20-5531

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

C. Holmes
Petitioner,
v.

James Y. Becker, M. M. Caskey,
Mikell R. Scarborough, and
Haynsworth Sinkler Boyd, PA,
as successor to Sinkler & Boyd, PA,
Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Whether the revised South Carolina Frivolous Proceedings Act (FPA), S.C. Code § 15-36-10, is unconstitutional on its face or as applied in violation of the First, Fifth, Seventh, Eighth, and/or Fourteenth Amendments.

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The unpublished Order on appeal in this matter is dated November 25, 2019. Petition for Rehearing was denied on January 21, 2020. The March 19, 2020, order of this Court provides extension to file 150 days after the Petition for Rehearing was denied.

JURISDICTION

The United States Court of Appeals Petition for Rehearing was denied by order filed January 21, 2020. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AT ISSUE

Amendment I

Religion and Expression

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

From the Bill of Rights

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII

Civil Trials

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

Amendment VIII.

Excessive Punishments Strictly Prohibited

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV.

Rights Guaranteed:
Privileges and Immunity of Citizenship,
Due Process, and Equal Protection.

SECTION I. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

STATE STATUTORY PROVISIONS AT ISSUE

SCFPA: S.C. Code Ann. § 15-36-10 through 15-36-50 (2005).

Revised SCFPA: S.C. Code Ann. § 15-36-10 (Supp. 2009).

STATEMENT OF THE CASE

Petitioner challenges respondents' wrongdoing regarding the February 9, 2017, order, copy attached, which respondents admit is pending appeal in the state court and for which there is no decision from the state court of last resort. This matter involves 42 USC 1983, facial and as applied constitutional challenge to the revised S.C. Code § 15-36-10, and other claims.

The suit giving rise to the underlying legal malpractice claims was filed by Defendant Becker in Federal Court but dismissed because necessary parties were not named and because a corporation cannot conspire with itself. The underlying Haynsworth (as successor) legal malpractice case arose from Sinkler & Boyd's malfeasance in Federal Court. When that case was essentially transferred to state court, Sinkler & Boyd's, Bill Boyd, now with Haynsworth, had a state court complaint drafted, delivered it to the petitioner, and advised the petitioner to file it pro se. Members of the firm stated they did not want to sue hospitals. On information and belief, the conflict of interest arose over the anticipated and/or concurrent representation of a hospital, including but not limited to, In re *Hospital Pricing Litigation*, 377 S. C. 48, 659 S.E.2d 131 (2008).

Though compromised and in consideration of the duty to mitigate, the state court case was resolved in petitioner's favor. The settlement agreement was entered on the record with the court retaining jurisdiction to enforce it. When the hospital breached the terms of the settlement agreement to follow the bylaws in good faith, counsel of record

filed suit. Though counsel of record signed the complaint, filed it, and certified the case is not frivolous, counsel of record was not sanctioned. Despite petitioner's reliance in good faith on counsel's certification, petitioner was sanctioned for filing a frivolous claim. See *In re Ruffin*, 363 S. C. 347, 610 S. E. 2d 803 (2005) (Court found lawyer did not violate Rule 3.1 in filing a meritless complaint because there was no clear and convincing evidence of the misconduct; the lawyer relied on the advice of his attorney). The state court judge in that case acknowledged on the record that SCCLC and ODC meddled in that pending litigation, which was done to gain collateral advantage for private parties. Transcript available on request. The unconstitutional retroactive application of the revised SCFPA in that case was then wrongfully used, while stayed on appeal, as a basis for unconstitutional retroactive application of the revised SCFPA in favor of malpractice defendants Haynsworth Sinkler Boyd, PA, then Chief Justice Jean Hoefer Toal's well-publicized former employer and mentor. Motion to recuse was denied by Toal without comment.

Hsb defendants' professional negligence in that matter gave rise to the legal malpractice claim, breach of contract, and other claims in state court, which were filed in 2002 under Case No. 2002-CP-10-01448 and, after reversal of defendants' wrongful change of venue, under Case No. 2007-CP-10-01444. Defendants' own legal malpractice expert Professor John Freemen was asked on the witness stand at trial if hsb defendants' conduct complied with the standard of care. Defendants' own legal malpractice expert Professor John Freemen testified under oath: "No, ma'am. Let me be real clear on this. I consider that would be unethical. I consider that would be a form of blackmail or

extortion and criminal in South Carolina to do that." Accordingly, a jury should and would reasonably conclude that hsb defendants' criminal as well as other malfeasance is a deviation from the standard of care and/or unconscionable.

Independent outside counsel for defendant corporation in the underlying legal malpractice case answered and entered no counterclaim for outstanding fees or other claims because there were none. Even if there had been outstanding fees or other claims, which petitioner denies, all were waived. The trial court denied defendant corporation's motion for summary judgment, thereby precluding sanctions and precluding a finding that plaintiff's legal malpractice and other claims are frivolous under the prior FPA then in effect, S.C. Code § 15-36-10 through 15-36-50. *See Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). But for the unconstitutional retroactive application of the revised FPA, pursuant to defendants' misrepresentations that the wrong FPA statute applied, we would not be here. The underlying matter ended in directed verdict for defendants with no money judgment. The FPA matter is not a "money judgment" in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental/collateral to the underlying claim. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); Toal *et al*, *Appellate Practice in South Carolina,* 3rd edition (2016), p. 341. "(T)he decision of whether to award sanctions is a collateral issue and does not constitute a ruling upon the merits of the case. ...*See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 394, 396, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990)." *Pee Dee Health Care, P.A., v. Estate of Thompson*, 418 S.C. 557, 795 S.E.2d 40 (S.C.App. 2016).

Reasons for Granting the *Writ of Certiorari*

I. Introduction

In February of last year, the Great Statesman, Rep. Elijah Cummings, may he rest in peace, observed, "When we're dancing with the angels, the question will be asked, in 2019, what did we do to make sure we kept our democracy intact?" It is fitting to remember his lifetime of unremitting bravery and courage. It is fitting, as well, to remember the beginnings of that democracy. The framers of our state and Federal Constitutions risked life, limb, and liberty to escape abuses by the British government. They deliberately crafted both state and Federal constitutions to foreclose those abuses here. The framers did not need computers, tablets, or cell phones to discern the basic tenets of fundamental fairness and due process. An impartial decision-maker was seen as a non-negotiable requirement for preventing such abuses. The letter and spirit of our cherished Constitution categorically prohibit deprivation of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws. The right of trial by jury shall be preserved inviolate. As a corollary, another requirement, deemed mandatory and prohibitory, is that no single individual, whether British monarch or government official, shall have absolute authority over a citizen's life, liberty, or property without being subject to the right of appeal with meaningful judicial review. Judge J. Waties Waring, the renowned crafter of divine dissents lying in repose in Charleston, must be turning over in his grave at the historically persistent lawlessness of the courthouse bearing his name. It is respectfully submitted our democracy depends on

the basic tenets of fundamental fairness and due process just as much, if not more so, in this age of cell phones, tablets, and computers. The Constitution prohibits the revised S.C. Code § 15-36-10 (FPA). See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402, 110 S.Ct. 2447, 110 L.Ed.2d 359, 58 USLW 4763 (1990)(the lack of any legal requirement other than the talismanic recitation of "'*frivolous*' will foreclose meaningful review." (emphasis supplied)). The FPA is used herein to deny trial by jury, meaningful opportunity to be heard, adequate record for appellate review, the right to defend, the right to present evidence and call witnesses, and the right to self-representation. The FPA cannot pass constitutional muster.

II. Constitutional Challenge to the revised S.C. Code § 15-36-10.

The instant case includes challenge to the constitutionality of the revised S.C. Code § 15-36-10 (hereinafter FPA) on its face and as applied. But for the unconstitutional retroactive application of the revised SCFPA, we would not be here. Is it any wonder attorneys are at each others throats over the revised SCFPA? As set forth more fully below, the revised SCFPA cannot pass constitutional muster including, but not limited to, its censorship, denial of right to trial by jury, and/or violation of the Eighth Amendment's prohibition against cruel and unusual punishment: "the court orders the Clerk of Court's office to strike all motions filed by *the petitioner* in this matter as well as all future motions." Referee/master's ex parte order, copy attached, entered February 9, 2017 (emphasis supplied). Moreover, the referee/master unlawfully confiscated the unearned filing fees required for each motion while at the same time giving respondents

a "free pass" by failing to require mandatory, jurisdictional filing fees, which any other litigant or lawyer would be required to pay, thereby evidencing claims of unofficial wrongdoing by Referee/Master Mikell Scarborough. Discovery is indicated. These issues of great public importance are capable of repetition and capable of evading judicial review while undercutting appearance of a disinterested court.

Petitioner challenges respondents' wrongdoing and the ex parte February 9, 2017, order, which states there was a hearing; however, there was no notice, no opportunity to be heard, and no exigent or other circumstances even alleged to legally authorize ex parte order: "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." Ex parte February 9, 2017, order, copy attached. The referee/master knew or should have known not to make these material misrepresentations and/or false statements, also evidencing claims of unofficial wrongdoing. That February 9, 2017, order expressly relies on an unspecified, unnamed, unpublished December 3, 2009, order without case number, without caption, and without citation. In fact, there is no December 3, 2009, order under that case number, and as per the Advance Sheets, there is no S. C. Supreme Court order filed December 3, 2009, at all. An unspecified, unpublished December 3, 2009, order is untrustworthy hearsay. In *Mizell v. Glover, infra,* the South Carolina Supreme Court stated: " We find persuasive the jurisprudence developed by the Fourth Circuit and other federal courts which have recognized that judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial. See *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993); *U.S. Steel, LLC v. Tieco, Inc.*, 261 F.3d 1275 (11th Cir. 2001); *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994); *Blue Cross and Blue Shield v. Philip Morris, Inc.*, 141 F.Supp.2d 320

(E.D.N.Y.2001).[8] In *Nipper*, the Fourth Circuit held that judicial findings constitute hearsay and do not fall within any of the exceptions to the hearsay rule, including the exception for public records, Rule 803(8), FRE. *Nipper*. The Fourth Circuit made clear that its holding was firmly rooted in the common law. Id. (Citing 5 John H. Wigmore, Wigmore on Evidence § 1671a (James H. Chadbourn rev.1974) (citations omitted))." *Mizell v. Glover*, 351 S.C. 392, 57 S.E.2d 176 (S.C. 2002). "The federal courts addressing this issue point to the great weight and obvious prejudicial effect that credibility assessments of witnesses by judges have on subsequent juries. See *Philip Morris*, 141 F.Supp.2d 320 (denying admission of a judge's statement regarding credibility of expert witness for impeachment of that expert at a subsequent trial). Although *Philip Morris* involved the credibility assessment of a judge and not the assessment of a jury, the jury's factual finding introduced in this case is hearsay nonetheless, and we believe, is equally prejudicial. See *U.S. Steel v. Tieco* (finding appellants were prejudiced by the admission of a previous judge's factual opinion into a subsequent trial because appellees relied on the opinion throughout the trial and advised the jury during closing argument to use the opinion to make their own credibility determinations)." *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002). The consideration of hearsay in the form of a court order from an unspecified, unnamed, unpublished December 3, 2009, order without case number, without caption, and without citation is contrary to state and Federal constitutional due process safeguards. Unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved. Rule 268(d)(2), SCACR. Respondents all in concert knew or should have known unpublished orders are not to be relied on in any other case.

Respondents provided a cropped version of an unpublished, unrelated *John Doe* order dated December 2, 2009. Despite the fact the Haynsworth SCFPA order was then stayed on appeal, that *John Doe* order recites and relies on footnote 2 with no citation, source, or authority for that footnote, which is lifted from the Haynsworth order then stayed on appeal. But for the unconstitutional retroactive application of the revised SCFPA, there would be no *John Doe* order because that order was issued as a result of the inapplicable revised SCFPA provision for reporting to the appellate courts and to ODC, which should have been stayed pending appeal. The appellate court then effectively decided the Haynsworth appeal, not on briefs, but by issuing a *John Doe* order without consideration of the merits or the record on appeal (ROA), which had not yet been filed, thereby denying meaningful, objective appellate review. That *John Doe* order was then used to deny appeal of that very Haynsworth order (attached) in the South Carolina Court of Appeals. On its face, it is clear there is no record to support that *John Doe* order, which is reversible abuse of discretion. Haynsworth unilaterally drafted its own legal malpractice order which does not reflect the proceedings or the facts. Trial transcript available on request. Accordingly, this Court should find the revised SCFPA is unconstitutional on its face and as applied because it thwarts/prevents meaningful, objective appellate review. See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402, 110 S.Ct. 2447, 110 L.Ed.2d 359, 58 USLW 4763 (1990)(the lack of any legal requirement other than the talismanic recitation of "'*frivolous*' will foreclose meaningful review." (emphasis supplied)).

Respondents acted all in concert under color of state law to benefit private parties by depriving the petitioner of individual, property, and constitutional rights including,

but not limited to, meaningful opportunity to be heard:

Defendant Scarborough: "We're here for supplemental proceedings....to determine what assets, if any, are available to satisfy the judgment." Transcript of March 10, 2017, hearing, p. 4, line 12.

Defendant Scarborough: "Would you like me to put you under oath and have you testify as to your assets? That's really what we're here for. Would you like me to do that?" Transcript of March 10, 2017, hearing, p. 16, lines 9-12.

Petitioner: "Yes, I have the information that you requested for me to bring. I'm happy to do that." Transcript of March 10, 2017, hearing, p. 16, lines 13-15.

Defendant Scarborough: "If I have to sit here and listen to your testimony of what your assets are, they're going to disappear in the courtroom at the time. Okay? That's what I'm going to do. All right?" Transcript of March 10, 2017, hearing, p. 23, lines 7-11.

Unable to file due to the February 9, 2017 order, copy attached, the petitioner timely appeared, offered the requested information, and requested to be heard but was denied. See denial of filing based upon the ex parte February 9, 2017, order, copy attached. Important public issues support the petition herein. Compare In re *Primus,* 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) (the First Amendment provides limits); *Timbs v. Indiana,* 586 U.S. __, 139 S. Ct. 682 (2019) (excessive punishments are strictly prohibited under the Eighth Amendment); *Turner v. Rogers,* 564 U.S. 431 (2011).

Further, the revised SCFPA denies a full and fair hearing at trial by jury and effectively denies a neutral decision-maker. Moreover, in this case, the revised SCFPA, S.C. Code § 15-36-10, is not applicable to the underlying legal malpractice claims against respondents because the claims arose prior to the effective date of the revised SCFPA.

See *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). Under the applicable SCFPA, S.C. Code § 15-36-10 to 50, Judge Hughston's denial of respondents' motion for summary judgment precludes sanctions. Judge Hughston wrote, "Given my opportunities to observe and hear Dr. Holmes, I have no doubt she is sincere in her beliefs about this case," and he found there is no "intent to harm," which precludes sanctions under the applicable SCFPA, S.C. Code § 15-36-10 to 50, then in effect and precludes sanctions under Rule 11, SCRCP. Defendants' Entry No. 27, Ex. 1, p. 11. But for the unconstitutional retroactive application of the revised SCFPA, we would not be here. The revised SCFPA cannot pass constitutional muster.

In addition, the revised SCFPA's "reasonable attorney standard" is not fair notice to the public at large or to parties. The First Amendment doctrine of overbreadth is an exception to this Court's normal rule regarding the standards for facial challenges. See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 796 (1984). The showing that a law punishes a "substantial" amount of protected free speech, "judged in relation to the statute's plainly legitimate sweep," *Broadrick v. Oklahoma*, 413 U. S. 601, 615 (1973), suffices to invalidate all enforcement of that law, "until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression," id., at 613. See also *New York v. Ferber*, 458 U. S. 747, 769, n. 24 (1982); *Dombrowski v. Pfister*, 380 U. S. 479, 491, and n. 7, 497 (1965).

The Court has provided this expansive remedy out of concern that the threat of

enforcement of an overbroad law may deter or "chill" constitutionally protected speech--especially when the overbroad statute imposes monetary civil sanctions. See *Schaumburg v. Citizens for a Better Environment*, 444 U. S. 620, 634 (1980); *Bates v. State Bar of Ariz.*, 433 U. S. 350, 380 (1977); *NAACP v. Button*, 371 U. S. 415, 433 (1963). Many persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through litigation, will choose simply to abstain from protected speech for fear of financial loss--harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas. Overbreadth adjudication, by suspending all enforcement of an overinclusive law, reduces these social costs caused by the withholding of protected speech.

As this Court noted in *Broadrick*, however, there comes a point at which the chilling effect of an overbroad law, significant though it may be, cannot justify prohibiting all enforcement of that law--particularly a law that reflects "legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct." 413 U. S., at 615. For there are substantial social costs created by the overbreadth doctrine when it blocks application of a law to constitutionally unprotected speech, or especially to constitutionally unprotected conduct. To ensure that these costs do not swallow the social benefits of declaring a law "overbroad," the Court has insisted that a law's application to protected speech be "substantial," not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications, before applying the doctrine of overbreadth invalidation. *Id.* at 613. This Court is respectfully requested to exercise its jurisdiction to grant review.

III. A change in the law occurred.

A change in the law has occurred. Specifically, *Timbs v. Indiana*, 586 U.S. ___ (2019) recognized that states may not impose constitutionally excessive monetary and non-monetary punishments in violation of the Eighth and Fourteenth Amendments. But for the unconstitutional retroactive application of the revised SCFPA, we would not be here; the state imposed constitutionally excessive monetary and non-monetary punishments herein in violation of the Eighth and Fourteenth Amendments. The less burdensome legal standard for the inapplicable revised SCFPA was retroactively applied and is reversible as a matter of law. *See Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). Moreover, the revised SCFPA is unconstitutional on its face and as applied including, but not limited to, failure to require a determination of ability to pay which led to the constitutionally excessive fine. Though timely raised, these issues have not been addressed. It is respectfully submitted the unconstitutional retroactive application of the revised SCFPA resulted in constitutionally excessive monetary and non-monetary punishments in violation of the Eighth and Fourteenth Amendments raising issues of exceptional importance. Moreover, even assuming the less burdensome legal standard in the revised SCFPA is applicable, which appellant disputes, the non-monetary and monetary punishments are constitutionally excessive based on prejudice, passion, or other constitutionally prohibited reason in violation of constitutional safeguards and the Eighth and Fourteenth Amendments. Compare *Turner v. Rogers,* 564 U.S. 431 (2011).

See In re *Primus,* 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) (the First Amendment provides limits). See *Timbs v. Indiana,* 586 U.S. __, 139 S. Ct. 682 (2019) (excessive punishments are strictly prohibited under the Eighth Amendment).

In addition, the Fourth Circuit has since reversed the Eastern Division of the District Court of South Carolina based on misapprehension and/or overreach of the Rooker-Feldman doctrine. Like the recent *Hulsey* case, the instant case does not fall within the Rooker - Feldman doctrine's narrow scope, for multiple independent reasons including but not limited to, because the injury herein is caused by defendants all in concert conspiring to cause harm by misrepresenting an unspecified, unpublished order from an unrelated case. *Hulsey v. Cisa*, 947 F.3d 246 (4th Cir. 2020). Unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved. Rule 268(d)(2), SCACR. Accordingly, new case law supports reversal.

IV. The Rooker-Feldman doctrine is inapplicable.

As noted above, new case law ruled the Rooker-Feldman doctrine is inapplicable under the same or similar facts. *Hulsey v. Cisa*, 947 F.3d 246 (4th Cir., January 17, 2020). There is conflict in the Fourth Circuit regarding the disparate rulings under the same or similar fact pattern in *Hulsey*; this Court is requested to grant review regarding consistency. *Id.* Plaintiff challenges defendants' wrongdoing pursuant to the revised SCFPA and the February 9, 2017, order, copy attached, which defendants admit is on appeal and for which there is no decision by the state court of last resort.

The magistrate dismissed due to the Rooker-Feldman doctrine based on false evidence admittedly outside the record from the internet cited in Footnote 10 on page 9 of the R&R filed on October 31, 2018. The magistrate relied on false information regarding a false remittitur wrongfully posted by defendants all in concert on the county government public website in October 2018. A jury should and would find that the false remittitur was wrongfully published by defendants all in concert to obtain dismissal herein. It is evidence consistent with intentional wrongdoing. Discovery is indicated. A pattern and practice has emerged of defendants' wrongdoing all in concert to cause entry of altered/erroneous information on the county government's public website, under color of state law to benefit private parties. Serious questions are raised regarding direct or indirect ex parte communication of false information to the district court over the internet and outside the record by and through the federal magistrate. Petitioner is prejudiced by wrongful dismissal and denial of timely request for notice and opportunity to respond to the magistrate's unlawful search and solicitation over the internet.

The case of *Thana v. Bd. of License Comm'rs for Charles Cnty.*, 827 F.3d 314 (4th Cir., 2016) provides as follows:

To emphasize the narrow role that the Rooker –Feldman doctrine is to play, the Supreme Court has noted repeatedly that, since the decisions in Rooker and Feldman , it has never applied the doctrine to deprive a district court of subject matter jurisdiction. See, e.g. , *Skinner v. Switzer* , 562 U.S. 521, 531, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011); *Lance* , 546 U.S. at 464, 126 S.Ct. 1198; *Exxon*, 544 U.S. at 287, 125 S.Ct. 1517. Similarly, since *Exxon*, we have never, in a published opinion, held that a district court lacked subject matter jurisdiction under the Rooker –Feldman doctrine. ...

In the circumstances of this case, we conclude that this federal action is a concurrent, independent action supported by original jurisdiction conferred by Congress on federal district courts, even though the complaint in the action includes claims and legal arguments similar to or the same as those made in the state proceedings, and that therefore it is not barred by the Rooker –Feldman doctrine.

Thana v. Bd. of License Comm'rs for Charles Cnty., 827 F.3d 314 (4th Cir., 2016).

Even under the now rejected, overly expansive application of the R-F doctrine prior to *Exxon, supra,* the facts in this case are consistent with the 1997 4th Circuit case in *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir.1997). The case herein does not seek review of a state court decision by the state court of last resort because there is no decision by the state court of last resort on the February 9, 2017, order; instead, the challenge is to the process by which the state court decisions resulted, which is within the express legislative intent and jurisdiction of the district court.

In *Washington v. Wilmore*, 407 F.3d 274 (4th Cir., 2005) (after *Exxon, supra*), the 4th Circuit cited *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir.1997), and distinguished between actions seeking review of the state court decisions themselves and those cases challenging the constitutionality of the process by which the state court decisions resulted. Similarly, the plaintiff's claims herein rest not on a state court judgment itself, but rather on challenge to the constitutionality of the process by which the state court decisions resulted and to the revised SCFPA on its face and/or as applied as well as other deficiencies. Accordingly, the Rooker –Feldman doctrine is not applicable and the lower court orders should be reversed.

V. Motion to disqualify conflicted pro se co-defendant advocate-witness should be granted.

Specifically, the magistrate denied "at this time" the motion to strike and to

disqualify conflicted *pro se* co-defendant advocate-witness. Thereafter, the record reflects the conflicted *pro se* co-defendant advocate-witness's unsworn testimony, "(T)here is no loan." Entry No. 27, p. 4. The demand letter, signed by conflicted *pro se* co-defendant Advocate-Witness Caskey, makes false claims of a loan and falsely claims entitlement to fraudulent charges thereon. Defendants admit material misrepresentations regarding false statements and false claims of entitlement to charges on a loan in violation of FDCPA/SCCPC/SCUTPA (Fair Debt Collection Practices Act/ South Carolina Consumer Protection Code/ South Carolina Unfair Trade Practices Act). Plaintiff expressly appealed to the then Presiding District Court Judge for disposition on disqualification which was denied.

Further, the prohibition against advocate as witness is a substantial right. *See, e.g., Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). See *Brooks v. SCCID and OID,* South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477. Plaintiff seeks compliance with the prohibition against advocate as witness and disqualification of conflicted *pro se* co-defendant attorneys, who are necessary witnesses in this case, from representing any party other than themselves. See *Brooks v. SCCID and OID,* South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477. As an example, the garden variety "Payday Lender" corporation and its perpetrator of wrongdoing engaging in the same or similar bad faith debt collection practices as defendants would not be allowed to represent the corporation in court for multiple reasons, including but not limited to, promoting full and fair determination on the merits and other public policy considerations. Accordingly, conflicted Pro Se Co-Defendant Advocate-Witness Caskey has disqualified herself.

Consistent with governing law in South Carolina Rule 3.7, RPC, Rule 407, SCACR, the New York Rule 3.7 provides that "'a lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact.'... New York courts (*and South Carolina courts*) have interpreted Rule 3.7 to require the disqualification of counsel upon the movant's showing that the attorney's testimony is necessary and that there is a substantial likelihood of prejudice if the attorney continues to act as an advocate. *See Capponi v. Murphy*, 772 F.Supp.2d 457, 471–72 (S.D.N.Y.2009)." In re *Liotti*, 667 F.3d 419 (4th Cir., 2011)(emphasis supplied). *See, e. g., McRae v. Minor* (S.D. Miss., 2017) ["Specifically, the Court finds that *pro se attorneys* should be disqualified from representing any party other than themselves in this case, including the *corporate defendant.*" (Emphasis supplied.)] "As the ethical consideration suggests, even in the 'usual' case the advocate as witness poses myriad threats to the integrity and reliability of the judicial process. Those difficulties multiply when the lawyer testifies to his own *impropriety*. The importance of the lawyer's credibility as a witness, and the necessity of an opportunity effectively to cross-examine him, increase when the lawyer testifies.... Furthermore, there may arise in such an instance issues not only of credibility and effective advocacy, but of potentially differing interests of the lawyer and his client." *Dasher v. Stripling*, 685 F.2d 385 (11th Cir., 1982) (emphasis supplied). The record reflects a substantial likelihood of prejudice if the attorney continues to act as an advocate. Accordingly, motion to strike and disqualify should be granted and dismissal should be reversed.

Under theses circumstances, a corporation may not appear *pro se*. "It has been the law for the better part of two centuries . . . that a corporation may appear in the federal

courts only through licensed counsel." Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02 (1993). "[A] corporation may not appear pro se but must be represented only by duly licensed counsel." Allied Colloids, Inc. v. Jadair, Inc., 139 F.3d 887, 1998 WL 112719, at *1 (4th Cir. 1998)(citing Rowland v. California Men's Colony, 506 U.S. 194 (1993).

Although 28 U.S.C. Sec. 1654 (1976) provides that "[i]n all courts of the United States, the parties may plead and conduct their own cases personally or by counsel," it is established that a corporation, which is an artificial entity that can only act through agents, cannot proceed pro se. E.g., Shapiro, Bernstein & Co. v. Continental Record Co., 386 F.2d 426, 427 (2d Cir.1967) (per curiam) (reversing order that allowed action to proceed against a defendant corporation pro se); Southwest Express Co. v. ICC, 670 F.2d 53, 55 (5th Cir.1982) (per curiam); Brandstein v. White Lamps, Inc., 20 F.Supp. 369, 370 (S.D.N.Y.1937) ("While a corporation is a legal entity, it is also an artificial one, existing only in the contemplation of the law; it can do no act, except through its agents....Since a corporation can appear only through its agents, they must be acceptable to the court; attorneys at law, who have been admitted to practice, are officers of the court and subject to its control.")

Jones v. Niagara Frontier Transp. Authority, 722 F.2d 20 (2nd Cir., 1983).

As a corollary, the importance of the advocate-witness prohibition under these circumstances is underscored in the following case:

Because artificial entities cannot take oaths, they cannot make affidavits. See, e.g., In re Empire Refining Co., 1 F.Supp. 548, 549 (SD Cal.1932) ("It is, of course, conceded that a corporation cannot make an affidavit in its corporate name. It is an inanimate thing incapable of voicing an oath"); Moya Enterprises, Inc. v. Harry Anderson Trucking, Inc., 162 Ga.App. 39, 290 S.E.2d 145 (1982); Strand Restaurant Co. v. Parks Engineering Co., 91 A.2d 711 (D.C.1952); 9A T. Bjur & C. Slezak, Fletcher Cyclopedia of Law of Private Corporations § 4629 (Perm ed. 1992) ("A document purporting to be the affidavit of a corporation is void, since a corporation cannot make a sworn statement") (footnote omitted).

Rowland v. California Men Colony, Unit Ii Men Advisory Council, 506 U.S. 194, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993)

In the instant case, the *pro se* co-defendant advocate-witness has disqualified herself by

entering unsworn testimony. Moreover, ethical and other considerations require disqualification of the *pro se* co-defendant advocate-witness as a necessary witness to material facts. Further, the prohibition against advocate as witness is a substantial right. *See, e.g., Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). Because, including but not limited to, the corporate defendant is unable to make a sworn statement, the evidence is not otherwise or sufficiently available. *See* South Carolina Rule 3.7, RPC, Rule 407, SCACR. See *Brooks v. SCCID and OID,* South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477. Because the *pro se* co-defendant advocate-witness is disqualified, there is no qualified filing for the corporate defendant. Moreover, plaintiff is prejudiced by denial of due process including, but not limited to, opportunity to cross-examine the advocate-witness and present evidence. Despite its well-publicized financial wherewithal, *pro se* corporate defendant is unwilling or unable to obtain outside counsel. Haynsworth has placed the court in an untenable position, not to mention the position in which Haynsworth has placed and/or corralled Conflicted Pro Se Co-Defendant Advocate Witness Caskey. "Since a corporation can appear only through its agents, they must be acceptable to the court; attorneys at law, who have been admitted to practice, are officers of the court and subject to its control." *Jones v. Niagara Frontier Transp. Authority*, 722 F.2d 20 (2nd Cir., 1983) (citations omitted) (emphasis supplied). Governing law controls and prohibits the conflicted *pro se* co-defendant advocate-witness from representing the corporate defendant. *See* South Carolina Rule 3.7, RPC, Rule 407, SCACR. See *Brooks v. SCCID and OID,* South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477. Objection is timely raised in USAP4 No. 18-2255 and USAP4 No. 19-1572.

Moreover, respondents admit misrepresentations to the court in the attached motion wherein conflicted *pro se* co-defendant advocate-witness admits the individual co-defendants had no legal interest and therefore, no standing to bring the action. Moreover, in that state court motion, respondents misrepresented, "There are no pending claims asserted by plaintiff against defendants in this matter." The record reflects defendants all in concert knew or should have known that statement is false. P*ro se* co-defendant advocate-witness is disqualified from representing any party other than herself in this case as a necessary witness to material facts. Specifically, conflicted p*ro se* co-defendant advocate-witness Caskey and her partner in crime Ms. Eldridge made material misrepresentations, which were rejected by the South Carolina Supreme Court and which were made in the state court proceedings on behalf of conflicted *pro se* co-defendants all in concert. Ms. Eldridge and defendants all in concert knew or should have known of failure to comply with Rule 265(c), SCACR, "If substitution of a party is desired for any reason other than death or incompetency, substitution shall be by motion to the appellate court." Rule 265(c), SCACR. The trial court order of substitution of parties while the case was pending in the appellate court was entered *ex parte* in the state trial court with no certificate of service at a time when exclusive appellate jurisdiction was vested in the South Carolina Supreme Court. Respondents have unclean hands and respondents prejudiced the petitioner, the petitioner's claims, the courts, and the appeal. Conflicted *pro se* co-defendant advocate-witness has disqualified herself by entering unsworn testimony in the instant case; that prejudicial error requires reversal including but not limited to, where the appellant was dénied the substantial right to cross-examine and present evidence regarding that unsworn testimony by untrustworthy

officer of the court who is a necessary witness to material facts with manifest conflict of interesst regarding her corporate client. The position in which Haynsworth has placed the court is untenable, not to mention the position in which Haynsworth has placed conflicted *pro se* co-defendant Advocate-Witness Caskey. The lower court wrongfully relied on unsworn testimony of conflicted *pro se* co-defendant advocate-witness for dismissal. The court and petitioner are prejudiced. Accordingly, the lower court orders should be reversed.

VI. Article III Judicial Officer.

Jurisdiction cannot be waived. In the March 29, 2019, Order, the referral to a magistrate is based on error of material fact and law including but not limited to, there is no consent to a magistrate. Moreover, the plaintiff's response in opposition to defendants' motions timely requested appeal to and de novo disposition by an Article III Constitutional Judicial Officer (not a magistrate). See plaintiff's Opposition to Motions to Dismiss, pp. 1-2. *Wimmer v. Cook*, 774 F.2d 68 (4th Cir., 1985); *Roell v. Withrow*, 538 U.S. 580 (2003). Further, Local Civil Rule 73.02(B)(2) (D. S.C.), recited and relied upon, is not applicable. To the extent Local Civil Rule 73.02(B)(2) conflicts with constitutional protections including, but not limited to, the right to an Article III Constitutional Judicial Officer, plaintiff respectfully objects and asserts constitutional challenge and prejudicial error. Without being disagreeable, there is disagreement on the Report and Recommendation (R&R), which plaintiff asserts is thoroughly biased including, but not limited to, the magistrate's weaponized pejorative code words adopted by the Presiding

District Court Judge: "plaintiff is a frequent filer in this Court." See, e.g., *Cuthbertson v. Biggers Bros., Inc.*, 702 F.2d 454, 459 (4th Cir. 1983) (undercuts appearance of a disinterested court). For the record, there are three cases filed: a Medicare appeal from 2011 which was pending with the ALJ for years(!); a complete diversity case; and the instant case.

Without consent, there is no jurisdiction for the R&R or its adoption by the lower court. To the extent the unwary pro se litigant is subjected to a magistrate without express, voluntary consent, this issue is capable of repetition and capable of evading judicial review. It is respectfully submitted that overworked and underpaid district court judges may not be neutral decision-makers, consciously or sub-consciously, in denying de novo determination by an Article III Constitutional Judicial Officer, not a magistrate. To the extent the unwary pro se litigant is subjected to a separate second class system of so-called justice dispensed by a non-Article III Judicial Officer without express, voluntary consent, there is an abundant body of law definitively determining separate is never equal.

Therefore, in performing a de novo review, the district judge must exercise "his non-delegable authority by considering the actual testimony, and not merely by reviewing the magistrate's report and recommendations." *Wimmer v. Cook*, 774 F.2d 68, 76 (4th Cir. 1985). "The Supreme Court has stated that the Constitution requires that the judicial power of the United States be vested in courts having judges with life tenure and undiminishable compensation in order to protect judicial acts from executive or legislative coercion. *O'Donoghue v. United States*, 289 U.S. 516, 531, 53 S.Ct. 740, 743, 77

L.Ed. 1356 (1933). Pursuant to 28 U.S.C. § 636(b)(3), appellant's timely express request for de novo disposition by an Article III judicial officer is a substantial right. The record reflects clear error because the outcome would be different but for impermissible delegation which resulted in unauthorized prejudicial R&R with arbitrary and capricious rulings adopted by the district court. See *Branch v. Umphenour*, No. 17-15369 (9th Cir. 2019) (filed Sept. 5, 2019). To the extent, the record on appeal purports to contain consent for referral to the magistrate, that consent is falsified. Appellant's reasonable and timely request to review appellant's record on appeal was unreasonably denied.

The record reflects clear error which affects a substantial right. An error affects substantial rights if it "affected the outcome of the district court proceedings." *United States v. Olano*, 507 U.S. 725, 734 (1993). "'The standard for showing that is the familiar reasonable probability of a different result formulation, which means a probability sufficient to undermine confidence in the outcome.' Id. (quotation omitted)." *United States v. Heath*, 419 F.3d 1312, 1316 (11th Cir., 2005). But for the impermissible delegation and/or unauthorized R&R, the outcome would be different because in this case there would be no adoption of R&R with arbitrary and capricious rulings. Summary dismissal by a magistrate without jurisdiction, without voluntary express consent, and without meaningful lower court review violates 28 U.S.C. § 636(b)(3), the Constitution, and other laws, thereby adversely impacting fundamental fairness, integrity, and/or public reputation of the lower court. Accordingly, the lower court orders should be reversed.

VII. Dismissal admittedly based on untrustworthy hearsay outside the record is reversible as a matter of law.

Serious questions are raised regarding the R&R's dismissal based on evidence outside the record in the form of unknown, unverified content admittedly gleaned from the internet. Timely request for notice of and opportunity to respond was unreasonably denied without comment.

In analyzing an ex parte communication issue, the court recognized that "[t]he essence of procedural due process is notice and an opportunity to be heard." 661 F.2d at 679 (citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 813-14, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (observing that right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest")); see also United States v. Minor, 228 F.3d 352, 356 (4th Cir.2000) (recognizing adequacy of notice as "a matter of obvious constitutional magnitude"); Elmco Props., Inc. v. Second Nat'l Fed. Sav. Ass'n, 94 F.3d 914, 920-21 (4th Cir.1996) (explaining that parties must be given constitutionally adequate notice).

Simer v. Rios, 661 F.2d 655 (7th Cir.1981) (emphasis supplied).

Matters of exceptional importance and "obvious constitutional magnitude" are at stake. *United States v. Minor*, 228 F.3d 352, 356 (4th Cir.2000). Petitioner timely and respectfully requested notice and opportunity to respond to the magistrate's search and solicitation over the internet of evidence on which he based dismissal. Petitioner is prejudiced because there would be no dismissal but for the untrustworthy internet hearsay outside the record. Accordingly, the lower court orders should be reversed.

VIII. Dismissal is premature.

Dismissal is premature due to, including but not limited to, the magistrate's

Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983); 6 Moore's Federal Practice ¶ 56.02[6], p. 56-39 (2d) ed. 1990); see, e.g., First Chicago Int'l v. United Exchange Co., 836 F. (2d) 1375 (D.C. Cir.1988); Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F. (2d) 230 (2d Cir.1985)(emphasis supplied).

Without discovery, petitioner and the court are prejudiced. This issue was raised but not addressed. Accordingly, dismissal is premature.

XI. The FDCPA applies to this debt which arose out of a consumer transaction.

A consumer debt is defined under the FDCPA as:

(A)ny obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

Tierney v. Unique Mgmt. Servs., Inc., (D. S.C., 2016).

The petitioner is an individual consumer, not a business entity, for services; the debt arose out of a consumer transaction for legal services primarily for the support and education of dependent minor children, family, and other household purposes. *Zimmerman v. HBO Affiliate Grou*p, 834 F.2d 1163, 1168-69 (3d Cir.1987). But for the consumer transaction for legal services, we would not be here. In state court, conflicted pro se co-defendant Advocate-Witness Caskey represented the debt was the same type of consumer debt collection which defendant "has done a lot of." Transcript of the March 10, 2017, Hearing, p. 18, line 1-2. Defendants are debt collectors regularly engaged in the collection of debt for others and defendants violated the FDCPA, including but not limited to, false, deceptive misrepresentations, and/or false claims of entitlement to wrongful charges. Moreover, it is unconscionable to deprive a litigant of due process, individual,

property, and other state and Federal constitutional and statutory protections, rights, and laws. The case of *Mabe v. G.C. Services Ltd. Partnership*, 32 F.3d 86 (4th Cir., 1994), provides as follows:

> The case law interpreting this section of the FDCPA is sparse. At least two courts of appeals, however, have held that the type of "transaction" which creates a "debt" under the FDCPA is one in which "a consumer is offered or extended the right to acquire 'money, property, insurance, or services' which are 'primarily for household purposes' and to defer payment," Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1168-69 (3d Cir.1987). Bloom v. I.C. Sys., Inc., 972 F.2d 1067, 1068 (9th Cir.1992) (holding that the FDCPA applies only to "consumer debts" incurred "primarily for personal, family, or household purposes"); Staub v. Harris, 626 F.2d 275, 278 (3d Cir.1980) (holding that "at a minimum, the [FDCPA] contemplates that the debt has arisen as a result of the rendition of a service or purchase of property or other item of value").
>
> *Mabe v. G.C. Services Ltd. Partnership*, 32 F.3d 86 (4th Cir., 1994).

The intended consumer use is determined at the time the debt is incurred, not at the time of collection. *Miller v. McCalla*, 214 F.3d 872 (7th Cir., 2000). But for the consumer contract for legal services, we would not be here.

By analogy, the Fifth Circuit ruled that "*plaintiff* contracted for personal and family services, i.e., *legal services*. Moreover, the plain meaning of "arising out of" as "stemming from" leads us to conclude that the obligation to pay arose from the contract/transaction for *legal services*. *Taylor v. Javitch, Block & Rathbone, LLC* (N.D. Ohio, 2012) (citing *Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385 (5th Cir. 2002) (emphasis supplied). Accordingly, the FDCPA applies to this debt which arose out of a consumer transaction.

To establish a claim under the FDCPA, "a plaintiff must prove that:

> '(1) the plaintiff has been the object of collection activity arising from consumer debt

(*in this case, the SCCPC/SCUTPA incorporate the FDCPA to apply to this creditor in a consumer transaction for services and the SCCPC /SCUTPA incorporate the requirements under 15 U.S.C. Section 1692g, many of which are violated in the demand letter*);

(2) the defendant is a debt collector as defined by the FDCPA

(*in this case, the SCCPC/SCUTPA incorporate the FDCPA to apply to a first party creditor who is also a debt collector for debt owed to others*); and

(3) the defendant has engaged in an act or omission prohibited by the FDCPA

(*in this case, the SCCPC/SCUTPA incorporate the FDCPA to require validation notices which are not contained in Ex. B to the current complaint, the demand letter, or any other notice from defendants in violation of 15 U.S.C. Section 1692(g), to prohibit wrongful charges or amounts, to prohibit false and/or deceptive information, and to prohibit the abundant unconscionable acts reflected in the record including, but not limited to, unconscionable conspiracy to deny due process,, failure to provide verified petition which is a fatal defect, failure to provide validation notice, failure to provide verification/validation upon dispute, and/or other violations of 15 U.S.C. § 1692g and the SCCPC/SCUTPA*)."'

Boosahda v. Providence Dane LLC, 462 F. App'x 331, 333 n.3 (4th Cir. 2012) (quoting *Ruggia v. Wash. Mut.*, 719 F.Supp.2d 642, 647 (E.D. Va. 2010); *see Webster v. ACB Receivables Mgmt., Inc.*, 15 F. Supp. 3d 619, 625 (D. Md. 2014); *Stewart v. Bierman*, 859 F.Supp.2d 754, 759 (D. Md. 2012). "Debt collectors that violate the FDCPA(*SCCPC*) are liable to the debtor for actual damages, costs, and reasonable attorney's fees." *Russell*, 763 F.3d at 389 (citing 15 U.S.C. § 1692k(a)(1), (a)(3)).

Garner v. ClaimAssist, LLC (D. Md., 2018) (Aug. 9, 2018) (emphasis supplied).

In the instant case, plaintiff entered a dispute regarding wrongful charges and amounts. Defendants failed and refused to provide validation/verification upon dispute. Instead, defendants engaged in wrongdoing including, but not limited to, unconscionable denial of constitutional rights, unconscionable *ex parte* contacts, and unconscionable confiscation of unearned filing fees in order to evade the merits. Defendants failed to comply with the FDCPA/SCCPC/SCUTPA.

"The Fourth Circuit recently considered a similar case, *Powell v. Palisades Acquisition XVI, LLC*, 782 F.3d 119 (4th Cir. 2014). In that case, a judgment for a

consumer's credit card debt was assigned to a debt collector. *Id.* at 121. The debt collector filed an assignment of judgment with the court that reported a principal amount of $11,727.99 instead of the correct amount of $10,497.21. *Id.* at 122. It also stated that the debtor had not made any payments even though she had made $2,700 in payments. *Id.* Thus, the assignment over-reported the amount the debtor owed by $3,930.78....The Fourth Circuit determined that the misstatement in the initial assignment was a material misrepresentation because "the least sophisticated consumer could be led to decide to pay far more than she otherwise would have paid." *Id.* At 127. *Afewerki v. Anaya Law Grp.*, 868 F.3d 771 (9th Cir., 2017).

From the case of *McCray v. Samuel I. White, P.C.* (D. Md., 2017) (March 31, 2017), "(t)he Fourth Circuit first concluded that 'nothing in [the] language [of the FDCPA] requires that a debt collector's misrepresentation [or other violative actions] be made as part of an express demand for payment or even as part of an action designed to induce the debtor to pay.' Id. at 359 (quoting *Powell v. Palisades Acquisition XVI, LLC*, 782 F.3d 119, 123 (4th Cir. 2014) (internal quotation marks omitted)). Rather, 'to be actionable under . . . the FDCPA, a debt collector needs only to have used a prohibited practice in connection with the collection of any debt or in an attempt to collect any debt.' Id. (quoting Powell, 782 F.3d at 124). Accordingly, based on the Fourth Circuit's reasoning in McCray I, the Court concludes as a matter of law that under the FDCPA, Defendants were debt collectors pursuing debt collection activity." *McCray v. Samuel I. White, P.C.* (D. Md., 2017) (March 31, 2017). Accordingly, unconscionable attempts to deny including, but not limited to, constitutional rights are actionable under FDCPA/SCCPC/SCUTPA.

Harm to the public includes, but is not limited to, the following:

the appearance of impropriety/impropriety in fact of wrongdoing by defendants all in concert misusing and abusing their positions as officers of the court to, including, but not limited to, deny constitutional rights; to place "the proverbial butcher's thumb" on the scales of justice; to materially omit/misrepresent the unpublished status of a *John Doe* order; to make false/deceptive claims regarding prior representation including, but not limited to, claiming loan documents and entitlement to wrongful charges thereon; to deprive a former client/litigant of due process, individual, property, and constitutional rights including, but not limited to, the right to defend, to represent oneself, and to file; to cause confiscation of unearned filing fees and wrongful $2500.00 in defendants' attorneys fees paid; to cause denial of meaningful opportunity to be heard, due process, equal protection, and adequate record for meaningful judicial review and appeal; and to fail to comply with mandatory jurisdictional court and/or filing fees any other lawyer or party is required to pay. Defendants all in concert have conspired to, including but not limited to, violate FDCPA/SCCPC/SCUTPA and to deny constitutional rights. Accordingly, the lower court orders should be reversed.

X. Error of material fact and law.

Moreover, it is error of material fact and law for defendants to conflate a referee/master with a state circuit court judge. A referee/master has no general jurisdiction and only that jurisdiction expressly afforded him or her by a valid order of reference and by the authorizing statutory law cited. In this case, the order of reference is

invalid and fatally defective and the statutory law cited as authority for the order of reference does not exist. Further, there is no jurisdiction to conspire with legal malpractice defendants to harm plaintiff and/or essentially fix the outcome of a case. In *Dennis v. Sparks*, 449 U.S. 24, 28-29 (1980), the U.S. Supreme Court held that private parties who conspired with a judge to fix a case acted under color of law. The record reflects evidence of lack of jurisdiction, lack of official capacity including lack of valid order of reference, and/or lack of authority including, but not limited to, failure of defendants all in concert to comply with mandatory jurisdictional court or filing fees as documented on the case summary sheet. The record includes abundant evidence of unofficial and/or administrative wrongdoing by defendants all in concert including, but not limited to, lack of official capacity; administrative wrongdoing; lack of jurisdiction; lack of authority for the *ex parte* February 9, 2017, hearing/order; wrongdoing outside the scope of authority; confiscation of plaintiff's unearned filing fees; failure of respondents to comply with multiple mandatory and/or jurisdictional court and filing fees; impermissible/unconscionable ex parte communication; and/or lack of valid order of reference, which constitute exceptions to a referee/master's immunity. In addition, the conspiracy to harm claims do not require unlawful acts.

The record reflects respondent referee/master concedes exceptions to immunity, which petitioner has pled including, but not limited to, lack of valid order of reference. Specifically, the order of reference is invalid including but not limited to, governing law under *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). The record reflects defendants' so-called verified petition is unverified. See copy of

defendants' unverified petition attached to Defendants' Entry No. 27, Ex.4, p. 2. See South Carolina Court Administration Form 403, Verification. Lack of verified petition is a fatal defect precisely because it is a summary proceeding. *Id.* Petitioner is prejudiced because defendants' unverified petition makes false statements claiming false charges which are disputed. Despite timely request, defendants have failed to provide documentation they cited or itemization with verification. Accordingly, the lower court orders should be reversed.

XI. Collateral Issue

The lack of any legal requirement other than the talismanic recitation of "*frivolous*" will foreclose meaningful review and, in this case, meaningful opportunity to be heard. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402, 110 S.Ct. 2447, 110 L.Ed.2d 359, 58 USLW 4763 (1990) (emphasisi supplied). Specifically, the "decision of whether to award sanctions is a collateral issue and does not constitute a ruling upon the merits of the case. ...*See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 394, 396, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990). *Pee Dee Health Care, P.A., v. Estate of Thompson*, 418 S.C. 557, 795 S.E.2d 40 (S.C.App. 2016). Because SCFPA sanctions constitute an incidental or collateral proceeding, a SCFPA sanction order is not a traditional judgment on the underlying cause of action. Per the case of *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000), no exception to automatic stay on appeal applies because the matter is incidental or collateral to the underlying claim and does not constitute a traditional money judgment on the underlying claim as contemplated by the statute, S.C. Code § 18-9-130.

See Toal *et al., Appellate Practice in South Carolina* (3d ed. 2016), p. 341, 344. Because the revised SCFPA order is a collateral issue and does not constitute a ruling on the merits and because the issues are not the same, the plain language of the *John Doe* order is not applicable in this case. Accordingly, the lower court orders should be reversed.

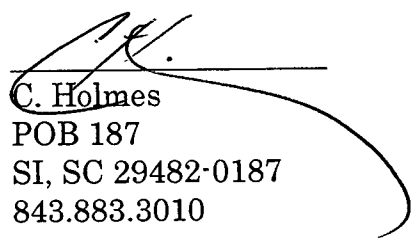
XII. Request for leave to amend.

Petitioner respectfully requests leave to amend. Leave to amend a pleading "shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). "[L]eave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." *Laber v. Harvey*, 438 F.3d 404, 426–27 (4th Cir. 2006) (citations omitted). The petitioner respectfully submits there is no legal prejudice, bad faith, or futility. Accordingly, leave to amend is respectfully requested.

CONCLUSION

WHEREFORE petitioner respectfully requests this Court grant the petition for writ of certiorari.

Respectfully submitted,



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