No. 21-7378

ORIGINAL

In the Supreme Court of the United States

Andrew Long, Petitioner

v.

Oregon State Bar,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OREGON SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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Petitioner *pro se*

QUESTIONS PRESENTED

Federal protection of individuals from the arbitrary exercise of power by state government is at the heart of the Fourteenth Amendment's due process and equal protection guarantees, but principles of comity and federalism may restrict the lower federal courts from protecting this core value in the context of state attorney discipline proceedings. *See e.g. Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 437 (1982). Petitioner Andrew Long, a well-regarded legal scholar and former law professor with no history of misconduct, has consistently denied all allegations put forward by the Oregon State Bar (OSB) disciplinary attorneys, identified evidence of improper motives for their attack on him, and has repeatedly advanced constitutional arguments requiring dismissal in the state proceedings below. Yet, he endured a prehearing suspension, extended indefinitely for nearly four years as OSB attorneys announced their intent to disbar him, and then set about manufacturing a reason to do so by paying up to $31,689.29 to obtain testimony through apparently felonious bribery. Ultimately, the Oregon Supreme Court's opinion, without commenting on any detail in Long's actual constitutional arguments, disposed of all constitutional issues in one generic and demonstrably incorrect statement about the record, relied directly on the $31,689.29 testimony, and disbarred him. Long suggests the case epitomizes arbitrary exercise of state power and seeks certiorari on the following issues:

1. Did the Oregon Supreme Court violate Long's Fourteenth Amendment right to due process prior to deprivation of his property interest where its order of disbarment:

    a. Rests on uncorroborated testimonial evidence obtained by OSB attorneys' apparent felonious bribery of a witness in violation of ethical prohibitions on contingent payments to fact witnesses for testimony?

    b. Followed 45 months of indefinite interim suspension (initiated by allegations that have since been dismissed), during which OSB attorneys announced their intent to

"see what we can do about getting [Long] disbarred," and then began to assemble the present case by offering payments to clients injured by the suspension in apparent *quid pro quo* for testimony that could justify disbarment?

c. Relies on the opinion of a trial-level adjudicator who was previously disqualified in the related (now dismissed) companion case for apparent bias against Long and had plainly omitted several of Long's evidentiary exhibits from the record?

d. Included the participation of Justice Thomas A. Balmer despite Long's motion to disqualify him for appearance of bias where then-Chief Justice Balmer alone signed the orders imposing and maintaining the indefinite suspension such that he should be presumed to have an interest in confirming his earlier judgment?

2. Does the Equal Protection Clause prohibit the Oregon Supreme Court from disbarring Long as a result of OSB's singular hostility toward him, which, without rational basis, was far more aggressive than in contemporaneous cases of similarly situated attorneys, such as one who discharged seven rounds from a weapon into an office building after driving "black-out drunk" to do so, was convicted of a crime, and was subsequently convicted of another crime for manufacturing illegal drugs in his basement, where OSB did not prosecute his violence and threats to clients and intentionally discouraged proof of violations similar to those on which Long was disbarred?

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PETITION FOR A WRIT OF CERTIORARI

Andrew Long hereby petitions for a writ of certiorari to review the Oregon Supreme Court's judgment below.

OPINION BELOW

The Oregon Supreme Court's July 29, 2021 opinion is published (*In re* Long, 368 Or. 452, 491 P.3d 783 (2021)) and included in the appendix at A001. The trial panel opinion in this case is unpublished and included in the appendix at A033. The Oregon Supreme Court order denying reconsideration is unpublished and included in the appendix at A071.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) for writ of certiorari from the final judgment of the highest court of a state based on rights claimed under the Fourteenth Amendment to the U.S. Constitution. The Oregon Supreme issued its opinion and final judgment on July 29, 2021. An order denying a timely motion to reconsider was issued on September 22, 2021.

CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment to the United State Constitution:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISION INVOLVED

ORS 162.265 (Bribing a witness)

(1) A person commits the crime of bribing a witness if the person offers, confers or agrees to confer any pecuniary benefit upon a witness in any official proceeding, or a person the person believes may be called as a witness, with the intent that:

(a)The testimony of the person as a witness will thereby be influenced; or

(b)The person will avoid legal process summoning the person to testify; or

(c)The person will be absent from any official proceeding to which the person has been legally summoned.

(2)Bribing a witness is a Class C felony.

STATEMENT OF THE CASE

1.

This is a disciplinary proceeding in which the Oregon Supreme Court ordered that the petitioner, legal scholar and former law professor Andrew Long, be disbarred. This specific judgment upon which this petition is based is the culmination of an attack on Long's license and reputation undertaken primarily by the disciplinary attorneys representing the Oregon State Bar (OSB). The specific proceeding in which the judgment was entered consists primarily of charges and evidence caused or created by the actions of the OSB's disciplinary attorneys.

One feature of this case stands out above all others. OSB's attorneys arranged for payments to nearly all of Long's former clients who testified, including a payment of $31,689.29 in a manner that appears to constitute felony bribery of a witness under state law. That payment, promised months before trial but delivered immediately after, directly produced the specific testimony upon which the Oregon Supreme Court rested its rationale for disbarring Long. The testimony, however, is self-serving, contradictory, and dependent upon hearsay-within-hearsay that rests upon the truth of words purportedly spoken by an out-of-court declarant who is a multiple felon and career thief, and which words conveniently absolve the declarant of any wrongdoing. It is not clear why the purported declarant could not be brought to trial, but it is clear that he was heavily involved with the witness and her $31,689.29 claim.

The claim, made to OSB's Client Security Fund (CSF) with the guidance of the OSB attorneys most involved with the CSF Committee, was handled for eight months, all the way through to obtaining final approval for payment, before Long was notified that it existed despite having given him notice immediately of all prior claims filed. Further, once approved, the claim

was not paid promptly as Long had assumed it was, but held in abeyance until one day after the end of the trial at which the witness testified. It appears literally impossible that this string of events could have transpired without some intent on the part of OSB attorneys who controlled the information flow and the funds. It is equally unlikely that they would not have known that the witness' testimony was going to be influenced (perhaps to the point of adopting impossible positions on the stand, as she did) by her reasonable (and probably correct) belief that the content of her testimony would directly determine whether she received $31,689.29 immediately after trial, some lesser amount, or possibly a notice of criminal prosecution if she had changed the story that OSB helped her to state on her CSF claim that had just been approved. Given these points, three OSB attorneys would have no apparent defense to felony prosecution under ORS 162.265 (bribery of a witness).

A second fact that defines this case is the nearly four-year interim suspension, imposed prehearing on the basis of outrageous allegations that have since been dismissed, that was used to hobble and distract Long while OSB attorneys contacted his former clients and misused the Client Security Fund (CSF) to arrange payments to only those clients who agreed to testify for OSB. The proceeding that culminated in the judgment from which certiorari is sought was not born of the case supporting the main interim suspension. Instead, Long prevailed in that case to the extent of securing a remand due to an effort to disbar him without a trial. *See In re Long*, 366 Or. 194, 458 P.3d 688 (2020) (*Long I*). The case is nonetheless relevant in several ways, most notably because of the disqualification of Mark Turner, Oregon's sole "adjudicator" for the trial level disciplinary cases, based on Long's motion alleging appearance of bias. Subsequent to that disqualification, the Oregon Supreme Court's opinion in the present matter relied heavily on a trial panel opinion authored by Turner.

From the very outset of the earliest related proceedings and through to the present, Long has consistently argued that he was being denied due process by OSB's actions and by the Oregon Supreme Court ordering and then sustaining an immediate prehearing interim suspension that persisted from December 20, 2017 until his disbarment on September 27, 2021.

2.

In 2015, the Petitioner in this matter, Andrew Long, reactivated the Oregon State Bar license he had held since 2003. In the intervening years, he earned an LL.M. at New York University Law School, clerked with the New York Court of Appeals, and served on the doctrinal faculty of three ABA-accredited law schools, where he developed an international reputation as a scholar by publishing more than 20 academic articles and presenting his research regularly. He then left academia on good terms to address family issues that soon erupted into a contentious four-year divorce and custody case in Florida, where he obtained a restraining order against his ex-spouse due to her repeated past violence and continued hostility. In January 2016, Long established a solo practice serving mainly lower income clients in Portland, Oregon.

In September 2017, the owner of Long's apartment building demanded that he move out immediately, presenting veiled threats to destroy Long's career through OSB if he resisted. *See* R-2563-2564 (emails from TMT Development personnel, demanding compliance with 24-hour termination of tenancy and stating: "Failure to comply will result in an eviction filing with an additional notification lo the Oregon Bar").

Long resisted the termination and exercised his rights as a tenant, litigating the resulting eviction case *pro se*. He was shocked by the wealth and influence displayed against him while defending that cases.[1] He later learned that the President and CEO of his landlord at the time,

[1] Elsewhere, for example, Long has alleged that, after Sturgeon had his toilet removed from his apartment to force him out despite his legal rights, the Multnomah County Circuit Court ruled in her favor on the basis of an affidavit

Vanessa Sturgeon of TMT Development, Inc., was locally very influential, has a history suggesting possible corruption efforts, and was in contact with his ex-wife's custody lawyer in Florida during this time.[2] At the outset of October 2017, no significant ethical complaints were pending, nor had Long suffered discipline. Long first met one of OSB's disciplinary attorneys at the TMT eviction trial, where she served notice of a subpoena upon him, alerting him of OSB's monitoring efforts regarding his bank accounts.[3]

The day after that trial ended, OSB disciplinary attorneys notified Long they would seek his immediate suspension from the practice of law. OSB's media specialist began working with a local reporter at this time, ultimately resulting in a dozen negative "hit piece" articles about Long in a second-tier local newspaper. Further, when OSB did file a petition for his immediate suspension, Long learned of it because a reporter contacted him before publishing a story on the extremely rare warning to the public that OSB issued in the form of a press release about him. As is discussed below, the release was grossly out of line with OSB's approach to other matters it was supposedly investigating and, in any event, there is no reasonable way to explain the press release as a legitimate attempt to protect the public given the nature of the allegations being filed.

On November 3, 2017, OSB filed its petition for Long's immediate prehearing interim suspension based on allegations related to his personal life or involving his former legal assistant (Morgana Alderman), whom he had just discovered was covertly assisting his ex-wife while

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by an unknown plumber whom Long had no opportunity to question, and after Long was flatly refused the opportunity to enter contrary evidence. *See* Amended Complaint in *Long v. TMT Development, Inc. and Vanessa Sturgeon,* Multnomah County Circuit Court Case No. 19CV52416 (dismissed), Oregon Court of Appeals No. A176090 (pending).

[2] Suggestions of a tendency toward corruption may be gleaned from her involvement in the matters described at *State v, Moyer*, 348 Or. 220 (2010) (reinstating felony charges) and Helen Jung, *Jury awards $360,000 to building caretaker over urination dispute gone bad in downtown Portland*, OREGONIAN (July 6, 2011) (noting an "email chain 'revived' the criminal case").

[3] Years later, when the OSB would allege theft by Long, every date they identified in an allegation came after Cournoyer served the notice on Long. In other words, the allegation is that, once Cournoyer told Long that she was watching him, Long decided it would be a good idea to begin stealing from the account she was monitoring.

working for him. OSB listed Alderman and TMT Development's attorney, Bonnie Richardson, whom Long had never met prior to the TMT eviction trial, as primary factual sources.

3.

On December 20, 2017, then-Chief Justice Thomas A. Balmer of the Oregon Supreme Court issued an order granting the petition and suspending Long, immediately and prehearing, until further order of the Court under Oregon State Bar Rule of Procedure 3.1 (2017), which provided for interim suspension upon a showing that the attorney would pose a danger to the public if he continued practicing law, and designated former Oregon Supreme Court Richard Baldwins special master for a post-suspension hearing.[4]

Two days later, OSB attorneys Susan Cournoyer and Nik Chourey took custodianship of Long's practice, seizing only Long's paper file (often merely a page of contact information) for each of his then-active clients. They never asked about his electronic file materials, financial recordkeeping, time logs, or other data.

On January 3, 2018, Cournoyer wrote to all of the clients for whom she had obtained contact information. The letter urged each recipient to return a form providing contact information "as soon as possible," and no later than two weeks later, stating that "[i]t is imperative that you act promptly so that all your legal rights will be preserved." R-464. Cournoyer's letter closed by stating: "If you believe that you have funds or other property in Mr., Long's possession, please contact me directly at the phone number or email address listed below." *Id.* The clients who responded to that portion of the letter comprise nearly all of the witnesses testifying for OSB below.

[4] The rule was intended for situations roughly similar to those contemplated by Rule 20 of the ABA Model Rules of Disciplinary Enforcement.

4.

The post-suspension hearing occurred on February 12-13, 2018. At the outset of the hearing, it became clear that the special master was unable to determine whether the 2017 procedural rules applied or the significantly revised 2018 rules. The primary substantive difference was the need to determine whether any of the Oregon Rules of Professional Conduct had been violated, which was required to sustain the suspension only under the 2018 rules.

Also notable, albeit only indirectly demonstrated in the record, was the presence of Sturgeon (the president of Long's landlord). As Long later entered into evidence and argued, he observed her spend nearly two full business days observing the hearing from the galley. That was more time spent than any person not required to be there, and she sat in the front row of the galley with a rapt focus on the special master, former Justice Baldwin.

None of the evidence presented by OSB during the hearing was relevant to any claim upon which Long would later be disbarred. Nonetheless, OSB's attorney made the following statement during closing argument: "The bar intends to . . . see what we can do about getting [Long] disbarred." Trans. in Case No. N007129 at 593; (2-13-18).

5.

On March 5, 2018, prior to any results of the February 2018 post-suspension hearing, Long filed an emergency motion requesting that the interim suspension be lifted. He also filed a 42-page memorandum in support that identified at least three ways in which his continued suspension conflicted with the requirements of due process under the Fourteenth Amendment and this Court's jurisprudence.

First, Long argued that the inability to determine whether the 2017 or 2018 procedural rules applied deprived him of due process because they contained different types of protections

based on their differing procedures. Among other things, the 2018 rules eliminated the possibility of prehearing suspension, yet Long remained under suspension without any ruling issued after the hearing. Further, the 2017 rule required an order continuing the suspension within 30 days of the post-suspension hearing, but that had become plainly impossible by the date of the memorandum.[5] Any way the matter was understood, Long should not have remained subject to suspension.

Secondly, Long argued that OSB's use of the media violated his due process rights by inflicting very substantial reputational injury on him without any notice or opportunity to be heard. That is, he asserted that OSB used their "warning" to the public – which was publicized via a major newspaper article: Aimee Green, "State Bar Warns Public About Lawyer for His Alleged Threats Against Women," *The Oregonian* (Nov. 6, 2017) – served as a means of damaging Long's reputation, both to inflict a punishment on him without due process and to undermine his ability to resist the effort at prehearing suspension.

Third, and of perhaps the greatest continuing relevance, Long explained that OSB's attorneys had adopted three different sets of allegations and narratives in the four months since they had begun to attack him. Every time a set of allegations was put forward, Long knocked it back effectively. This "shell game" approach, in which new allegations were paraded out every time OSB had to make a submission or provide evidence, could only be intended to prevent Long from being fully prepared by depriving him of notice of what he was required to defend against and reducing the meaningfulness of his opportunity to be heard. Moreover, the shifting allegations tended, Long argued, to demonstrate that OSB was attacking him personally for reasons unrelated to protection of the public.

[5] In fact, the Oregon Supreme Court did not rule on whether the interim suspension should be continued until May 3, 2018, which was 79 days after the conclusion of the required post-suspension hearing.

The Oregon Supreme Court (Flynn, J.) denied Long's motion with leave to re-file if the special master's report was not timely issued. Shortly thereafter, former Justice Baldwin issued his special master's report recommending that Long remain suspended. It explicitly disclaimed any decision on which rules applied and failed to indicate any specific ethical rule that Long could be said to have violated.

Long objected, arguing that no unbiased person who reviewed the transcripts and evidence could endorse the report as reasonably portraying the evidence and, therefore, the report appeared to express a predetermined result. Long's extensive testimony and multiple witnesses was hardly discussed. The report effectively ignored the numerous clients who testified on Long's behalf, extolling his concern for their cases, exceptional dedication, and very generous approach to fees and payments. It showed no awareness of the clients' testimony that the sudden suspension of their attorney had severely prejudiced these clients' cases and damaged their lives.

No client of Long's testified for OSB. Instead, nearly all of OSB's witnesses consisted of attorneys who were or had been opposing Long in litigation or had represented people who sought to sue Long. These included attorneys Bonnie Richardson (attorney for TMT Development, Inc. and Vanessa Sturgeon) and Beth Creighton (recruited by Richardson to represent his former legal assistant, Alderman, in any matter against him *pro bono*), both of whom were still involved in litigation against him personally at the time they testified. Richardson admitted an ethical violation on the stand.[6]

The special master's report did not mention these concerns. Instead, it emphasized the

[6] Long properly reported Richardson's admission to OSB in October 2018 along with multiple other clear violations, but the complaint was dismissed without investigation.

sole OSB witness who had worked with Long – a woman who had briefly worked as his clerical assistant and then tried to sue him – without noting that she was not mentioned in OSB's petition for Long's suspension. She maintained that, despite having no prior experience, she was owed $125 per hour by Long for her brief work as a clerical assistant and that she had to explain the law to Long because he didn't understand it, among other flatly absurd statements purported to be fact. Nonetheless, that OSB witness was the sole witness described as "credible" in the report.

6.

On May 3, 2018 at 10:10 a.m., then-Chief Justice Balmer signed an order rejecting Long's objections and continuing the interim suspension. That same order also granted Long's prior motion to file an amended objection and supplemental exhibits. The amended objection had just been filed at 9:37 a.m. on the same date as the order (May 3). The supplemental exhibits were not filed until 9:05 p.m. on that date.

Long filed a motion to reconsider, observing that his amended motion had been filed less than 25 minutes before Chief Justice Balmer rejected it to confirm his own prior order of suspension. It also noted that the order continuing Long's suspension was issued approximately 11 hours before Long submitted the additional evidence he was permitted to offer. On June 21, 2018, then-Chief Justice Balmer denied Long's motion to reconsider.

4.

While Long was attempting to overturn the interim suspension in the first half of 2018, OSB's disciplinary attorneys followed through on their stated intent to "see what we can do about getting [Long] disbarred" by arranging payments to his former clients who would testify against him in the present proceeding. Specifically, approximately 14 of the clients contacted by OSB attorney Cournoyer in early January 2018 filed claims with OSB's Client Security Fund

(CSF) during the first half of 2018.

By statute, CSF payments are only supposed to be made in cases where a loss was caused by an attorney's "dishonest conduct." ORS 9.625. Further, the OSB Board of Governors or CSF Committee "shall not authorize payment unless" the attorney who purportedly caused the loss was convicted of a crime arising out of the relevant dishonest conduct, was adjudged to owe the debt in a civil action but cannot pay, or, for claims under $5,000, suffered OSB discipline resulting from the conduct at issue. ORS 9.655(1), 9.665(2). The statute permits waiver of these requirements "in cases of extreme hardship or special and unusual circumstances." ORS 9.665(2).

That exception was necessarily invoked in each and every claim paid to Long's clients because Long has never been found guilty of a crime, had a relevant civil judgement against him, or (until this case became final in July 2021) been subject to qualifying discipline. Most of the claims against Long were filed and quickly paid in the spring of 2018. Long received notice of each of the claims paid at that time, all of which were apparently based on a supposed assessment that Long had not sufficiently earned fees that he retained following the immediate suspension. So far as Long is aware, there is no written ruling on CSF claims beyond the payments themselves.

One client who was among the early CSF payees, Stuart Beutler, testified in the proceedings below that OSB contacted him upon Long's suspension and encouraged him to file the claim. He testified that, prior to the suspension, he fully expected Long to complete the agreed upon work. R-914. Long himself testified that the research and report he had agreed to write for Beutler "was basically all done, but [Beutler] didn't have work product yet" when the suspension occurred. R-945-946. Beutler never discussed the matter with Long following the

suspension.

Another early payee, Arlo Stone, had paid part of an agreed flat rate and Long testified that he had performed part of the agreed work. Their agreement specified that Long would not file the relevant documents until Stone paid the full agreed sum. Stone filed a CSF claim when OSB suggested that he do so upon Long's suspension. Long and Stone had no communication following the suspension.

No client testified to filing a CSF claim without OSB urging them to do so. The only CSF claims against Long that were denied were filed by clients who did not testify for OSB, except one by a former client who testified from federal prison while serving a sentence for crimes unrelated to Long's representation. Otherwise, all CSF claims filed by clients who testified for OSB in the present proceeding were paid. Some, such as the several claims totaling nearly $20,000 that were filed by Harold Mitchell, were initially denied and then, for unknown reasons, suddenly reopened after the trial in this matter and paid in full.

5.

The last CSF claim filed arose in June 2018 when OSB attorney Cournoyer arranged to assist Long's former client, Shannon Williams, to file a CSF claim for $31,689.29. Cournoyer had contacted Williams in January 2018 and at least two other times before they began meeting. At least once, they met at a diner on the far eastern outskirts of town.

In her CSF claim, Williams alleged that Long had held $31,689.29 in trust for her and then simply stolen the entire amount in small distributions to himself. Oddly enough, the alleged theft was said to have begun the same day that Cournoyer notified Long that she was monitoring his trust account records, which was the day he lost the eviction trial against TMT Development and Sturgeon. The claim of theft, then, implies that Long suddenly began openly stealing from

his client as soon as he knew he was being watched.

Williams' friend, Bryan Wilson, became so involved in communications regarding her money that the CSF investigator recommended contacting him, but there is no record of whether OSB attorneys ever did so. Wilson has multiple felony convictions and was incarcerated for theft of nearly $30,000 during OSB's supposed investigation, but was evading a warrant by the time Long learned of Williams' claim and remained so at the time of trial. Long had no opportunity to examine Wilson.

At trial, Williams testified that Wilson told her in December 2017 that Long told him (Wilson) that he (Long) had stolen her money but would pay it back. That uncorroborated testimony is the sole source of the key allegation upon which Long was ultimately disbarred.

Williams never reported the supposed theft to the police, nor anyone else, and she never even filed an ethics complaint. Instead, in June 2018 (a full six months after Long's accounts and practice were taken over by OSB), after Cournoyer contacted her multiple times. Williams simply claimed theft of $31,689.29 on a form requesting to be paid that amount, filled out at Cournoyer's suggestion and with Cournoyer's help. Then, in June 2019, Williams testified against Long and received $31,689.20 immediately after trial.

Williams testified that she never saw an invoice from Long, never authorized him to bill against money in trust, and never picked up any cash from him. Yet, on cross examination Williams was forced to acknowledge that she had given OSB a copy of an invoice that she had received from Long, as well as an email in which Long explained that he would bill from her money in his trust account (to which she did not object). Both Long and his assistant at the time, Heidi Glick, testified to meeting with Williams and Wilson together to deliver cash to Williams on request.

6.

From approximately April to August 2018, Long was forced to actively litigate the first set of allegations against him (not the charges in this case), most of which supposed conduct in Long's personal life. In that case, he experienced what he described as extreme bias from the occupant of a new position created by the 2018 amendments to the Oregon State Bar Rules of Procedure called "the adjudicator," Mark Turner.

As the adjudicator, Turner serves as trial panel chair of all disciplinary proceedings in the state, authors all trial panel opinions (TPOs) in such matters, and resolves all pre-hearing issues between the OSB and the respondent. In the first matter against Long, Turner decided over 20 pre-trial motions; each was decided exactly as the OSB attorneys requested.

In one instance, Turner even advised the OSB attorneys to change their position via email, and then he adopted their new position in his ruling. In another instance, Long had subpoenaed Sturgeon for deposition and made arrangements a month in advance. The day before deposition, Richardson moved to quash and Turner gave Long only three hours to respond. Long responded, but Turner quickly quashed the subpoena shortly after the response was received.

When the first OSB case against Long was to be tried in August 2018, Long became ill during OSB's presentation of its case. Turner immediately and without notice declared a default in OSB's favor, then ordered Long's disbarment without providing him any chance to present evidence. On Long's request for review, the Oregon Supreme Court rejected the TPO and remanded the matter for a new trial. *See In re Long*, 366 Or. 194 (2020) (*Long I*).

The new trial never occurred. The charges underlying *Long I* – which constitute the purported reasons that Long was immediately suspended and his practice destroyed – were

dismissed without trial by OSB over Long's objection in September 2021.

7.

Trial in the present matter occurred in June 2019. It was the first time that OSB was able to produce any client of Long's to testify. All but two of OSB's witnesses had filed CSF claims. All but one of those testifying claimants saw their claims paid. They may also have sensed an implied threat: that a prosecution for fraud could be launched to punish any testimony that deviated from their earlier statements against Long to recover CSF money.

Long refuted the charges directly, but also focused on providing the evidence necessary to attack the process and advance equal protection arguments. Among other things, he called Chelsie Buchanan as a witness. As noted later in this memorandum, Buchanan had been a client of attorney Erik Graeff (who made national news for shooting into another lawyer's office in December 2017) and other lawyers facing discipline. Long sought to offer her testimony regarding her experiences in which OSB's attorneys minimized, ignored, and blocked her efforts to hold Graeff accountable for ethical misconduct, including threats, loss of documents, and delay in returning funds. The adjudicator, Turner, prevented Buchanan from testifying.

Following the trial, the TPO, authored by Turner, recommended that Long be found guilty of very nearly everything charged against him. Long sought review by the Oregon Supreme Court.

8.

When the record was made available for the Oregon Supreme Court matter, Long objected and sought correction. His exhibits – transmission of which Turner stated on the record that he would personally guarantee – were disorganized with several potentially significant exhibits missing entirely. For example, Long's outstanding invoices pertaining to his former

client, Lena Davidson, were not present in the record. They tended to demonstrate Long's generosity and patience because Davidson owed Long approximately $14,000 and he was accepting $500 per month on a long-term payment plan.

Long moved to correct the record. The court assigned Turner to determine whether Long's motion to correct (premised on an assertion that Turner or OSB had improperly tampered with his evidence) should be granted. Long was partially successful, but several exhibits plainly discussed at the trial remained omitted from the record. The Oregon Supreme Court denied Long's objection and further motion to correct on March 5, 2020.

9.

After the TPO in this matter was issued, a member of the trial panel in this case, attorney Craig Crispin, assumed the chair of Oregon's regional body governing discipline. Thus, when Long moved to disqualify Turner from participating as adjudicator in the first case, on remand from *Long I*, the motion was heard by Crispin.

Long's motion argued bias and appearance of bias. Crispin granted the motion. Turner immediately moved for reconsideration. Crispin granted reconsideration and adhered to his earlier decision, thereby disqualifying Turner from further participation in *Long I* on May 20, 2020.

10.

After oral argument in this case, Long filed a motion seeking to have Justice Balmer recuse himself or be disqualified on the basis of apparent bias. He argued that Justice Balmer likely felt invested in his earlier decisions ordering and sustaining Long's interim suspension for nearly four years and, therefore, would be unconsciously inclined to rule against Long. The motion was denied.

11.

In his opening brief to the Oregon Supreme Court, Long argued insufficient evidence, advanced three major due process arguments requiring dismissal, and demonstrated that his treatment relative to similarly situated attorneys violated equal protection requirements (partly reiterating his motion to dismiss of June 2018). Broadly, he emphasized misconduct by OSB, bias at multiple points that prevented a fair trial, and the major problems in Williams' testimony that demonstrated it could not be "clear and convincing evidence."

The Oregon Supreme Court ordered Long's disbarment in a July 29, 2021 opinion. It ruled in OSB's favor on nearly every issue, with the exception of several instances where OSB and the trial panel determined that Long's work had no value whatsoever (including cases in which he had filed a complaint to initiate litigation that was ultimately successful) to conclude that he charged an excessive fee.

Long filed a motion for reconsideration and, with the Oregon Supreme Court's permission, an amended motion to reconsider that focused his discussion of federal constitutional arguments. The motion was denied on September 22, 2021.

REASONS FOR GRANTING THE PETITION

Arbitrariness Undermines Constitutional Values & Self-Government

This case presents a particularly clear example of an emerging insidious risk to core constitutional values that, if ignored, may significantly undercut self-government. It is the risk that flows from permitting unchecked arbitrary exercise of power by state government,

especially where it follows the whims of powerful and self-interested private entities. That particular evil – the arbitrary exercise of governmental power for private purposes – remains among the most fundamental enemies of a functioning system of self-government and rule of law. Addressing the concern now, in a case where it is clearly presented, will provide the strongest defense against a creeping tyranny effectuated by arbitrary disbarment of targeted lawyers.

The right to be free of the arbitrary exercise of government power stands among the core values embedded in the U.S. Constitution at the founding that remain highly relevant for the continued success of self-government and representative democracy in today's world.[7] This right is expressed through the only substantive phrase repeated twice in the constitutional text – the guarantee that no person shall suffer a deprivation "of life, liberty, or property[,] without due process of law" – which suggests not only its importance in understanding the power, limitations, and structure of the federal government but also the particular relevance of this command to understanding federalism in the areas where state abuse of power is most likely or problematic. Repetition in the Fourteenth Amendment emphasizes the particular need for federal protection against arbitrary deprivation by state authorities. Similar to the Due Process Clause, the Equal Protection Clause protects against arbitrary use of power by providing a federal guarantee against irrational discrimination in the implementation of state law.

Yet, aside from this petition, Long was left to seek relief only in the state court that he asserts violated his rights and only within in the proceeding wherein the violation occurred. For attorneys who seek to challenge the constitutionality of state proceedings affecting their licenses

[7] A useful discussion of arbitrariness in this context can be found in Randy E. Barnett & Evan D. Bernick, *No Arbitrary Power: An Originalist Theory of Due Process of Law*, 60 WM. & MARY L. REV. 1599, 1644 (2019) ("'the due process of law' was understood to denote a concept of rule by principles that are distinguishable from the mere will of the holders of power, and of impartial adjudication in neutral courts of law").

on Fourteenth Amendment due process or equal protection grounds, the twin barriers of the *Rooker-Feldman* doctrine and *Younger* abstention now appear effectively insurmountable.[8] There is, therefore, no practical federal check against the arbitrary exercise of state government power over the property interest an attorney possesses in his license to practice law.

Where state and local politics have long histories of cronyism and corruption overwhelming rule of law, as is indisputably true in Oregon, it was only a matter of time until the absence of lower federal court jurisdiction to police abuses that violate constitutional rights would encourage strategic use of the disciplinary power for corrupt and private ends. State attorney disciplinary systems offer a particularly effective means of eliminating or intimidating those who may stand in the way of an ascendant private interest strong enough to capture a disciplinary regulator. The ability to arbitrarily disbar an attorney could be used to limit or eliminate not just disfavored attorneys, but also the ability of targeted interests within a community to obtain quality legal representation.

Lawyers must be able to not only stand on their own rights in their private lives (as a tenant, in Long's case), but also stand up for vulnerable or unpopular citizens and community groups. The history of attorney discipline is fraught with examples of powerful groups disbarring attorneys for the less powerful, whether they were immigrants, workers, political dissidents, or

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[8] The abstention doctrine established by *Younger v. Harris*, 401 U.S. 37 (1971) prevents challenges to ongoing disciplinary proceedings except where "it plainly appears that advancing the constitutional argument in the state proceedings 'would not afford adequate protection.'" *C.f. Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 436-37 (1982) (*quoting Younger*, 401 U.S. at 45). It is not clear what circumstances would meet the requirement for exception or how a potential plaintiff would know whether adequate circumstances exist prior to final judgment in state court. Yet, *District of Columbia Court of Appeals v. Feldman*, 460 US 462 (1983), prevents challenges to final decisions of state attorney disciplinary proceedings as a matter of jurisdiction. The impact of preventing legitimate challenges to blatantly unconstitutional action in disciplinary proceedings was at least partially recognized by Justice Stevens in his dissent form the *Feldman* majority opinion. *Id.* at 490 (Steven, J., *dissenting*) ("The fact that the licensing function in the legal profession is controlled by the judiciary is not a sufficient reason to immunize allegedly unconstitutional conduct from review in the federal courts"). Justice Stevens also suggested that *Feldman* creates an undesirable limitation on lawyers in cases where "[i]f they were seeking admission to any other craft regulated by the State, they would unquestionably have" the ability to sue in district court. *Id.* at 490, note 2 (Stevens,, J. *dissenting*).

criminal defendants. *See e.g. Sacher v. U.S.*, 343 U.S. 1, 18 (1952) (Black, J. dissenting); *In re Smith*, 133 Wash. 145, 153-154 (1925) (Parker, J. dissenting); *see generally*, James E. Moliterno, *Politically Motivated Bar Discipline*, 83 WASH. U. L. Q. 725 (2005).

Attorneys, are the bridge between "the people," where the sovereign power resides in our system, and the individual agents of government. Gaining control over that bridge through a power to arbitrarily disbar attorneys will frequently convey control over the ability of the people to be heard by their government. A real estate developer, for example, could use such power to prevent lay opposition to certain projects from obtaining competent counsel to mount challenges.

Ultimately, this case is about the extent to which the content of a state bar may become dictated by particularly powerful local interests with no accountability. Where the state disciplinary power can be wielded to serve a private vindictive end irrespective of the nature of conduct, it has become an arbitrarily exercised power abhorrent to the Fourteenth Amendment.

Long has sounded this theme continually throughout the assault on his reputation and license. Unlike many who merely mimic such themes to cover their own wrongdoing, the record here strongly and unequivocally supports Long's concerns. The problem is that the state government in Oregon has proven deaf to them.

In Oregon, by late 2017, Long was marked for disbarment, with the official rationale to be determined. OSB said as much directly in February 2018 by identifying its intent to "see what we can do to disbar him."

It is clear in this record that, at the time of that statement, OSB was actively arguing for either of two sets of procedural rules that might apply, regularly switching their argument to disadvantage Long. No tribunal, including the Oregon Supreme Court, has ever ruled on which rules applied despite Long's direct arguments that due process must require that he at least know

what rules he was to defend himself under. The absence of a ruling indicates that it does not matter – Long was to be disbarred regardless.

At the same time, OSB attorneys were utilizing their control of the CSF to pay Long's former clients – whom they had injured by causing an unwarranted immediate suspension – to testify against him. This was not a fair case in any respect; the game was rigged from the outset.

There is still no strong evidence that Long violated any rule of conduct in a manner that even arguably supports disbarment. Yet, the extent of review necessary to demonstrate that reality is beyond anything Long can obtain. Instead, this Court is asked to assess the larger brush strokes that permitted OSB to disguise its own underhanded, and often criminal, actions against Long as if they had uncovered some actual evidence against him through a genuine investigation.

There are other reasons to believe that the Oregon attorney disciplinary system illustrates a particularly insidious threat to constitutional values and, thus, warrants the close attention from this Court that granting the writ would allow. Much of the problem as it affected Long can be seen taking shape several years earlier. For example, following a controversial upheaval in the OSB's disciplinary counsel's office, an ABA team visited the state and, in its final report, strongly urged removing the disciplinary attorneys from OSB's control in order to "enhance the public's perception of the system as being fair, accessible and free from appearance that the internal politics of bar associations may somehow influence disciplinary proceedings." ABA STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE, OREGON: REPORT ON THE LAWYER DISCIPLINE SYSTEM (2015) at 35.

Shortly thereafter, an OSB team charged with considering implementation of the recommendations produced sharp divisions. One of the minority report authors identified exactly the type of problem that has since become dangerously common:

> DCO [Disciplinary Counsel's Office] is a powerful office. It has the power to bankrupt attorneys and ruin their careers. A fully autonomous and unaccountable DCO may be perceived as abusive, and may in fact act abusively. DCO without independent oversight may overcharge, refuse to negotiate reasonable case resolutions, and delay proceedings in hopes of causing the charged attorney to [resign his or her license voluntarily through] Form B.

Richard H. Braun, *Minority Report -- Disciplinary System Review Committee* (2015) 3. That is precisely what OSB attorneys apparently hoped Long would do – resign his license voluntarily – and they put forward the Williams complaint, consisting of uncorroborated testimony by a felon at a cost of $31,689.29, when he refused to do so.

There is strong reason to believe that Long is not alone in suffering this injustice from the OSB attorneys, which is suggested by materials in the record.[9] Presumably, Oregon is not the only state in which similar problems are developing, and its resolution must be national regardless of how many states may be failing to maintain constitutional protections for lawyers.

Protecting the Public and the Profession: Justice Abhors Pretended Justice

At times, this Court has looked to the words of then-Chief Judge Cardozo to express the contours of an attorney's professional obligations:

> 'Membership in the bar is a privilege burdened with conditions.' [An attorney is] received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice."

In re Snyder, 472 US 634, 644 (1985) (*citing People ex rel. Karlin v. Culkin*, 248 N. Y. 465, 470-471, 162 N. E. 487, 489 (1928)). This concept of the obligations attendant to being an attorney fits perfectly with the theme of Long's brief before the Oregon Supreme Court – that

[9] For example, the record contains extensive complaints of OSB attorneys' unethical conduct that were filed by the attorney who was targeted in the matter leading to *In re Klemp*, 636 Or. 62 (2018).

"the worst form of injustice is pretended justice" – and with his entire career as an attorney (a widely acknowledged point that even the adjudicator, Turner, acknowledged on the record).

Viewing an attorney as "an instrument or agency to advance the ends of justice" has consequences that may sometimes require parsing a situation that appears, on its face, to be both common and in the interests of justice. As the Preamble to the ABA Model Rules states, for example, it is "a lawyer's duty, when necessary, to challenge the rectitude of official action." ABA Model Rules, Preamble ¶ 5.

In the Oregon Supreme Court, Long's opening brief contained a clear theme, the roots of which date to at least Plato's *Republic*: the case developed and tried against Long should be understood to represent a particularly insidious threat to all attorneys and, in fact, all citizens of Oregon because it embodies injustice that masquerades as justice. He expressed clear concern about the potential for deception or other impropriety because of "the disjunction between trust placed in Bar attorneys as guardians of ethics and their grossly unethical actions against Long." Opening Brief at 33.

In an opinion that reads as if Long's brief was never even read, the Oregon Supreme Court continued the charade.[10] It seems probable that the Oregon Supreme Court has a strong incentive to protect the reputation of the regulatory body it has described as its "surrogate" in disciplinary matters. *In re Hendrick*, 346 Or. 98 (2009). Whether or not such incentive constitutes a built-in bias in most cases, it most certainly does so in a case where the disciplinary

[10] A review of Long's opening and reply briefs against the opinion will require any reasonable person to acknowledge that it is entirely possible that the opinion was drafted without ever reading Long's submissions. It would explain, for example, why the Oregon Supreme Court chose to rely on the word of a multiple felon and career thief (Wilson) as expressed through uncorroborated hearsay within hearsay by a witness paid $31, 689.29 by OSB (Williams, also a felon) to determine what Long meant by saying "thank you" in a text message, yet rejected the testimony of Long as corroborated by his assistant at the time and supported by the immediate context of the message – the OSB brief utterly ignores the felony records and Long's assistant's testimony on point, as well as omitting significant context highlighted by Long. This particular example was argued directly in Long's Amended Motion for Reconsideration at 42-44 and overarching problems with the analysis related to Williams are described at pages 28-49 of that document.

attorneys act with the extreme disregard for truth and justice that Long has persistently argued underlies this case.

Understandably, this Court rarely accepts certiorari in state lawyer disciplinary cases. Because the lower federal courts are, for practical purposes, unable to provide relief to an unfairly disciplined attorney in even the most egregious cases of deceptive conduct by state disciplinary attorneys and state court judge, such officials likely believe that they can safely defy the Fourteenth Amendment and this Court's jurisprudence without consequence.

One of the best illustrations of the impotence of the lower federal courts in these circumstances turns out to have a direct connection to this case. In *Liedtke v. The State Bar*, 18 F.3d 315, 316 (5th Cir., 1994), then-Chief Judge Politz authored an opinion sharply critical of the maneuvering by a young Texas disciplinary attorney and a state judge, but ultimately concluded the court "must affirm" the district court's dismissal of the suit. After explaining the shenanigans by which, "with no notice or opportunity to be heard on either the sanctions issue or the merits of the disciplinary petition, Liedtke was stripped of his status as an attorney and officer of the court," and then "[c]autioning that our ruling should not be taken as acceptance or approval of the scenario described above," the Fifth Circuit explained that, "unfortunately we can give Liedtke no relief because of the firmly-established doctrine of *Rooker/Feldman*." *Id.* at 317.

The young Texas disciplinary attorney chastised in *Liedtke* for disbarring without due process was Dawn Miller, who later became known as Dawn Miller Evans. Ms. Evans served as the Disciplinary Counsel for the Oregon State Bar from 2016 until approximately two months after the conclusion of the trial in this case.

In fact, Evans assumed control of this case personally upon final approval of the payment of $31,689.29 to Williams in February 2019. She then attempted to hold a second temporary

hearing at which only Williams would testify, scheduled for April 2019. Long successfully moved to stay the hearing, which forced Evans to call Williams at the main trial in June 2019. Unbeknownst to Long at the time of trial, OSB (presumably at Evans' direction) had not yet paid Williams despite approval of her claim.

Instead, one day after the scheduled end of the June 2019 trial at which Williams testified – approximately four months after Williams' claim had been finally approved for payment, which is a far longer delay than occurred in any of the other claims paid by OSB that are relevant to this case – a check was suddenly issued for $31,689.29 to Williams by OSB. Long's reply brief in a related matter, due immediately after the trial in this matter, was primarily devoted to alerting the Oregon Supreme Court that record evidence demonstrated that Evans and two others had undeniably violated ORS 162.265 (bribery of a witness, which is a felony). Within weeks, Evans had quickly announced her retirement, then left OSB and moved out of the state.

It is unlikely this Court will receive a certiorari petition in the near future that is better suited to emphasizing to the state supreme courts and bar personnel the importance of complying with constitutional requirements applicable to attorney discipline. Given the *Liedtke* opinion of 1994, it is as if not only Evans but the entire machinery of the Oregon attorney disciplinary system that hired her to head its office thumbed its nose at this Court's case law and the requirements of due process as applied to attorney licensure and discipline.

End Run Around Due Process: Suspend and Charge

In holding that due process protections apply to an attorney's property interest in remaining licensed, this Court has described attorney disciplinary cases as "adversary proceedings of a quasi-criminal nature" and concluded that "[t]hey become a trap when, after

they are underway, the charges are amended on the basis of testimony of the accused." *In re Ruffalo*, 390 US 544, 550 (1968).[11] Thus, in the context of an attorney disciplinary proceeding, this Court has applied the Due Process Clause to prevent amendment of charges to take advantage of information gained from the respondent's testimony in the proceeding in which the charges will be tried.

Ruffalo's discussion of a "trap" laid by the disciplinary prosecutors must apply to situations in which such disciplinary prosecutors intentionally used their authority to generate grounds for future prosecution. Indeed, it must prohibit the intentional filing of disciplinary charges that cannot be proven solely for the purpose of fishing out evidence that can be used to craft new charges against the respondent attorney.

That is precisely what OSB's attorneys did to Long. The allegations filed in 2017 to support OSB's petition for immediate suspension described outrageous conduct that created an image in line with the stereotypical abuse of power targeted by the #MeToo movement that was reaching its zenith at the time. None of those charges were ever proven. Long consistently derided the charges as ridiculous, lacking evidence, and a result of the improper influence of a wealthy and politically the influential real estate developer, Sturgeon.

Government Misconduct

Long summarized the following aspects of OSB attorneys' misconduct in his brief below:

The basic facts related to Williams' claim and testimony suggest violation of ORS

[11] Oregon statute designates attorney disciplinary proceedings as neither civil nor criminal, but *sui generis*. ORS 9.529; *see also In re Skagen,* 476 P.3d 942, 950 (Or 2020). According to at least one district court, the "overwhelming majority of courts" characterize attorney disciplinary proceedings as *sui generis. Matter of Gorence,* 810 F. Supp. 1234, 1235-36 (D.N.M., 1992) (citing federal cases); *but see In re Daley,* 549 F. 2d 469, 474 (7th Cir. 1977) (reasoning that "[d]enomination of a particular proceeding as either 'civil' or 'criminal' is not a talismanic exercise . . . and tends to inhibit factual inquiry into the nature of the proceeding itself" when addressing a Confrontation Clause issue related to an attorney disciplinary proceeding) (citations omitted).

> 162.275 by Cournoyer, Evans, Hollister, and/or others in that: (1) Cournoyer apparently promised to facilitate Williams' receipt of CSF money (2) on condition that Williams' testimony support the Bar, and (3) delay of payment was used to control the content of her testimony, which is further suggested by the attempted April hearing featuring only Williams.
>
> Any reasonable person in Williams' position would believe that the content of her testimony would determine whether she was paid $31,689.29, some lesser amount, or nothing. If she had testified that Long provided her with much of the money and earned the remainder (i.e. the truth), she would have made herself ineligible to receive the CSF payment and could have triggered a criminal prosecution against herself.

Opening Brief at 57. He continued with the following summary of key anomalies in the OSB's handling of the case:

> Why, for example, did Cournoyer and Chourey fail to request or seize Long's financial information and electronic files when they stormed his office, and why were such not sought when relevant claims were formulated? Why did Cournoyuer subpoena Long's [trust account] records in October 2017 despite the absence of financial complaints against him? Why did no one notify Long of the Williams CSF claim? Why has the Bar not subpoenaed Long's bookkeeper or prior assistants?
>
> The logical answer is that the case was manufactured. The Bar offers no better explanation.
>
> Due process requires complete dismissal.

Id. at 58.

These arguments and several others were discarded below without discussion of their merits on the purported grounds that the record did not support them. That reasoning tracks the OSB brief exactly, but conflicts sharply with the record, which is loaded with information relevant to Long's due process arguments. The Oregon Supreme Court opinion reads as one would expect if that court were to simply borrow from the OSB's misleading and inaccurate brief without bothering to even peruse Long's arguments or check whether OSB's statements about the record might have some support therein.

Thus, although the Oregon Supreme Court opinion almost makes sense to a reader confined to the four corners of the document, it plainly does not hold up to scrutiny against the

record. Long pointed much of this out in his motion to reconsider, but is limited in his ability to reproduce such documents in the appendix to this petition (primarily by expenses after having endured this conflict over his license without significant paid work for the last four years).

Should the Court request the record, and receive the complete and correct documents from Oregon, it will be readily apparent that the Oregon Supreme Court's opinion misreads or mischaracterizes both the record and Long's arguments. For example, the Oregon Supreme Court's statement that "We find no support in the record for [Long's] contention that the Bar was investigating alleged rule violations, most of which stemmed from complaints by clients or third parties, for reasons other than the Bar's legitimate regulatory purpose" can be easily refuted. For example, there is plainly support for the idea that the investigation was driven by Sturgeon in the timing of events, Sturgeon's heavy involvement, Cournoyer's citation of Richardson as a primary fact source, Cournoyer's appearance at the TMT Development eviction trial, the timing of Cournoyer's letter notifying of intent to seek suspension, the multiple newspaper articles against Long and the OSB's emails provoking them, and multiple other pieces of evidence plainly in the record.

As for the Oregon Supreme Court's statement that the complaint underlying this case "stemmed from complaints by clients or third parties," one must wonder whether the Oregon Supreme Court failed to notice that such complaints were not spontaneous but followed letters from Cournoyer and track closely with extensive payments from the CSF to generate witnesses who had received or were awaiting payments based on earlier claim forms that would become fraudulent if their testimony deviated from OSB's script. At best, the OSB's assembly of this case appears to be the work of a well-oiled, practiced effort to shape witness testimony with a mix of pressure and payment. At best, the Oregon Supreme Court simply didn't notice that the

record is loaded with evidence of problematic conduct by OSB and Long's justified resistance.

Long encourages the Court to request the full record in this case (and to check its accuracy) in order to determine the veracity of his claims. The result of doing so will strongly support Long's argument that this case suggests massive due process violations that threaten core constitutional values.

Consider footnote 4 of the Oregon Supreme Court's opinion – finding "no evidentiary support" for the constitutional claims advance or for the "claim that the adjudicator was biased against him" – which conclusions were reached despite the prior disqualification of the adjudicator on Long's motion asserting appearance of bias. *See* Op. at 8, note 4. The idea that the record does not contain any evidentiary support for Long's claims of due process violations (including bias) is laughable, as the discussion throughout this petition should make clear.

At least equally absurd is the claim that the record somehow contains "no evidentiary support" for Long's equal protection argument. In fact, it is stuffed with evidence relevant to the equal protection argument, and the point was readily apparent from previous filings with attached evidentiary materials.[12] It is notable, for example, that the Oregon Supreme Court apparently took no notice that Chelsie Buchanan, the former client of Graeff who was blocked by OSB attorneys from testifying against him in that case (despite being a named victim), was subsequently blocked in her attempt to testify for Long about the extreme unfairness that she encountered from OSB as she sought their assistance regarding the three lawyers in a row who

[12] In June 2019, for example, Long submitted a document containing three joint motions into the only extant case numbers at the time, which he clearly intended to be a part of the record in this case. Those motions, and the exhibits submitted to support them (which are, in fact, present in the current record), demonstrate beyond question that Long was singled out for extremely harsh treatment by comparison to the contemporaneous and otherwise similarly situated cases of attorney Erik Graeff and former attorney Lori Deveny, putting the Bar's treatment of him in a category similar to (but far more extreme than) unjustly persecuted attorney Lisa Klemp. *See* Respondent's Motion to Consolidate et al., Oregon Supreme Court Case Nos. S066327 & S066649 (filed June 10, 2019); Record (present case) at 457-593 (exhibits in support of June 10, 2019 motions). It is not clear to Long why his supporting exhibits to the June 10, 2019 motions are in the current record but his motions are not.

were suspended, disbarred, or resigned while representing her, and, separately, her experience of Long as a competent and caring individual.

As a client, Buchanan was threatened by Graeff, who wrote: "If you [or your husband] ever show up unannounced . . . I would simply break his goddamn face. I also keep licensed firearms in my office so you have been warned." R-2547. However, Graeff was not charged based on that written threat. Less than a month later, he discharged his firearm repeatedly into an occupied office building.

The date of Graeff's shooting into the office was December 21, 2017 – one day after Long was suspended as a danger to the public, supposedly for sending angry text messages to his former legal assistant who lied to him to interfere with his ability to litigate custody of his children. OSB never sought to suspend Graeff under that provision, and never issued any media warning about him.[13] In fact, Graeff was allowed to practice unsupervised for an additional year before entering a voluntary suspension and going to prison. Moreover, Greaff was not disbarred – he was suspended for five years. *See In re Graeff*, 368 Or 18 (2021).[14]

Further, Graeff's anger toward Buchanan related to a situation in which Greaff allegedly lost documents and delayed by weeks providing her a refund. Yet, those matters were not even charged by OSB.

Something is not right in this case. Further evidence on point includes November 2017 comments by Sturgeon's attorney, Richardson, in response to Long's request for a correction of Sturgeon's prior defamatory statement about him (made to the Florida attorney for Long's ex-

[13] As a point of comparison, Graeff reportedly sent an email to the attorney whose office he shot into on the day after the shooting in which he stated, "With that off my chest merry Christmas buddy, Don't suck too many reindeer dicks over the holiday." *See e.g.*, Catalina Gaitán, *Portland-based attorney who shot at Beaverton colleague's office receives 5-year law suspension*, THE OREGONIAN (4/23/2021).

[14] It is not clear whether the recusal of Justice Balmer from the Graeff case and the denial of Long's motion to disqualify him in this case may play any role in explaining the striking disparity in treatment.

wife). A full month before Long was suspended, she told Long: "My testimony will corroborate Ms. Sturgeon's statements." Exhibit P (11-22-17), Supplemental Exhibits, Case No. N007129, at 85 (filed 5-3-18).

At the time, there was no known reason to think Richardson would ever testify against Long in any setting. Yet, it seems that she knew what was coming a month before the Oregon Supreme Court ordered it. Three months later, Richardson would testify for OSB before former Justice Baldwin.

The threat to democratic self-government represented by this case is real. A locally powerful private interest with a known history of corrupting activities appears to have directed OSB disciplinary attorneys to attack Long. OSB attorneys then attacked Long full-throttle in the media and in the disciplinary realm by employing a shifting set of allegations that were never proven. The Oregon Supreme Court immediately suspended Long and held him in that indefinite state for four years while OSB attorneys literally manufactured a case sufficient to disbar him by paying more than $60,000 in apparently criminal arrangements to his former clients.

It is particularly important, therefore, to demonstrate that the Fourteenth Amendment cannot be ignored with the impunity that OSB's attorneys seem to assume they enjoy. The matter is not a mere error correction in this instance because it establishes the extent to which there is a means to push back against the provincial power-grab demonstrated by this case. Whether in Oregon or elsewhere, the threat to eliminate lawyers' licenses for upsetting a powerful player is antithetical to due process. Granting the writ both sends the needed signal and will allow the Court to protect our core constitutional structure by revisiting federalism as it plays out in the judicial branch's regulation of attorneys.

Long's brief below suggested that cases involving vindictive prosecution or outrageous

government conduct, rarely as they may apply in the criminal context, or even the courts' inherent supervisory powers, may provide a solid analogy from which the state courts may be able to more effectively police and protect against abuses of the disciplinary power. *See e.g. United States vs. Russell*, 411 US 423, 432 (1973) ("due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction" where conduct is "fundamentally unfair and shocking to the universal sense of Justice"); *United States v. Hasting*, 461 U.S. 499, 505 (1983); *Rea v. U.S.*, 350 US 214, 217 (1956). These doctrine may also provide a bounded means for the federal courts to prevent official state action from depriving attorneys of their Fourteenth Amendment rights.

Undoubtedly, such questions can be more closely examined if the writ is granted. Amicus briefs, for example, would seem likely to advise the Court in a manner that promotes shaping the processes necessary for justice and democracy going forward.

Preventing Arbitrary Exercise of State Power

The application of the Fourteenth Amendment to require appropriate use of state power in the regulation of attorney licensure and discipline, while perhaps most firmly rooted in *In re Ruffalo*, 390 U.S. 544 (1968), has solid grounding in this Court's precedent dating back nearly 150 years. In *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), the Court explained plainly that the principles underlying our system of government "do not mean to leave room for the play and action of purely personal and arbitrary power." Instead, applying the Fourteenth Amendment, this Court instructed that "the very idea that one man may be compelled to hold . . . the means of living . . . at the mere will of another, seems to be intolerable in any country where freedom prevails." *Id.* Notsably, Justice Stevens cited *Yick Wo* in his opinion dissenting from the *Feldman*

majority, stating his view that "if plaintiffs challenging a bar admissions decision by a state court prove facts comparable to" the case, they should plainly be entitled to relief and implying that the majority rendered such relief unlikely. *Feldman*, 460 US at 490 (Stevens, J. *dissenting*).

Over a half-century ago, the Court made clear that in at least some constitutional contexts, "[t]]he threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion" against which the protections of the Fourteenth Amendment must be liberally construed because "lawyers are not excepted from the words 'no person' . . . sand we can imply no exception." *Spevack v. Klein*, 385 U.S. 511, 516 (1967). Accordingly, *Spevack* suggests that Fourteenth Amendment rights "should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it." *Id.* at 514.

Bias Decision-makers

The issues regarding decision-maker bias in this case also lend themselves to a resolution by this Court that will carry national significance. The significance flows partly from the ill-defined nature of federalism vis-à-vis state attorney disciplinary procedures, but also grows from the need to resolve lingering questions regarding appearance of bias that arises when a judge must review his or her own earlier decisions, particularly where not confirming the earlier decision would lead to some degree of embarrassment, expense, or risk.

Most obviously, deciding the bias questions raised by this case would necessarily clarify the extent to which attorney discipline is subject to the same due process requirements for a neutral decision maker as the criminal law and/or civil (including administrative) law, which would likely clarify the nature of federalism in the attorney disciplinary context. Thus, the case is

worth hearing because the Court would be able to improve the quality of attorney regulation nationally by simply clarifying whether neutral decision-makers are required in the context of attorney discipline. The Oregon Supreme Court's reliance on the TPO of the adjudicator, Turner, after his disqualification in the companion case provides something close to the ideal case to address issues of bias in that regard.

Plainly, "[d]ue process guarantees an absence of actual bias on the part of a judge." *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016) (internal quotation marks and citation omitted). However, because bias can be difficult to ascertain, especially in oneself, this Court has established "an objective standard that, in the usual case, avoids having to determine whether actual bias is present." *Id.*

Accordingly, the question is "not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias." *Williams*, 136 S.Ct. at 1905. As such, "[r]ecusal is required when, objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (quoting *Withrow v. Larkin*, 421 U. S. 35, 47, (1975)). This standard thus requires an objective assessment of the circumstances to determine whether there exists an "interest [that] poses such a risk of actual bias or prejudgment that" disqualification is required "if the guarantee of due process is to be adequately implemented." *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 883-884 (2009). This analysis requires "a realistic appraisal of psychological tendencies and human weakness" to determine whether a judge's interest in the matter "poses such a risk of actual bias or prejudgment" as to offend due process. *Caperton*, 556 U.S. at 883-84 (internal quotation marks and citation omitted).

More broadly, this case raises the issue whether Justice Balmers' continue participation -- when it was not in any way necessary to resolve the case – may violate Long's due process rights because of his earlier involvement in the major orders causing and sustaining the interim suspension that effectively destroyed Long's professional reputation and career. Presumably, involvement in deciding such motions would create in the average judge an unconscious desire to confirm the truth of their prior determinations.

Based on the standard established by this Court, Jusice Balmer should have reused himself or the Oregon Supreme Court should have disqualified him. It is nearly unthinkable that, after almost four years of interim suspension that utterly destroyed Long's professional reputation and left him literally indigent with all attendant consequences (such as complete loss of access to his three minor children), Justice Balmer could have objectively assessed whether his earlier decisions (which were the necessary prerequisite for OSB to produce the present case) had been wrongheaded and, therefore, Long should be immediately reinstated without regard to the potential impacts on either OSB or the reputation of the Oregon Supreme Court during Justice Balmer's tenure as its chief.

While perhaps rarely encountered, it seems plain that anyone in Justice Balmer's position would be unable to objectively assess the present case. As such, his participation violated due process.

Additional Points

Particularly in the wake of the #MeToo movement and associated social shift toward granting accusers more automatic credibility, this case provides a vehicle for considering the contours of what due process requires. Here, the question is sharply focused on whether the

nearly four years of interim suspension was justified by what were essentially false and misleading #MeToo-like allegations launched at the absolute peak of that movement and, in the longer term, whether the claims constructed by OSB out of the damage inflicted by the suspension (*i.e.*, OSB and the Oregon Supreme Court's quick credulity toward what were rather obviously inaccurate and, in some cases, plainly opportunistic allegations) are a permissible basis for disbarring an attorney with a previously exemplar record for nearly two decades.

Equal Protection Violations Warrant Attention

To offset the risks posed in the current state of the attorney disciplinary regime in Oregon elsewhere, explication of the appropriate role of equal protection considerations can provide a similar form of protection to that of due process. A key difference may be the ability to employ a fair but flexible standard that prevents too much intrusion by the federal courts into traditionally state areas. Specifically, states set their own baseline in the equal protection analysis because it essentially requires only that like cases be treated alike. As a *sui generis* area, it makes sense that attorney discipline borrow from both the criminal analysis of treating similarly situated defendants similarly to avoid selective prosecution, and the civil analysis that prohibits animus toward a "class of one."

Here, OSB and, perhaps to a lesser extent, the Oregon Supreme Court violated equal protection under either approach. To understand this, it is necessary to consider the facts of two other cases drawn from the record in this case and appendix to Long's brief, except occasional publicly available information.

The Oregon Supreme Court's opinion below, in light of Long's filings and the record, can be understood to effectively reject application the Equal Protection Clause as an appropriate

check on the adjudicatory processes of state attorney discipline. Long consistently advanced a major argument – in his briefs and motion for reconsideration, but also in his June 2019 filing of three motions intended to be filed into both cases, that provided the most detailed factual development (with all needed evidence attached) – that actions in accord with equal protection required immediate dismissal of the case against him due to the exponentially more hostile and aggressive actions OSB took toward Long when compared with any other attorney for whom a written record of prosecution could be found and, especially, when compared with two extreme offenders who were almost exactly contemporaneous – Erik Graeff and Lori Deveny.[15]

OSB treated those other two attorneys much better than Long without rational explanation for the difference in treatment. Long, in fact, became the target of what might be the most extreme false prosecution by OSB in its history.

Graeff was eventually disciplined by the Oregon Supreme Court for recklessly shooting multiple rounds from his firearm into another attorney's office, with a bullet narrowly missing a staff person's head, but he was not disbarred. *See In re Graeff,* 368 Or 18 (2021). The Bar never sought Graeff's interim suspension, instead agreeing to allow him to practice for 11 months after the shooting, until he was imprisoned.

Earlier complaints against Graeff had not been pursued and were never prosecuted. Further, he faced pled guilty to manufacturing illegal drugs, but faced no disciplinary charges for those acts.

As noted above, Chelsie Buchanan was expressly prevented from testifying by OSB at

[15] For relevant discussions by a journalist outside of Oregon, see Stephanie Volin, *In the Matter of Andrew Long*, Medium.com (9/6/2018), available at: https://stephanievolin.medium.com/in-the-matter-of-andrew-long-27f5a04ed9de and Stephanie Volin, *The Duty to Protect the Public: Disturbed Thinking at the Oregon State Bar*, Medium.com (8/13/2018), available at: https://stephanievolin.medium.com/the-duty-to-protect-the-public-cdbadbbe6dfa. The same author has also written pieces about criminal conduct by Oregon attorneys, the influence of Vanessa Sturgeon on Oregon government, and other relevant topics, which are collected at: https://stephanievolin.medium.com/

Graeff's disciplinary trial. OSB also failed to charge Buchanan's report that Graeff had threatened her with a loaded firearm, delayed sending her funds that were owed, and lost primary documents. When Long called her as a witness to testify in this matter, Turner ruled that her experiences with OSB's handling of other matters was irrelevant.

OSB did not charge Graeff with reported misconduct, but prosecuted Long for similar allegations as if they were severe. Specifically, each faced a complaint due to a delayed check that he had misaddressed. Only Loing was prosecuted.

OSB's failure to prosecute an earlier complaint made by an attorney who witnessed Graeff throw a female client into a wall, causing bruising and a police report, also creates questions about OSB's prosecutorial discretion.

Similar comparisons can be made for broader issues. For example, the police issued a warning to the public regarding Graeff because OSB did not. However, in Long's case (which involved no violence or weapons), OSB issued a warning to the public and undertook a year-long media campaign to destroy his reputation, along with twice featuring him in the OSB Bulletin.

Another consideration, perhaps, is that Graeff's practice was apparently never subject to custodianship. Long's was taken into custodianship within two days and OSB attorneys raided his office with police escorts despite the complete absence of resistance or threatening behavior.

A second contemporaneous point of comparison exists as well. Former attorney Lori Deveny, who currently awaits trial on over 100 criminal counts in state and federal court, has become infamous for her apparent theft of at least $3.4 million directly from her clients (most of whom suffered severe brain trauma and required the money for basic living expenses and/or medical needs) and her continuing lies to deceive those clients who trusted her. Her crimes began to come to the attention of several interested individuals (and were clearly going to become

public) sometime in the latter half of 2017 – exactly when OSB suddenly began to attack Long.

In 2018, as OSB attorneys were soliciting Long's clients to file CSF claims, they also permitted Deveny to continue using (*i.e.*, spending from) her trust account for months after resigning her license, "lost" over 90 of her files they were supposed to have custody over during the months when criminal prosecutions were being formulated, and delayed for months after her voluntary ("form B") resignation in filing for a custodianship of her practice (and then they made her a signatory on her trust account, whereas Long's trust account had less than $5,000 but was fully seized by OSB within two days). Once they had custodianship of Deveny's practice and accounts, OSB attorneys filed grossly inaccurate documents as a final accounting in a failed effort to quickly close the case. Most recently, while Bar attorneys have argued for payment of earned fees for CSF claims against Long, in cases where Deveny apparently forged a client signature to steal an entire settlement, they have argued that a 33% fee should nonetheless be deducted from resulting CSF awards as Deveny's "earned." fees.

There are multiple other possible comparisons that Long relied on in his briefs below to make the disparity clear. For every other case he examined, none showed anywhere near the hostility he suffered. Even where the misconduct was proven or admitted to be worse than the allegations against him, none were treated nearly as harshly as Long. For example, Ronald Johnson was the subject of a negotiated resolution with OSB (which, as the record reflects, OSB refused when Long attempted to discuss it). He admitted to the following litany of harms to clients and rejections of the OSB's authority: Johnson caused a client's case to be dismissed, negligently allowed an order to become final, failed to respond to the first 10 OSB inquiries to him,[16] collected $1,000 from a client but did no work and failed to explain why he retained the

[16] Long was suspended for each inquiry he was said not to have answered sufficiently, even where he made good faith arguments against OSB authority based on federal law (such as the Americans with Disabilities Act) or on

money, and collected $1,300 from a woman seeking a restraining order to protect her from an abusive partner but completely neglected to do any work on the matter and kept the money anyway. OSB agreed to stay a suspension such that discipline caused no disruption to Johnson's practice. The agreement was memorialized and then approved by the Oregon Supreme Court. *In re Johnson*, Oregon Supreme Court Case No. S066917 (2019).

In essence, then, the Oregon Supreme Court approved an agreement to condone Johnson's admitted theft (he was not required to repay money or perform services). Yet, it disbarred Long on the claims of a felon who was paid $31,689.29 to say that he stole from her after her claim to that effect was hidden from Long and the payment to her was withheld until immediately after she testified, and despite his denials, major contradictions in her testimony, and corroboration of Long's version of events by his assistant. It is simply not credible that both cases follow the same law or logic.

OSB's treatment of Long, when viewed alongside similarly situated attorneys, plainly constitutes selective prosecution and/or irrationally targeting a "class of one." The Equal Protection Clause should have prevented Long's disbarment, as he argued repeatedly, but the Oregon Supreme Court completely ignored the argument in its opinion.

The broader importance of this comparison, along with the potential significance of revitalizing equal protection clause analysis in the regulation of attorney conduct, is that it demonstrates Long's experience was not an isolated problem.[17] Given the type of criminal conduct committed by OSB attorneys in Long's case, and the type of criminal conduct to which they (at best) appear wholly blind – if not outright criminal accomplices in a cover-up –

OSB's belligerent and plainly wrongful conduct. The Oregon Supreme Court found Long violated the relevant rule in each instance in a part of the opinion that appears to parrot OSB's brief below.

[17] Long also provided extensive evidence regarding the case against Lisa Klemp who,. like Long, appeared to be attacked by OSB for reasons related to the ire of a wealthy and influential individual and not her conduct. *In re Klemp* , 636 Or. 62 (2018).

regarding Graeff and Deveny, it should be fairly plain to this Court that Long's disbarment may well have resulted from the type of criminal arrangements to abuse the disciplinary power that are outlined above.

CONCLUSION

OSB's actions against Long manifest the long-recognized truth that the worst injustice is pretended justice. This truth is apparent in the small-scale narrative of the case, in which OSB attorneys enforced an unjust system of cronyism through false accusations and paid witnesses to reach the predetermined goal of destroying the career of an ethical scholar/attorney who angered a locally influential power broker. It is also apparent in the larger scale implications of the case.

Lawyers serve as the intermediaries between the people and their government, but where their license to practice depends on pleasing locally powerful interests because due process is optional, the available lawyers cannot speak truth to power. If they try, they risk suffering the damage that Long has sustained. Unless this Court grants certiorari, this case demonstrates disturbing ways that rule of law bends to political power in *sui generis* attorney discipline.

The underlying problem is not unique to Oregon. Where lawyers face a greater threat of disbarment for angering a particular real estate developer than for driving "black-out" drunk to an occupied office building and discharging six rounds from a firearm into an occupied office, democracy is in danger. This Court should act by granting the writ.

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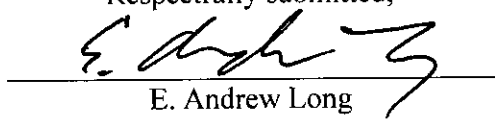
Respectfully submitted,



E. Andrew Long