of the Civil Rights Act of 1866, . . . and was enacted for the express purpose of 'enforc(ing) the . . . [14th] Amendment.' *Id.* at 238.

The Reconstruction era legislation, of which § 1983 was an important part, clearly established

> . . . the role of the Federal Government as a guarantor of basic federal rights against state power. . . . Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation. *Id.* at 238-39.
>
> . . . The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, *or judicial*.' *Id.* at 242, *quoting Ex parte Virginia*, 100 U.S. 339, 346 (1879). (emphasis added).
>
> . . .
>
> Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights. *Id.* at 240.
>
> The prohibitions of . . . [A-14] are directed to the States, and they are to a degree restrictions of State power. It is

> these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative, *or judicial.* Such enforcement is no invasion of State sovereignty. *Ex parte Virginia* at 346. (emphasis added).

7. The enactment of §1983 demonstrated Congress' intent that the lower federal courts would have some limited oversight of state courts and their judges

Section 25 of the Judiciary Act of 1789, conferring on SCOTUS exclusive *appellate* jurisdiction over state court judgments raising federal questions, obviously existed when §1983—§1 of the Civil Rights Act of 1871—was enacted. If Congress believed that SCOTUS' review of state-court decisions implicating federal law constituted sufficient oversight of those courts, then why would it have enacted §1983—a statute that was largely designed to target state courts and their judges? Interpreting §1983 to preclude any type of lower federal court oversight of state court judicial decisions renders nugatory the language of that statute, as well as the Supremacy Clause, Art. VI, § 2.

8. The 1996 Amendment to §1983 eliminates the concerns that inform the *R-F* doctrine

The Federal Courts Improvement Act of 1996 amended § 1983, and virtually eliminated the availability of injunctive relief against state-court judges, while preserving the non-coercive remedy of

declaratory relief against their unconstitutional judicial decisions. That amendment eliminated the concerns the *R-F* doctrine addressed. Prior to the 1996 Amendment, when injunctive relief was presumably available as a remedy against state court judges, petitioners generally requested it in an effort to make end-runs around this Court. But with the enactment of the 1996 amendment, Congress erected an impermeable barrier to attempted end-runs around 28 U.S.C. § 1257. No longer can a state court loser employ §1983 to conscript the federal district courts to act as *de facto appellate* tribunals over state courts. That statute has been defanged, at least with respect to its application to state-court judges. A §1983 plaintiff can obtain only a declaration that the disputed state court ruling violated the Constitution. While, in some sense, this constitutes a "review" by a federal district court of a state court judgment, it is not the type of coercive *appellate* review that is vested exclusively in this Court, and therefore prohibited to the district courts.

As amended, §1983 imposes liability on "every person who, under color of [state law] subjects . . . any [person] to the deprivation of any rights . . . secured by the Constitution . . . in an action at law, suit in equity, *or other proper proceeding for redress* . . . ." 42 U.S.C. §1983 (emphasis added). Since actions at law for damages, and suits in equity for injunctive relief are not available remedies against state court judges acting in their official judicial capacities, if §1983 is to retain any meaning with respect to state court judges—the very target of its enactment, that meaning must be found in the italicized phrase quoted in the previous sentence. Leiser contends that suits for declaratory relief are

precisely the "other proper proceeding[s] for redress" referenced therein. Besides imparting meaning to that otherwise empty phrase, Leiser's interpretation properly balances the legitimate concern of limiting true appellate review of state court judgments exclusively to SCOTUS, while breathing vitality into the Supremacy Clause, which states,

> The Laws of the United States . . . shall be the supreme Law of the Land; *and the Judges in every State* shall be bound thereby." Art. VI, cl. 2. (emphasis added).

If the role of the inferior Article III courts is limited to the issuance of declaratory judgments as to the constitutionality of state court judgments and orders, a proper balance is struck between ensuring the supremacy of federal law, while not encroaching on either the exclusive appellate jurisdiction of this Court or the autonomy of the States to develop their own unique jurisprudence, circumscribed by only the U.S. Constitution and Laws in conflict therewith. Striking that balance became much easier after the enactment of the 1996 amendment. No longer can a disappointed state court litigant circumvent the exclusive appellate jurisdiction of this Court, by seeking review and reversal of a state court judgment in federal district court. But at the same time, the federal district courts, which, along with this Court, share the Judicial Power of the United States, Art. III, § 1, retain their important role to ensure that federal law reigns supreme.

USCA-4's interpretation of *R-F* goes too far in foreclosing the lower federal courts from interpreting

the Constitution, *vis-à-vis* state court judges acting in their judicial capacities, and thereby playing some supervisory role over those judges, by ensuring their adherence to the U.S. Constitution. Instead, USCA-4 abdicated its duty to VSC, to the exclusion of the federal courts, because, as a practical matter, confining the remedy for state-court judicial violations of constitutional rights, to the discretionary appellate review of this Court, is to effectively deprive persons injured by those constitutional violations of a meaningful remedy, for, ". . . it was obvious that [SCOTUS] alone could not hear all federal cases throughout the [U.S.]." *Printz v. U.S.*, 521 U.S. 898, 907 (1997). Under USCA's overly-broad interpretation of *R-F*, the lower federal courts abandon on the battlefield state-court litigants injured by deprivations of their constitutional rights, leaving them to the mercy of the state courts, and effectively putting each of the 51 states (including D.C.) in charge of interpreting the Constitution as each sees fit, within its jurisdiction. That is decidedly inconsistent with the notion of federal supremacy regarding matters involving the interpretation and application of constitutional principles. Leiser's interpretation preserves this Court's role as the exclusive forum for appellate jurisdiction over federal questions decided by the highest state appellate courts, while appropriately enlisting the invaluable assistance of its inferior federal tribunals, to ensure that the state courts adhere to minimum constitutional standards. The *Rooker* and *Feldman* plaintiffs sought *both* declaratory *and injunctive* relief. The two were intertwined. Thus, neither case speaks to the

outcome had declaratory relief, alone, been sought, as it was in the case at bar.

Section 1983 imposed liability on *every person* acting under color of state law, who deprived another of his rights, and expressly provided, as remedies to the aggrieved person, "action[s] at law, suit[s] in equity, or other proper proceeding[s] for redress." The 1996 amendment to § 1983 leads, inexorably, to the conclusion that awarding aggrieved litigants purely declaratory relief against judicial officers acting in their judicial capacities is precisely what was contemplated by that newly enacted statutory language. Indeed, that amendment clearly established declaratory relief as the default remedy. O*nly* if declaratory relief was not available or a defendant violated a declaratory decree, would injunctive relief become available.

9. Leiser's due process claims against Judge #2

Leiser's § 1983 complaint asserted claims against Judge #2, alleging that he deprived him of both substantive and procedural due process of law, in contravention of A-14, on the theory that state court rulings that ignore well-settled state-law legal doctrines are arbitrary and capricious, and, for that reason, *per se,* unconstitutional. Rulings that inexplicably and radically depart from controlling statutory authority or common law precedent undermine the rule of law because they rightly erode the public's confidence in the predictability, rationality, and integrity of our justice system. Stated another way, there is a constitutional threshold beyond which the legal underpinnings of a

ruling stray so far outside the orbit of what a reasonable jurist could adopt as a correct interpretation of the governing law, that the ruling cannot survive constitutional scrutiny.

In adopting an absurd interpretation of his own court's prior order which rendered it and several others meaningless, Judge #2 not only violated Leiser's substantive due process rights by extinguishing his property right in and thereby depriving him of his claim for the mandatory imposition of sanctions against McCarthy and Hawes—but did so without citing to any legal authority that would support his decision. He similarly failed to articulate the legal basis for his decision that his court could not exercise *in personam* jurisdiction over Hawes. But this Court has stated, in what is at least *obiter dicta*, that the meaningful opportunity to be heard guaranteed by A-14 requires *any* governmental decision-maker engaged in dispositive decision-making *of a judicial nature*, to articulate the legal and factual bases for his decision. *Goldberg v. Kelly*, 397 U.S. 254, ___ (1970). In declining to explain the reasons for his decision that was dispositive of Leiser's rights, Judge #2 deprived Leiser of his procedural due process right to a meaningful opportunity to be heard.

10. Leiser's procedural and substantive due process claims against VSC

Because VSC's decision denying appellate review of the trial court's final order denying Leiser's motion for sanctions tacitly affirmed that court's dispositive rulings, it suffers from the same constitutional infirmities as those rulings themselves, in support of which, there was an

absence of any controlling legal precedent, and which, for that reason are constitutionally untenable because they reflect such a radical departure from well-settled legal doctrines. Thus, Leiser's claims against VSC are grounded in that court's decisions to refuse his petition for appeal and to deny his petition for rehearing, and thereby deprive Leiser of his vested right in the expectation that his motion for sanctions—and subsidiary legal issues, including the state trial court's exercise of *in personam* jurisdiction over Hawes—would be governed by the same well-settled legal principles that would presumably govern any other litigant's claim for sanctions in any other case. By adopting the decisions of that trial court as its own, despite the absence of any precedential support, VSC changed the rules—at least as they applied to Leiser—midstream, and did so, *sub silentio*, and thereby acted arbitrarily and capriciously, in violation of Leiser's substantive due process rights. Moreover, VSC's dispositive decisions, issued without explanation, through its issuance of its perfunctory orders that failed to disclose the reasons for the refusal of his petition for appeal, violated Leiser's procedural due process right to a *meaningful* opportunity to be heard—one that necessarily includes a reasoned explanation from the decisionmaker articulating the legal and factual bases for its decisions that are dispositive of a litigant's rights.

11. Leiser's due process claims implicate rights secured by the Constitution

Because Leiser's due process claims against Judge #2 and VSC raise federal questions arising under A-14, EDVA was obligated to exercise SMJ

over those claims, pursuant to 28 U.S.C. § 1331. And because his complaint is styled as a § 1983 civil rights action, EDVA should have exercised SMJ over it, pursuant to 28 U.S.C. §§ 1343(a)(3) and (a)(4).

CONCLUSION

WHEREFORE, Appellants, Leiser, respectfully request this Honorable Court grant their petition for a writ of *certiorari* to review the judgment of USCA-4.

Respectfully submitted,

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