18-9073

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Pro se

IN THE SUPREME COURT

FOR THE UNITED STATES OF AMERICA

MAURICE GRAYTON, a Disabled Veteran-Examinee; Petitioner, vs. STATE OF CALIFORNIA, COMMITTEE OF BAR EXAMINERS, et. al. Examiner's - Respondent's.	**PETITION FOR A WRIT OF CERTIORARI** Case No.: D.C. No. 37-02336-CAB-JMA Southern Dist. of Ca. San Diego Court of Appeals Case No.: 18-55295

TO THE CLERK OF THE COURT:

TO THE HONORABLE SUPREME COURT JUSTICE'S:

TO THE RESPONDENTS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE THAT now come MAURICE GRAYTON, Petitioner with this Petition, as it is timely and proper.

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ORIGINAL

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JURISDICTION

Jurisdiction is invoke pursuant **Rule 10** of the Court Governing Review on Writ of Certiorari.

AUTHORITY

The 5th Amendment states, in pertinent part: that Private property shall not be taken for a public use, without just compensation.

PARTIES:

MAURICE GRAYTON, a disabled veteran-examinee and Petitioner in this case.

The STATE OF CALIFORNIA, COMMITTEE OF BAR EXAMINERS is the examiners and EXAMSOFT is the testing software provider in this case.

INTRODUCTION

Petitioner respectfully petitions for a writ of certiorari to review the judgment and decision of the District and the Court of Appeals for the 9th Circuit. The Petition is ripe and the Court must address the issues as to entering decision's that departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power; because an injustice has occurred and the remedy provided is unconscionable based upon the circumstance regarding the standard thereof the quality of control for inspection, placing in the stream of testing and the technical assistance for the FYLSE. The case also involves claims, regarding a negotiation for specific performance. Thus, resulting in an unlawful taking thereof in violation of the 5th and 14th Amendments of the U.S. Constitution, Title 42 U.S.C. § 1983 and the American with Disabilities Act of 1990 and California Civil Code §50-51.

Petition a disable veteran, an examinee with additional test time had done everything he was required to do and/or excused from doing. Petitioner has been twice wronged by the Examiner's. The first incident occurred in 2015 when Petitioner attempted to log on to the exam software provided by ExamSoft, in order to display his knowledge to the issue that were supposed to have been be presented for this particular exam. However, a malfunction occurred, prohibiting Petitioner from "booting up" his laptop on this scheduled day; weeks prior to the schedule exam date, ExamSoft certified Petitioners upload, as successful. Thus, the failure resulted in Petitioner being unable to test in 2015. The second incident occurred in 2016, after Petitioner completed the written portion of the FYLSE the Examiners texted messaged the Petitionrt, while he was driving, informing that he was administered the wrong essay. The horrific news and event shocked Petitioners consciousness causing additional unwelcomed distress.

ISSUES PRESENTED

Whether In Re: *Dolan v. City of Tigard (1994); Nollan v. California Coastal Comm'n (1987) and the* Knick v Township of Scott 138 S.Ct 1262 (2018) decision provided that the U.S. District and the 9th Circuit Court of Appeals erred by affirming the dismissal's by overlooking the of tendering of money and the taking thereof, while not requiring the Psychometrician to examine a disabled applicant, in order to determine "what impact" had the mistake impose on the ability to properly respond and continue testing thereafter; more importantly is the election not to enforcement the "**General Rule**" for testing subjects covering Contracts, Criminal Law and Torts amounts to an unconstitutional act in violation of the Petitioners rights pursuant the 5th, and 14th Amendment of the U.S. Constitution, Title 42 U.S.C. § 1983, the American with Disabilities Act of 1990 and California Civil Code §50-51 (UnRuh Civil Rights Act)? Yes

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STATEMENT OF THE CASE

Petitioners claims arise from attempting to undergo proper testing of the FYLSE. At all relevant times, the STATE OF CALIFORNIA, COMMITTEE OF BAR EXAMINERS and EXAMSOFT in joint venture with the Examiner's. Examsoft is a privately owned educational software company employed by the STATE OF CALIFORNIA and was acting within the line and scope of employment. The first incident occurred during the 2015 testing. On the day of the exam, Petitioners new laptop failed to "Boot-Up" after ExamSoft certified the download of its software. The second incident occurred in 2016 when the Examiner's distributed the incorrect essay question in violation of the "**General Rule**". The **General Rule** provides the test of **Contract, Criminal Law and Torts**, not **Criminal Procedures.** [Emphasis Added] Despite, this long-standing rule. Petitioner was tested in Criminal Procedures. Thus, it was after responding to the wrong essay question, when the Respondents informed Petitioner that they made a substantial material mistake. This is when, Petitioner requested that his FYLSE requirement be waived. (Emphasis Added) The Examiner's address one issue and informed Petitioner that "only" the State Supreme Court could waive the requirement. Never the less, in either incident, did the Examiners make a recommendation to the State Supreme Court or honor the request for a refund.

PROCEDURAL HISTORY

On February 27, 2018, Clerk J. Gutierrez for the United States District Court, Southern District of California issued a Judgment In A Civil Case providing that "Defendants motion to dismiss based on the **Rooker-Feldman** doctrine is Granted. The complaint is Dismissed without leave to amend, but without prejudice to re-filing in state court. The decision is in direct contravention of the 5th and 14th Amendment.

On September 19, 2018, Circuit Judges, HAWKINS, CLIFTON and N.R. SMITH issued an Order dismissing the appeal as frivolous against the State of California, et. al. in favor of the Respondents. The Judgment and the Order must be vacated.

FRAUD EXCEPTION TO ROOKER-FELDMAN

The Circuits and the Court has provided exceptions to the application of the **Rooker-Feldman Doctrine.** One of the exceptions to the doctrine is fraud. ExamsSoft defrauded Petitioner when it erroneous certified the condition of his laptop. Thus, the Examiner's defrauded Petitioner when electing to administer the Criminal Procedure essay. Both instance are exceptions to Rooker-Feldman.

THIRD PARTY EXCEPTION TO THE ROOKER-FELDMAN

The Circuit Court analysis of **Rooker-Feldman** clearly provides guidance for the Court's to allow Petitioner an opportunity to state sufficient facts shedding light on an independent claim. Thus, it has been well established that **"If there is some other source of injury, caused by a THIRD PARTY ACTION, then there is an assertion of an INDEPENDENT CLAIM."** Id.; Prewitt v. Wood County Common Pleas Court Juvenile Div., 2014 U.S. Dist. LEXIS 152676 also see Lawrence, 531 F.3d at 368-69. ... In conducting this inquiry, the District Court was required to consider Appellants requested relief. See Evans v. Cordray, 424 Fed. Appx. 537, 2011 WL 2149547, at *1 (6th Cir. 2011).

Petitioner asserted and/or should have been allowed to assert an **INDEPENDENT CLAIM** against Examsoft. For this reason alone, this is why the Court must address the injury. The 6th Circuit attempted to clarify the scope of the **Rooker-Feldman** by **REVERSING** a District Court decision to dismiss a claim. See. Evans v. Cordray, 424 Fed. Appx. 537, **because the Doctrine is not broad enough to cover all the situations in which federal court relitigate issues decided in State Courts.** See David P. Curried, Res Judicata: The Neglected Defenses, 45 U. Chi. L. Rev. 317, 321-25 (1978). We all know that the most important point for **Rooker-Feldman** purposes is that it **allows an original action in equity to attack a prior judgment, which appears consistent with general federal equity practice.** Whether the substantive bases for equitable relief are met is a matter wholly separate from jurisdiction.

The Court has acknowledged the possibility of circumstances federal courts would be justified in creating exceptions and not affording state court judgments as much preclusive effect as would the state courts. See Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 386 (1985) (allowing for possibility that federal courts would afford a state court judgment less preclusive effect than the rendering state court would if necessary to protect federal

interests); See also Matsushita, 516 at 380-86 (raising, but rejecting, possibility that federal jurisdictional statute partially repealed § 1738 so that state court judgment would not be given preclusive effect where federal claim could not have been raised in state court). The 9th Circuit continues to note that the **Rooker-Feldman** doctrine has no application to various actions, including determinations made by an administrative agency such as the Examiner's. See The Utility Reform Network v. Public Utilities Com., 166 Cal. App. 4th 522 *, 82 Cal. Rptr. 3d 791, 2008 Cal. App. LEXIS 1376. In Brewster v. Shasta County, 275 F.3d 803, 807 (9th Cir. 2001), and Cortez v. County of Los Angeles, 294 F.3d 1186, 1190 (9th Cir. 2002).

The September 19, 2018, Circuit Judges Order dismissing the appeal as frivolous against the State of California, et. al. in favor of the Examiner's must be vacated because it is in direct contravention of the decision in Prewitt v. Wood County Common Pleas Court Juvenile Div.,. Petitioner asserted and/or should have been allowed leave to assert an **INDEPENDENT CLAIM** against Examsoft. For this reason alone, this is why the Court must address the injury. The 6th Circuit attempted to clarify the scope of the **Rooker-Feldman had no bearing what so ever, despite the REVERSAL OF** a District Court decision to dismiss a claim. See. Evans v. Cordray, 424 Fed. Appx. 537, **because the Doctrine is not broad enough to cover all the situations in which federal court relitigate issues decided in State Courts.** The Order is in further contravention because in 9th Circuit held county officials liable under Section 1983. Based on a reverse parity argument, the Courts must not be sensitive to state interests, because the District Court is already entrusted with protecting its interests under preclusion rules and that, under the current expansive version of **Rooker-Feldman,** the District Court is expected to protect those interests without guidance from state law.

OPINIONS

The Court has held that when considering granting a request to review a Petition regarding property and unsettled questions concerning the extent to which the high court's opinions in Dolan v. City of Tigard (1994) 512 U.S. 374 [129 L. Ed. 2d 304 114 S. Ct. 2309] (Dolan) and an earlier case of Nollan v. California Coastal Comm'n (1987) 483 U.S. 825 [97

L. Ed. 2d 677, 107 S. Ct. 3141] (Nollan) an analysis of the taking is tantamount regarding to the condition of the negotiation. The Court has went further by holding that when adhering to its precedents, a determination as to first, whether the takings of the particular properties at issue were "reasonably necessary" to achieving an intended use, and, second, whether the takings are for "reasonably foreseeable needs." See Kelo *et al. v.* City of New London *et al.*

REASONS FOR GRANTING THE PETITION

A certification must be issued because the decisions are in direct contravention of the ADA, precedent and pending case before the Court, also the decisions undermine the very intent and purpose of the "Taking Clause" standard and misplaces the application of the **Rooker-Fieldman** Doctrine, thus warranting the exercise of the Court's discretionary power. The Court is being called upon to enforce the "**General Rule**", *examine the* "reasonableness" and "necessity" of twice grading the mistake and correct the wrong doings of the Examiner's, otherwise Examinee's will continue to be bonded by the ".....".

I.

KELO, DOLAN AND NOLLAN PROVIDES THAT LOWER COURTS ERRED BY AFFIRMING THE DISMISSAL CONCERNING TWO FACTORS 1). A TENDERING AND TAKING OF MONEY THEREOF AND 2). THE REDEMDY PROVIDED IN VIOLATION OF THE 5th AMENDMENT U.S. CONST. [TAKING CLAUSE], THE 14th AMENDMENT U.S. CONST. [DUE PROCESS CLAUSE], Title 42 U.S.C. § 1983, THE AMERICAN WITH DISABILITIES ACT OF 1990 AND CALIFORNIA CIVIL CODE §50-51 (UNRUCH CIVIL RIGHTS ACT)

The case must be sent back to the 9th Circuit with specific instructions requiring Respondents to refund money tender for the laptop incident but more importantly instructing the Respondents to waive Petitioner FYLSE requirement because the Court should "expect that the Respondents would have provided some kind of *leveraging* [i.e., the imposition of a waiver as a condition of fixing

its mistake and/or allowing the Petitioner to sit future FYLSE exams, at no cost until he passes]. This type of policing implementation should ensure a more stringent quality control, which the Respondents is required to accomplish prior to all testing . . . ." (*Id. At p. 837, fn. 5 [97 L. Ed. 2d at p. 690*], italics added.)

The Courts view, in Kelo, *Nollan* and *Dolan was* intended to address just such indicators in "bargains" between the Petitioner and the Respondents . Those test quintessentially applies. There effect, at least as to those which the 5th Amendment protects. Petitioners test result were taken for public statistical usage and without compensation.

The 5th and 14th Amendment provides that no person shall be deprived of property, without due process of law. This included a refund; nor shall private property be taken for public use; this included test result, without just compensation. The 5th Amendment was made applicable to the states through the 14th Amendment in Chicago, B & Q Ry. Co. v. Chicago (1897) 166 U.S. 226 [41 L. Ed. 979, 17 S. Ct. 581]. The 5th and 14th Amendments "leaves to the state a procedure by which compensation may be sought." (*8 Cal. 4th at p. 13.*). The lower Courts erred by not finding that Petitioner did not have a valid **INDEPENDENT CLAIM** at least against ExamSoft. The decision is in direct contravention of the except to the **Rooker-Feldman** Doctrine. Accordingly, the Petition should be granted, in order to review and correct the mistakes.

As explain by the Court, in Kelo, Dolan and the Nollan opinions for determining whether a compensable unjust taking has occurred in violation of the Takings Clause pursuant the 5th Amendment under the circumstances of this case, regarding Petitioner claim of tendering money to the Respondents, resulting in a subsequent condition of receiving two score one of which was 100 points for answering the wrong essay in violation of its "**General Rule**". Again, the **General Rule** called for the test of **Contract, Criminal Law and Torts, not Criminal Procedures.**

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FOR VIOLATING THE AMERICANS WITH DISABILITY ACT (ADA)

The Examiner's violated the ADA. The Examiner's are required to provide reasonable accommodations, especailly in the event of a mistake. These accommodations are not limited to waiving FYLSE requirements and/or conductng independent psychological examination prior to making a determination regarding what impact a particular event imposes on a applicant. Thus, the "takings" has prevented and continue to prevent Petitioner from obtaining his Juris Doctrate Degree in violation of the ADA.

CONCLUSION

A certification must be issued for the following reason(s): (1)The remedy provided "substantially advance a significant amount of money" to the state for a illegitimate interest. (*Ibid.*) The Court must consciously embraced what Justice Brennan had critically characterized as a more "demanding" quality control (*483 U.S. at p. 848 [97 L. Ed. 2d at p. 696*] (dis. opn. of Brennan, J.)) and requiring a more "precise examination of FYLSE material before placement into the stream of testing regardless of the burdens, but more so, more flexible waiver system than in place for purposes of satisfying due process. Despite, any rejection argument under a reasonable "exchange" in return for the "benefit" of .., declaring that "private rights even though its exercise can be subjected to legitimate requirements—cannot remotely be described as a 'governmental benefit.' " (*483 U.S at pp. 833-834, fn. 2 [97 L. Ed. 2d at p. 687*].) Justice Scalia, is being recalled to elaborate on his view of the essence of the takings clause, similar to the dissent in Pennell v. San Jose (1988) 485 U.S. 1, 15 [99 L. Ed. 2d 1, 17, 108 S. Ct. 849]. Justice Scalia may hold "that the . . . provision . . . effects a taking of private property without just compensation . . . ." (Ibid.) Invoking the language of Armstrong v. United States (1960) 364 U.S. 40, 49 [4 L. Ed. 2d 1554, 1561, 80 S. Ct. 1563] which fell squarely in the *perimeters of* the takings clause, that dissent reasoned, "is simply the unfairness of making one citizen pay, in some fashion other than taxes, to remedy a social problem that is none of his creation." (*Id. at p. 23 [99 L. Ed. 2d at p. 22*]; cf. *Nollan, supra, 483 U.S. at p. 825, fn. 4 [97 L. Ed. 2d at p. 688*].) The final reason why a certification must be

issued is because the exceptions to the **Rooker-Feldman** Doctrine was not fairly applied. Hence, the "**General Rule**" calls for subjects to be tested (e.g. **Contract, Criminal Law and Torts), not Criminal Procedures.** Despite, giving Petitioner the score of 100 point, his response to the **Criminal Procedure** essay was not posted the Model Answer.

For the foregoing reasons, the Petitioner respectfully requests that the Court grant this petition.

11/10/2018
DATED

Respectfully Submitted,

/s/ Mr. MAURICE GRAYTON