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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (APRIL 28, 2021)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CHRISTOPHER CHESTNUT,

Plaintiff-Appellant,

v.

CHARLES CANADY, Justice, RICKY POLSTON, Justice, JORGE LABARGA, Justice, C. ALAN LAWSON, Justice, BARBARA LAGOA, Justice, ET AL.,

Defendants-Appellees.

No. 20-12000

D.C. Docket No. 4:19-cv-00271-RH-MJF

Appeal from the United States District Court for the Northern District of Florida

Before: JILL PRYOR, GRANT and ANDERSON, Circuit Judges.

PER CURIAM:

Christopher Chestnut, proceeding *pro se*, appeals the dismissal of his 42 U.S.C. § 1983 action against several current and former Florida Supreme Court Justices and the Clerk of the Florida Supreme Court.

On appeal, Chestnut argues that the district court erred in dismissing his complaint under the *Rooker-Feldman*[1] doctrine and that it abused its discretion in alternatively dismissing his complaint under the *Younger*[2] abstention doctrine. We agree that *Rooker-Feldman* does not apply to this case. But we conclude that the district court did not abuse its discretion when it dismissed the complaint under the *Younger* abstention doctrine; thus, we affirm.[3]

I. Background

This case arises out Chestnut's permanent disbarment from the Florida Bar. Following three findings of probable cause by grievance committees, the Florida Bar filed three complaints against Chestnut in the Florida Supreme Court ("FSC"). The FSC appointed referees to conduct evidentiary hearings in the cases. Those referees found Chestnut guilty of violating the disciplinary rules of the Florida Bar in nine of the 11 matters. The FSC approved the referees' findings of fact and recommendations as to guilt and ordered that Chestnut be disbarred on May 3, 2019. Chestnut filed a motion for rehearing on May 20, 2019, which was denied on August 2, 2019.

While these three original disciplinary complaints were pending before the FSC, the Florida Bar filed a

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[1] *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

[2] *Younger v. Harris*, 401 U.S. 37 (1971).

[3] Appellees also argue that Chestnut's suit is barred by Eleventh Amendment and judicial immunity. Because we decide the case on *Younger* abstention grounds, we do not address this argument.

fourth complaint against Chestnut, based on new probable cause findings from grievance committees. As with the other complaints, the FSC appointed a referee who found Chestnut violated Florida Bar rules in three of four cases. In response to this finding, the FSC entered an order permanently disbarring Chestnut on August 22, 2019. Chestnut filed a motion for rehearing, which was denied on November 18, 2019.

Before he was disbarred but while disciplinary complaints against him were pending, on June 4, 2019, Chestnut filed in the United States District Court for Northern District of Florida the instant § 1983 action against the Justices and Clerk of the FSC. Following two amendments, the operative complaint was filed on January 31, 2020. In that complaint, Chestnut alleged the Justices and the Clerk violated his due process rights in disbarring him. He requested that the court void the orders to disbar him and enjoin "the Justices on the Supreme Court of Florida from enforcing the sanction of disbarment and permanent disbarment." Doc. 13 at 46.[4]

The Justices filed a motion to dismiss Chestnut's second amended complaint for lack of subject matter jurisdiction and failure to state a claim. They argued, among other things, that they were protected by Eleventh Amendment and judicial immunity. They also argued that the district court should decline to consider the claim under the *Rooker-Feldman* doctrine, which prevents district courts from hearing "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced." *Exxon Mobil*

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[4] "Doc." numbers refer to the district court's docket entries.

Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Ultimately, the district court granted the motion to dismiss on the ground that the suit was barred by *Rooker-Feldman*. The district court held in the alterative that, to the extent that *Rooker-Feldman* was inapplicable, the suit would be barred by the *Younger* abstention doctrine.

This is Chestnut's appeal.

II. Standard of Review

We review *de novo* dismissals for lack of subject matter jurisdiction pursuant to *Rooker-Feldman*. *Nicholson v. Shafe*, 558 F.3d 1266, 1270 (11th Cir. 2009). We review the district court's decision to apply *Younger* abstention for an abuse of discretion. *31 Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003). A district court abuses its discretion when it makes an error of law. *United States v. Pruitt*, 174 F.3d 1215, 1219 (11th Cir. 1999).

III. Discussion

On appeal, Chestnut argues that the district court erred in ruling that this case was barred by the *Rooker-Feldman* doctrine because the disbarment matter was ongoing when he filed this § 1983 suit. He also argues that the district court abused its discretion when it ruled in the alternative that the case should be dismissed under the *Younger* abstention doctrine. We address each of these questions in turn.

A. Chestnut's Suit Is Not Barred by the *Rooker-Feldman* Doctrine.

The *Rooker-Feldman* doctrine precludes a federal court, other than the Supreme Court, from exercising

jurisdiction over a claim brought by an unsuccessful party in a state court case. *See Alvarez v. Attorney Gen. for Fla.*, 679 F.3d 1257, 1262–63 (11th Cir. 2012). The *Rooker-Feldman* doctrine only applies when the state court proceedings have ended prior to the district court proceeding. *Nicholson*, 558 F.3d at 1278. In determining whether the *Rooker-Feldman* doctrine applies, we look to when the initial complaint is filed in federal court, rather than the date of any amended complaints. *Lozman v. City of Riviera Beach, Fla.*, 713 F.3d 1066, 1072 n.3 (11th Cir. 2013). State proceedings have not ended if an appeal from the state court judgment is pending at the time that the plaintiff commences the federal court action. *Nicholson*, at 1278–79.

Chestnut originally filed this case on June 4, 2019. At that time, his motion for rehearing on his initial disbarment and the complaints against him that led to his permanent disbarment were pending before the FSC. Although Chestnut filed an amended complaint after his motions for rehearing were denied, his state court proceedings had not ended when he filed his initial complaint. Thus, the *Rooker-Feldman* doctrine does not apply here; Chestnut was not a "state-court loser[ ]" when his case was still pending in state court. *Exxon Mobil*, 544 U.S. at 284.

B. The District Court Did Not Abuse Its Discretion in Dismissing Chestnut's Complaint Under the *Younger* Abstention Doctrine.

After determining that Chestnut's case was barred by the *Rooker-Feldman* doctrine, the district court alternatively held that "if *Rooker-Feldman* is deemed

inapplicable here on the ground that the Florida Supreme Court proceeding was still pending when this federal action was filed," the case would still be barred by the *Younger* abstention doctrine. Doc. 21 at 3. On appeal, Chestnut argues that the district court abused its discretion by determining that *Younger* abstention applies here because (1) *Younger* abstention is inappropriate when the district court has jurisdiction under 28 U.S.C. § 1343, which gives district courts original jurisdiction over certain civil rights actions, and (2) the bad faith exception to *Younger* abstention applies in this case. We disagree.

Younger abstention applies where (1) the state judicial proceedings are ongoing, (2) those proceedings implicate important state interests, and (3) the state proceedings provide an adequate opportunity to litigate the plaintiff's federal constitutional claims. *31 Foster Children*, 329 F.3d at 1274. As with the *Rooker-Feldman* doctrine, we look to the date the initial complaint was filed to determine if a case is ongoing. *Liedel v. Juvenile Court of Madison Cty., Ala.*, 891 F.2d 1542, 1546 n.6 (11th Cir. 1990). The plaintiff has the burden to show that the state proceeding will not provide him an adequate remedy for his federal claim. *31 Foster Children*, 329 F.3d at 1279. Generally, in the absence of authority to the contrary, a federal court should assume that a state's procedures will afford the plaintiff an adequate remedy. *Id.*

The district court made no error of law in ruling that *Younger* abstention applied to Chestnut's § 1983 action. State judicial proceedings against Chestnut were ongoing when he filed his initial complaint in June 2019. Supreme Court precedent instructs that state disciplinary proceedings against attorneys implicate

important state interests for the purposes of *Younger* abstention. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 434–35 (1982). And although Chestnut provides a history of racial discrimination in southern state courts in his appellate brief, he does not point to any state procedures or other authorities that indicate he did not have an opportunity to raise these claims in his state proceeding. Indeed, he made some of the same due process arguments before the FSC.

Chestnut nonetheless argues that *Younger* abstention should not apply here because the district court had original jurisdiction over the matter under 28 U.S.C. § 1343. This is incorrect. *Younger* and its progeny are only implicated after the district court has concluded it has jurisdiction. It is the nature of the state proceedings, not the district court's jurisdiction, that a court analyzes when determining if it should abstain under *Younger*. *See id.* at 431–32. As such, the statute that granted the district court jurisdiction of this case does not alter our *Younger* analysis.

Chestnut also argues that this case falls under the bad faith exception to *Younger*. Here, too, we disagree. A proceeding is initiated in bad faith if it is brought without a reasonable expectation of obtaining a valid conviction. *Redner v. Citrus County, Fla.*, 919 F.2d 646, 650 (11th Cir. 1990). The bad faith exception requires a substantial allegation that shows actual bad faith. *See Younger*, 401 U.S. at 48. Chestnut has provided us with no evidence that the disciplinary proceedings against him were brought without a reasonable expectation of obtaining a finding of guilt. Based on the record before us, the Florida Bar appeared to have ample evidence that Chestnut had engaged

in alleged misconduct before filing the complaint with the FSC. Therefore, the bad faith exception does not apply.

Chestnut's action meets the three requirements for *Younger* abstention: At the time of filing, (1) there was an ongoing state proceeding that (2) implicated an important state interest and (3) those proceedings provided adequate opportunity for Chestnut to be heard. Chestnut's arguments about jurisdiction and bad faith are unavailing. As such, we cannot say that the district court abused its discretion in abstaining from the case.

IV. Conclusion

For the foregoing reasons, the district court's order of dismissal based on *Younger* abstention is affirmed.

AFFIRMED.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (MAY 27, 2021)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CHRISTOPHER CHESTNUT,

Plaintiff-Appellant,

v.

CHARLES CANADY, Justice,
RICKY POLSTON, Justice, JORGE LABARGA,
Justice, C. ALAN LAWSON, Justice,
BARBARA LAGOA, Justice, ET AL.,

Defendants-Appellees.

No. 20-12000

District Court Docket No. 4:19-cv-00271-RH-MJF

Appeal from the United States District Court
for the Northern District of Florida

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: April 28, 2021

For the Court: DAVID J. SMITH, Clerk of Court

By: Djuanna H. Clark

ORDER OF DISMISSAL
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION
(APRIL 14, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CHRISTOPHER CHESTNUT,

Plaintiff,

v.

JOHN TOMASINO, ET AL.,

Defendants.

Case No. 4:19-cv-271-RH-MJF

Before: Robert L. HINKLE,
United States District Judge

The Florida Supreme Court disbarred the plaintiff Christopher Chestnut for alleged misconduct. He asserts the action was unconstitutional both because he was not afforded procedural due process and because a white attorney would not have been disbarred in the same circumstances. Mr. Chestnut is African American.

Mr. Chestnut raised in the Florida Supreme Court the same due-process and racial-discrimination argu-

ments he asserts here. His attempt to relitigate the issues here runs headlong into the *Rooker-Feldman* doctrine.

The United States Supreme Court has put it this way: federal district courts cannot hear "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). *See also Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

Mr. Chestnut is a state-court loser. The Florida Supreme Court ruled against him. As the Eleventh Circuit has recognized time and again, this was a judicial decision fully subject to the *Rooker-Feldman* doctrine. *See, e.g.*, *Doe v. Florida Bar*, 630 F.3d 1336, 1341 (11th Cir. 2011) (affirming the district court's dismissal of as-applied challenges to the Florida Bar's certification rules); *Berman v. Fla. Bd. of Bar Exam'rs*, 794 F.2d 1529 (11th Cir. 1986) (applying *Feldman* to affirm the district court's dismissal of an action challenging denial of admission to the Florida Bar); *Uberoi v. Labarga*, 769 F. App'x 692 (11th Cir. 2019) (same). And Mr. Chestnut is complaining of an injury —his continuing exclusion from the Florida Bar— caused by the state-court judgment.

This claim is dead center of the *Rooker-Feldman* doctrine.

In reaching this conclusion, I have not overlooked the chronology. The Florida Supreme Court entered the order disbarring Mr. Chestnut on May 3, 2019.

Mr. Chestnut moved for rehearing on May 20, 2019. Mr. Chestnut filed the original complaint in this federal action on June 14, 2019, plainly "inviting district court review and rejection" of the Florida Supreme Court's order disbarring him. *Exxon Mobil*, 544 U.S. at 284. The Florida Supreme Court made the disbarment permanent by order entered on August 22, 2019. Mr. Chestnut submitted the second amended complaint in this federal action—the pleading now before the court—on December 31, 2019.

The Eleventh Circuit has said that *Rooker-Feldman* applies only when the federal action is filed after state-court proceedings have ended. *See Nicholson v. Shafe*, 558 F.3d 1266, 1275 (11th Cir. 2009). If, by this, the court means *Rooker-Feldman* does not apply when a federal proceeding is initiated after the state court of last resort has entered judgment but while a motion for rehearing is pending, one might well question the result. One might well conclude that a party who comes to federal court only after suffering an adverse ruling in the state court of last resort is a "state-court loser[ ] complaining of injuries caused by [the] state-court judgment[ ]." *Exxon Mobil*, 544 U.S. at 284. *Nicholson* involved a pending appeal to a court that had not ruled at all on the matter at issue; *Nicholson* did not involve a motion for rehearing in a court that had already ruled.

In any event, if *Rooker-Feldman* is deemed inapplicable here on the ground that the Florida Supreme Court proceeding was still pending when this federal action was filed, the result would not change. In *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982), the Supreme Court held that a federal action seeking injunctive

relief from ongoing bar disciplinary proceedings was barred by the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971). Actions challenging bar disciplinary proceedings that have been dismissed in this court on the ground that *Middlesex* is controlling, with the dismissals affirmed by the Eleventh Circuit, include *Stoddard v. Fla. Bd. of Bar Exam'rs*, 509 F. Supp. 2d 1117, 1118-19 (N.D. Fla. 2006), *aff'd*, 229 F. App'x 911, 912 (11th Cir. 2007), and *Lawrence v. Schwiep*, No. 4:05cv14-RH, 2005 WL 2491564 (N.D. Fla. Oct. 7, 2005), *aff'd sub nom. Lawrence v. Rigsby*, 196 F. App'x 858, 858-59 (11th Cir. 2006).

Whether viewed as a challenge to a state-court proceeding that was ongoing when this federal action was filed—a challenge barred by *Younger*—or as a challenge to a state-court proceeding that had ended when this federal action was filed—a challenge barred by *Rooker-Feldman*—the result is the same. This action must be dismissed.

For these reasons,

IT IS ORDERED:

1. The motion to dismiss, ECF No. 16, is granted.

2. The clerk must enter judgment stating, "This case was resolved on a motion to dismiss. The plaintiff Christopher Chestnut's claims against the defendants, the Clerk of Court and Justices of the Florida Supreme Court in their official capacities, are dismissed."

3. The clerk must close the file.

SO ORDERED on April 14, 2020.

/s/ Robert L. Hinkle
United States District Judge

JUDGMENT OF THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION (APRIL 15, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CHRISTOPHER CHESTNUT

v.

JOHN TOMASINO, ET AL

Case No. 4:19-cv-00271-RH-MJF

This case was resolved on a motion to dismiss. The plaintiff Christopher Chestnut's claims against the defendants, the Clerk of Court and Justices of the Florida Supreme Court in their official capacities, are dismissed.

Jessica J. Lyublanovits
Clerk of Court

/s/ Betsy Breeden
Deputy Clerk

Date: April 15, 2020

SECOND AMENDED COMPLAINT FOR PROSPECTIVE INJUNCTIVE AND DECLARATORY RELIEF AGAINST STATE OFFICIALS IN THEIR OFFICIAL CAPACITIES (DECEMBER 31, 2019)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CHRISTOPHER CHESTNUT,

Plaintiff,

v.

JUSTICE CHARLES CANADY, JUSTICE RICKY POLSTON, JUSTICE JORGE LABARGA, JUSTICE C. ALAN LAWSON, JUSTICE BARBARA LAGOA, JUSTICE ROBERT LUCK, and JUSTICE CARLOS MUNIZ; in Their Official Capacities as Justices for the Florida Supreme Court of Florida; JOHN A. TOMASINO, in His Official Capacity as Clerk for the Supreme Court of Florida,

Defendants.

No. 4-19-CV-271-RH-MJF

Complaint for Prospective Injunctive and Declaratory Relief Against State Officials in Their Official Capacities[1]

[1] There is an exception to the law that permits a private plaintiff to bring a suit against a state office for prospective injunctive

COMES NOW, Plaintiff, CHRISTOPHER CHESTNUT, *pro se*, and hereby files this claim for declaratory and prospective injunctive relief pursuant to 28 U.S.C. § 1343(a)(3), seeking immediate and emergency declaratory and injunctive relief to nullify and enjoin the enforcement of orders to disbar and permanently disbar Plaintiff issued by the Supreme Court of Florida in violation of due process, and offers in support thereof as follows:

I. Introduction

A. Nature of the Case

1. This is a lawsuit for equitable relief pursuant to Section 1 of the Civil Rights Acts as codified by 42 U. S. C. § 1983 against the individual Justices of the Supreme Court of Florida in their official capacities and the Clerk of the Supreme Court of Florida in his official capacity.[2] The Justices acted individually and collectively as state actors to deprive Plaintiff Chestnut

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relief. *See generally, Ex Parte Young*, 209 I.S. 123 (1908); *see also Stevens v. Gay*, 864 F.2d 113,115 (11th Cir. 1989) ("The Eleventh Amendment does not prevent a plaintiff from suing state officials in their official capacity for prospective injunctive relief and costs associated with that relief."). However, the Eleventh Amendment bar against suing the state itself "applies regardless of whether the plaintiff seeks money damages or prospective injunctive relief." *Stevens*, 864 F.2d at 115; *Ramey v. Georgia*, Lexis 2010 U.S. Lexis 20097 n.1 (M.D. Ga. 2010).

[2] *See Kentucky v. Graham*, 473 U.S. 159, 167 n. 14 (1985) (Plaintiff may seek injunctive relief under § 1983 against a state official in his or her official capacity, because official capacity actions for perspective relief are not treated as sanctions against a state.).

of his Fifth and Fourteenth Amendment Constitutional rights. Specifically, the Justices entered an order to disbar and subsequently permanently disbar Plaintiff Chestnut without a requisite hearing, order to show cause or opportunity to be heard otherwise in deprivation of his due process rights. Plaintiff Chestnut seeks an immediate order for prospective declaratory and injunctive relief by this Federal District Court declaring the illegal orders to disbar and permanently disbar are void and to enjoin the Supreme Court of Florida from imposing the sanctions as ordered on May 3, 2019 and August 22, 2019 respectively.[3]

2. Plaintiff acknowledges that the Federal District Court does not have jurisdiction for substantive appellate review of a final state court order from the highest state court; and, further acknowledges the considerable precedent of Federal District Court abstention from intervening in state court orders for disbarment. However, the case *sub judice* is highly distinguishable in fact and law from the precedent. This complaint invokes Federal District Court original jurisdiction under 28 U.S.C. § 1343, which codifies immediate Federal District Court jurisdiction and intervention when a member of a protected class has been deprived of liberty or property by state action in violation of due process and equal protection law.[4]

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[3] *See Gresham Park v. Howell*, 652 F.2d 1227, 123 (5th Cir. 1981) ("where a party asks a federal court to declare a state court judgment null and void, we should consider this as praying for any injunctive enjoining its enforcement.).

[4] The legislative intent of the Civil Rights Act of 1871 was to provide for Federal Court intervention for blacks who were being deprived of liberty and property by the state courts in the southern states, including Florida. *See* Zeigler, Donald H., *A*

The Supreme Court of Florida orders disbarring Plaintiff (a black male attorney), *sub judice*, involve selective enforcement of bar disciplinary sanctions, promulgating unequal application and misapplication of law/rules, the overt obstruction of discovery and evidentiary safe guards, and repeated due process violations by state court judges suborning unfair tribunals all for the specific purpose of discriminating against him. The orders further impose the harshest sanctions (permanent disbarment) for alleged misconduct where similarly situated white attorneys engaging in the same conduct were not prosecuted or not sanctioned at all; and, subjugate Plaintiff to permanent disbarment upon deprivation of an evidentiary hearing to show cause why disbarment should not be the imposed sanction, when similarly situated white attorneys where at a minimum afforded a show cause order prior to disbarment. Moreover, consistent with Fed. R. Civ. P. § 11(b) Plaintiff seeks the extension and application of the holding in *Rhoades v. Penfold*, 694 F.2d 1043 (5th Cir. 1983) to this case. In *Rhoades*, where the 5th Circuit affirmed Federal District Court declaratory and injunctive relief vacating a final state court order terminating a mother's parental rights after the appellate court found her due process and equal protection rights were violated in the state court termination process.[5]

Reassessment of the Younger Doctrine in Light of the Legislative History of Reconstruction, 87 Duke LJ 987, 1039 (1983).

[5] As a decision of the Old Fifth Circuit, *Rhoades* remains persuasive in the Eleventh Circuit. *See Bonner v. City of Pritchard*, 661 F.2d 1206, 1207 (11th Circ. 1981) (en banc).

A. 1. 42 U.S.C. § 1983 Due Process Violation & Prospective Injunction Defined

3. The Fourteenth Amendment secures a right in an individual citizen to be free from state deprivations of property without due process of law.[6]

4. Section 1 of the Civil Rights Act as codified by 42 U.S.C. § 1983 provides a private right of action for equitable relief against persons acting under the color of state law, statute, ordinance, regulation, or custom or who deprived a citizen of any rights, privileges, or immunities secured by the U.S. Constitution and federal laws.[7]

5. To prevail in a § 1983 claim, a plaintiff must prove: (1) a deprivation of a right secured by the Constitution and the laws of the United States; (2) that the deprivation was under color of state of law constituting state action.[8]

6. A state may act through different agencies including its judiciary.[9] Any act taken by a state court judge or justice acting in his or her official capacity that abridges the rights guaranteed by the Fourteenth Amendment will be considered state action.[10]

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[6] *United States v. Stanley*, 109 U.S. 3, 18 (1883).

[7] *See, Parratt v. Taylor*, 451 U.S. 527, 534-5 (1981) (Negligent deprivation of civil rights is actional under § 1983.).

[8] *Id.*

[9] *Flagg Bros, Inc. v. Brooks*, 473 U.S. 149,156 (1978).

[10] *Id.*

7. When a state court justice acting individually or collectively engages in state action to take the property or liberty interest of a plaintiff without the due process of law, that plaintiff may seek injunctive relief under § 1983 against the state official(s) in his or her official capacities, under prospective injunctive relief.[11]

8. Furthermore, neither the defendant state actors nor the state agency judiciary enjoys Eleventh Amendment immunity in a claim for injunctive relief for reinstatement of employment, pursuant to the *Ex parte Young* exception.[12]

A. 2. § 1983 Constitutional Rights Deprived by State Action

9. Plaintiff Chestnut had a right under the Fifth and Fourteenth Amendment to due process when the state agency aimed to deprive him of his property and liberty interest in employment via his license to practice law in Florida.[13] A license to practice law is

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[11] *See Kentucky v. Graham*, 473-U.S. 149, 167 n. 14 (1985).

[12] *See Lane v. Cent. Ala. Cmnty College*, 772 F.3d 1349, 1350 (11th Cir. Ala., 2014); *see also Ex parte Young*, 2019, U.S. 123, 128 (1908) (A suite against individuals for the purpose of preventing them as officers of a state from enforcing unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the state within the meaning of the Eleventh Amendment.).

[13] A state cannot exclude a person from the practice of law for from any other occupation in a manner or for reasons that contravene Due Process or Equal Protection Clause of the Fourteenth Amendment. *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232,237 (1957).

considered real property.[14] The Supreme Court of Florida systemically violated Plaintiff Chestnut's due process rights when it entered orders to disbar and permanently disbar him without affording him an opportunity to be heard on the issue of disbarment or permanent disbarment.[15] Furthermore, the Supreme Court of Florida order was required to declare a "valid" reason for issuing the harshest sanction of disbarment and permanent disbarment and none was stated.[16] The orders signed by the individual Justices of the Supreme Court of Florida caused Plaintiff Chestnut to suffer an actual deprivation of this Fifth and Fourteenth Amendment constitutional rights.[17]

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[14] *Bradley v. Fisher*, 80 U.S. 335, 355 (1871) ("to deprive one of an office of this character would often be to decree poverty to himself and destitution to his family.").

[15] *Id.* at 354.

[16] *Bradley* at 354; *see also Ex parte Garland*, 4 Wall. 3333,379 (1867) (We need not enter into a discussion whether the practice of law is a "right" or "privilege". Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly, the practice of law is not a matter of the State's grace.").

[17] *See Pulliam v. Allen*, 466 U.S. 522, 538 (1984) (An injunctive action against a judge is not prohibited when the suit aims at restraining the judge from depriving persons of their federal rights.).

B. Jurisdiction and Venue

The Federal Court has Original Jurisdiction.

10. The lawsuit is a private right of action, pursuant 42 U.S.C. § 1983. The Federal District Court has original jurisdiction over this claim, pursuant to 28 U.S.C. § 1343(3) & (4).[18]

11. Venue is proper in the Northern District of Florida because the alleged primary acts and events taken by the Supreme Court of Florida occurred in Tallahassee, Leon County, Florida; Plaintiff, Chestnut has a residence in Gainesville, Alachua County, Florida; and, the Supreme Court of Florida and its Clerk sit in Tallahassee, Leon County, Florida, all of which are within the jurisdiction of the United States District Court in and for the Northern District of Florida.[19]

12. Plaintiff has no pending state claims and no adequate remedies under Florida law; thus, the *Younger* abstention[20] is not permitted to preclude Federal District Court intervention.[21]

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[18] *See also* Civil Rights Act of 1871, ch. 22 § 1, 17 Stat. 13, codified at 42 U.S.C. § 1983.

[19] 28 U.S.C. § 1391(b).

[20] *Younger v. Harris*, 401 U.S. 37 (1971) (holding that federal courts are required to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings.). *See also Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992) ("Absent any pending proceeding in state tribunals, therefore, application by the lower courts of *Younger* abstention was clearly erroneous.").

[21] *See, Rhoades v. Penfold*, 694 F.2d 1043,1047 (5th Cir. 1983).

13. Prior to filing this action Plaintiff Chestnut filed a motion for written opinion, clarification, and rehearing pursuant to Fla. App. P. § 9.330, for both orders to disbar, neither of which was heard at an initial hearing, notwithstanding the title "Motion for Rehearing".[22] *See attached Exhibit. B, Respondent Motion for Reconsideration.* The Supreme Court of Florida's remedial action is discretionary, and both motions were denied.[23]

14. Alternatively, because this lawsuit involves a black attorney complaining of deprivation of due process by state court actors under § 1983, the Federal District Court may immediately intervene notwithstanding the *Rooker-Feldman* Doctrine.

Rooker-Feldman Doctrine does not prohibit this Court from intervening, and this court should intervene.

15. The *Rooker-Feldman* Doctrine does not apply *sub judice*, and this court should intervene.[24]

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[22] *See* Art. 1, § 9, Fla. Const., all proceedings affecting life, liberty, or property must be conducted according to due process. *See also, Tibbets v. Olson*, 108 So. 679 (1926) (holding the essence of due process is that fair notice and a reasonable opportunity to be heard must be giving to interested parties before judgment is rendered.).

[23] *Vill of DePue v. Exxon Mobil Corp.*, 537 F.3d 775, 782 (11th Cir. 2008) ("The mere fact that a case could be heard in state court is insufficient to justify the *Younger* abstention.").

[24] *See Patsy v. Board of Regents*, 457 U.S. 496 (1982) (The Court relied upon a careful review by the Court of the Congressional debates of the Civil Rights Act of 1871 as authority for the legislative intent of § 1983 and necessity of federal court intervention when dealing with blacks in the South, because

16. *Feldman* was published in 1983 when Writ of Certiorari review by the U. S. Supreme Court was mandatory[25] However, *The Supreme Court Selections Action of 1988* eliminated mandatory U.S. Supreme Court review of a final order from the highest court of a state and made Writ of Certiorari under 28 U.S.C. § 1257, discretionary.[26]

17. The U. S. Supreme Court rejects most Writs of Certiorari and typically only entertain writs that involve substantial impact on state or federal law. For instance, in 2017, the U.S. Supreme Court heard only 2.8% of Writs of Certiorari filed.[27]

18. Consequently, *Rooker Feldman* should not bar Plaintiff Chestnut's cause action, because the U.S. Supreme Court is no longer obligated to hear this Writ of Certiorari, as it was under *Feldman*, and there is a substantial likelihood that his Writ of Certiorari will not be heard by the U.S. Supreme Court,

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blacks were not receiving justice or equitable application of laws in enforcement or before the court post-reconstruction, absent federal court intervention.).

[25] *See Rooker v. Fid. Trust. Co.*, 44 S. Ct. 149, 150 (1923) (only the Supreme Court can entertain jurisdiction of a proceeding to reverse or modify a state court judgment.); *see also District of Columbia Court of Appeals v. Feldman*, 460 U. S. 462 (1983) (review of final orders from the highest court of a state in bar disciplinary proceedings is relegated to the United State Supreme Court only, pursuant to 28 U.S.C. § 1257.).

[26] The Supreme Court Selections Act of 1988 (Pub. L 100-352 Stat 662, enacted 6/27/88, codified at 28 U.S.C. § 1257).

[27] *Success Rate of a Petition for Writ of Certiorari to the Supreme Court.* The Supreme Court Press, www.supremecourtpress.com/chanceofsucess.html. 2018.

leaving no guaranteed opportunity for remedy to an unconstitutional taking in violation of due process.

This Court May Take into Consideration Rule 11 and The Reconstruction Congress' Legislative Intent When Considering Whether to Exercise Subject Matter Jurisdiction.

19. The debate and commentary by the Reconstruction Congress (1865-1871) in drafting and enacting the Civil Rights Act of 1871 codified by 42 U.S.C. § 1983, unequivocally solidifies the Congressional intent directing the Federal District Court's jurisdiction over § 1983 claims; including presumptive injunctive relief claims against official capacity state action against a protected class member violating due process.

20. Additionally, Plaintiff Chestnut relies on Rule 11(b), Fed. R. Civ. P.[28] as a basis for arguing that this Court take subject matter jurisdiction over his claim.

21. Rule 11(b) provides this Court express authority to reverse application of the existing *Rooker-Feldman* doctrine. *Rooker-Feldman* became obsolete in 1988 when U. S. Supreme Court review of § 1257 writs became discretionary. The doctrine has not been modified to cure the post 1988 procedural void, and thus it inflicts irreparable harm to a protected class member like Plaintiff Chestnut who will be robbed of an opportunity to be heard by a higher

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[28] Rule 11(b), Fed. R. Civ. P. provides the claims defenses and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying or reversing existing law or for establishing new law.

court on his due process claims concerning his disciplinary proceedings, where he has been deprived of due process and a fair and impartial tribunal culminating in permanent disbarment. The Reconstruction Congress' legislative intent in enacting Section 1 of the Civil Rights Act of 1871, later codified by 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3) & (4), along with the Fourteenth Amendment supports this Federal District Court's exercise of jurisdiction over the prospective injunctive relief claims, Equal Protection claims, and § 1983 claims, *sub judice.* Additionally, Rule 11(b) authorizes Plaintiff to seek this Federal District Court's jurisdiction to modify and / or reverse the application of the *Rooker-Feldman* Doctrine under these circumstances and to extend the application of the court's holding in *Rhoades* where a plaintiff has been denied due process.[29]

22. Specifically, Plaintiff alleges when the Justices to the highest state court in Florida, the Supreme Court of Florida, entered a final state court order revoking the law license from a black attorney without due process of law in violation of his Fifth and Fourteenth Amendment, that a black attorney (member of a protected class) has no guaranteed remedial action under § 1257, because the U.S. Supreme Court has discretionary review over Writs of Certiorari. Consequently, the only avenue for recourse of his federally guaranteed right is to seek intervention by the Federal District Court pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343 (3) & (4).

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[29] *See Rhoades v. Penfold*, 694 F.2d 1043 (5th Cir. 1983).

History of Discriminatory Deprivation of Constitutional Rights to Blacks & Non-Confederate Whites Requiring Federal Court Intervention Authority Conferred by Reconstruction Congress.

23. The primary reason for Civil Rights Act of 1871 and 42 U.S.C. § 1983 was to address inequity in the application and enforcement of law, and to cure the bias especially in the southern states as applied to formerly held slaves (blacks).

24. The U. S. Supreme Court acknowledges the legislative intent of 42 U.S.C. § 1983 in *Monroe v. Pape*, 365 U.S. 167, 180 (1961), stating:

> "It is abundantly clear that the one reason the legislation was passed was to afford a federal right in federal courts because by reason of prejudice, passion, neglect, intolerances or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies."[30]

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30 "The Civil Rights Bill is intended to secure these citizens against injustice that may be done them in the courts of the States within where they may reside." *See* Cong. Glove 39th Cong. 1st Ses.474-475, 604, 1758-59 (remarks of Sen. Trumbull):

> But why do we legislate upon this subject now? Simply because we fear and have reason to fear that the emancipated slaves would not have their rights in the court of the slave states . . .
>
> Here Justice of the Peace in South Carolina or Georgia, or a county court or a circuit court, that is called

25. After the Civil War, black persons were being deprived of liberty and property without due process of law and the deprivations occurred because judges in civil state court proceedings failed to afford the procedural fairness required by the U.S. Constitution.[31]

26. Despite the dissimilarities, the nature of the potential state court problem that the Reconstruction Congress sought to remedy has not changed in the past century. Although the state justice system has not in the last decade manifested the level of racism, hatred and bigotry that marked the post — Civil War era, there is no guarantee that the state systems will not again become the bastion of such ill will.[32]

27. Also, although there have been significant improvements in equal protection for the descendants of slaves in the former southern slave states, including Florida, there has not been enough in parity for black attorneys to rely solely on state courts to enforce and equally protect constitutional rights.

28. Plaintiff's experience *sub judice* of an inability to get due process, including but not limited to a fair and impartial tribunal, at the state court level underscores the need of intervention by the Federal

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upon to execute this law. They appoint their own marshal, their deputy marshal, or their constable, and he calls upon *the posse comitatus*. Neither the judge, nor the jury, nor the officer as we believe is willing to execute the law. *Id.* at 602-3. (emphasis added).

[31] Zeigler, Donald H., *A Reassessment of the Younger Doctrine in Light of the Legislative History of Reconstruction*, 87 Duke LJ 987, 1039 (1983).

[32] *Id.*

District Court pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343 (3) & (4) as anticipated by the Reconstruction Congress in enacting the civil rights law.

Discriminatory Patterns Strikingly Similar to Reconstruction Era Southern State Court Practices Warrant Federal District Intervention in the case *sub judice.*

29. Indicia of a resurgent chilling climate on racial intolerance and inclusion may be found in the following studies on bar disciplinary disparities in the California Bar Association, racial bias in the legal profession against blacks in legal writing, and bias against blacks in the state court systems of Florida. The disheartening findings are as follows:

a. The California Bar Association on 11/13/2019 released findings of a study on racial disparities in bar disciplinary actions from 1990-2018, for over 116,000 attorneys admitted between 1990 and 2009. The findings were that black lawyers were nearly 3 times mor likely to incur a sanction of suspension than a similarly situated white attorney colleague (3.2% black v. .9% for white) and nearly 4 times more likely to be disbarred than a similarly situated White colleague (3.9% black v. 1.0% for white).

b. A similar racial bias hostile to Blacks in legal writing was found in a 2014 study by April N. Reeves; her paper entitled: *Written in Black and White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills*, found that similarly situated white law partners reviewing the identical legal

writings with identical errors where the hypothetical author had the same name for the white and black supposed junior associate writer (Thomas Meyer), resulted in an average score of 3.2/5.0 for Blacks and 4.1/5.0 for whites, the only difference in the writing was the reviewing partner was advised of the race of the writer which caused disparity in the scoring.

c. *The Sarasota Harold-Tribune* on 12/12/16 published an article entitled, *Florida's Broken Sentencing System; Designed for Fairness, it Fails to Account for Prejudice.* This article was amongst a series of articles by this newspaper after an intense study on racial bias in the state courts of Florida, the authors, John Salman, et. al. found:

   i. "There is little oversight for judges in Florida, without checks to ensure equality, bias reigns";

   ii. "Judges say they are not racist but centuries of racial tension in America, lack of cultural understanding and negative stereotypes cloud their judgment."

   iii. Cornell Researchers in 2009 found racial bias from 133 judges presented with hypothetical cases, resulting in a majority of the cases discriminately favoring whites on sentencing with harsher sentencing on blacks for the same offense. Additionally, researchers found sentencing was harsher if the hypo-

thetical presented to the judge was primed with words tied to black culture.

iv. As of 2016, out of 900 county and circuit court judges in Florida, 62 were black, 28 were assigned to serious / felony crimes.

d. 32 out of 64 judicial appointments to Florida's five appellate courts were appointed between 2011-2018; not a single appointee was black.

e. Of the three Florida Supreme Court Justices appointed in 2019 by Gov. DeSantis, none were black, and there presently is not an black on the Supreme Court of Florida for the first time in nearly 40 years.

f. Blacks comprise approximately 16.9% (3.5 million) of the Florida population, yet less than 5% of The Florida Bar.[33]

30. Furthermore, Plaintiff, a black attorney in Florida, has been unable to receive a fair and impartial tribunal before the Florida Supreme Court or its appointed Trial Court Referees, in the cases *sub judice*. Indicia of his unfair treatment delineated as follows:

a. All of the Circuit Court Judges appointed to referee Plaintiff's Florida Bar Disciplinary proceedings hailed from the Fifth Judicial Circuit (no nexus to the Fifth Circuit for Plaintiff). Of the four Judges, two were disqualified for improper conduct in violation

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[33] U.S. Census Bureau, https:www.census.gov/guickfacts/fact/table/FL/RHI225217#RHI225217.

of Judicial Canons and Florida Rules of Judicial Administration. *See attached Exhibit C & D, Order of Disqualification & Writ of Prohibition.*

b. The Supreme Court of Florida knowingly allowed and relied upon the Report of Referee by Judge Jonathan Ohlman[34] in *SC17-307* to disbar Plaintiff Chestnut, yet the Report of Referee was entered after Judge Ohlman had been technically disqualified pursuant to Fla. R. Jud. Admin. § 2.330 and lost jurisdiction. Thus, the Report of Referee in *SC17-307* is null and void.[35] Moreover, Plaintiff filed a Writ of Prohibition to the Supreme Court of Florida regarding the Judge's continued activity on the file after his disqualification and the Supreme Court of Florida refused to rule on or hear the writ deferring it to be heard on appeal. *Cf. Sutton v. State*, 975 So.2d 1073, 1077 (Fla. 2008) (holding, a formal writ of prohibition in connection with an issue of judicial recusal is immediately reviewable by certiorari, not by appeal.)[36] (emphasis added). However, the Supreme Court of Florida never heard the Writ of Prohibition in *SC17-307* because it dismissed Plaintiff's

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[34] Hon. Jonathan Ohlman, State of Florida, Fifth Judicial Circuit Court, In and For Marion County.

[35] *See, ML. Builders, Inc. v Reserve Developers, LLP*, 769 So. 2d 1 079, 1082 (Fla. 4th DCA 2000) (A void judgment is a nullity and may be stricken at any time.).

[36] Fla. R. App. P. § 9.030

appeal as untimely absent the prerequisite Order to Show Cause. Plaintiff's subsequent Motion for Reconsideration raising the due process violation of dismissing his appeal absent an Order to Show Cause or a Ten-day Notice, was summarily denied.[37]

c. Additionally, in *SC17-307*, the trial court stopped the trial/ final hearing on day two of four, before Plaintiff could put on a meaningful case-in-chief, call witnesses, or rest his case-in-chief. This prejudice was compounded by pre-existing rulings by Judge Ohlman depriving Plaintiff of discovery subpoenas for out of state fact and complaining witnesses who could not be compelled to trial. The trial was never resumed prior to Judge Ohlman entering a Report of Referee finding Plaintiff guilty and recommending sanction.

d. In *SC16-797* due process violations occurred when the referee, Judge Curtis Neal[38] entered a post-trial order sanctioning Plaintiff Chestnut by excluding nearly all of his trial evidence and testimony without affording him an evidentiary hearing. This order was in response to a pre-trial motion by The Florida Bar alleging discovery violations by Plaintiff. Excluding a party's evidence is amongst the harshest of sanctions for alleged discovery violations and requires a court to

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[37] Fla. R. App. P. § 9.410

[38] Hon. Curtis J. Neal, State of Florida, Fifth Judicial Circuit, In and For Hernando County.

conduct a *Kozel*[39] evidentiary hearing and make evidentiary findings reasonably supporting the sanction. Judge Neal failed to conduct a *Kozel* hearing prior to excluding Plaintiff's evidence, a violation of due process of law. Excluding Plaintiffs evidence post-trial allowed for the factual findings of guilt based upon The Florida Bar's evidence, a distorted one-sided record. Judge Neal was later disqualified as referee in *SCJ 7-307* for summarily granting prejudicial motions filed by The Florida Bar *ex parte*[40]. The *ex-parte* orders entered without hearing from Plaintiff were prejudicial to Plaintiff.

e. In *SCI6-797*, Plaintiff Chestnut was denied his 14th Amendment right to equal protection under law, when he was treated differently and less favorably than similarly situated

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[39] *See Kozel v. Ostendorf*, 629 So.2d 817,818 (Fla. 1993).

[40] Florida Code of Judicial Conduct—provides in pertinent part:

> "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider the other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding . . . " *See* Florida Code Jud. Conduct, Canon 3B(7), formerly Canon 3A(4); *see also Rose v. State*, 601 So.2d 1181, 1183 (Fla. 1992) ("Nothing is more dangerous and destructive of the impartiality of the judiciary than a one-sided communication between a judge and a single litigant.").

individuals.[41] Plaintiff was found guilty of Florida Bar Rule violations for allegedly seeking approval of a 40% contingency fee contract without presenting the client to the court for prior court approval of the fee contract.[42]

i. First, there were two white attorneys (Kim Yozgat and Evan Small) who worked on the *Baker*[43] case, worked on the drafting and client signing of the disputed 40% fee contract, actually appeared at the fee approval hearing without the client in the absence of Plaintiff Chestnut, and then both sued Plaintiff Chestnut and settled for employee bonuses resulting from the subject 40% attorney fee, yet neither was ever prosecuted or sanctioned by The Florida Bar, only Plaintiff Chestnut, the black attorney.

ii. Second, a similarly situated white attorney failed to present his client for a hearing to approve a 40% contingency attorney fee after settling a wrongful death case, and not only was he not prosecuted or sanctioned by The Florida Bar (as opposed to Plaintiff Chestnut),

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41 *See Campbell v. Rainbow City, Ala.*, 434 F. 3d. 1306,1314 (11th Cir. 2006); *see also Griffin Idus., Inc. v. Irvin*, 496 F.3d 1189 (11th Cir. 2007).

42 *See* Rule 4-1.5, Rules Regulating The Florida Bar.

43 *Baker v. Chestnut*, 2013-CA-3768, tried in the Eighth Judicial Circuit Court, In and For Alachua County, Florida.

but the 2d DCA found that a 40% contingency fee contract could be approved without a fee approval hearing. *See Mahany v. Wright's Healthcare & Rehab. Ctr.*, 194 So.3d 399, 402 (Fla. 2d DCA 2016). Thus, the very conduct, in Plaintiff Chestnut's instance was considered misconduct, and relied upon by the Supreme Court of Florida under *SC16-797* to disbar Plaintiff Chestnut in 2019, yet a similarly situated white attorney engaging in the same conduct, in 2016 was determined to be allowable and he was never prosecuted or sanctioned by The Florida Bar or Supreme Court of Florida.

f. In *SC18-1614* the Report of Referee by Judge James Baxley[44] recommended, and the Supreme Court of Florida granted a permanent disbarment of Plaintiff Chestnut, again with no Order to Show Cause or evidentiary hearing. However, most notable is the continued pattern depriving Plaintiff Chestnut of a fair and impartial tribunal, throughout discovery and trial the Referee inhibited or prohibited Plaintiff Chestnut's ability for discovery, specifically obstructing Plaintiff's discovery to prove affirmative defenses like Fraud against The Florida Bar and Grievance Committee members, after complaining witnesses testified to submitting

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44 Hon. James R. Baxley, Circuit Court Judge, State of Florida Fifth Judicial Circuit Court, In and For Lake County.

a complaint that did not mirror the charges from the Grievance Committee. At trial the Referee admitted as follows:

> MR. CHESTNUT: —so I understand the Court is constructively striking my affirmative defense of fraud. Is that correct?
>
> THE COURT: Well, I would—I would probably say yes, sir.
>
> MR. CHESTNUT: Okay. So just so I'm clear, you're striking my affirmative defense.
>
> THE COURT: Yes. I don't see how that comes into play, whether you make ethical violations or not.
>
> MR. CHESTNUT: All right.
>
> THE COURT: Okay?
>
> MR. CHESTNUT: Your Honor, again, just for the record, I renew on separate basis a motion for mistrial, Your Honor—

See Trial Transcript, The Florida Bar v. Christopher Chestnut, SC18-1614, 4/2/2019, pg. 223, lns. 16-25.

Judge Baxley also unfairly inhibited Plaintiff Chestnut's impeachment of witnesses on prior inconsistent statements and veracity; yet entered a guilty finding and recommended permanent disbarment for alleged trial misconduct.

g. Overall, The Florida Bar and Supreme Court of Florida habitually denied Plaintiff due process and equal protection in erroneously

and inequitably prosecuting and sanctioning Plaintiff for alleged misconduct occurring in states other than Florida. Rule 3-4.6 (b)(2), Rules Regulating The Florida Bar, Choice of Law provision allows for The Florida Bar sanction of an attorney licensed in Florida for out of state misconduct, if that attorney has been previously found guilty of lawyer misconduct by the foreign jurisdiction. If there has been no finding of guilt by the foreign jurisdiction, The Florida Bar may prosecute the attorney for the alleged misconduct occurring out of state, but must apply the foreign jurisdiction's law / Professional rules and regulations in determining guilt of the attorney before sanction.[45] Plaintiff was disbarred upon findings of guilt in foreign jurisdictions where there was neither finding of guilt nor sanction of Plaintiff for alleged lawyer misconduct in that foreign jurisdiction. Yet Plaintiff was erroneously prosecuted under Rules Regulating the Florida Bar, and sanctioned under Rules Regulating the Florida Bar, with no application of the foreign jurisdictions law as required by Rules Regulating the Florida Bar. Not only did The Florida Bar violate its own rules in prosecuting Plaintiff Chestnut under Rules Regulating the Florida Bar, but no similarly situated white attorney disbarred in 2019 involving out of state misconduct, was subject to the sanction of disbarment in the absence of a foreign

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45 *Id.*

tribunal finding that lawyer guilty of a crime or rule violation in that foreign jurisdiction. *See* attached, *Exhibit E, 2019 Chart on Florida Bar Disbarments & Revocations. Cf., SC 19-1373, The Florida Bar v. Scott Maddox*, where Mr. Maddox (a white male attorney) plead guilty to 3 federal counts involving public corruption and received a sanction of 30 days from The Florida Bar; yet, Plaintiff (a black male) has no criminal convictions and was disbarred then permanently disbarred on rule violations such as: failure to communicate, lack of diligence, failure to provide a settlement statement to a vendor, etc.

h. Additionally, Plaintiff Chestnut was habitually prosecuted and sanctioned for alleged conduct, that even if proven to be true, would have been committed or omitted by other attorneys in the law firm with direct supervision over the respective file.[46] Yet, neither the lawyers directly assigned to the file, nor the direct supervisor (Managing

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[46] Rule 4-5.1(c), Rules Regulating The Florida Bar:

> A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
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> 1. The lawyer orders specific conduct or, with knowledge thereof, ratifies the conduct involved; or
>
> 2. The lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated by fails to take reasonable remedial action.

Attorney) of the assigned attorney were prosecuted or sanctioned in any of these cases; while Plaintiff Chestnut was disbarred and permanently disbarred in contravention Rule 4-1.5(c), Rules Regulating The Florida Bar. Similarly situated white lawyers who mass advertise and have multiple offices have not been disbarred for allegations of misconduct committed by subordinate attorneys assigned directly to the aggrieved claimant, with no direct supervisory authority over the individual assigned attorney. Furthermore, similarly situated white attorneys who were disbarred in 2019, were disbarred for alleged misconduct committed by other attorneys not under the sanctioned attorney's direct supervision, in contrast to Plaintiff's disbarment.

i. Claims brought under § 1983 are determined by federal law.[47] The purpose of § 1983 is to: (1) to override certain kinds of state laws that were inconsistent with state law; (2) to provide a federal remedy where state law was inadequate; and, (3) to provide a federal remedy where the state remedy was available in theory but not in practices.[48]

31. Plaintiff has litigated and raised the issues of constitutionality, deprivation of due process and liberty, and equal protection challenges at the state court level in the highest court of the state. The

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[47] *See McCeese v. Board of Education*, 373 U.S. 668, 674 (1963).

[48] *Monroe v. Pape*, 365 U.S. 167, 173-74 (1961) (emphasis added).

alleged state action involves serious constitutional question and poses immediate and irreparable harm to Plaintiff, thus the Federal District Court should intervene and enjoin the disbarment orders.[49]

32. Plaintiff seeks intervention by the Federal District Court because he was repeatedly denied due process rights including but not exclusively, inability to receive a fair and impartial tribunal, and equal protection under the law, before the Supreme Court of Florida.[50]

33. Importantly, Plaintiff appreciates the well settled law that the Federal District Court does not have jurisdiction for substantive appellate review of a final state court judgment from the highest state court; and that is not the gravamen of Plaintiff's request of this Court. Plaintiff is seeking to enjoin the enforcement of the final state court judgment, for due process and equal protection violations, violations that do afford this court jurisdiction for declaratory and injunctive relief.[51]

34. Equally, Plaintiff is not seeking a collateral attack on the final state court judgments, and because this lawsuit is an action for prospective declaratory

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[49] *See Gay Students Organization a/University a/New Hampshire v. Bonner,* 367 F. Supp. 1088 (DC NH 1974).

[50] *See Gibson v Benyhill,* 411 U.S. 564 (1973) (Plaintiff Optometrists sought a prospective injunction to enjoin proceedings against them pursuant to a § 1983 claim against the Alabama Board of Optometry that they could not get a fair and impartial hearing.).

[51] *See, Rhoades v. Penfold,* 694 F.2d 1043 (1983).

and injunctive relief, *res judicata* does not apply as a defense to subject matter jurisdiction.[52]

C. Parties to this Action

35. Plaintiff Chestnut is a 39 year-old African American Male, admitted by The Florida Bar to practice law in 2006. He is a graduate of University of Florida, College of Law and Florida State University. He was a Community Service Scholar and Student Government Senate President at Florida State University. He served as the first National Chair of the National Black Law Students Association at University of Florida College of Law in 2004-2005. Plaintiff Chestnut opened The Chestnut Firm, LLC in June 2006 in Gainesville, Florida focusing primarily on Plaintiff Personal Injury, Criminal Defense, and Wrongful Death Cases. Plaintiff Chestnut was one of very few African American Personal Injury Attorneys that engaged in mass media marketing in multiple jurisdictions. In 2014, Plaintiff Chestnut was co-trial counsel for one of the largest single event wrongful death cases in Florida History.[53] By 2015 The Chestnut Firm, LLC had grown into a multi-jurisdictional law firm with offices in Atlanta, Jacksonville, Gainesville, and Miami; over 40 staff members, approximately 8 staff attorneys, and more than 450 cases under active management. Plaintiff's law firm would annually give away hundreds of turkeys at Thanksgiving in the community, hundreds of gallons of gas at Christmas, and provide scholarships for post-secondary education.

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[52] *Id.*

[53] *Cynthia Robinson et.al. v. R.J Reynolds*, $17 million compensatory, $23 billion punitive damages.

Plaintiff Chestnut is progeny to a fifth-generation family mortuary serving Gainesville, FL for over 100 years. His Mother was the first black female Mayor of Gainesville, Florida and the first black to be elected to the Florida Legislature from Gainesville, Florida since Reconstruction. His mother, father and brother have each served multiple terms on the Alachua County Commission, with over 60 years of combined career of service in elected office ranging from school board to the Florida State Legislature. Plaintiff is also childhood friends with Mr. Andrew Gillum and was a key campaign advisor for Mr. Gillum's (Democrat) 2018 candidacy for Governor of Florida, an election won by now Gov. DeSantis (Republican).

36. The Florida Supreme Court is comprised of seven Justices appointed by the Gov. of Florida. Three of the sitting Justices were recently appointed by Gov. DeSantis in 2019. The remaining four Justices were appointed by Republican Governors. The Florida Supreme Court oversees The Florida Bar. The Florida Bar oversees all disciplinary actions against attorneys licensed in Florida from investigation through the trial phase, where typically an appointed circuit judge sitting as referee, administers the trial process and issues a Report of Referee with Findings of Guilt and Recommendation for Sanction to the Florida Supreme Court for declaration of final sanction and disposition of disciplinary action against a Florida attorney.

II. Count I-42 U.S.C. § 1983 Deprivation of Due Process & Prospective and Injunctive Relief

A. Allegations of Facts

37. Plaintiff incorporates hereto paragraphs 1-36.

38. At all times material hereto, Plaintiff Chestnut had a property and liberty interest in his license to practice law issued and by the Supreme Court of Florida. Plaintiff Chestnut was licensed to practice law only in the State of Florida.

39. Plaintiff Chestnut is a member of a protected class under§ 1983 as a black male.

40. Prior to May 3, 2019, Plaintiff Chestnut was a member of The Florida Bar in good standing, and was issued a license to practice law upon admission to The Florida Bar in 2006.

41. Plaintiff Chestnut had a prior disciplinary sanction of Public Reprimand issued in *SC14-1870.*[54]

42. Prior to May 3, 2019, Plaintiff Chestnut had received no interim sanction or discipline by The Florida Bar or any bar association for any other state.

43. On May 3, 2019 an order disbarring Plaintiff Chestnut was entered; no order to show cause as to why the court should not disbar him was issued or hearing granted on this disbarment prior to entry of the order.

44. On August 22, 2019, The Florida Supreme Court entered an order permanently disbarring Plaintiff

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[54] Consent Judgment of Guilt to rule violations: 4-1.3 (Diligence), 4-1.4(a) (Informing Clients of Status Representation); 4-1.4(b) (Duty to Explain Matters to Client).

Chestnut; no order to show cause was issued or hearing granted on this disbarment prior to the entry of the order.

II. A. i. Procedural History of SC16-797 & SC17-307 & SC18-1614

45. The order to Disbar Plaintiff Chestnut relied upon the Findings of Fact and Recommendation for Sanction in *SC16-797, SC16-1480* and *SC17-307* which all were consolidated into a common case number of SC16-797 on or about April 29, 2019.

46. Plaintiff Chestnut filed a Notice of Intent to Seek Review of Report of Referee in SC16-797 on or about June 17, 2017.

47. In *SC16-797*, Plaintiff Chestnut filed an appellate Answer Brief (10.17.17) and Reply Brief were filed (11.23.17), oral hearing was denied, and no written opinion was ever filed by the Supreme Court of Florida.

48. In *SC 17-307*, Plaintiff Chestnut filed a Cross Notice of Intent to Seek Review of Report of Referee (6.14.18), The Florida Bar filed an Initial Brief (6.21.18), on (7.16.18) Plaintiff filed a Motion for Extension of Time to File Cross Initial/ Answer Brief on the Merits (7.25.18), the Supreme Court of Florida denied that motion for extension on (7.25.18), and the Florida Supreme Court denied Plaintiffs motion to Supplement the Record on (7.27.19).

49. The Supreme Court of Florida denied Plaintiff's Writ of Prohibition (filed 4.3.18) concerning the Referee's disqualifying conduct four months after its filing on August 3, 2018.

50. On August 20, 2018, The Clerk of Court for the Supreme Court of Florida dismissed Plaintiffs Cross-Notice of Intent to Seek Review of the Referee's Report, effectively dismissing his appeal without a hearing.[55] Plaintiff filed a Motion for Reinstatement (10.8.19), the Supreme Court denied Plaintiff's Motion for Reinstatement.

II. A. ii. Social Political and Racial Makeup of the Supreme Court of Florida.

51. Justices Muniz, Lagoa, and Luck were appointed by Gov. DeSantis (Republican) in 2019. The remaining four Justices were appointed by previous Republican Governors). Presently, there are no sitting Justices appointed by or under a Governor elected as a Democrat.

52. There are presently no black Justices on the Supreme Court of Florida for the first time in nearly four decades.

II. A. iii. The Florida Supreme Court's Order to Disbar Plaintiff Chestnut is Unconstitutional and Invidiously Discriminatory.

53. On or about May 3, 2019, Justices Charles Canady, Justice Ricky Polston, Justice Jorge Labarga, Justice C. Alan Lawson, Justice Barbara Lagoa, Justice Robert Luck, and Justice Carlos Muniz signed an order to disbar and a separate order to permanently

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55 *See* Fla. R. App. P. § 9.410(2018) (an appellate court may dismiss a case on its own motion but only after ten-days' notice warning of possible dismissal.); *see also United Auto. Ins. Co. v. Total Rehab & Med. Ctr.*, 870 SO. 2d 866 (Fla. 3d DCA 2004).

disbar Plaintiff on August 22, 2019, both entered by John A. Tomasino (Clerk of The Florida Supreme Court), all acting in their official capacities.[56] *See attached Exhibit A, Order to Disbar & Order to Permanently Disbar Christopher Chestnut.*

54. The order is invidiously discriminatory because it failed to articulate a valid reason or nexus to the qualifications, conduct, or character of Plaintiff Chestnut and the imposition of the most severe sanction of permanent disbarment.[57]

55. The Supreme Court of Florida failed to issue Plaintiff an Order to Show Cause as to why the sanction of disbarment or permanent disbarment should not be imposed prior to entering the Orders to Disbar and Permanently Disbar Plaintiff.[58]

56. The Supreme Court of Florida denied due process entirely before entering the Orders to Disbar and Permanently Disbar Plaintiff.

57. The orders are in part based upon the Report of Referee in *SC17-307.*

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[56] The order to Disbar instructs Mr. Chestnut to shut down his practice within 30 days of thee-filed order, to immediately cease accepting new cases, and to petition for a re-hearing if desired but the disbarment would stand notwithstanding.

[57] *Yick Who v. Hopkins*, 118 U.S. 356,363 (1886).

[58] The Federal Courts hold: Certainly, the practice of law is not a matter of the State's grace. Regardless of how the State's grant of permission to engage in this occupation is characterized (whether the practice of law is a right or a privilege), it is sufficient to say that a person cannot be prevented from practicing law except for valid reason. *See Ex parte Garland*, 4 Wall, 333,379 (emphasis added).

58. In *SC 17-307* the following due process violations occurred:

a. The Referee, Judge Ohlman, had no authority or jurisdiction to issue a Report of Referee because he was technically disqualified pursuant to Fla. R. Jud Admin. § 2.330, prior to filing the Report of Referee on April 18, 2018, where he failed to respond to a Motion to Disqualify within the requisite 30 days; thus, the Report of Referee its findings and recommendations are null and void and insufficient as a basis for disbarment or permanent disbarment[59];

b. The Supreme Court of Florida acknowledged receipt but never ruled on Plaintiff's Writ of Prohibition seeking immediate relief from the unsanctioned actions of Judge Ohlman in SC17-307, a deprivation of due process[60];

c. Plaintiff Chestnut, was not provided an opportunity to present a defense, as the trial was stopped on day two of the four-day trial in violation of due process, nor was Plaintiff provided an opportunity to conduct discovery pre-trial;[61]

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59 *See Fuster-Escalona v. Wisotsky*, 781 So,2d 1063,1065 (Fla. 2000) (When a trial court fails to act in accord with the statutes and procedurals rules on a motion to disqualify, an appellate court will vacate a trial court judgment that flows from that error.).

60 *Id.* ("the allegation of judicial prejudice is serious and cannot be ignored.").

61 . . . .

d. All three counts arose from allegations of lawyer misconduct occurring out of state, in Georgia and South Carolina respectively. Rule 3-4.6(b)(2)[62], Rules Regulating the Florida Bar, allows The Florida Bar prosecution and sanction for foreign jurisdiction misconduct, but the foreign jurisdiction's law must be applied in the prosecution of guilt, however, in the cases *sub judice*, Plaintiff was erroneously prosecuted under Rules Regulating the Florida Bar.[63] Furthermore, Plaintiff was unequally sanctioned for alleged out of state misconduct in comparison to his white counterparts. In these instances, the Supreme Court of Florida did not follow its rules, and permanently disbarred Plaintiff who was never convicted of any crimes or found guilty of civil or professional rule violations in foreign jurisdictions, whereas white attorneys who were disbarred for foreign jurisdiction misconduct were found guilty of criminal violations in the foreign jurisdiction under their foreign jurisdiction's rules, subject to

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[62] Rule 3-4.6 (b)(2), Rules Regulating The Florida Bar requires that: The Florida Bar and the Referee are to apply the law of the foreign jurisdiction when exercising disciplinary authority over a Florida Bar member for alleged conduct that occurred in a jurisdiction other than the State of Florida.

[63] *See Holland v. Gross*, 89 So. 2d 255, 2158 (Fla. 1956) (misapplication of law to established facts renders the decision of the trial court made in nonjury setting clearly erroneous).

less harsh sanction than Plaintiff for more severe violations.[64]

e. Plaintiff Chestnut's appeal was dismissed by the Supreme Court without an Order to Show Cause or ten-day warning of dismissal pursuant *to Fla. R. App. P.* § 9.410.

59. The Supreme Court has also relied upon the consolidated cases of *SC 16-797* in the orders to disbar Plaintiff Chestnut.

60. In consolidated *SC 16-797* the following due process violations occurred:

a. The Referee, Judge Neal, violated due process by excluding Plaintiff Chestnut's evidence post-trial, absent the requisite *Kozel* hearing, in deprivation of due process, then entered a finding of guilt.[65] Judge Neal also precluded Plaintiff Chestnut from discovery and evidence in defense of solicitation allegations, after advising at the Emergency Suspension Hearing in SCI6-1589 that he would do so.

b. Additionally, Judge Neal, violated Equal Protection, in Count II, *Baker v. Chestnut*, by finding Plaintiff Chestnut (black attorney) guilty of an illegal contract and excessive attorney fee for a straight 40% contingency fee contract in contrast to the pre-approved Florida Bar sliding scale contingency fee contract, because the 40% fee contract was

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64 *See GJR Invs., Inc. v. County of Escambia*, Fla., 132 F.3d 1359, 1367 (11th Cir. 1998).

65 *See, SC16-797*, Record Index Filings: 55,57,77, and 78.

not pre-approved at a hearing with the client present. However, a similarly situated white attorney was not prosecuted for a straight 40% contingency fee agreement and fee taken without a hearing in *Mahany v. Wright's Healthcare & Rehab. Ctr.*, 194 So. 3d 399 (Fla. 2d DCA 2016) (finding a fee approval after a hearing before a judge was preferred but not required).

c. Furthermore, Judge Neal found guilt against Plaintiff Chestnut, on these charges of excessive fee and illegal contract, Kim Yozgat and Evan Small (both white attorneys), were the attorneys with day to day supervision of that case at the time the contract was drafted, consulted with the Bakers when the contract was signed, and are the attorneys that drafted and sought fee approval without the client present for the hearing; yet were not prosecuted or found guilty of those acts.

61. In *SC18-1614*, the following due process violations occurred:

a. Plaintiff was prohibited from pre-trial discovery on his plead Affirmative Defense of Fraud and denied him opportunity at trial to present or adduce evidence of Fraud at trial. On appeal, Plaintiff was denied a ten-day order to show cause as to why the appeal should not be dismissed for untimeliness, after two orders denying Plaintiffs motions for extension of time for Plaintiff to retain appellate counsel.

62. Plaintiff Chestnut has suffered immediate and irreparable harm by the taking of his sole law license and liberty to earn a living by enter of final orders by the Supreme Court of Florida without the requisite due process as provided law.

63. As such, the Justices sitting on the Supreme Court of Florida had a duty to follow the law as prescribed by the U.S. and Florida Constitution, to include, but not exclusively, procedural and substantive due process when seeking to sanction Plaintiff Chestnut with disbarment and permanent disbarment.

64. Plaintiff Chestnut was entitled to due process in state bar disciplinary proceedings.[66]

65. Plaintiff Chestnut was entitled to an opportunity to be heard and defend himself in the subject state bar disciplinary proceeding to disbar and permanently disbar.[67]

66. The Justices of the Supreme Court of Florida knew or should have known that the court must follow due process as required by law in seeking to disbar and permanently disbar Plaintiff Chestnut.

67. The Justices of the Supreme Court of Florida knew or should have known that it must provide Plaintiff Chestnut Equal Protection of the law under § 1983 the Fourteenth Amendment.

68. On May 3, 2019 and August 22, 2019 the Justices on the Supreme Court of Florida in their official capacities breached their duty by taking state

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66 *See, Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985).

67 *See, The Florida Bar v. Tipler*, 8 So.3d 1109, 1118 (Fla. 2009).

action violating the due process rights of Plaintiff Chestnut, by entering an order to disbar and permanently disbar Plaintiff Chestnut absent a hearing, notice, or sufficient evidentiary basis; respectively.

69. Additionally, the Florida Supreme Court Justices in the official capacities violated Equal Protection law in their state action depriving Plaintiff Chestnut of due process and ability to have a fair trial before a neutral tribunal, unequally applying its rules and law for the specific purpose of intentionally discriminating against him in prosecution and sanction, and in sanctioning him more harshly than similarly situated white attorneys.

70. As a direct and proximate result of the illegal state action by the Supreme Court of Florida, the Justices in their official capacities and the Clerk of Court, Plaintiff Chestnut has suffered the immediate and irreparable harm of losing his only license to practice law; consequently, had to close his law office losing his means of earning income.

71. As direct and proximate result of the illegal state action taken by the Justices on the Supreme Court of Florida in their official capacities, an immediate and irreparable harm has been inflicted upon the greater community as Plaintiff Chestnut through his law practice regularly performs philanthropic contributions to the community, is a mentor to many other attorneys, and assists clients who otherwise would not have access to court by accepting cases that other attorneys decline.

72. Mr. Chestnut is praying only for equitable relief and no money damages, thus the Federal District Court maintains jurisdiction and this lawsuit is

allowed against the State of Florida under the Eleventh Amendment.

WHEREFORE, Plaintiff, CHRISTOPHER CHESTNUT, *pro se*, hereby petitions this honorable Court for a final judgment declaring the illegal orders to disbar and permanently disbar Plaintiff Chestnut null and void in violation of due process and § 1983 and enjoining the Justices on the Supreme Court of Florida from enforcing the sanction of disbarment and permanent disbarment, and further petitions this honorable Court for a trial by jury on all issues so triable as a matter of law.

Respectfully submitted this 30th day of December, 2019.

By: /s/ Christopher M. Chestnut
Telephone: (855) 374-4448
Facsimile: (855) 377-2667
christopherchestnut@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of December, 2019, the forgoing was physically served upon the Clerk of the Court for the United States District Court for the Northern District of Florida.

By: /s/ Christopher M. Chestnut