No. 20-5531

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,

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A *WRIT OF CERTIORARI*

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REPLY TO STATEMENT OF THE CASE

As a threshold matter, without being disagreeable, there is disagreement and petitioner disputes Mr. Andrew Lindemann's Statement of the Case which omits material facts and makes material misstatements of fact. On page 1, Mr. Lindemann falsely claims S.C. Code Ann.(sic) § 15-11-10 contains a provision that states, "A Master-in-Equity is a part of the unified state court system in South Carolina." It does not. Furthermore, "S,C. Code Ann." is considered antiquated and/or obsolete. Moreover, a master-in-equity (hereafter MOE) is not the equivalent of a state circuit court judge and S.C. Code Ann. (sic) § 15-11-15 does not state that MOE is the equivalent. In fact, S.C. Code Ann.(sic) § 15-11-15 does not exist. To the extent he attempts to cite "S.C. Code Ann.(sic) § 14-11-15," Mr. Lindemann misrepresents the quotation, which is taken out of context and which is incomplete. Mr. Lindemann materially omits the final sentence which negates the statement: MOE is the equivalent of a state court circuit judge. That final sentence definitively delineates MOE is NOT a judge, may not be construed to be a judge, and MOE's are prohibited from participating in the State Retirement System **for Judges.**

On page 1 in the second paragraph, petitioner disputes the second sentence and Mr. Lindemann's attempt to limit and mischaracterize the complaint. Instead, the allegations assert claims including conspiracy by defendants all in concert under color of state law to deny petitioner's constitutional, individual, and property rights for the benefit of private parties to fix the outcome of the 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.

In Footnote 1 on page 1, Mr. Lindemann misrepresents the February 9, 2017, MOE order is "sua sponte." Specifically, the attached February 9, 2017, MOE order states "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." Black's Law Dictionary, 2d Edition, provides the following definition for "ex parte": Court order against a party absent from the proceedings and given no prior notice. The Charleston County public access website for Case No. 2007-CP-10-1444 shows there was no prior notice for the hearing referenced in the order and no opportunity to be heard. "Sua sponte" is not the proper term.

On page 2 at the top of the page, Mr. Lindemann materially omits the referee/master lacked jurisdiction to strike the Rule 60, SCRCP, motion then pending before the trial judge who is the only judge with jurisdiction to hear the Rule 60, SCRCP, Motion. Moreover, disposition on that Rule 60, SCRCP, Motion is a condition precedent to supplemental proceedings and a condition precedent to jurisdiction for the order of reference. Without it, the order of reference is invalid. Even assuming the order of reference is valid, which is denied, only the trial judge has jurisdiction for disposition of the pending Rule 60, SCRCP, Motion and MOE is not the trial judge. Further, the referee/master lacked jurisdiction to strike the MTD then pending before the Presiding Circuit Court Judge. Mr. Lindemann materially omits that his client confiscated/converted petitioner's monies paid in good faith for filing fees while giving a "free pass" to defendant corporation on jurisdictional full payment of filing fees. This non-judicial wrongdoing speaks volumes. MOE did not require full payment of filing fees from defendant corporation which is an administrative, non-judicial act of wrongdoing and

prejudicial bias. MOE did not require full payment of filing fees from defendant corporation which every other attorney is required to pay and which is required for statutory authority:

S.C. CODE SECTION 14-11-310.
Masters-in-equity to collect certain fees.

Masters-in-equity shall collect the following fees which must be deposited in the general fund of the county:

...(4) for a supplemental proceeding, a fee of twenty-five dollars;...

The fees provided for in this section, including the first day's fee provided for in item (5) and excluding the commission on sale, **must be paid** at the time the order of reference is signed and is nonrefundable unless so ordered by the master-in-equity on proper cause being shown. S.C. Code § 14-11-310 (emphasis supplied).

On page 2 in the first complete paragraph, Mr. Lindemann fails to disclose S.C. Code § 14-11-310 provides that a salaried employee of defendant corporation is not entitled to attorney's fees. As such, the $2500 order for attorneys fees for employee Caskey is a violation of S.C. Code § 14-11-310. Moreover, the transcript reflects the petitioner timely complied with discovery in the courtroom on the record, it reflects defendant corporation failed to provide admissible evidence of non-compliance, and it reflects the petitioner was not allowed to testify, to present evidence, or to call witnesses.

On page 2 in the last full paragraph, Mr. Lindemann states, "The district court further ruled that 'it is clear that Scarborough issued the orders in question in his judicial capacity and not in the absence of jurisdiction, as they were made pursuant to **orders** of reference from the circuit court (emphasis supplied).'" Importantly, the district

court failed to address the validity of the **orders** of reference. By inference, at least one of those "**orders**" is invalid and plaintiff contends both are. Summary dismissal is improper under these facts with multiple (invalid) "orders" of reference.

With regard to fn. 2 on page 3, petitioner retired from the practice of law with Neighborhood Legal Aid before attending medical school and there have never been any client complaints. But for the unconstitutional retroactive application of the inapplicable revised FPA, S.C. Code § 15-36-10, and unauthorzed reporting to ODC in subsection M of the FPA while that Haynsworth FPA order was stayed pending appeal, there would be no complaint to ODC. S.C. Code § 15-36-10(M). Further, there would be no definite suspension after multiple attempts at improper default by Barbie Seymour, now removed. But for the unconstituional retroactive application of the revised FPA, we would not be here. A detailed description by petitioner's state court Appellate Counsel of Record may be found at sccourts.org, select C-Track Public Access under Quick Links, select Court of Appeals (COA), be sure to uncheck "exclude closed cases," and enter Case No. 2019-000880, then click on the entry date of 04/24/2020 for Petition For Rehearing on improper dismissal of that appeal. Current appeal by Haynsworth is pending under COA Case No. 2020-000968 based on the attached state court order dated June 11, 2020.

Currently, Mr. Lindemann contemptuously flouts the attached state court order for mandatory ADR (Alternative Dispute Resolution) regarding viable state court claims specified in the R&R, adopted by the district court, and timely filed in state court. ADR applies to essentially all civil litigants in the unified state court system. As he points out on page 1, MOE is part of the unified state court system, yet Mr. Lindemann apparently believes he and MOE, a county (not Judicial Department) employee, are above the law

and do not have to comply with state court orders of the unified state court system. Significantly and materially, the unified state court system is struggling to manage its docket in these uncertain times of unfolding and unprecedented public health and affiliated economic emergencies. Public policy mandates compliance with ADR. In derogation of his professional responsibilities and the South Carolina Rules of Professional Conduct, Attorney Lindemann cavalierly and contemptuously refuses to comply with the attached state court order dated July 13, 2020. Attorney Lindemann could have but did not timely file a motion to reconsider and/or to alter or amend and/or appeal. He unreasonably fails and refuses his professional responsibility to comply with a valid court order and refuses to even discuss mediation, contrary to legislative intent and the letter and spirit of ADR. Importantly, in compliance with that order, deposit was paid and mediation scheduled for September 18, 2020, or any other mutually agreeable date and time which Mr. Lindeman contemptuously ignored without providing alternate date.

Turning to fn. 3 on page 3, regarding the first case, see attached Civil Action Cover Sheet showing Counsel of Record filed the suit and signed at the bottom certifying the case is not frivolous. Importantly, the dissent in Footnote 23 of the opinion in that case properly points out that the majority agreed with petitioner's Counsel of Record that the case law "might not be [so] limited...." supporting petitioner's counsel of record and his theory of the case. *Holmes v. ECCH, Inc.*, 758 S.E.2d 483, fn. 23 (2014). Significantly, in his dissenting opinion, Former Chief Justice, then Justice Pleicones correctly noted there was no basis in law for finding the physician violated the FPA and no basis in fact or law for sanctioning the party alone and not the attorney. Of note, that very issue is scheduled for oral argument in another case on November 12, 2020, in the state COA under COA

App. Case No. 2018-000467.

Regarding the second case in fn. 3 on page 3, the definite suspension in that case was based on improper default and the above referenced unauthorized sanction against a represented party while stayed pending appeal in which the majority agreed and the dissenting opinion found that Counsel of Record's suit was not frivolous and that a represented party alone could not be sanctioned. *Holmes v. ECCH, Inc.*, 758 S.E.2d 483, fn. 23 (2014). As a matter of law in that case, therefore, the reasonable attorney standard in S.C. Code § 15-36-10 (FPA) as well as a reasonable jurist standard is met. There is no frivolity. *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 reasonable attorney standard is not fair notice to the general public or to parties.

Regarding the third case in fn. 3 on page 3, but for the unconstitutional retroactive application of the revised FPA, we would not be here. The dissent in that case agreed, "I agree with appellant that the original version of the FCPSA and not the amended version applies here." *Holmes v. Haynsworth et al.*, 408 S.C. 620, 760 S.E.2d 399 (S.C. 2014). Further, the trial judge expressly ruled there is no intent to harm. But for the attached denial of the plaintiff's motion for substitution of counsel in that underlying case of Haynsworth's malfeasance, we would not be here. The record reflects that the Presiding District Court Judge who denied plaintiff's timely and meritorious motion to substitute counsel did not timely recuse himself in the instant case despite timely notice.

On page 3, Mr. Lindemann again omits material facts. He fails to provide any

citation, source, or case number for his reliance on *Doe v. Duncan.*and materially fails to disclose it is unpublished. 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. Even Mr. Lindemann is unable to cite, locate, or access that *John Doe* order which is inadmissible untrustworthy hearsay and which supports petitioner's allegation of direct or indirect impermissible ex parte communication by defendant corporation and defendants with MOE, otherwise that unpublished order could not be found. That *John Doe* case is unrelated to and not directly involved with the matter herein and in any case, is not applicable because the physician is in a defensive posture. *See Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). Of note, Former Chief Justice Toal, who at every opportunity publicly praises Haynsworth for "launching" her career "and the rest is history," authored two of the four opinions on page 3 and participated in the other two Per Curiam.

At the bottom of page 3, Mr. Lindemann materially omits directed verdict was granted to two of the three defendants on insufficient service in *Holmes v. Becker, Grier, and Haynsworth Sinkler Boyd, PA,* 760 S.E.2d 399 (2014), authored by Former Chief Justice Toal. After the individual defendants appeared, testified, and defended at trial, the trial judge granted directed verdict on the grounds of insufficient service. Former Chief Justice, then Justice Pleicones dissented arguing it was against controlling precedent and well-settled rule of law, which essentially describes the entire majority opinion:

As I understand the applicable law, however, these respondents waived their right to rely

upon the belated service when they failed to raise the issue pursuant to Rule 12(h), SCRCP. See *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993). Failure to properly raise this issue under the rule also operates as a waiver of a statute of limitations defense. Id.; see also *Unisun Ins. v. Hawkins*, 342 S.C. 537, 537 S.E.2d 559 (Ct.App.2000)....Further, I agree with appellant that the original version of the FCPSA and not the amended version applies here. See 2005 S.C. Acts No. 27 § 16(3) 123 (revised FCPSA applies to causes of action arising on or after July 1, 2005). Thus the trial court erred as a matter of law in awarding sanctions under the FCPSA. *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997).
Holmes v. Haynsworth et al., 408 S.C. 620, 760 S.E.2d 399, 413 (S.C. 2014).

In addition, the dissent confirmed the revised FCPSA with its reporting provisions is inapplicable. S.C. Code § 15-36-10(M).

On page 4, Mr. Lindemann again engages in self-interested omission of material facts. Specifically, he fails to disclose there was no hearing date issued because statutory authorization requires full filing fees "**must be paid**" before the order of reference is authorized:

S.C. CODE SECTION 14-11-310.
Masters-in-equity to collect certain fees.

Masters-in-equity shall collect the following fees which must be deposited in the general fund of the county:

...(4) for a supplemental proceeding, a fee of twenty-five dollars;...

The fees provided for in this section, including the first day's fee provided for in item (5) and excluding the commission on sale, **must be paid** at the time the order of reference is signed and is nonrefundable unless so ordered by the master-in-equity on proper cause being shown. S.C. Code § 14-11-310 (emphasis supplied).

Thus, by statute the payment of fees is jurisdictional. The record reflects full fees have not been paid, including but not limited to, the full $50.00 initiation fee: $25 to file the

petition with the state circuit court and $25 for MOE. Materially, the record reflects MOE in his non-judicial and administrative capacity gave Haynsworth a free pass on full payment. A jury could find this is evidence of administrative wrongdoing in a non-judicial capacity for which there is no judicial immunity and evidence of prejudicial bias. Further, Mr. Lindemann fails to disclose there was no hearing date on the order of reference pending disposition on the plaintiff's pending Motion to Dismiss (MTD). See attached true copy of incomplete order of reference. Significantly and materially, the MTD was based on, including but not limited to, lack of standing due to lack of ownership interest which defendants later admitted in the attached copy of document filed September 29, 2017, as well as false, disputed claims and lack of verified petition which is a fatal defect. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994). The order of reference is incomplete and not final. No other judge has jurisdiction to enter, alter, or revise another judge's pending matter. Rule 43(l), SCRCP. The attached true copy of the incomplete order of reference, which is incomplete for jurisdictional lack of full payment, is not final and to date, full payment has not been made. It is not a final, valid order of reference, and there is no jurisdiction for MOE or MOE orders under these facts.

On page 4, Mr. Lindemann misconstrues the complaint. It is respectfully submitted the allegations in the complaint are not so limited. W*rit of Certiorari* is respectfully requested.

REPLY TO BRIEF IN OPPOSITION

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. *Hulsey v. Cisa*, 947 F.3d 246 (4th Cir., January 17, 2020). Moreover, the propriety of adopting Report & Recommendation (R&R) admittedly based on extrajudicial untrustworthy hearsay over the internet is challenged, including but not limited to, denial of timely request for notice and opportunity to respond to extrajudicial communication/content outside the record and/or denial of adequate record for meaningful judicial review. On page 5, Mr. Lindemann asserts two bases for denying the petition: absolute judicial immunity and the Rooker-Feldman doctrine. As set forth more fully herein, neither provides sanctuary for his client.

With respect to absolute judicial immunity, the referee/master is not a state circuit court judge and does not enjoy absolute judicial immunity. Specifically, he does not enjoy absolute judicial immunity because, including but not limited to, he does not enjoy general jurisdiction as does a state circuit court judge and never did. His jurisdiction is subject to a valid order of reference and only as specified in that order. In this case, there is no final, valid order of reference, therefore, the referee/master has no lawful judicial authority, and any actions he took including, but not limited to, judge-shopping for a second (invalid) order of reference, are outside his scope of authority and constitute non-judicial wrongdoing:

Lyles v. Bolles, 8 S.C. 258 (1876) endorsed the following language: "A sentence professing on its face to be the sentence of a judicial tribunal, if rendered by a self-constituted body, or a body not empowered by its government to take cognizance of the subject it had decided, could have no legal effect whatever." *Id.* at 262 (quoting *Rose v. Himely*, 8 U.S. 4 Cranch 241, 268–69, 2 L.Ed. 608 (1808) (Marshall, C.J.)). Both *Lyles* and *Rose* used the traditional term of art, *coram non judice*," 'before a person not a judge'—meaning, in effect, that the proceeding in question was not a judicial proceeding because lawful judicial authority was not present, and could therefore not yield a judgment." *Burnham v. Superior Court of California, Cty. of Marin*, 495 U.S. 604, 609, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990).
Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC, 815 S.E.2d 780 (S.C. App. 2018).

Accordingly, "because lawful judicial authority was not present, and could therefore not yield a judgment," the orders of the referee/master, including the February 9, 2017, order, "could have no legal effect whatever." *Id.*

In addition, even assuming a valid order of reference, which is denied, there is no judicial immunity for administrative and/or non-judicial wrongdoing in a non-judicial capacity which plaintiff has pled, such as, including but not limited to, causing false/misleading information to be published on the Charleston County public access website on which the district court relied to dismiss summarily. See Footnote 10 on page 9 of the Report & Recommendation (R&R) dated October 31, 2018.

As for the second reason to deny the petition, Mr. Lindemann misconstrues or misapprehends the Rooker-Feldman (R-F) doctrine. Specifically, 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 (2005). 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).

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. As in 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 under color of state law, including 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. That unpublished *John Doe* order in an unrelated case is not directly involved in the instant case. Accordingly, new case law in *Hulsey* supports reversal. *Id.*

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 currently pending state court 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 which he 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. Without defendants' wrongdoing all in concert the outcome should and would be different.

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 currently pending appeal; 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. Accordingly, there is no absolute judicial immunity for MOE under these facts and the Rooker–Feldman doctrine is not applicable. Petitioner respectfully requests *Writ of Certiorari.*

CONCLUSION

WHEREFORE, for substantial justice affecting substantial rights, petitioner respectfully requests that this Court grant the Petition for W*rit of Certiorari.*

Respectfully submitted,

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