No. 22-813

In the Supreme Court of the United States

SAMUEL EDWARD TRAPP,

Petitioner,

v.

JOHN GUNN, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

SAMUEL EDWARD TRAPP
PETITIONER PRO SE
4732 OSAGE BEACH PARKWAY
SUITE A
OSAGE BEACH, MO 65065
(573) 746-6226
SAMTRAPP1@GMAIL.COM

JANUARY 25, 2023
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QUESTIONS PRESENTED

1. Does the *Rooker-Feldman* doctrine foreclose a 42 U.S.C. § 1983 action in federal court against outside-the-licensure-process individual influencers of a state's attorney licensing process when the individual influencers actions negatively affect application and/or create a prerequisite to eligibility for licensure outside of any published Rule for admission? Does the state Supreme Court's judicial and administrative affirmation of the actions, findings and decisions of these unauthorized individual influencers mean that the fines and findings of such third-party unsanctioned and unlawful independent processes are *inextricably intertwined* with the state court *sua sponte* order imposing a fine years later, as the district court held in this matter; or does *inextricably intertwined* not protect such third party influencers as the 11th Circuit determined in *Behr v. Campbell,* 8 F.4th 1206 (11th Cir. 2021); and as the 8th Circuit determined in *Carter v. Ludwick,* (8th Cir. 2021).

2. Is it an impermissible delegation of authority from a state Supreme Court to a bar association, as this Court held in *D.C. Court of Appeals v. Feldman,* 460 U.S. 462 (1983), when the chief licensing authority in a state requires a potential bar applicant to 'reimburse' a bar fund in order to establish future eligibility to submit an application to practice law, even though the applicant is otherwise eligible to submit an application under the relevant promulgated state Rules for licensure, the applicant has never been found to have violated any rule of conduct related to any such bar fund proceeding, and the bar fund has not properly been granted any state or constitutional authority to investigate attorney misconduct? Does *Ex Parte Young,*

209 U.S. 123 (1908) allow the potential applicant to the bar to bring a federal declaratory relief action against the state's chief licensure and rule-making authority to determine the constitutionality of these rule provisions presented for review, as well as to determine the constitutionality of numerous unwritten state licensure practices prior to submitting additional requests for admission; or is declaratory relief foreclosed because the question regards the practice of law instead of any other licensed profession?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Samuel Edward Trapp

Respondents and Defendants-Appellees below

- John Gunn
- State of Missouri
- John W. Grimm
- Lauren McCubbin
- Thomas Vincent Bender
- Mischa Epps
- Julia Lasater
- Christa Barber Moss
- Jason Arthur Paulsmeyer
- Sam Phillips
- Paul C. Wilson
- John Doe I, Members of the Missouri Bar Client Security Fund Committee
- John Doe II, Members of the Missouri Bar Client Security Fund Committee

LIST OF PROCEEDINGS

Direct Proceedings Below

U.S. Court of Appeals for the Eighth Circuit

No. 21-3726

Samuel Edward Trapp, *Plaintiff-Appellant*, v. John Gunn; State of Missouri; John W. Grimm; Lauren McCubbin; Thomas Vincent Bender; Mischa Epps; Julia Lasater; Christa Barber Moss; Jason Arthur Paulsmeyer; Sam Phillips; Paul C. Wilson; John Doe I, Members of the Missouri Bar Client Security Fund Committee; John Doe, II, Members of the Board of Governors of the Missouri Bar, *Defendants-Appellees*.

Date of Final Judgment: September 13, 2022

Date of Rehearing Denial: October 27, 2022

U.S. District Court, Western District of Missouri

No. 2:21-cv-04006-MDH

Samuel Trapp, *Plaintiff*, v. The State of Missouri, Et. al., *Defendants*.

Date of Final Order: November 18, 2021

Other Relevant Proceedings

Supreme Court of Missouri

No. SC96695

In re: Samuel Trapp, *Petitioner*

Date of Final Order: February 4, 2020

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PETITION FOR A WRIT OF CERTIORARI

Samuel Trapp respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered October 27. 2022. (App.1a).

OPINIONS BELOW

The ruling and order of the District Court granting respondents motions to dismiss appears at *Trapp v. Gunn*, No. 2:21-CV-04006-MDH (WD. Mo. Nov. 18, 2021). (App.6a-App.31a). The United States Court of Appeals for the Eighth Circuit order affirming the District Court judgment appears at *Trapp v. Gunn*, No. 21-3726, (8th Cir. 2022). (App.1a). Petitioner's request for a rehearing en banc was denied on October 27, 2022. (App.37a).

JURISDICTION

The judgment of the Eighth Circuit Court of Appeals issued on September 13, 2022. (App.1a). On October 27, 2022, the Eighth Circuit denied petitioner's timely request for rehearing en banc. (App.37a). The Court has jurisdiction under 28 U.S.C. § 1254(1).

JUDICIAL RULES INVOLVED

- Mo. R. Gov. Bar Jud. 5.06-Chief Disciplinary Counsel (App.38a)
- Mo. R. Gov. Bar Jud. 5.08–Investigations Authority (App.39a)
- Mo. Sup. Ct. R. 5.28-Reinstatement (July 1, 2011) (App.41a)
- Mo. Sup. Ct. R. 5.28-Reinstatement (June 20, 2017) (App.47a)

STATEMENT OF THE CASE

This case impacts the very basis of our society, the legal profession. In 1983, this Court held in *D.C. Court of Appeals v. Feldman,* 460 U.S. 462 at 490, (1983) that United States district courts have subject-matter jurisdiction over general challenges to state bar rules promulgated by state courts that do not require review of a final state-court judgment in a particular case when the complaint involves a general attack on the constitutionality of an admission rule for the practice of law in a state. That case also held that when a state supreme court impermissibly delegates its decision-making authority to a bar association, whether judicially or administratively, federal district courts have jurisdiction to hear complaints related to such matters. I[1] have made just such a claim regard-

[1] I am a *pro se* petitioner. Throughout this document, I will refer to myself in the first person. Although irregular, I hope that this

ing the Missouri Supreme Court's delegation of its authority to the Missouri Bar Client Security Fund (CSF)[2], (App.118a-119a) presenting a fundamental question regarding Missouri's unwritten attorney reinstatement practices. I believe federal district courts have the authority to consider such claims, and it is my prayer that this Court either overrule the lower court dismissal of my declaratory relief claim against the chief licensing authority in Missouri, overrule the dismissal of my 42 U.S.C. § 1983 claim against the individual actors that permanently labeled me a fraudulent, dishonest attorney, or both. I ask this court to delve deeply into the issues I present, as outlined below.

As a necessary background, I present who I am and how I ended up here. Like any man my age, I am very proud of some things in my life and disappointed with others. Because I have been and continue to be very unfairly labeled a dishonest fraud by the most powerful organization in Missouri, without having been given the opportunity to defend myself, I will outline some of those things here. Most notably, I am proud to have served my country for 14 years in the military, holding a diplomatic passport and the nation's highest security clearance for many of those years while serving as a diplomatic interpreter (Russian) for the On-Site Inspection Agency (I believe that agency at some point was renamed the Nuclear Threat Reduction Agency). My duties involved monitoring activities both in Russia

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style of writing is not offensive to any reader of this petition. It is not intended to be so, and I pray that this Court find my story compelling enough to hear in person.

[2] The district court stated that the Missouri Supreme Court 'may in practice be yielding to the client security fund.'

and the United States under US/CIS arms control treaties. As a result of that position, I have been investigated by the National Security Agency repeatedly and found worthy of holding the highest level of security clearance many times. Quite recently, I have been found by the Missouri Real Estate Commission and the Florida Real Estate Commission worthy of licensure as a real estate broker in both of those states. I am very proud to have raised four children, some of that while attending law school and maintaining a full-time job at the same time. I am also very proud to have been to all fifty states and 38 countries. At one time, I was also investigated and found worthy to be an attorney in the state of Missouri, of which I am also quite proud.

I am disappointed in myself for other things in my life that I will not elucidate here, but the only event in my life that I am downright ashamed of is the fact that I had to be punished for my subpar activities as a practicing attorney in 2014. After a very lengthy and much disputed Missouri attorney disciplinary process stretching from 2011 to 2014, I was suspended indefinitely from the practice of law in Missouri (App.116a-118a) on October 14, 2014, for (1) failing to adequately communicate with a client, (2) failing to adequately cooperate with the investigative authority and (3) for potentially intermingling my own funds with those of my clients (substandard trust account systems) by the Missouri Supreme Court–the only authority in Missouri authorized by the Missouri Constitution to regulate the practice of law. (Mo. Const. Art V, Section 5; Mo. Const. Art V, Sec 18) Even though I fought the allegations that I had violated those professional rules vigorously, I do not downplay these infractions of the rules of professional conduct I was found to have

violated, and I consider them very important. That being said, it is also true that in Missouri, these types of practice failures typically result in admonishment or a letter of sanction, not indefinite suspension, and certainly not disbarment. (App.203a) It also bears repeating in my case a fact which everyone[3] seems to ignore–namely, that during my disciplinary proceedings, I was not found to have committed any act related to dishonesty, fraud or misappropriation of any client funds or property (App.9a, App.202a-203a), and no client was financially harmed by any act for which I was disciplined. Further, I do not dispute and have never disputed the Missouri Supreme Court findings or punishment, nor its one-word denials of my requests for reinstatement, as I repeatedly stated below. The federal action I have filed does not seek that the district court or this court overturn any of those proceedings. (App.72a-73a, App.192a(4), App.238a, App.285a) Had I sought that end result, I would have appealed one or all three of the decisions of the Missouri Supreme Court to this Court within the time limit set for such action, or I would simply submit another application

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[3] After the Eighth Circuit initially ruled on this case in September 2022, LAW.COM published an article outlining how I had stolen a client's home, an act which never occurred, and the events for which the Missouri Supreme Court ruled in my favor during the disciplinary process in 2014. Yet the focus on me is always that I somehow stole something from a client. What this poor example of legal journalism is likely referring to is that in 2010, I placed a lien on my client's mother's home to guarantee payment of my fees, a practice permissible under Missouri law. Even the title of that article mistakenly claims that the 8th Circuit somehow denied my reinstatement, which that Court is not authorized to do. *See* LAW.COM, *8th Circ. Denies Missouri Attorney's Reinstatement Attempt*, Marianna Wharry, September 15, 2022. https://www.law.com/2022/09/15/__trashed-18/

for reinstatement, have it denied again, and then appeal that decision to this Court. (App.138a)[4]

What I present to this Court is my proud battle standing up to the shadowy Missouri state bar practices that I have been subjected to after serving my term of discipline. Although I allege that these proceedings have destroyed my financial and professional life, and I pray for relief from such actions, I am pleased to be the voice challenging such good-old-boy readmission practices, whether or not I am ultimately granted the relief I seek. I recognize that the State of Missouri has no intention of allowing me to practice law in that state again, (App.72a, App.83a) but I cannot submit to or ratify a process that finds me to be a dishonest fraud without the opportunity to defend myself, regardless the consequences, (App.73a, App.84a) and regardless of whether or not paying such a fund will improve my chances of regaining licensure in Missouri. I have no idea why my two applications for reinstatement were denied (in one word) after 18 months and 26 months respectively. (App.200a, App.213a) Each court below completely neglected or sidestepped my requests for declaratory relief under 28 U.S.C. § 2201 and § 2202, but a one-word, unjustified denial of licensure creates

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[4] Even the district Court had trouble with the appeal option due to the one-word denial of both motions to reinstate, stating that its 'been bothering me through this whole litigation. Theoretically we don't know that the plaintiff was denied reinstatement because of his failure to pay the Client Security Fund. There is no order that says that. There is simply an order that says, you will not be allowed to reapply unless you pay the Client Security Fund. Am I right on that?' and opposing counsel agreed that there was 'an array of reasons why [I] could have been denied reinstatement.' We will never know why because of the Missouri practice of denying attorney reinstatement with one word.

absolutely no basis for appeal; (App.131a-132a) and 26 months to consider any licensure request would never be permitted in any other profession and should not be permitted just because the judiciary branch controls the process to license attorneys, not the executive branch. (App.142a-145a) I am seeking declaratory relief regarding the constitutionality of such practices and processes, (App.85a) conducted without a shred of protection available to the accused person subjected to them, (App.275a-277a) and am seeking monetary damages against the individual CSF actors that have been able to label me a professional fraud outside of any legitimate legal process. (App.84a, App.280a) So far, my efforts to restore my own faith in the legal system, and to perhaps protect some other future deceased, incompetent, suspended or disbarred Missouri attorney, (App.72a) have been unsuccessful, only because (in my view) we are discussing the practice of law and not some other profession. (App.275a-App. 278a) I allege that if what had happened to me happened in any other profession, the Missouri Supreme Court would swiftly deny the executive branch the ability to engage in such an arbitrary licensure process, and no federal court would allow such an arbitrary process in any other profession. (App.186a-187a) Count I of my petition seeks declaratory relief so stating. (App.217a-221a) But because a state's judicial branch is subject only to oversight by this Court when questions are presented regarding the practice of law, and because such oversight is rarely exercised, Missouri apparently feels quite comfortable in denying basic fairness principles to reinstatement applicants to the practice of law in Missouri. (App.268a-270a) My federal court petition below asks for review of these procedures as discussed herein, because at present, I am

far worse off than disbarred. (App.188a, App.286a) I am perhaps the first ever 'permanently suspended' attorney, being punished not for the acts that led to my suspension, which I accept; but for acts 'determined' by unauthorized parties in unauthorized proceedings subject to no representation, appearance, hearing or appeal; which I do not. (App.98a-99a) Such acts were then ratified years later by the Missouri Supreme Court outside of the requirements of the Missouri Constitution, Art. V, Sec. 18. (App.302a, App.237a) In short, I am left with no avenue for readmission to the practice of law in Missouri unless I honor what I know to be a sham process, and I am (so far) unable to bring action against those individuals who conducted such processes, because the courts below, in my humble view, misinterpret the *Rooker-Feldman* doctrine and completely ignore this Court's guidance in *Feldman* itself. (App.143a-148a, App.183a, App.258a-259a, App.265a-270a, App.281-282a, App.290a) For my part, I very much agree with Justice Stevens dissent[5] in *Feldman* and believe that what happened to me would create a licensing issue in any other profession in any other state, and the judiciary branch should not be held to a lesser standard just because it alone controls the practice of law. (App.186a-187a, App.268a-270a)

This suit chiefly challenges the procedures of the Missouri Bar Client Security Fund (CSF). The CSF

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[5] He stated that 'If a challenge to a state court's decision is brought in United States District Court and alleges violations of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the federal-question jurisdiction of the federal court. 28 U.S.C. § 1331 (1976).'

process was completely unknown to me[6] until I was subjected to it after serving the initial term of suspension imposed upon me by the Missouri Supreme Court. As soon as I became aware of this process, I conducted a bit of research on the program, discovered that it was not part of any disciplinary, licensing or admission Rule and hired a lawyer to deal with those issues, if possible, as I was residing out of the country at the time. My attorney and I quickly became aware that this set of self-created bar organization guidelines is used to target specific applicants for readmission to the bar in Missouri. (App.165a) This CSF process, created completely outside of any authorized regulatory or state disciplinary process, entailed named defendants in my federal suit soliciting complaints from my former clients, and offering funds to them should they so desire, should they be able to state that I somehow fraudulently or dishonestly misappropriated their funds. (App.237a-240a) The CSF may only authorize 'a formal claim . . . for recognition upon determination by the Committee that . . . [t]he claimant suffered a loss resulting from a fraudulent or dishonest act which occurred during, or in the context of an attorney-client relationship.' (App.10a) Naturally, a great number of former clients responded to such solicitations, many that I had represented years in the past.

The CSF is not authorized to resolve fee disputes, (App.12a-13a, App.126a, App.204a(49), App.205a(55), App.211a(89-91), App.227a, App.241a, App.245a, App.247a, App.294a) there is a Missouri Bar Fee Dispute Resolution Committee created for that purpose.

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[6] In fact, the district court judge (App.58a) was not familiar with this fund either.

(App.118a) The CSF was established to 'reimburse' former clients who suffered financially from the 'fraudulent and dishonest' acts of their former counsel. (App.10a-12a) I have never engaged in any act of fraudulent or dishonest conduct in my legal practice, such acts would necessarily constitute the violation of a properly promulgated Rule of attorney professional conduct, and no court or authorized state investigatory body has ever found that I violated any such Rule. (App.12a, App.207a, App.67a-69a) Furthermore, I stated over and over, both directly and through my attorney–that these complaints solicited against me were in the realm of fee disputes as the vast majority of complainants did not even allege that I had fraudulently or dishonestly withheld money from them. (App.118a-119a, App.227a) Additionally, I stated repeatedly that I intended to defend myself vigorously against such claims, (App.227a-230a) but defense is not permitted. (App.228a) Moreover, I have no intention of tacitly approving the acts of these shoddy proceedings, even though my license will never be reinstated in Missouri unless I do so. (App.73a) The proper Missouri investigatory body for attorney misconduct is the Office of Chief Disciplinary Counsel (OCDC), and if I had been defrauding clients, he should have been investigating me for those fraudulent acts. (App.38a, App.39a, App.259a) On the other hand, the CSF was not created by way of any state court rule, statute or regulation and admittedly has no grant of any state authority to regulate the practice of law in Missouri. (App.12a, App.231a) Its processes vary greatly depending upon the claim presented, (App.234a-236a) no appeal of any decision is possible, and no oversight of any kind exists. (*id.*) One process that does not vary before the CSF, how-

ever, is that the accused former attorney and/or his counsel may not participate. (App.235a)

Missouri has a long, yet virtually unknown practice of following these unwritten CSF 'rules' for readmission to the practice of law following suspension. The District Court outlined its own newly discovered[7] knowledge of this outside-of-the-rules CSF process in its own opinion (App.10a-App.14a), but mistakenly determined that the Missouri Supreme Court's rubber stamp of the CSF process years later and resultant imposition of a fine upon me somehow created a reimbursement obligation under the newly created version of Missouri Rule 5.28, (App.29a) even though the applicable readmission rules specifically call for an applicant to aver in the reinstatement application that any person harmed as a result of misconduct had been made whole (restitution) and even though no party to this action has ever alleged that restitution under the new Rule 5.28 (created in 2017) was at issue, and even though the first time the need to 'reimburse' the CSF was imposed upon me by the Missouri Supreme Court was in February, 2020, more than six years after my suspension. (App.32a)

In the courts below, I attempted to outline the CSF equivalent organization practices in other states[8]. (App.240a-242a) The majority of those are established

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[7] *Id.*

[8] *See* American Bar Association, *2014-2016 Survey of Lawyers' Fund for Client Protection, Standing Committee on Client Protection of the American Bar Association Center for Professional Responsibility, 2016*, https://www.americanbar.org/groups/professional_responsibility/committees_commissions/standingcommitteeonclientprotection/clientprotectioninformation/

by court Rule, by state statute or by other state regulation. (*id.*) Client security is a valid state interest, and I agree wholeheartedly that no attorney should be able to defraud any client. But any person, attorney or not, should be inherently entitled to defend himself against accusations of professional fraud and/or dishonesty, especially when he or she is or later could be required to pay a fine equivalent to the amount paid to a former client, ostensibly due to such former attorney's alleged fraudulent or dishonest behavior, particularly if reinstatement of a professional license may be held hostage as a result of such proceedings. (App.214a)

I have alleged throughout this now nearly nine-year process that the Supreme Court of Missouri, instead of following its own rules for reinstatement of a license to practice law, abdicates its own responsibility and allows an unauthorized bar committee to review client relationships between particularly targeted suspended attorneys, (App.98a-99a)[9] subject to no court rule, state statute or administrative regulation in Missouri; thereby impermissibly transferring its own authority to a bar association, as prohibited by *Feldman*. In its own Rules at the time of my first reinstatement petition, Missouri Rule 5.28(i) provided that the

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[9] The district court was 'a little uncomfortable with the concept that a consequence could be attached to the payments of the Client Security Fund by the Supreme Court that wasn't clear to those involved at the time the Client Security Fund acted and in which there is at least some dispute as to what level of due process that Client Security Committee afforded. And I can see Mr. Trapp's concerns about he's told he's suspended for offenses which weren't found to be sufficient to disbar and yet when he tries to reinstate he's told he owes all this money when that money doesn't seem to be—appear to be directly related to the offenses for which he was suspended.'

Court impose a new disciplinary panel in the event that some form of misconduct was discovered after initial discipline and during the investigation into the reinstatement application. (App.46a) But the Missouri Supreme Court did not follow its own Rule, and OCDC counsel appointed to investigate my application did not request such a panel under the Rule either. This is because, as I have alleged in my complaint, in Missouri, the Missouri Supreme Court has always followed the shadow CSF process and not its own promulgated reinstatement Rules. (App.118a-119a) Instead, the Missouri Supreme Court allows a group of favored attorneys appointed by other favored members of the bar to target particular applicants for readmission, outside of the published Rules (App.67a-68a; App.118a-119a), with no grant of necessary state authority.

The individual CSF members acknowledge that their activities have no foundation in the law. They admit that they have nothing to do with applications to practice law in the state of Missouri. Yet, since its inception, the CSF has always asked the Missouri Supreme Court to make any reinstatement petition contingent (App.68a, App.125a) upon the applicant recognizing the CSF as a valid arbiter of one-sided legal fee disputes, acknowledging and accepting the one, two three or six person (App.242a) findings that the former attorney somehow misappropriated or defrauded a particular client, and 'refunding' any amounts paid out by the CSF after its (in every literal sense possible) back-room, private proceedings. (App. 240a-245a) The Missouri rule requiring reimbursement of CSF payments is either a long-standing unwritten rule of general application to all reinstatement applicants, or it was created as a result of rule-making

activities conducted by judicial office holders for the first time on February 4, 2020 (App.32a, App.118a-119a), even though this new rule may have been promulgated in an otherwise judicial proceeding. (App.307a) However this new reinstatement rule was created, it is either a rule applicable only to me, or a rule applicable to all reinstatement applicants and its constitutionality may therefore be challenged in a federal district court by way of declaratory judgment.

I am also challenging numerous separate practices of the Missouri Supreme Court that are simply unbelievable to me. (App.217a-220a) Frankly, had these things not happened to me directly, I would have a hard time believing them to be true. I feel that the courts below have completely ignored my requests for declaratory relief, most notably that a one-word decision on the denial of reinstatement is just arbitrary (App. 68a-70a) and a delay of more than two years constitutes an unreasonable delay for a licensing decision, especially when that delay is intentional[10] (*id.*) and other requests by favored legal profession reinstatement applicants are swiftly granted, some even after lengthy felony prison sentences.

When I first applied for reinstatement to the legal profession in December of 2015, being fully eligible under the promulgated Missouri Rule for reinstatement (Mo. Rule 5.28), I had no idea that the process would (or could) be affected by an outside process; be intentionally delayed for more than 18 months by a vindictive investigator; nor that it could simply be

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[10] Defendant 'Sam Phillips did absolutely nothing' for more than two years and filed a virtually identical report to the report he filed during the first reinstatement request.

denied in one word, without justification or explanation. (App.206a) This was extremely troubling to me after the first 18-month denial in 2017, as I had no way of knowing what factor I had failed to live up to in the eyes of the licensure decision-makers (the Missouri Supreme Court) at that time of that decision. (App.37a) Also, I was shocked to discover that only for the profession of attorney in Missouri is 'because we said so' a sufficient justification for denial of licensure, and I had endless questions. Even the district court wondered what would happen if the Missouri Supreme Court had based its decision against me in a racially discriminatory manner. (App.87a) What if I was a person of color? What it I was a woman? What if I was disabled or a member of any protected class? A one-word denial provides no basis, for anything. (App.86a, App.138a, App.197a(18)) That is why it is not permitted in any other Missouri profession.

What I discovered is that in Missouri, the profession of attorney is the only profession that is subject to such arbitrary licensing decisions. In virtually every other licensed profession in Missouri (there are 41), licensure cannot be denied to an applicant without explanation, by statute. (App.251a) But in Missouri, potential lawyers are not entitled to a reason, because the judicial branch just says so. Since that time, I have made inquiry into many other states and have found no other state, case or rule elsewhere denying attorney licensure without explanation or justification. My declaratory relief request asks that the licensing authority for attorneys at least be required to provide a reasoned opinion for denial. But my declaratory relief requests have been ignored at every level, although *Ex Parte Young* allows the vehicle for such claims. Even

more shocking to me is that the Missouri Supreme Court has gone far out of its way to reinstate felons (*See In re Lockenvitz*, MO SC #91356) who lie under oath, and to not punish at all those who are guilty of far greater offenses than I have ever been found to have committed. (App.215a) In my federal Complaint, I alleged reasons for being treated differently by the OCDC and the Court itself and outlined the numerous practices that I believe violate the United Stated Constitution, for which I seek declaratory relief under 28 U.S.C. § 2201 and § 2202. (App.217a-221a)

After the shock of the unexplained first denial of reinstatement, and still fully eligible under a newly revamped version of Missouri Rule 5.28 issued during the pendency of my first reinstatement request, (App.47a) I applied again for reinstatement in September 2017, this time additionally and specifically asking for guidance as to what I could do to be readmitted to the practice of law in Missouri should the court again deny reinstatement, mistakenly thinking that this request would prompt the court to provide at least a reasoned opinion as to what factors under the new Rule 5.28 ethical considerations and new 'clear and convincing' reinstatement standard I had failed to live up to in order to be granted reinstatement. (App.207a) After more than 26 months, the Missouri Supreme Court again denied the petition without explanation, in one word. (App.142a-144a, App.209a-210a, App.275a-279a) But this time, as requested, the Court indicated a possible explanation for its denial of my reinstatement requests, stating that reinstatement would not be considered until I 'reimbursed' the CSF. Finally, I had at least a possible reason for the denial of my reinstatement petitions. This suit followed.

Instead of direct appeal to this court at that time, I ultimately elected to challenged Missouri's overall reinstatement rules and the CSF process in federal district court seeking declaratory relief that such procedures are unconstitutional and seeking monetary § 1983 relief against the individual actors that had solicited complaints and 'found' me to have dishonestly and/or fraudulently looted my former clients in my absence.

REASONS FOR GRANTING THE PETITION

I. EITHER *ROOKER-FELDMAN* IS A PRECLUSION DOCTRINE THAT ALLOWS COURTS TO THROW OUT VIRTUALLY ANY DIRECT OR COLLATERAL ATTACK ON A FINAL STATE COURT PROCESS, OR UNITED STATES DISTRICT COURTS SHOULD 'GET THE MESSAGE' THAT *ROOKER-FELDMAN* IS NOT A PRECLUSION DOCTRINE AS THE 11TH CIRCUIT STATED IN *BEHR*.

This Court in *ExxonMobil* outlined in the opening paragraphs of that case its view that the lower courts had stretched *Rooker-Feldman*'s limited scope, and noted the concept's rare appearance in the United States Supreme Court, commenting that 'the lower federal courts have variously interpreted the *Rooker-Feldman* doctrine to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law under 28 U.S.C. § 1738. Regardless of that case and its gui-

dance, in my humble view, *Rooker-Feldman* is still an ever-expanding preclusion doctrine at the federal district and appellate court levels.

One of the doctrines namesake cases, *Feldman*, dealt specifically with attorney licensure and the impermissible delegation of authority to a bar association, I feel of the same type of which I am complaining here. I have argued both at the district court and at the appellate level that for my case, it isn't even necessary to look to the ever-expanding scope of *Rooker-Feldman* over the years, just look at *Feldman* itself. Mr. Feldman made the argument/claim in 1983 that the D.C. Court of Appeals had impermissibly delegated its authority to the American Bar Association's determination of whether or not his education was sufficiently adequate to practice law in the District of Columbia, and that as a result, the chief licensing authority in that state had impermissibly transferred its power to regulate the practice of law in the District of Columbia to the American Bar Association. How does that claim differ from my claim that the Missouri Supreme Court has impermissibly delegated its authority to the Missouri Bar Client Security Fund's determination of whether or not my ethics (or the ethics of any attorney subjected to this process in the future) are sufficiently adequate to practice law in the State of Missouri? Doesn't acceptance of the factual scenario that I have presented to the United States District Court for the Western District of Missouri, which that court acknowledged must be taken as true at the motion to dismiss phase, mean that the chief licensing authority in Missouri has impermissibly transferred its power to regulate the practice of law to the Missouri Bar Client Security Fund?

The *Rooker-Feldman* doctrine has become a vast preclusion doctrine that this Court tried to clarify in *Exxon-Mobil*, but confusion still reigns in the application of this doctrine in all of the lower courts. Such is certainly true in the Eighth Circuit. As recently as 2021, the Eighth Circuit recognized and reiterated that suits that do not imply that any state court orders are invalid may properly proceed in federal district court. In *Carter v. Ludwick,* (8th Cir. 2021) the Eighth Circuit allowed claims to proceed that it decided were an attack on the adverse party's actions in gaining the decision, not an attack on the judgment itself, citing *MSK EyEs, LTD v. Wells Fargo Bank, Nat'l Ass'n,* 546 F.3d 533, 539 (8th Cir. 2008) and *McCormick v. Braverman*, 451 F.3d 382, 392-94 (6th Cir. 2006) (*Rooker-Feldman* bars claims alleging injury arising from state court judgment itself; where plaintiff raises abuse-of-process and fraud claims arising from defendants' actions, not state-court judgment itself, claims were independent and outside scope of *Rooker-Feldman*). Yet that court upheld the dismissal of my 42 U.S.C. § 1983 claims against the individual members of the Missouri Bar Client Security Fund and the Missouri Bar Board of Governors, both named and unnamed, and my claims against Defendant Sam Phillips, who I allege solicited claims on behalf of the CSF far outside of the scope of the authority granted solely to the Missouri Supreme Court to regulate the practice of law in Missouri. What does one need to do to convince the court below that my federal action (1) seeking money damages against individuals that have been impermissibly delegated authority to regulate my reinstatement to the bar; (2) seeking to destroy Missouri's use of the CSF process (at least in its present form) entirely; (3) seeking to determine the appropriate

allowable time an application may be delayed; and (4) seeking to call into question unjustified one word denials for all future reinstatement applicants to the practice of law in Missouri is not an action to overturn, negate, invalidate, nullify, void or otherwise call into question either ruling of the Missouri Supreme Court denying the reinstatement of Samuel Trapp's license to practice law in Missouri? Whether or not those claims should be dismissed as to the chief licensing authority in the state of Missouri because we are discussing judicial branch licensing determinations and not executive branch determinations will be argued in the next section, but certainly my 42 U.S.C. § 1983 attacks against third parties that destroyed my ability to reenter the practice of law under no grant of any state authority have merit and should be permitted to proceed in federal district court, certainly at the motion to dismiss phase of the case.

None of the claims submitted against me to the CSF were ever part of any disciplinary hearing, and as far as I am aware, the Missouri Supreme Court was not presented any details regarding any of those claims during either reinstatement request. All that was submitted to the Court for review during my reinstatement proceedings was a list of claimant names and an amount given to that claimant and a request that I be ordered to reimburse that amount or not be granted reinstatement. Period. That request was blindly granted in 2020 by the Missouri Supreme Court, although those claims were part of no disciplinary process and were decided against me years in the past by parties having no authority to regulate the practice of law in Missouri. All the chief licensing authority in Missouri knows is that the bar is request-

ing that I be required to reimburse funds paid out 'on my behalf,' but it has no idea what the basis of any claim against me to the CSF entailed, and whether I violated any professional rule of conduct that resulted in the CSF payment to any particular former client; it is just trusting the CSF process. That sounds very much like the *Feldman* argument regarding impermissible delegation to me.

In its judgment, the district court stated that 'for a plaintiff's claims to overcome *Rooker-Feldman*, the claim must be "prospective and directed toward the rules and procedures for considering future petitions for reinstatement, rather than toward the decision of the state supreme court[.]" *Centifanti v. Nix*, 865 F.2d 1422, 1429 (3d Cir. 1989) (internal quotations omitted) (holding that plaintiff's petition overcame *Rooker-Feldman* because it "challenge[d] the constitutionality of the Pennsylvania rules as they exist, rather than the state court's application of them to deny his petition"). (App.19a-20a) The court's use of that case is particularly interesting to me in light of this matter, because the court did not state how my constitutional claims differed from those of the defrocked attorney in that case. That case dealt with a reinstatement petition by an attorney that had been suspended for assault charges against his wife. He applied later to the practice of law in his state, and was denied licensure by that state supreme court, but the constitutional issues that he presented in his federal district court were permitted to proceed. But in my case the district court claimed it had no jurisdiction, because of *Rooker-Feldman*, to resolve my constitutional challenges to the federal court against the individual actors that found me to be a fraud without the ability to defend

myself. How are my federal claims not prospective and directed toward the rules and procedures for considering future petitions for reinstatement as outlined in Centifanti? At least to me, such differentiation does not add up.

My operative pleadings in this matter clearly outline that I am not seeking review of the denials of my reinstatement. I'm not sure what facts the district court implied to lead it to believe that I am seeking federal court intervention to overturn the state court decisions regarding my two reinstatement motions, or that my § 1983 claims against individuals that affected my reinstatement process without proper authority are so inextricably intertwined with the Missouri Supreme Court's reinstatement denials against me that those claims are really a cloaked attempt to overturn the Missouri Supreme Court's reinstatement decisions against me, but that is not what I seek, and that is not the factual pattern my pleadings laid out for that court.

The district court ruled that my § 1983 actions against the individual CSF members were inextricably intertwined with the decisions of the Missouri Supreme Court not to reinstate my license to the practice of law. But this conflicts with the 8th Circuit's ruling in *Carter*. I pointed out this fact to both lower courts, and pointed out as well a case that was ruled upon during the pendency of my case in the 11th Circuit, which specifically addressed the confusion in all circuits regarding those two words. The *Behr v. Campbell,* 8 F.4th 1206 (11th Cir. 2021) decision states that, at least in the 11th circuit post *Exxon-Mobil, Inc. v. Saudi Basic Industries, Inc.* 544 U.S. 280, it gets this Court's message. But apparently, in the 8th Circuit, they do not get the message, because some claims that collat-

erally or directly attack process and not the judgment itself are permitted to proceed, and some claims are inextricably intertwined and others are not, because those words are apparently discretionally used to foreclose some claims and to allow others to proceed.

In *Behr*, the 11th Circuit, quoting *Exxon-Mobil* stated

> *Exxon-Mobil* exposed the flaws in our significant expansion of *Rooker-Feldman*, and this Court got the message. (*Behr*, at 1210)
>
> and further 'We reemphasize one point here: *Rooker-Feldman* will bar far fewer cases going forward, but this does not mean plaintiffs have free rein to relitigate in federal court any and all issues related to their state court proceedings. Other preclusion and abstention doctrines remain alive and well, and in "parallel litigation, a federal court may be bound to recognize the claim-and issue-preclusive effects of a state-court judgment." *Exxon Mobil*, 544 U.S. at 293; *see also Lozman*, 713 F.3d at 1074–80. (*Behr* at 1214)

The 11th Circuit acknowledged the confusion created by those two words in *Feldman*, but further stated that this Court had corrected the applicability of those words in *Exxon-Mobil*. 'Those two words—admittedly hard to decipher when unmoored from the facts of the case—have spawned endless confusion. Indeed, that term is usually at the root of the many mistaken *Rooker-Feldman* dismissals that we are called to review.' Apparently, that confusion is still rampant, because those words were used by the Western District of Missouri to dismiss my claims against third

parties having nothing to do with the judgment of the Missouri Supreme Court to deny my reinstatement. In my opinion, it is past time for a definitive ruling from this Court on the meaning of those two words and whether district courts can use them to deny litigants access to the federal courts. Finally, the 11th Circuit stated in *Behr*, at 1208, that *Rooker-Feldman's* 'era of expansion is over.' But that era of expansion is still prevalent in the 8th Circuit.

II. EITHER *EX PARTE YOUNG* ALLOWS DECLARATORY RELIEF CLAIMS AGAINST THE CHIEF LICENSING AND RULEMAKING AUTHORITY IN A STATE, OR SUCH RELIEF DOES NOT APPLY TO CLAIMS AGAINST THE CHIEF LICENSING AUTHORITY FOR THE PRACTICE OF LAW BECAUSE THE DECISIONS THAT CREATE NEW RULES FOR THE PRACTICE OF LAW IN A STATE MAY HAVE BEEN MADE IN A JUDICIAL MANNER INSTEAD OF ADMINISTRATIVELY OR LEGISLATIVELY.

The circumstances I present establish a proper scenario for *ex parte Young* review; particularly as to challenges against the rules (and the silent rules) for admission to the practice of law against the chief rulemaking authority in Missouri. As pleaded in Count I against Defendant Chief Justice of the Missouri Supreme Court Wilson, I seek declaratory relief stating that decisions denying reinstatement should include a well-reasoned opinion that informs the party seeking reinstatement exactly why he or she is not being granted readmission, instead of a one-word denial. How do unjustified one-word opinions give any indication of a reasoned, thoughtful review of a licensing application to the practice of law? If one-word, unjustified denials are permitted in one profession, why are they

not permitted in every profession? What makes the practice of law so different? (App.144a-159a)

I outlined above that I have been investigated administratively by the federal executive branch and the executive branch in Missouri and in Florida and have been found to be sufficiently ethical to grant the administrative benefit I sought through submitting to those investigations. I alleged below that giving no indication of why I am unworthy of licensure to practice law, and why I must wait 18 or 26 months for a licensing decision (among other things) cannot possibly grant me procedural or substantive due process under the United States Constitution. (*id.*) I also argued below that I find it extremely hard to believe that seven Supreme Court judges could ever agree unanimously on what to have for lunch, let alone make a judicial determination on any applicant's reinstatement to the practice of law in a one-word unanimous decision. (App,196a, App.251a (footnote 20)) I ask this Court whether such practices violate the United States and Missouri Constitutions, and whether federal district courts have the power under 28 U.S.C. § 2201 and § 2202 to determine the constitutionality of such a process.

Does *ex parte Young* foreclose an action for declaratory relief against the state's chief licensing authority in Missouri, Defendant Chief Justice of the Missouri Supreme Court Paul Wilson, just because we are discussing judiciary licensing in the practice of law and not executive branch licensing decisions for every other profession? The district court delved into declaratory relief for Mr. Wilson acting in his capacity as the chief licensing authority for the practice of law, (App.144a-159a) but gave no indication in

the judgment why *ex parte Young* does not apply in the practice of law. (App.180a-182a, App269a-App.279a, App.298a-302a) The *Ex Parte Young* doctrine provides that a "suit challenging the constitutionality of a state official's action is not one against the State." *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 103 (1984). For *Ex Parte Young* to apply "(1) the action must seek only prospective injunctive relief; it may not challenge past conduct; (2) the action must address an ongoing federal violation; (3) the action cannot be based on state law; and (4) the official sued must have a connection with the law and direct responsibility for enforcing it." *S.B. by and through Kristina B. v. California Department of Education*, 327 F.Supp.3d 1218, 1236 (E.D. Cal. 2018). Those factors do not indicate that *ex parte Young* does not apply to actions against the judiciary branch, and I have alleged that each of these factors do apply to my declaratory relief claims against the chief licensing authority in the practice of law in Missouri. The district court should be required to outline the reasons that *ex parte Young* do not apply in the practice of law, and whether the judiciary is exempt from such declaratory relief requests when the executive branch would not be.

CONCLUSION

Honoring the 'findings' of the CSF is not required by any written, published or promulgated reinstatement rule. (Mo. Rule 5.28) As for me, admitting that I somehow dishonestly or fraudulently misappropriated money from my former clients will never happen, regardless of the rulings of the courts below and

frankly, regardless of any ruling in this Court. The commonest of thieves in the United States is permitted to defend himself against such allegations–but I am not. As I stated repeatedly below–I fought the allegations against me when I was initially suspended EVERY step along the way, and ultimately, I lost that battle. But I understood the consequences and accept those results. But I refuse to accept a shadowy process that occurred after my license to practice law was suspended, by people with no grant of state authority that ultimately determined that I am a dishonest fraud without giving me the opportunity to defend myself. I refuse to accept the Supreme Court of Missouri's rubber-stamp of such 'findings' without question years later. I think it's just un-American. It is unacceptable in any other Missouri profession, and I cannot believe I have to accept such consequences without recourse, just because the practice of law is ruled by the judiciary and not the executive branch. I happen to agree with Justice Stevens dissent in *Feldman* and I pray that this Court review and apply that decision to this case.

Either the practice of law is a profession entitled equal protection requirements and to simple procedural and substantive due process rights under the United States Constitution as Justice Stevens thought, or it is not because the judiciary controls the practice of law absolutely, without checks and balances from any other branch of government.

What happened to me (is happening to me?) is just plain wrong. I was an imperfect attorney, for which I am eternally sorrowful, apologetic and guilt-ridden. I am also an imperfect human, and certainly an imperfect mouthpiece for what I feel are extremely important

issues. But I don't deserve what happened to me, and this system still exists in Missouri. I would like the opportunity to change the system for the better and to punish those who should know better. Had I known the way the reinstatement 'system' really worked in Missouri before I operated my business and my profession in a somewhat haphazard fashion, I would have been far more careful running my law firm and maybe would never have ended up here in the first place.

Respectfully submitted,

SAMUEL EDWARD TRAPP
PETITIONER PRO SE
4732 OSAGE BEACH PARKWAY
SUITE A
OSAGE BEACH, MO 65065
(573) 746-6226
SAMTRAPP1@GMAIL.COM

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