ORIGINAL

23-261
No. _____

In the Supreme Court of the United States

HENRY L. KLEIN,
Petitioner,

v.

LOUISIANA OFFICE OF
DISCIPLINARY COUNSEL,
Respondent.

On Petition for a Writ of Certiorari
To The Supreme Court of the State of Louisiana

PETITION FOR A WRIT OF CERTIORARI

HENRY L. KLEIN, *pro se*
201 St. Charles Avenue, Suite 2501
New Orleans, Louisiana, 70170
(504) 439-0488
henryklein44@gmail.com

Member of the Supreme Court
Bar Since September 6, 1974

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QUESTIONS PRESENTED

After FNBC Bank was closed by regulators at a $1 Billion loss, FDIC sold the bank's loans in a secondary market at deep discounts. Girod LoanCo, created solely to purchase the loans, acquired $600,000 in debt owed by Regina Heisler, Petitioner's client. In defense, Petitioner exposed GIROD as part of a $108 billion vulture-conglomerate in the Cayman Islands. In retaliation, GIROD combined with Louisiana's Office of Disciplinary Counsel to accuse Petitioner of filing "...overly-zealous pleadings..." on his client's behalf. ODC allowed a **single** deputy to assume the roles of (i) complainant, (ii) investigator, (iii) prosecutor, (vi) adjudicator, and (v) appellate counsel and a **single** agency to prosecute Petitioner. In lawyer-discipline cases, Louisiana's scheme of review is *sui generis.*

Q-1. Did Louisiana ODC violate *Axon Enterprise v. FTC* and *SEC v. Cochran* principles by having a **single** deputy assume all prosecutorial and adjudicatory roles in a **single** administrative agency?

Q-2. In lawyer-conduct cases, does the Louisiana administrative scheme provide "...a meaningful judicial review..." of proceedings by two panels of non-Article III adjudicators?

Q-3. Given that after *Axon/Cochran*, the only question left was "...to decide where [the constitutional challenges] may be heard...", is *this* Court the one and only tribunal pursuant to 28 U.S.C. § 1257(a)?

Q-4. Did ODC violate Petitioner's 1st, 5th and 14th Amendment rights by subjecting him "...to an illegitimate proceeding led by an illegitimate decision-maker...."? *Axon*, at p.13.

Q-5. Was the use of the bar disciplinary process to advance GIROD's litigation goals a *malum prohibitum* as suggested at *Politically-Motivated Bar Discipline*, 85 Washington University Law Quarterly 770 (2005)?

Q-6. Should the Court use its inherent powers pursuant to *Chambers v. NASCO* and 28 U.S.C. 1651(a) to independently investigate if GIROD engaged in "...fraud upon the courts ..." by weaponizing the FNBC notes to bilk hundreds of millions of dollars from victims of the bank collapse, including Petitioner's client?

PARTIES TO THE PROCEEDINGS

1. Petitioner Henry Klein, a lawyer with a 55-year career, presented related issues to this Court on behalf of Regina Heisler at Dockets **18-19A41, 20-1361** and **21A41**, the most instructive being **20-1361**. For filing allegedly "overly-zealous" pleadings on behalf of Regina Heisler, Petitioner has been suspended by the Louisiana Supreme Court for a year-and-a-day, effectively **SILENCING** his exposure of GIROD as a vulture-creditor.

2. Regina Heisler, Petitioner's client, was described as *Nominal Borrower F* in the FNBC criminal cases because she **received no money** in the fraud. Notwithstanding, GIROD seized the entire $15 million estate left by her deceased husband. The widow-Heisler passed away December 23, 2022, while Petitioner was fighting for her estate when he was effectively disbarred.

3. GIROD created just before FNBC collapsed, was a "...special-purpose vehicle to buy FNBC loans and sue upon them..." GIROD's opaque silo structure in the Caymans fits the description of a "...vulture-creditor..." by the 111th Congress at H.R. 2932: STOP THE VULTURE FUNDS ACT[1].

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[1] So-called "vulture" creditors acquire, either by purchase, assignment, or some other form of transaction, the defaulted obligations of, and sometimes actual court judgments against, impoverished nations. Vulture creditors usually acquire the debt for a payment of a sum far less than the face value of the

4. ODC is a Louisiana agency created to administratively enforce lawyer-conduct. ODC is described as a "...unitary agency..." which separates prosecutorial and adjudicative functions to avoid unfairness, **but did not**.

5. Paul Pendley was the **only** ODC deputy involved in all aspects of the case against Petitioner — from complainant to investigator to charge-scrivener to prosecutor to advocate. Pendley's presentations to an ODC adjudicatory panel and to the Supreme Court were **not** recorded for purposes of meaningful judicial review.

6. Eric Lockridge is a partner at the Kean-Miller law firm, which conducted due diligence for GIROD on the FNBC loan portfolio, implicating the warnings by ABA FORMAL OPINION 491 against representing clients with potential plans to engage in fraud or crimes. Lockridge was ODC's only witness in the prosecution of Petitioner for filing "overly-zealous" pleadings of behalf of the widow-Heisler.

7. In lawyer-conduct cases, the Louisiana Supreme Court is not "...**a court of first resort**..." nor "...**a court of last resort**..." nor "...**a trial court**... with

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defaulted obligation. They do so for the sole purpose of collecting through litigation, seizure of assets, political pressure, or other means, preferential payment of the defaulted debt on terms and in amounts far in excess of the amount paid by the vulture creditor to acquire the debt.

any "...capacity for fact-finding..."[2]

SIGNIFICANT RELATED PROCEEDINGS

1. *Girod LoanCo v. Regina Heisler* began the $15 million in seizures. The state-court judge signing the writ of seizure contemporaneously received $47,500 from clients of the Kean-Miller law firm, resulting in the filing of Writ Application 20-1361.

2. *Girod LoanCo v. Henry Klein* is a lawsuit filed by Kean-Miller against Petitioner, claiming deficiencies that will exceed $2 million after all Heisler assets are sold.

3. *United States v. Gary Gibbs* is the first bank fraud case filed. Gibbs duped the widow-Heisler into signing notes as part of the note-kiting scheme that broke the bank. He awaits sentencing for conspiracy to commit bank fraud.

4. *United States v. Ashton Ryan* was tried in February of 2023. The jury returned 43 guilty verdicts out of 43 counts against FNBC CEO Ashton Ryan, seven of which confirmed that Regina Heisler was defrauded. On September 6, 2023, Ryan was sentenced to fourteen (14) years in federal prison.

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[2] In dissenting at *Elgin v. Department of the Treasury*, Justices ALITO, GINSBURG and KAGAN considered Congressional intent in administrative schemes. Congress, however, is **not** involved in lawyer-discipline, a *res nova* quandry.

5. *Regina Heisler v. Kyle Ardoin* was a citizen's lawsuit filed in 2020 against the Louisiana Secretary of State and the Louisiana Attorney General seeking to have the Louisiana closed-door statute enforced. When Regina Heisler filed bankruptcy *pro se*, Lockridge moved the Bankruptcy Court to order Petitioner to dismiss on the grounds that Petitioner was not authorized to represent the interests of the Debtor. The pattern of "...poisoning the well..." by GIROD worked perfectly[3].

6. *Regina Heisler v. Ramona Elliott* was filed in the District of Columbia as an attempt to have the National Office of United States Trustees in D.C. take action to prosecute a bankruptcy claim against GIROD (the only significant creditor) and against Lockridge for violation of ABA FORMAL OPINION 491[4].

7. *In re: Regina Heisler* was filed by Regina Heisler, *pro se*, at Eastern District Bankruptcy Docket 20-11509. Petitioner is not a bankruptcy practitioner and because GIROD had all of the widow-Heisler's funds tied up, she could not afford a bankruptcy

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[3] See, ***The International Society for the Study of Character Assassination***. In July 2011, scholars from nine countries gathered at the University of Heidelberg, Germany, to debate "...the art of smear and defamation in history and today...", Wikipedia.

[4] Petitioner is a member of the D.C. bar. The U.S. Trustee refused to enforce bankruptcy-fraud. The suit was dismissed per Rule 41. ODC argued this was overly-zealous advocacy.

lawyer and appeared *pro se.* GIROD filed a $7,869,608.10 Proof of Claim that Petitioner argued was a fraud because Regina Heisler *never* received any money in the note-kiting scheme that broke FNBC Bank and ODC knew it. ODC was given affidavits that Regina Heilser was defrauded and named *Nominee Borrower F* in the criminal cases. Yet, ODC did not reveal this to HC-37, nor to the adjudicative committee, nor the Louisiana Supreme Court and argued to the contrary.

8. *Regina Heisler v. Girod I* was a Petition for Certiorari filed by Petitioner after the Louisiana courts refused to address judicial misconduct by the district judge who accepted $47,500 in campign contributions from Kean-Miller and Kean-Miller clients in violation of *Caperton v. A. T. Massey Coal.* At the Court's conference on April 23, 2021, the writ was denied. Petitioner supplemented, based on Justice SOTOMAYOR's dissent in *City of Chicago v. Fulton*, 592 U.S. ___ (2021). Justice SOTOMAYOR referred 20-1361 to the full Court for its June 3, 2021 Conference, where it was again denied. **Fighting hard for Regina Heisler resulted in the effective disbarment of the pesky Henry Klein[5].**

9. *Regina Heisler v. Girod II,* was submitted on September 21, 2021 to Justice ALITO. It was re-

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[5] If anything is "recommended reading" by the Justices, Docket 20-1361 is the one. Petitioner's arguments were supported by documentation. Yet, Deputy Pendley told the Supreme Court that Petitioner filed pleadings without any support !!!

submitted by Justice SOTOMAYOR to the full Court at its October 29, 2021 Conference, where it was denied. The issues have now been resurrected by SILENCING Henry Klein through ODC, an agency devoid of Article III adjudicators which Justice THOMAS described as "...**dressed up as courts**..." in his concurrence in *Axon*.

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OPINION BELOW

On May 18, 2023, the Louisiana Supreme Court entered its PER CURIAM opinion, App B. Rehearing was denied on June 27, 2023 without comment, App C.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) in that the May 18, 2023 PER CURIAM opinion was a final judgment rendered by the highest court of the State of Louisiana questioning the administrative scheme whereby Petitioner was "...subjected to an illegitimate proceeding led by an illegitimate decision-maker...", *Axon v. FTC* and *SEC v. Cochran.*

This Court has jurisdiction pursuant to 28 U.S.C. § 1651(a), providing that The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

FNBC was founded in 2006 by Ashton Ryan, Jr. surrounded by celebrated board members and backers, setting a Louisiana record for the initial funding of a start-up bank. On May 10, 2013, FNBC opened on NASDAQ with nearly 4.2 million shares at $24, peaking at nearly $42 a share in December of 2015. The rise was due to aggressive lending practices,

creating a mirage of bank assets. The day FNBC collapsed, the criminal defendants in the Eastern District of Louisiana were overdrawn[6]:

Gary R. Gibbs	$ 123.0 Million
Kenneth Charity	$ 18.0 Million
Gregory St. Angelo	$ 46.7 Million
Frank Adolph	$ 6.1 Million
Avrid Vera	$ 2.7 Million
Warren Treme	$ 6.3 Million
Dunlop/Phoenix	$ 22.0 Million
Total	$ 224.1 Million

The bogus loans were made to deceive regulators by using *Nominee Borrowers.* Gary Gibbs, a now-convicted felon, was **the** insider who duped Regina Heisler. On April 28, 2017, the bank was closed with FDIC named Liquidator. Petitioner, recalling the days of RTC, advised the Heisler family to pay all debt before it was sold to entities known for vulture-ruthlessness. On May 10, 2017, armed with $600,000, Petitioner met FDIC liquidators who said the Heislers owed $9.8 million, not $600,000.

When Petitioner asked for the loan files, he was told that they had already been packaged for auction by the FDIC Dallas office. Six months of FOIA requests produced nothing. On November 13, 2017, GIROD paid $216 million for $415 million dollars in

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[6] Sentencing awaits, meaning DOJ has more targets in its sights.

face value. The discount was much higher due to default interest, penalties and attorneys fees. From April to November of 2017, GIROD conducted due diligence through the Kean-Miller law firm, a matter that has significance pursuant to ABA FORMAL OPINION 491, which warned lawyers not to aid potential clients seeking to engage in fraud or criminal activity. GIROD, created 20 days before FNBC collapsed, fit the description of a "...vulture fund..." in the passage of the STOP THE VULTURE FUND ACT at House Resolution 2932 of the 111th Congress, footnote 1, *supra.*

Of legal significance, GIROD did not qualify to transact business in Louisiana, a violation of Louisiana's "closed-door" statute, La. R.S. 12:1354(A). When pressed on that issue, GIROD claimed it was a "...debt collector for others...", notwithstanding *Henson v. Santander,* 137 S. Ct. 1718 (2017). On May 27, 2020, GIROD attempted to cure its status by an after-the-fact qualification with the Louisiana Secretary of State, a juridical act specifically prohibited by *Milburn v. Proctor Trust,* 54 F. Supp. 989 (W.D. La. 1944). In all 50 states and the District of Columbia, the penalty for not qualifying is that the foreign entity can **not** present judicial demands in the subject state's courts of law[7].

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[7] *Proposed Minimum Threshold Analysis for Imposing State Door-Closing Laws,* Robert Denicola, 51 Fordham Law Review 1360 (1983).

Within days after Petitioner filed a no right of action pleading based on *Henson* and *Proctor Trust*, Kean Miller made a $2500 contribution to the campaign of the judge presiding over the foreclosure, opening the door to discovery of the $47,500 contributions exposed in part by Louisiana Supreme Court candidate Richard Ducote[8].

REGINA HEISLER

Petitioner's client, Regina Heisler, lost her husband in 2007. He left a $15 million solvent estate. Soon after he died, long-ago convicted developer Gary Gibbs hired Regina Heisler's daughter as a way of getting to the Heisler wealth. Gibbs promised huge profits on developments and had Regina Heisler sign shill loans on which she received no money. Armed with toxic paper, GIROD began foreclosing on the widow-Heisler and her late-husband's succession. Notwithstanding Petitioner's efforts to protect the Heislers, GIROD has turned a $200,000+ purchase to a $15 million fleecing typical of the vulture-funding industry.

RIGHT OF LITIGIOUS REDEMPTION

Before GIROD purchased the FNBC notes from the FDIC, Petitioner attempted to exercise Heisler's "Right of Litigious Redemption" pursuant to Louisiana Civil Code Article 2652, the equivalent to champerty in

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[8] See Docket 23A96, "Other" at pages 86-93 "Ducote for Justice"

common law. Heisler should have been able to buy all of the FNBC debt for approximately $300,000. Kean Miller and Eric Lockridge refused to disclose what GIROD paid for the hundreds of millions of dollars in loans. Petitioner timely filed motions to enforce Article 2652, which provides as follows:

> **Article 2652. Sale of litigious rights**
> When a litigious right is assigned, the debtor may extinguish his obligation by paying to the assignee the price the assignee paid for the assignment, with interest from the time of the assignment.

Two significant cases apply to this issue. In *Smith v. Cook,* 180 So. 469 (1938), Louisiana Supreme Court Justice John FOURNET observed that "...public policy requires that by the debtor taking for himself the bargain . . . he should be preferred over **an odious purchaser of litigation.**"

The second case is from the District of New York, *Water Street Bank v. Panama,* 1995 WL 51160 (S.D.N.Y.):

> Vulture funds tend to be secretive about their investors. Yet knowing the identity of a litigation adversary is a matter essential to defending against the claims made. In *Water Street Bank & Trust v. Panama,* Judge Harold Baer found the plaintiff's steadfast refusal to disclose his human owners unacceptable

> and dismissed the case outright." *The Evolution of Modern Sovereign Debt Litigation: Vultures, Alter Egos, and Other Legal Fauna*, by Jonathan I. Blackman, available @ http://www.law.duke.edu/journals/lcp.

SILENCING HENRY KLEIN

Throughout all proceedings, Petitioner was diligently exposing GIROD as a vulture fund legally unable to present judicial demands in Louisiana courts. In *Girod v. Regina Heisler*, Petitioner filed a compelling motion to dismiss GIROD's case. The resulting threats to hold Petitioner in contempt of court for filing pleadings resulted in the filing of Writ Application at Docket 20-1361. GIROD is a phantasm which cannot stand for judgment. Its opaque structure precludes anyone from finding out who its members are and if they even exist[9]:

> **GIROD is wholly-owned by a limited liability company that is owned by three other limited liability companies. One of the members of the three limited liability companies is a limited partnership formed under the laws of the State of Delaware (the "DE LP"). To GIROD's**

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[9] Filed Affidavit in Civil Action 17-2205, *FDIC v. Levy Gardens, later Girod LoanCo v. Levy Gardens*. Petitioner is being sued by GIROD for an alleged deficiency *circa* $400,000.

> **knowledge, one of the limited partners of the DE LP is a limited liability company formed under the laws of the State of Louisiana; the members of the LA LLC are inter vivos trusts incorporated under the Louisiana Trust Code (the "Trusts") and the settlors, trustees and beneficiaries of the Trusts are individuals who reside in Louisiana.**

GIROD is foreclosing on a multitude of Louisiana citizens armed with FNBC notes, the epitome of the "fruits of a poisonous tree". Silencing Petitioner was very important to GIROD and Kean-Miller. Because of the disobedience of ABA FORMAL OPINION 491, Petitioner was accusing GIROD of "...money-laundering..." with the spoils being distributed to unknown persons in the Cayman Islands.

ODC, GIROD AND ERIC LOCKRIDGE

Petitioner's accusations that ODC, GIROD and Eric Lockridge were in an "unholy alliance" or had entered into a "Faustian Pact[10]" apparently *enraged* the Justices of the Louisiana Supreme Court to the point of accusing Petitioner of "...repugnant disrespect of the system we are charged to honor and serve..."

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[10] At the **unrecorded** Louisiana Supreme Court argument, Petitioner was asked if he was accusing ODC of making a deal with the devil. The answer was a 1st Amendment "YES."

When ODC was first involved, there was no complainant. Without a complainant, Paul Pendley assumed the role of complainant **and** investigator a *Bandimere* impossibility. Mr. Pendley first took a sworn statement from Petitioner during which frank colloquy took place, as depicted at Exhibit C to Petitioner's Motion to Dismiss based on *Axon/Cochran*[11]. After Petitioner explained all to Mr. Pendley, ODC nevertheless proceeded to meet with Eric Lockridge, who Petitioner accused of having "...a $15 million axe to grind...". Petitioner sought discovery of all Lockridge/Pendley communications, which were DENIED by "the chair". When Petitioner moved to strike Lockridge as an adversary as opposed to a client, "the chair" DENIED. ODC did **not** call a single independent witness, yet Mr. Pendley argued to the adjudicatory panel what other people said and thought. Petitioner filed a "Ventriloquist Objection" because other people's words were coming out of Mr. Pendley's mouth. It was **not** meant to be facetious, although the Louisiana Justices missed the point.

DECEMBER 7 AND 8, 2021

By the time Eric Lockridge testified before Hearing Committee-37 on December 8, 2021, he had already taken at least $6,412,777.73 from the Heislers. The lowest blow is the $2,037,327.16 that Lockridge collected on December 7, 2021 — one day before he testified in front of Hearing Committee-37:

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[11] Presented to Justices ALITO and KAGAN at 23A96.

When ODC presented its deceptive case against Henry Klein to the three ODC panelists at HC-37 — none possessed "...any expertise..." in the criminal art of "note-kiting". Paul Pendley did **not** ask Lockridge about the millions already taken from the widow-Heisler **nor** the $2,037,327.16 check Lockridge had burning in his pocket since December 7. Neither told the "...whole truth[12]..." Louisiana Civil Code Article 1953 makes fraud by silence just as fraudulent as an outright lie. ODC and Lockridge painted a picture of Petitioner as a filer of frivolous pleadings on behalf of his client for no legitimate reason or legal support.

Pendley also said nothing to the adjudicative ODC panel or the Louisiana Supreme Court about Petitioner's 55-year career of fighting corruption, the raising of two grandsons who lost both parents (one Petitioner's daughter) to heroin, the loss of his oldest son to fentanyl or anything that was favorable to Petitioner[13].

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[12] On December 8, 2021, Petitioner was suffering from COVID-like symptoms and requested a continuance, which "the chair" DENIED.

[13] **Article 1953: Fraud may result from misrepresentation or silence**

> Fraud is a misrepresentation or suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. **Fraud may also result from silence or inaction.**

INCORPORATION OF 23A96

On August 1, 2023, Petitioner's Application for a Stay of Discipline pending this Petition was docketed. On August 8, Justice ALITO denied. Petitioner refiled with Justice KAGAN, the author of *Axon/Cochran*. The Application and Appendix have been distributed for the September 26 Conference. For the sake of brevity, Petitioner incorporates 23A96 herein, avoiding much volume.

FINANCIAL FRAUD, MONEY LAUNDERING AND TAX EVASION

Petitioner told the truth. The FDIC's policy statement on the acquisitions of failed banks specifically mentioned the three vile attributes to be avoided by prohibiting entities in offshore jurisdictions from bidding. Petitioner accused GIROD of all three, a dangerous exercise of 1st Amendment rights. The citizen's lawsuit filed against Louisiana Secretary of State Ardoin and Attorney General Landry, *Regina Heisler v. Kyle Ardoin* tried to have these public officials enforce the law. GIROD has made hundreds of millions defrauding Louisiana citizens, **laundering the money to the Caymans and has not paid any taxes.** GIROD successfully persuaded the bankruptcy court to threaten sanctions. The proof presented in 23A96 was twisted against Petitioner, presently in contempt of the bankruptcy court, a matter this Court should independently investigate pursuant to *Chambers v. NASCO* – another cardinal sin that has ruined Petitioner's career of fighting corruption.

IRREPARABLE HARM

Constitutional violations are irreparable, *per se.* But the harm of suspending Petitioner to stop him from the "...constitutional challenge..." against the United States Department of Agriculture in the 7th Circuit – scheduled for oral argument November 3 — involves millions of low-income families depending on SNAP benefits for their hunger needs. The Administrative Review Officers (AROs) at USDA are far less capable than the ALJs at FTC and SEC. The opening brief in *Said v. The United States* was due April 14, 2023. Petitioner gets immediate releases from this Court **and reads them**. That habit allowed (the repugnant) Henry Klein to seek an extra 15 days and focus on *Axon/Cochran*. **SILENCING** Henry Klein constitutes what Justice WHITE said in *Chambers v. NASCO*, at 44:

> tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public.

ODC was protecting GIROD, not the public.

SUMMARY OF THE ARGUMENT

These not-so-united-states are in constitutional demise. Separation of Powers principles are yielding to weaponization of regulatory prowess for sinister agenda. The administrative state threatens freedoms

the Constitution was designed to protect. *Axon/Cochran* took the first important step. *Klein v. ODC* takes the second step:

> Q. Our task today is not to resolve those challenges; rather, it is to decide where they may be heard.
>
> A. Here and now[14].

OVERARCHING PRINCIPLES OF LAW

Petitioner was counsel to the Heislers for over 35 years, appearing *pro se* throughout the majority of the ODC process[15]. Prior to the April 14, 2023 publication of *Axon*, petitioner raised Appointment Clause defenses, citing *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016), *Buckley v. Valeo,* 424 U.S. 1 (1976), *Carr v Saul,* 593 U.S. _____ (2021), *Elgin v. Department of the Treasury*, 567 U.S. 1 (2012), *Lucia v. SEC,* 585 U.S. _____ (2018) and *Ryder v. United States,* 515 U.S. 177 (2015).

On April 14, 2023, Petitioner saw Justice

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[14] Not to be forgotten is *Enas Said v. USDA* in the 7th Circuit Court of Appeals, scheduled for expedited oral argument November 3. The Opening Brief, due April 14, was revised to address the significance of *Axon/Cochran*. (Q.V.)

[15] For short intervals, Petitioner was represented by counsel, which became too expensive due to the aggressiveness of Eric Lockridge and GIROD.

KAGAN's analysis in *Axon*, requested a 15-day extension to file his Opening Brief in *Said v. United States Department of Agriculture* and added *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), *Elgin v. Department of the Treasury*, 567 U.S. 1 (2012), *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. ____, *FTC v. Standard Oil*, 499 U.S. 232 and *Mitchell v. Forsyth*, 472 U.S. 511 to his portfolio of cases.

In essence, Petitioner said what Michelle Coochran said. Petitioner did **not** want to gamble his career on an administrative scheme (i) that did **not** provide "...meaningful judicial review...", (ii) that subjected Petitioner to "...an illegitimate proceeding led by an illegitimate decision maker..." and (iii) that was a structure that would come too late to be meaningful. Before reaching the conclusion that the ODC process was hopelessly unconstitutional, Petitioner studied the Clark Committee and McKay Commission reports on lawyer discipline and was bold enough to argue to the Louisiana Supreme Court that its process should heed the McKay recommendations. The constructive criticism fell on deaf ears and obviously enraged the Louisiana Justices.

Notably, the Louisiana administrative scheme for lawyer-discipline is *sui generis*, which means it does **not** need to comply with any rules of substantive or procedural law. Moreover, the Louisiana administrative scheme is based on the ABA Rules for Lawyer Disciplinary Enforcement, adopted by the American Bar Association House of Delegates on

August 8, 1989.

In 1970, however, the ABA Clark Committee, headed by United States Supreme Court Justice Thomas Campbell CLARK, found the lawyer-discipline system in "...a scandalous situation that require[d] the immediate attention of the profession..." That report was followed by the McKay Commission under the title *Lawyer Regulation for a New Century*, September 13, 2018. As it eventuated, Petitioner mistakenly thought he was before an impartial tribunal, as commanded by *Withrow v. Larkin*, 421 U.S. 35 (1975). **Not so.**

OVERARCHING CONSTITUTIONAL ARTICLES IMPLICATED

The action by the Louisiana Supreme Court violated more than the 1st, 5th and 14th Amendments to the United States Constitution. Petitioner will address the Articles in order.

The Appointments Clause: ARTICLE II, Section 2, Clause 2 provides, in pertinent part:

> [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress

> may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The reliance on the Appointments Clause in *Axon* was manifest. But for Petitioner, here's the rub: The three ODC Hearing Committee Members had "...no experience..." as to the note-kiting scheme that broke the bank. The FNBC criminals fooled regulators for years. HC-37 had no credentials.

The Supremacy Clause: Article VI provides, in pertinent part:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . . shall be the supreme law of the land; **and the judges in every state shall be bound thereby**, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Justices of the Louisiana Supreme Court are not Article III adjudicators. Nor is that Court a court of first resort, or last resort, or any resort. Bound by oath and the Supremacy Clause, however, they are not at liberty to violate Petitioner's 1st, 5th and 14th Amendment rights. 20 minutes to save 55 years of fighting corruption is hardly the "...meaningful judicial review..." articulated in *Axon* or in the jurisprudence

cited.

When the Clark Committee called the lawyer-enforcement process "...scandalous...", Justice CLARK could not have dreamed that a lawyer fighting hard for an innocent victim of financial fraud and crime would be disbarred. The meaning of the *sui generis* aspect is inexplicable. The conduct of ODC is indefensible.

ODC VIOLATION OF ITS OWN RULES

Compounding the fatal legal issues that resulted in expelling Henry Klein, ODC made shambles of its own rules under Louisiana Supreme Court Rule XIX, viz:

> **Section 2. The Attorney Disciplinary Board.**
>
> **Agency**. There is hereby established one permanent statewide agency to administer the lawyer discipline and disability system . . . . The agency is a unitary entity. While it performs both **prosecutorial and adjudicative functions, these functions shall be separated within the agency insofar as practicable in order to avoid unfairness.**

That not only did not happen, but Paul Pendley was rejected on his first try by "...the chair..." because

it would chill advocacy.

> **Section 3. Hearing committees.**
>
> **Appointment**. The board shall appoint hearing committees. Each hearing committee shall consist of two members of the bar of this state and one public member. A lawyer member of each hearing committee shall be appointed chair by the board.

In both *Bandimere* and *Lucia*, doubts are expressed about adjudicators "**...dressed up as courts...**" (as Justice THOMAS observed) beholden to their boss in making decisions that would please the boss – whoever that might be.

> **Section 11. Procedure for Disciplinary Proceedings.**
>
> **A. Screening**. The disciplinary counsel shall evaluate all information coming to his or her attention by complaint or from other sources alleging lawyer misconduct or incapacity.

This case has no complainant. The triggering letter from the Clerk of Court specifically said it was not a complaint. It may have been only about the district judge who violated *Caperton*. Moreover, GIROD was not a client, but an adversary with a "...$15 million axe to grind..." – another truthful

accusation that infuriated the Louisiana Justices.

> **E. Formal Charges.** If a matter is to be resolved by a formal proceeding, disciplinary counsel shall prepare formal charges in writing that give fair and adequate notice of the nature of the alleged misconduct.

Who wrote the scathing reports? Petitioner concluded that Paul Pendley was the scrivener for the brutally scathing reports and said so. The Louisiana Court was so livid (please read their words) that it twice said that Petitioner had a "...repugnant disrespect of the system we are charged to honor and serve..." By now, this Court has seen Henry Klein's penmanship on multiple occasions. Petitioner is in this Court's Making of Modern Law and has been successful in bringing down corruption on many occasions cited in his CV.

> **Section 18. Additional Sections of Procedure.**
>
> **A. Nature of Proceedings.** Disciplinary proceedings are neither civil nor criminal but are *sui generis*.

What does that mean? ODC is a Self Regulating Organization (SRO), answering only to itself.

C. Standard of Proof. Formal charges of misconduct .... shall be established by clear and

convincing evidence.

The reports contained no proof, much less "...clear and convincing evidence..." The charges were replete with veritable *ipse dixits*, deemed to be so because Paul Pendley said they were so. In *Morrison v. Olson*, 487 U.S. 654 (1988), the incomparable Antonin SCALIA said it best in his dissent, at 726:

> He who lives by the ipse dixit dies by the ipse dixit.

F. Hearings Recorded. The hearing shall be recorded. Upon respondent's request, the board shall make the record of a hearing available to the respondent at the respondent's expense.

After Mr. Pendley told the Board that Petitioner had no basis for making the accusations, Petitioner requested a transcript. No transcript. *Ergo*, no meaningful judicial review. Same thing at the Louisiana Supreme Court level. No transcript of the oral argument, replete with mendacious accusations about Petitioner.

> **G. Related Pending Litigation.** Upon a showing of good cause to the board or to the hearing committee chair .... the processing of a disciplinary matter may be stayed because of substantial similarity to the material allegations of pending criminal or civil litigation

GIROD had multiple lawsuits it was using to enforce the FNBC toxic paper and attack Petitioner. On the criminal side, the United States was prosecuting dozens of co-conspirators of bank fraud. An effort to have chief ODC counsel stop the proceedings fell on deaf ears.

ARGUMENT ON QUESTION 1.

Did Louisiana ODC violate principles articulated in *Axon Enterprise v. FTC* and *SEC v. Cochran* by having a **single** deputy combine all prosecutorial and adjudicatory functions in a **single** administrative agency?

Yes. Even before *Axon / Cochran*, ODC violated its own Rule XIX in a multitude of ways. At the outset, ODC violated its screening criteria at Section 11(A), which provides that ODC **shall** evaluate all information coming to its attention by complaint or other sources alleging lawyer misconduct. There was **no** complaint and **no** allegation of lawyer misconduct by Petitioner. The only letter from the Clerk of the Louisiana Supreme Court said it was **not** making a complaint. Moreover, the process protects clients, not **adversaries.** By any measure, *Klein v. ODC* answers Justice KAGAN's question as to where the constitutional issues could be heard. Petitioner's answer is "...here and now..." **and** on November 3, 2023, where expedited oral argument will take place in the 7th Circuit – unless Petitioner's suspension at the behest of GIROD and Lockridge disqualifies Petitioner, damaging millions of SNAP recipients.

ARGUMENT ON QUESTION 2.

In lawyer-conduct cases, does the Louisiana administrative scheme provide a meaningful review of proceedings by two panels of non-Article III adjudicators?

No. The Louisiana Supreme Court does not actually "...review..." what the adjudicatory board heard because the 15 minute argument by ODC and the 15 minute response by Petitioner were **not** recorded. Moreover, Petitioner raised Appointments Clause issues loud and often, as required by *Ryder v. United States* and *Carr v. Saul,* among other cases mentioned in the appendix to Docket 23A96, now before the full Court on September 26, 2023.

At stake in the case at bar is Petitioner's **most valuable property right:** his Juris Doctor Degree earned from Tulane University School of Law in 1968. As Justice THOMAS stated in his concurring opinion in *Axon/Cochran:*

> As I have explained, when private rights are at stake, full Article III adjudication is likely required. Private rights encompass "the three 'absolute' rights," life, liberty, and property, "so called because they 'appertain and belong to particular men merely as individuals,' not 'to them as members of society or standing in various relations to each other'—that is, not dependent upon the

> will of the government." . . . . This also helps to explain why, in *Marbury v. Madison*, 1 Cranch 137 (1803), Chief Justice Marshall found it necessary to first determine whether Marbury was "entitled to the possession of those evidences of office, which, being completed, became his property." . . . . Such rights could be adjudicated and divested only by Article III courts . . . "[A]n exercise of the judicial power is required 'when the government wants to act authoritatively upon core private rights that had vested in a particular individual'" . . . . "Cases involving deprivations or transfers of life, liberty, or property constitute a 'core' of cases that . . . must be resolved by Article III courts — not executive adjudicators **'dressed up as courts'"**.

ARGUMENT ON QUESTION 3.

Given that after *Axon/Cochran*, the only question left was "...to decide where [the constitutional challenges] may be heard...", is *this* Court the one and only tribunal pursuant to 28 U.S.C. § 1257(a)?

Yes, and "here and now." The 7th Circuit Court of Appeals presents a second forum because the district court in *Said v. USDA* did not reach the *Lucia/Bandimere/Carr* issues. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) **and** 28

U.S.C. § 1651(a) **and** inherent rights pursuant to *Chambers v. NASCO* to reach a final verdict on the administrative state. In all *Girod v. Heisler* courts below, Petitioner sought an independent investigation to establish beyond cavil that Regina Heisler's plight was the quintessential "...fruit of a poisonous tree...".

ARGUMENT ON QUESTION 4.

Did ODC violate Petitioner's 1st, 5th and 14th Amendment rights by subjecting him "...to an illegitimate proceeding led by an illegitimate decision-maker...."? *Axon*, at p.13.

Yes. Petitioner need only cite Michelle Cochran's declaration that sending in a new ALJ was "...the last straw...". In the case at bar, Paul Pendley played **all** the roles Circuit Judges Lucerno and Moritz found unacceptable in *Bandimere.*

> There is a conflict of principle involved in [the agencies'] make-up and function. They are vested with duties of administration and at the same time they are given important judicial work. **The evils resulting from this confusion of principles are insidious and far-reaching** ... The mixed duties of the [agencies] render escape from the subversive influences impossible; the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens

> public confidence in that fairness. Agency decisions affecting private rights lie under suspicion of rationalizations of the preliminary findings with the agency – in the role of prosecutor – presented to itself.

ARGUMENT ON QUESTION 5.

Was the use of the bar disciplinary process to advance GIROD's litigation goals a *malum prohibitum* as suggested at *Politically-Motivated Bar Discipline*, 85 Washington University Law Quarterly 770 (2005)?

Res nova? There is a new cancer that has taken the nation by storm. Petitioner leaves it to this High Court to commence the process of fulfilling the vision of James Madison's Angels at Federalist 51:

> *In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.*

ODC IS OUT OF CONTROL

ARGUMENT ON QUESTION 6.

Q-6. Should the Court use its inherent powers pursuant to *Chambers v. NASCO* and 28 U.S.C. 1651(a) to independently investigate if GIROD

engaged in "... fraud upon the courts ..." by weaponizing the FNBC notes to bilk hundreds of millions of dollars from victims of the bank collapse, including Petitioner's client?

Yes. It was because Petitioner asked every court below to independently investigate whether GIROD colluded with ODC to have Petitioner silenced by **expulsion** from the practice of law, an act of "... tampering with the administration of justice in [a] manner that ... involves far more than an injury to a single litigant. **It is a wrong against the institutions set up to protect and safeguard the public** ..."

Quoting Mr. Justice WHITE in *Chambers v. NASCO* was **disregarded and disrespected** by the Louisiana Court, as follows, Appx B, 4a-5a:

> On May 27, 2020, respondent filed a Motion to Set a Hearing Pursuant to Precedent Set in *NASCO v. Calcasieu* and *Chambers v. NASCO*, 501 U.S. 32 (1991). The motion alleged that the 'vulture fund' GIROD had perpetrated a fraud upon the court and requested an independent investigation to protect the integrity of the court. On June 3, 2020, the district court denied respondent's motion, refused to accept certain exhibits as part of the record, and **prohibited respondent from filing further motions in the case without first**

seeking leave of court and obtaining permission to make such filings.

This manifest 1st Amendment violation of meaningful "access to courts" was part of Writ Petition 20-1361. All of this was deemed to be "overly-zealous" pleading worthy of disbarment. Turning to Justice WHITE, the following language is too compelling not to be replicated, 501 U.S. 43:

> Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates . . . . . Of particular relevance here, the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court. This historic power of equity to set aside fraudulently begotten judgments, is necessary to the integrity of the courts, **for tampering with the administration of justice in [this] manner ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public.** Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud.

It should not be left to Petitioner to prove that ODC protected GIROD's pocketbooks in the Cayman Islands.

THE CONSTITUTIONAL RIGHT TO THINK

The birthplace of all expression is the mind. It is **the** purest of beginnings since the Immaculate Conception. It is **the** ultimate *raison d'être*:

Cogito, Ergo Sum

"...I think, therefore I am..." The 1st Amendment has never been in greater danger. God protect us all from the danger of losing the constitutional right to think[16].

REASONS FOR GRANTING THE PETITION

Few cases present as many nationally-important issues as the case at bar:

[1] A $1 billion bank is closed due to a note-kiting scheme, which is differs from check-kiting between at least two banks. At FNBC, the kiting took place **within the same bank**. It was ingenious and deceived regulators for years.

[2] The ODC adjudicators **had no expertise**

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[16] Today's increasing political hostility seeks to imprison thinkers who voice their thoughts.

as to the complexities of using *Nominal Borrowers* such as Regina Heisler. Each ODC panel in the administrative scheme had an ODC member, a private member and a lawyer member. **None** were vetted for banking acumen or the competence to understand the case, both *sine qua non* requirements under *Axon, Thunder Basin* and *Carr,* among others.

[3] Typically, Congressional intent regarding the administrative scheme is considered by all tribunals engaged in the judicial review of a final agency decision. The *sui generis* makeup of ODC and Louisiana Supreme Court Rule XIX are matters that have national implications because **most states use the same ABA model.**

[4] Here, Petitioner lost his right not to be subjected to a process were the only review is deferred until after a meaningless non-trial, *Mitchell v. Forsyth,* 472 U.S. 511. None of the adversarial rigors in *Carr v. Saul* take place in the lawyer-discipline arena. Recommendations by the McKay Commission were ignored despite Petitioner's efforts to call the Supreme Court's attention to what the Clark Committee called **"...a scandalous situation..."** in the lawyer-discipline administrative process[17].

[5] The 1st Amendment requires that access

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[17] Jack S. Nordby, *The Burdened Privilege: Defending Lawyers in Disciplinary Proceedings,* 30 South Carolina Law Review 363 (1979).

to courts does not mean ingress and egress, but that such access "...be adequate, effective, and meaningful..." *Broudy v. Mather*, 460 F.3d 106 (D.C.Cir. 2006). Having **all** motions for discovery, **all** *in limine* objections and **all** substantive objections to the charges decided by a non-Article III "chair" is hardly "...adequate, effective or meaningful..."

Fifteen minutes of oral argument at a "Board Hearing" and 20 minutes at the Supreme Court fits all elements of a **Denial-of-Access Claim** articulated in *Broudy*, too good not to cite generously:

> The Supreme Court has long recognized that citizens have a right of access to the courts. "[T]he right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship". The Supreme Court has grounded the right at various times in different provisions of the Constitution: the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses. Furthermore, the right not only protects the ability to get into court, but also ensures that such access be adequate, effective, and

meaningful.

[6] This is the only case in the United States that has exposed the vulture industry in the detail Petitioner has provided. The Congressional Act: STOP THE VULTURES has been sitting idle in the House-Senate Judiciary Committee since 2009. Because Petitioner was exposing a $108,000,000,000 industry hiding in the Cayman Islands, GIROD combined with ODC to have Petitioner silenced, a manifest act of *Politically-Motivated Bar Discipline*, 85 Washington University Law Quarterly 770 (2005).

[7] ABA FORMAL OPINION 491 warns lawyers not to aid potential clients who, upon due consideration, are preparing to commit crimes or fraud. Petitioner was **specifically** warned by ODC's Deputy not to make disparaging remarks about either the subject judge or a "...pristine law firm...". Threats of sanctions have been outlawed since at least *Dombrowski v. Pfister*, 380 U. S. 479 (1965).

[8] **Financial Fraud, Money Laundering and Tax Evasion** are specific goals of ABA FORMAL OPINION 491. Petitioner's expression of these facts is

what has resulted in the suspension for a-year-and-a-day. That, however, is clearly what is happening with GIROD and its affiliates, Girod HoldCo, Girod REO and Girod Titling Trust[18].

CONCLUSION

Yesteryear, telling the truth was deemed a virtue. Louis Brandeis, "the people's lawyer" was admired, not castigated. Elliot Ness was untouchable. Today, the crooks are untouchable. Regulators don't regulate and the power to investigate "... is the power to defame and destroy ..." Weaponization of governmental prowess, *however slight*, gains ferocity in the wrong hands. The threat of sanctions is the most lethal enemy of the 1st Amendment.

Petitioner refused to yield to these insidious ways and means to chill his advocacy for Regina Heisler, a victim of the most poisoned of poisoned trees. For that tenacity, Petitioner's 55-year old career has ended in the humiliation of disbarment, with the term "... repugnant..." ringing in his ears.

GOD SAVE US ALL.

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[18] The FDIC received comments from 3 Senators ... urging the FDIC to eliminate the ability of investors domiciled in secrecy jurisdictions to invest in failed U.S. banks and thrifts based on the history of association **offshore structures have with financial fraud, money laundering, tax evasion, and other misconduct.** *Sept. 2, at 4545.*

Respectfully submitted,

HENRY L. KLEIN, *pro se*
201 St. Charles Avenue Suite 2501
New Orleans, Louisiana, 70170
(504) 439-0488
henryklein44@gmail.com

Member of the Supreme Court
Bar Since September 6, 1974