

No. _____

In the
Supreme Court of the United States

J. CORY CORDOVA,

Petitioner,

v.

LOUISIANA STATE UNIVERSITY AGRICULTURAL &
MECHANICAL COLLEGE BOARD OF SUPERVISORS, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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July 17, 2023

SUPREME COURT PRESS



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QUESTIONS PRESENTED

Litigants may not weaponize the judicial system to sanction colorable arguments that in effect insulate its conduct from legitimate judicial challenges without implicating central First Amendment concerns. The underlying premise of the adversary system is that truth is its object; thus, the prohibition on viewpoint discrimination is particularly compelling—and, in fact, essential—to the integrity of the adversary system. Thus, sanctions and threats may not be utilized to restrict the substantive arguments litigants may present in legal proceedings.

A sophisticated Medicare/Medicaid healthcare fraud scheme and the improper assignment of the state's Medicaid and Medicare identification numbers to a private hospital was discovered by Petitioner due to the unprecedented amount of stonewalling he received when he sought to clarify the true nature of his employment relationship with the Respondents. The Respondents—a charity hospital system ostensibly designed to educate our future doctors while serving the most vulnerable members of our community—employed abusive litigation tactics utilizing the resources of the Louisiana Attorney General/current gubernatorial candidate to avoid detection and review of Petitioner's case on the merits.

The Questions Presented Are:

1. Whether the lower courts' imposition of punitive sanctions violates Petitioner's rights under the First Amendment to the United States Constitution.

2. Whether the lower courts disregarded its mandatory duty to summarily correct, investigate, or report attorney misconduct, fraud, or corruption that affects the public interest.
3. Whether the lower courts exceeded its authority and/or failed to adhere to this Court's established precedents when it reviewed an order granting remand, determined it was a merits judgment, and sanctioned Petitioner for requesting vacatur to avoid preclusion.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff/Appellant

- J. Cory Cordova, M.D.

Respondents and Defendants-Appellees Below

- Louisiana State University Agricultural & Mechanical College Board of Supervisors
- Louisiana State University Health Science Center—New Orleans
- Jeffery Landry, Louisiana Attorney General
- Karen Curry, M.D.
- Kristi Anderson
- Lafayette General Health System, Incorporated
- Lafayette General Medical Center, Incorporated
- Nicholas Sells, M.D.
- University Hospital & Clinics, Incorporated

LIST OF PROCEEDINGS

U.S. Supreme Court

Supreme Court of the United States

No. 21-1280

In re: J. Cory Cordova, *Petitioner*

Petition for an Extraordinary Writ of Mandamus
denied: May 16, 2022

Federal Courts

United States Court of Appeals for the Fifth Circuit
Case Number: 21-30239

J. Cory Cordova, M.D., *Plaintiff/Appellant*, versus
Louisiana State University Agricultural &
Mechanical College Board of Supervisors; Karen
Curry; Nicholas Sells; Kristi Anderson; University
Hospital & Clinics, Incorporated; Lafayette General
Medical Center, Incorporated; Lafayette General
Health System, Incorporated, *Defendants/Appellees*
On Initial Appeal

Per Curiam Opinion: November 8, 2021

Denial of Rehearing: December 16, 2021

Per Curiam Order: April 13, 2022

Order Denying Motion to Amend Judgment:
April 13, 2022

United States Court of Appeals for the Fifth Circuit
Case Number: 22-30548 consolidated with 22-30732
22-30548 Caption:

J. Cory Cordova, *Plaintiff-Appellant*, v.
Louisiana State University Agricultural &
Mechanical College Board of Supervisors; Karen
Curry; Nicholas Sells; Kristi Anderson;
University Hospital & Clinics, Incorporated;
Lafayette General Medical Center,
Incorporated; Lafayette General Health System,
Incorporated, *Defendants-Appellees*.

22-30732 Caption:

J. Cory Cordova, *Plaintiff-Appellant*, v.
Louisiana State University Agricultural &
Mechanical College Board of Supervisors; Karen
Curry; Nicholas Sells; Kristi Anderson,
Defendants-Appellees.

Per Curiam Order: April 17, 2023

Order Denying Stay of Mandate: May 4, 2023

United States District Court for the Western District
of Louisiana

Civil Action Number: 6:19-CV-1027

J. Cory Cordova, M.D., *Plaintiff*, v.
Louisiana State University Agricultural &
Mechanical College Board of Supervisors; Karen
Curry; Nicholas Sells; Kristi Anderson; University
Hospital & Clinics, Incorporated; Lafayette General
Medical Center, Incorporated; Lafayette General
Health System, Incorporated, *Defendants*

Judgment on Order of Remand: March 24, 2021

Memorandum Order: April 14, 2021

Memorandum Ruling (Motion to Vacate):
August 23, 2022

Memorandum Ruling (Cost and Attorney's Fees):
October 10, 2022

Memorandum Ruling (Sanctions): February 27, 2023

Memorandum Ruling (Sanctions): April 13, 2023

Memorandum Ruling (Rule 38 Sanctions):
June 29, 2023

Louisiana State Courts

15th Judicial District for the State of Louisiana, Parish of Lafayette, Division D

2019-2019

J. Cory Cordova, M.D., *Plaintiff*, v. Louisiana State University Agricultural & Mechanical College Board of Supervisors; Karen Curry; Nicholas Sells; Kristi Anderson; University Hospital & Clinics, Incorporated; Lafayette General Medical Center, Incorporated; Lafayette General Health System, Incorporated, Gachassin Law Firm, Christopher Johnston, Bezou Law Firm., and Jacques Bezou, Sr., *Defendants*.

Notice of Remand:

Judgment on Order of Remand: March 24, 2021

Consolidation pending appeal:

15th Judicial District for the State of Louisiana,
Parish of Lafayette, Division L

2022-2976

J. Cory Cordova, M.D., *Plaintiff*, v. Karen Curry;
University Hospital & Clinics, Incorporated;
Lafayette General Medical Center, Incorporated;
Lafayette General Health System, Incorporated,
Defendants

Order Granting No Right of Action: August 1, 2022

Order Granting Exception of Improper Service:
August 1, 2022

Order Granting Exception of *Res Judicata*: January
30, 2023

Order Granting Motion for Sanctions: March 3, 2023

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OPINIONS BELOW

Petitioner seeks review of the U.S. Court of Appeals decision in the consolidated Case Nos. 22-30548 and 22-30732. The per curiam decision of the U.S. Court of Appeals for the Fifth Circuit, dated April 17, 2023, is found at App.1a. This opinion was not designated for publication.

This opinion affirmed the district court's denial of Plaintiff's Motion for Relief of Judgment. (App.24a). The Fifth Circuit Court of Appeals remanded the case back to the district court for the determination of sanctions, attorney fees, and costs under Federal Rule of Appellate Procedure 38. Petitioner's motions to disqualify counsel and for sanctions, damages, and attorney fees, and costs under 28 U.S.C. § 1927 were denied without reasons. (App.11a). On May 4, 2023, the Fifth Circuit Court of Appeal denied Petitioner's stay of the issuance of the mandate pending petition for writ of certiorari. (App.14a).

The United States District Court for the Western District of Louisiana, Lafayette Division issued a Memorandum Ruling Denying Petitioner's Motion to Vacate/Attorney's Fees on August 23, 2022. (App.24a). The United States District Court for the Western District of Louisiana, Lafayette Division issued a Memorandum Order on February 27, 2023 granting the Motion for Sanctions filed on behalf of the Lafayette General Defendants. (App.45a). The United States District Court for the Western District of Louisiana, Lafayette Division issued an Order on April 13, 2023 calculating sanctions awarded to the Lafayette General Defendants. (App.64a). The United States District

Court for the Western District of Louisiana, Lafayette Division issued an Memorandum Order on June 29, 2023 calculating sanctions awarded to the Lafayette General Defendants by the United States Fifth Circuit Court of Appeal. (App.66a).



JURISDICTIONAL STATEMENT

The Fifth Circuit issued its opinion on April 17, 2023. (App.1a). Petitioner invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., art. III, sec. 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

U.S. Const., amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const., amend. XIV, sec. 1

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

U.S. Const., art. IV, sec. 1

Full Faith and Credit Clause

Full faith and Credit shall be given in each State to the public acts, Records, and judicial Proceedings of every other State. And the Congress may be general Laws prescribe the manner in which such Acts, Records, and proceedings shall be proved, and the Effect thereof.

28 U.S.C. § 1651(a)

All Writs Act

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

Nearly four (4) years ago, Louisiana State University (LSU), represented by the Louisiana Attorney General, Jeffery Landry—chief legal officer for the State of Louisiana and current gubernatorial candidate—with the aid of his co-counsels and Dr. Cordova’s own counsel improperly/fraudulently removed this

matter from state court to the Western District of Louisiana to obtain qualified immunity defenses and obtain dismissals “on the merits” that are in reality jurisdictional dismissals. Overlooked by the lower courts is the lack of subject matter jurisdiction, attorney misconduct, evidence of concealment of fraud in the Medicaid/Medicare programs, retaliation, and the material misrepresentations repeatedly relied upon by the courts.

A. Statement of the Facts

On February 18, 2019, Dr. Cordova hired the Bezou Law Firm to represent him in this matter. On March 15, 2019, Jacques Bezou, Jr., a lawyer at the Bezou Law Firm, was sued for malpractice and was represented by James Gibson, the attorney for the Lafayette General Defendants in this case. On March 29, 2019, Dr. Cordova brought suit in the 15th Judicial District Court against Louisiana State University Health Science Center (“LSUHSC”), University Hospital and Clinics (“UHC”), Lafayette General Hospital, Dr. Karen Curry, Dr. Nicholas Sells, Kristi Anderson, Christopher Johnson, and the Gachassin Law Firm. [ROA.45]. The initial Petition for Damages was signed by Jacques Bezou, Sr., and was verified by Dr. Cordova. [ROA.178-180].

On April 5, 2019, James Gibson—attorney for the Bezou Law Firm in an unrelated legal malpractice action—requested an extension from the Bezous to file responsive pleadings on behalf of the Lafayette General Defendants in this case. Despite the concurrent representation by Mr. Gibson, the Bezous did not advise Dr. Cordova of this conflict. Rather, Mr. Bezou, Jr. sent Dr. Cordova a correspondence advising that “Jim Gibson is an old friend and frequent opponent.

Glad to see he is defending one of the parties here.” [ROA.3631].

On April 23, 2019, the attorneys for Lafayette General Defendants enrolled in the state court proceeding and filed a Dilatory Exception of Vagueness and Nonconformity of Dr. Cordova’s Petition. Mr. Gibson requested that his client/lead counsel for Dr. Cordova cure the filed Exception by amending Dr. Cordova’s petition to allege sufficient particulars for UHC and LGMC. [ROA.162-163]. [ROA.181]. The Exception alleged that Dr. Cordova’s original petition was vague because the allegations against the Lafayette General entities were “sparse” and did not provide the Lafayette General Defendants with the information necessary to properly prepare its defense. [ROA.175-181].

On July 22, 2019, Jacques Bezou, Sr., filed a First Amended Petition for Damages that was not verified by Dr. Cordova. [ROA.240]. Although neither requested by the Lafayette General Defendants nor verified by Dr. Cordova, Mr. Bezou unilaterally named a new defendant: “The Board of Supervisors of Louisiana State Agricultural and Mechanical College, a state agency.” [ROA.226]. Although not relevant to cure the Exceptions filed by the Lafayette General Defendants, the Amended Petition filed by Mr. Bezou also removed a defendant named in Dr. Cordova’s original petition, Louisiana State University Health Science Center (“LSUHSC”). However, the Amended Petition did not formally dismiss or substitute the original defendant, LSUHSC, thereby leaving LSUHSC a named and served party in the state proceedings. LSUHSC remains a named defendant on the district court’s official case caption in this matter. [ROA.226].

After the Bezous' unauthorized filing of the Amended Petition or on August 7, 2019, the newly named Board of Supervisors for LSU filed a Notice of Removal and misrepresented to the district court that the Board was incorrectly identified, named, and referred to as Louisiana State University Health Science Center in the caption and body of Dr. Cordova's original petition. [ROA.35].

B. Procedural History

1. Previous Proceedings in the Federal District Court

On August 16, 2019, nine (9) days after removal, the LSU Defendants filed a Rule 12(b)(6) and judicially admitted to the district court that: "LSUHSC has not been dismissed as a party. Out of an abundance of caution a dismissal of LSUHSC from this litigation is requested." [ROA.518]. The district court found no basis for dismissing LSUHSC from the federal suit. [ROA.525]. LSUHSC was never properly before the district court and the removal procedure in this matter was defective from its inception since not all of the Defendants named in the state court proceedings provided the necessary consent for removal to federal court.

On March 9, 2020, the LSU Defendants filed a second Rule 12(b)(6) Motion seeking dismissal of Dr. Cordova's federal due process claims. Despite the previous averments in its Notice of Removal, the LSU Defendants argued that "any assertion that this court previously determined that Plaintiff has stated a claim for a Section 1983 violation by the LSU Defendants should be rejected." [ROA.550].

On April 6, 2020, while the Rule 12(b)(6) motion was under advisement, counsel for Lafayette General, James Gibson, sent an email to all attorneys which stated:

I talked to Jacques this morning. He brought up that his client, an ER doctor cannot be deposed now or likely for the foreseeable future. Moreover, unlike others on this email, Jacques and I are in the target age for catching the virus (he more than me, based on age). We discussed filing a joint motion to continue the trial date/all deadlines, with a request for a conference call if that is necessary. We can add emergency to that motion if necessary and point out all issues to the Court. [ROA.3059].

The very next day or on April 7, 2020, the district court dismissed the procedural due process claims and many of the substantive due process claims against LSU because vicarious liability cannot support a claim under § 1983. The district court maintained that Dr. Cordova had identified a “possible” substantive due process violation against only Dr. Karen Curry. The district court deferred its ruling on qualified immunity pending development of the record. [ROA.611].

On April 28, 2020, an Order is signed by the district court continuing the trial based on Dr. Cordova’s unavailability due to the COVID-19 pandemic. [ROA. 652]. Although no further discovery was conducted and the pandemic necessitated continued executive and judicial orders, the LSU Defendants filed a Motion for Summary Judgment on October 21, 2020. [ROA.663]. Thereafter, the Lafayette General Defendants also filed a Motion for Summary Judgment. The

motions for summary judgment were filed without initial disclosures, formal discovery, or depositions.

On December 15, 2020, oral argument was held at the district court and the undersigned counsel was not allowed into the federal courthouse to attend oral argument after answering yes to the following question: “Have you been around anyone required to self-quarantine?” This question was not included as a visitor restriction on the Western District of Louisiana’s Order issued on March 13, 2020. [ROA.3667-3668]. The undersigned requested that the U.S. Marshal contact the district court to explain that the undersigned had neither been in contact with anyone diagnosed with COVID-19 nor was she exhibiting any symptoms of COVID-19. The district court indicated that it would not allow in person attendance for safety reasons. The undersigned requested that she be allowed to participate via Zoom and was advised that there was not enough time but she could attend via telephone. [ROA.6243-6245]. The undersigned was given twenty minutes to return to her office and was the only attorney not allowed into the courtroom.

On December 17, 2020, the district court granted both motions for summary judgment in favor of the Defendants. [ROA.1865]. A deadline to submit briefs regarding certification under the Federal Rule of Civil Procedure 54(b) was set for December 28, 2020. Dr. Cordova objected to lack of subject matter jurisdiction and filed a Motion to Remand and Amended Motion to Remand pursuant to 28 U.S.C. § 1447. [ROA.2214].

On December 31, 2020, the LSU Defendants prematurely sought attorney’s fees pursuant to 42 U.S.C. § 1988 as the prevailing party in a § 1983 action.

[ROA.1966]. The LSU Defendants—the party who removed this action from state court—sought fees on a theory of recovery Dr. Cordova never pled. The billing records associated with the LSU Defendants’ Motion for Attorney’s Fees prove that at the time of removal the LSU Defendants were aware that Dr. Cordova’s state court petition was “without allegations of civil rights violation under 42 U.S.C. § 1983.” [ROA.1984].

On January 27, 2021, the district court issued an order indicating that it must resolve Dr. Cordova’s Motions to Remand before it could proceed on any additional motions relating to the merits. [ROA.2223]. On March 24, 2021, the district court granted the motions to remand, entered the previous orders of dismissals with prejudice, and issued an insufficient Rule 54(b) certificate in an attempt to make the summary judgments final. All of the district court’s orders were contained in the Order of remand. (App.22a). Dr. Cordova filed a Notice of Appeal of the order granting remand and the subsequent order granting costs to the LSU defendants. [ROA.2877].

2. Previous Proceedings before the U.S. Fifth Circuit in Docket Number: 21-30239

While Dr. Cordova’s previous appeal was pending before the Fifth Circuit, Dr. Cordova became aware of the concurrent conflict of interest between the Bezous and James Gibson. On October 14, 2021—after briefing was complete but before a decision was issued by the Fifth Circuit—Dr. Cordova filed a Motion for Relief from Judgment. Dr. Cordova filed a Rule 60(b) motion to alert the Fifth Circuit to the undisclosed concurrent

conflict of interest that compromised his representation.

On October 22, 2021, the attorney for Lafayette General filed a response to the motion and admitted its lead counsel represented Dr. Cordova's attorneys for nine (9) months during the time that the Bezous represented Dr. Cordova in this litigation. [ROA.3529]. Dr. Cordova was neither made aware of this conflict nor did he waive the conflict. On November 5, 2021, the LSU Defendants filed an untimely response to the motion for relief of judgment adopting the Lafayette General Defendants' response.

On November 8, 2021, a panel of the Fifth Circuit issued an unpublished *per curiam* opinion that dismissed Dr. Cordova's appeal of the March 24, 2021 "final" "merits order" as untimely and affirmed the April 14, 2021, award of costs because Dr. Cordova's brief exclusively argued subject matter jurisdiction but did not brief an objection to the imposition of costs. (App.17a).

However, on January 13, 2022, Dr. Cordova filed a timely Post Decision Motion to Amend Judgment, in part, due to an intervening change in controlling law because of the January 7, 2022, Louisiana Supreme Court decisions involving the Lafayette General/UHC Defendants implicating the jurisdiction of the federal court. On January 13, 2022, the Court directed a response from the Defendants. On January 24, 2022, the Lafayette General Defendants filed an Opposition to Dr. Cordova's Rule 59(e) Motion alleging that Dr. Cordova's motion was improperly before the Fifth Circuit as a second Rule 60(b) motion and that "Appellant failed to heed the clear instructions of this Court" to present any further Rule 60(b) Motions to the trial

court. [ROA.5552]. The Lafayette General Defendants misrepresented that they were not the same defendants in the Louisiana Supreme Court decision requiring Dr. Cordova to correct this material misrepresentation. [ROA.5739]

On March 15, 2022, Dr. Cordova filed a Writ of Mandamus to this Court because the Order referred to as the “merits order” was an Order of Remand. At the time of the writ application, the Fifth Circuit had not yet ruled on Dr. Cordova’s pending Rule 59(e) Motion and the time delays for the stay and to seek review were nearly exhausted. [ROA.4018]. On April 13, 2022, while Dr. Cordova’s Writ of Mandamus was pending, the Fifth Circuit denied the Motion to Amend Judgment, withdrew and substituted its November 8, 2021 opinion with a new opinion identical to its previous opinion, and issued a memorandum regarding “Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc.” (App.21a). On May 16, 2022, this Court denied Dr. Cordova’s Writ of Mandamus. On May 19, 2022, the Fifth Circuit issued the mandate to the district court. [ROA.2883].

3. Proceedings in State Court for Injunctive/Declaratory Relief

Following the issuance of the mandate in federal court, Dr. Cordova discovered a complicated scheme exposing prohibited and complex structures by which University Hospitals & Clinics, Inc., (“UHC”)—a shell corporation formed on April 18, 2013, wholly owned and funded by Lafayette General Health Systems, Inc. (“LGHS”) and Lafayette General Medical Center, Inc. (“LGMC”)—colluded with various Louisiana state entities to receive Medicare/Medicaid benefits, residency

caps, and other federal benefits to which they were not entitled. This scheme involved the improper assignment of the state's Medicaid and Medicare numbers to a private hospital (UHC). [ROA.4129-4678].

Additionally, Dr. Cordova continued to experience reputational harm due to the dissemination of false information when he sought state medical licensure in June of 2021 and again in January of 2022. On June 8, 2022, Dr. Cordova requested declaratory and injunctive relief in state court in an attempt to prohibit and/or enjoin this continued reputational harm. Dr. Cordova's request for relief in state court was met with a peremptory exception of federal *res judicata* so he returned to the district court to seek clarification and/or relief from its remand order incorrectly referred to by the Fifth Circuit as a final merits order.

4. Proceedings in District Court Related to Motion for Relief of Judgment Pursuant to Federal Rule of Civil Procedure Rule 60.

On July 8, 2022, Dr. Cordova filed a Rule 60(b) motion before the district court requesting relief from the district court's previous adverse judgments/orders for six (6) mutually exclusive reasons: 1.) The lead counsel for Dr. Cordova and the lead counsel for the Lafayette General Defendants had an undisclosed concurrent conflict of interest that compromised Dr. Cordova's representation; 2.) The Defendants strategically and improperly removed this case from state court by misrepresenting/misleading the district court as to Dr. Cordova's true employer when all Defendants knew that Dr. Cordova was employed by the Lafayette General Defendants; 3.) The Defendants failed to

inform the district court that all parties agreed to stay discovery prior to the summary judgments due to the COVID-19 pandemic; 4.) The Defendants misled and/or misrepresented that the LSU Defendants maintained Dr. Cordova’s residency/personnel file when all were aware that the file was maintained by the Lafayette General Defendants; 5.) On January 7, 2022, a Louisiana Supreme Court decision was released wherein the Lafayette General Defendants stipulated it was a private actor in a vaccine mandate case and no federal constitutional claims could be asserted; 6.) On July 5, 2022, the Lafayette General Defendants filed an exception of *res judicata* based on the district court’s rulings and requested dismissal of Dr. Cordova’s new claims against the Lafayette General Defendants in state court.

The Defendants opposed the motion arguing it was unfounded, untimely, and requested sanctions. The district court denied the motion because it was untimely and Dr. Cordova’s underlying action was without merit. (App.24a). Finally, the district court awarded attorneys’ fees to the LSU Defendants pursuant to 42 U.S.C. § 1988 because Dr. Cordova alleged “unfounded allegations of compromised representation and arguments about ancillary issues such as the status of the Lafayette General defendants as private employers.” (App.43a). Accordingly, the district court found that an “award of attorneys fees are due to the LSU Defendants due to plaintiff’s unreasonable attempts at continuing this litigation.” (App.43a).

5. Appeal to Fifth Circuit Related to the Motion for Relief of Judgment Pursuant to Federal Rule of Civil Procedure Rule 60.

Dr. Cordova appealed the district court's ruling denying the Motion for Relief of Judgment to the Fifth Circuit in Case No. 22-30548. First, Dr. Cordova argued the Motion for Relief of Judgment was timely and raised issues of subject matter jurisdiction and due process which may be brought at any time pursuant to the cases of *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998) and *Williams v. New Orleans Public Serv., Inc.*, 728 F.2d 730, 735 (5th Cir.1984). Second, Dr. Cordova argued that the concurrent conflict of interest between his prior counsel and counsel for the defendants compromised his case and the district court overlooked voluminous evidence contained in the record. Third, Dr. Cordova argued that intervening and controlling case law implicated federal subject matter jurisdiction, required vacatur, and a remand of the case back to state court. Finally, Dr. Cordova argued that Rule 60(b)(6) allowed the district court to reopen a judgment in extraordinary circumstances, including a change in controlling law and intervening developments of facts.

In a separate appeal to the Fifth Circuit, Dr. Cordova sought review of the collateral order that awarded attorney's fees to the LSU Defendants pursuant to 42 U.S.C. § 1988 in Case No. 22-30732. In that appeal, Dr. Cordova argued that attorney's fees were improperly awarded because no separate motion was filed by the LSU Defendants. Second, Dr. Cordova pointed out that the district court previously refused to declare the LSU Defendants the victors in

the underlying civil rights' action. [ROA.2935]. Next, Dr. Cordova argued that attorney's fees may not be awarded pursuant to 1988 because no subject matter jurisdiction existed and the LSU Defendants misrepresented the nature of their employment relationship. Dr. Cordova pointed the Fifth Circuit to the employment forms contained in the record that listed UHC, a private actor, as his employer. [ROA.2910-2913]

Dr. Cordova also pointed to the Form 990 for UHC contained in the record that identifies UHC as a teaching hospital that has "two home based residency programs providing graduate medical education" in "internal medicine and family medicine." [ROA.4221]. Finally, Dr. Cordova alerted the panel to the intervening case law from the Louisiana Supreme Court which supported his assertion that he was employed by a private actor.

On April 17, 2023, the Fifth Circuit issued a *per curium* opinion that consolidated the appeals on its own motion. Two of the three members of the panel were the same members that heard Dr. Cordova's previous appeal and issued the mandate to the district court on May 19, 2022. The Fifth Circuit concluded that Dr. Cordova's Motion for Relief of Judgment, filed on July 8, 2022, was untimely because he waited 417 days to seek Rule 60(b) relief. (App.5a). The Fifth Circuit concluded that Dr. Cordova quoted the Fourteenth Amendment and alleged due process violations making the state case plainly removable. (App.4a). The Fifth Circuit determined: "Cordova has repeatedly refused to heed the district court's warnings about 'unreasonable attempts at continuing this litigation' with an untimely and meritless 60(b) motion." (App.8a). Finally, the Fifth Circuit remanded to the district

court to determine the appropriate sanction to be assessed “that both deters vexatiousness and also does not duplicate the other sanctions imposed or to be imposed in this case.” (App.9a).

In this case, sanctions have been imposed upon Dr. Cordova and the undersigned counsel in state and federal court for attempting to obtain nonmonetary relief from an order of remand that is unappealable and lacks preclusive effect under the law. Nevertheless, the LSU Defendants were awarded sanctions in the amount of \$11,582.50 as a prevailing party in a § 1983 action, a theory of recovery Dr. Cordova never alleged. (App.62a). The Louisiana state court awarded sanctions in the amount of \$98,390.17 to the Lafayette General Defendants “for the filing of a claim barred by *res judicata*.” (App.71a). Dr. Cordova has sought appellate review of the state court *res judicata* determination and the award of sanctions. In response, the Lafayette General Defendants have sought two (2) sets of sanctions.

Additional sanctions were awarded to the Lafayette General Defendants in the amount of \$29,692.70 by the district court for the undersigned counsel’s “bad faith” in alleging that Dr. Cordova was employed by University Hospital & Clinics, Inc. (App.64a). The district court also awarded sanctions to the Lafayette General Defendants in the amount of \$50,664.74 for Dr. Cordova’s “frivolous appeal” to the Fifth Circuit which he now requests this Court to review. (App.68a).



REASONS FOR GRANTING THE PETITION

J. Cory Cordova, M.D., (herein “Dr. Cordova”) is seeking this Court’s intervention under extraordinary circumstances to prohibit Respondents’ continued application of political and financial pressure designed to chill his First Amendment rights. Albeit unbelievable and perplexing, the uncontroverted evidence reveals the severe retaliation and lack of due process experienced by Dr. Cordova after discovering Respondents’ Medicare/Medicaid fraud scheme. (App.78a). [ROA.4129-4678]

A court has the inherent power to address actions which are meant to undermine the truth-seeking function of the judicial system that place into question the integrity of officers of the court and our system of justice. This case involves willful conduct which injects misrepresentations into the judicial process so serious that it distorts existing law and ignores decades of established precedent. Through abusive litigation tactics, Respondents have relentlessly continued their efforts to silence, professionally retaliate, and punish Petitioner for exercising his constitutional rights to be heard and access to the court systems for relief for legitimate grievances. When these types of litigation tactics are condoned and rewarded by our courts of justice, the advocacy of lawyers and the First Amendment rights of litigants are not merely chilled, they are frozen by the severity of the retaliation Petitioner experienced after raising issues of public interest with legal and national significance.

I. THE PETITION SEEKS RESOLUTION OF CORE FIRST AMENDMENT PROTECTIONS IN THE CONTEXT OF PUBLIC AFFAIRS.

A court may not sanction colorable arguments that in effect insulate its decisions from legitimate judicial challenges without implicating central First Amendment concerns. While the First Amendment does not safeguard all forms of speech in the context of court proceedings, litigants may not be punished because their arguments are subjectively considered to be frivolous. The underlying premise of the adversary system is that truth is its object; thus, “the prohibition on viewpoint discrimination is particularly compelling—and, in fact, essential—to the integrity of the adversary system.”¹ Thus, sanctions may not be imposed to restrict the substantive arguments litigants may present in court proceedings unless those arguments are objectively unreasonable.

The Fifth Circuit’s unpublished *per curiam* opinion held that:

Cordova has repeatedly refused to heed the district court’s warning about “unreasonable attempts at continuing this litigation” with an untimely and also meritless Rule 60(b) motion. And here again Cordova has filed another frivolous appeal . . . We, therefore, grant the appellees’ Rule 38 motion and remand for the district court to fix the appropriate sanctions, attorney fees, and costs for this appeal. (App.8a).

¹ Margaret Tarkington, *Voice of Justice: Reclaiming the First Amendment Rights of Lawyers* (Cambridge U. Press 2018).

This finding is inconsistent with prior decisions of the Fifth Circuit that hold an appeal is frivolous if the result is obvious or the arguments of error are wholly without merit.² Dr. Cordova’s Rule 60(b) motion is supported by existing Fifth Circuit jurisprudence and ample unrefuted evidence that should have been reviewed *de novo* rather than sanctioned.

This Court has explained: “By seeking to prohibit the analysis of certain legal issues and to truncate presentation to the courts, the enactment under review prohibits speech and expression upon which the courts must depend for the proper exercise of the judicial power.”³ Thus, it is essential that litigants be protected in raising nonfrivolous arguments and appeals; because if they are not, then the judicial power itself can be undermined. Without litigants bringing such cases, the judiciary would be powerless to protect those harmed by unconstitutional and abusive actions of those in power. When Defendants seek to “truncate presentation to the courts” of certain arguments, this Court concluded: “The Constitution does not permit the Government to confine litigants and their attorneys in this manner.”⁴ Likewise, courts may not exclude from litigation those arguments and theories the court finds unacceptable which by their nature are within the province of the court to consider.

² *Sun Coast Res., Inc. v. Conrad*, 958 F.3d 396, 398 (5th Cir. 2020).

³ *Legal Service Corporation v. Velazquez*, 531 U.S. 533, 545 (2001).

⁴ *Id.* at 548.

II. THE PETITION SEEKS RESOLUTION OF THE ISSUE THAT THIS COURT LEFT UNRESOLVED IN *BP P.L.C. v. MAYOR AND CITY COUNCIL OF BALTIMORE*, 952 F.3d 452 (2021).

The April 17, 2023, *per curiam* opinion held that Dr. Cordova did not timely appeal the underlying judgment that dismissed all of his claims against the Respondents in this case. (App.3a). Overlooked is the fact that the March 24, 2021 “judgment” Dr. Cordova sought to vacate was a jurisdictional ruling granting Dr. Cordova’s Motion to Remand for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447. (App.22a). Since at least 1949, federal appellate courts have generally lacked the power to review a district court order remanding a case to state court. *See BP P.L.C. v. Mayor and City Council of Baltimore*, 952 F.3d 452. This Court held that an order encompasses all issues contained in it. *Id.* However, this Court did not decide the issue presented in this case and left open the determination of whether other appealable issues contained in an Order of Remand may be reviewed by the appellate courts. Thus, Dr. Cordova presents an issue that is *res nova* and ripe for determination.

The *per curiam* opinion suggests that because the Order that granted remand contained a cursory statement that “the remaining claims in this matter have been resolved through prior dispositive motions and the court hereby GRANTS the Motion for Entry of Judgment under Rule 54(b) as to its rulings on those claims” the order of remand is now a final judgment on the merits, subject to appellate review. (App.23a). The Fifth Circuit’s characterization of an order of remand as a final judgment on the merits

converts the district court’s jurisdictional rulings to a judgment on the merits entitled to preclusive effect. This conversion is inconsistent with the prior decision by the Fifth Circuit in *Beiser v. Weyler*, 284 F.3d 665, 673 (5th Cir. 2002). In *Beiser*, the Fifth Circuit held that a remand order is not entitled to preclusive effect. (explaining that when “a litigant, as a matter of law, has no right to appellate review, then he has not had a full and fair opportunity to litigate and the issue is not precluded”); *see Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 395 (5th Cir. 1998) (suggesting that “collateral estoppel may not be applied offensively to a jurisdictional decision—such as one granting a motion to remand—that is not capable of being subjected to appellate review”); 18A Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE § 4433 n.39 (3d ed. 2021).

III. LACK OF SUBJECT MATTER JURISDICTION IN THIS CASE IMPLICATES SUBSTANTIAL FEDERALISM CONCERN UNADDRESSED BY THE LOWER COURTS.

The Fifth Circuit has held that when a Rule 60(b)(4) motion is brought pursuant to lack of subject matter jurisdiction, there is no time limit for doing so. *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998). In *Carter*, the Fifth Circuit also considered and rejected the argument that a party’s neglect to prosecute a timely appeal bars relief from a final judgment and held that a motion brought pursuant to subsection (4) of Rule 60 has no set time limits and is reviewed *de novo*. Rather than afford Dr. Cordova a *de novo* review of the issues presented in his appeal, the *per curiam* opinion held that by “alleging the defendants violated Dr. Cordova’s due

process rights established in the federal and state constitutions and quoting the Fourteenth Amendment . . . plainly made the case removable and gave the district court federal jurisdiction." (App.4a). Overlooked in this case is the fact that the Defendants removed Dr. Cordova's state court breach of contract case based upon the district court's "unquestionable" jurisdiction to hear a 1983 claim they knew did not exist. This prior knowledge is supported by the LSU Defendants' billing records submitted in support of its Motion for Attorney Fees wherein a billing entry dated prior to removal states that Dr. Cordova's state court petition was "without allegations of civil rights violation under 42 U.S.C. § 1983 in anticipation of removal and the filing of a 12(b)(6) motion."

The district court clearly lacked subject matter jurisdiction in this case from the very beginning. Rather than acknowledge the district court lacked jurisdiction, the Defendants characterized Dr. Cordova's objection to the subject matter jurisdiction of the district court as "sly," "exceptionally ill-timed," "grossly delinquent," "improper," "disingenuous" and "should not seriously be entertained." [ROA.2204]. However, Dr. Cordova's employment by a private actor and lack of jurisdiction is supported by the following documents contained in the record: 1.) Dr. Cordova's W-4 which lists his employer as University Hospital & Clinics "UHC"; 2.) Dr. Cordova's Form L-4 that lists UHC as his employer; 3.) Dr. Cordova's I-9 which lists UHC as his employer; and. 4.) Dr. Cordova's Medicare Enrollment Record which lists UHC as his employer. Although falsification of any of these forms/documents constitutes a federal crime, the Lafayette General/UHC Defendants were awarded sanctions by the district

court for the undersigned’s “bad faith” in suggesting that Dr. Cordova was employed by the employer listed on the forms that were placed into evidence by the Defendants. (App.60a).

Moreover, the Louisiana Supreme Court’s intervening and controlling decisions in the consolidated matters of *Hays v. University Health Shreveport*, 21-1601 332 So.3d 1163 (La. 1/7/22) and *Nelson v. Ochsner Lafayette General*, 21-1453 (La. 1/7/22) remove all doubt as to the knowledge of the Respondents in this case. The consolidated cases are legally preclusive as to the issue of Dr. Cordova’s true employer as a resident at University Hospitals & Clinics (UHC). In ruling for Lafayette General/UHC (the same Respondents herein represented by the same counsel herein), the Louisiana Supreme Court noted “[t]here is no allegation or even the barest insinuation that Employer is a state actor; indeed, the parties in this case stipulated that Employer is a private actor.” Further, the Louisiana Supreme Court stated that Lafayette General/UHC (Respondents herein) as a private actor could not present issues of federal law and solely state law applied. In keeping with the inherent goals of federalism, the Louisiana state court decision should have been afforded full faith and credit by the lower courts as it raises subject matter jurisdiction issues relevant to this case and involves the same Respondents represented by the same attorneys.

The Respondents in this case simply cannot have it both ways. The Lafayette General Defendants cannot accept Medicare graduate education payments and bill Medicaid/Medicare as a provider for a resident’s

services⁵ and at the same time claim they do not educate, supervise, or control the residents. Likewise, the Lafayette General Defendants cannot litigate before the Louisiana Supreme Court its CMS mandatory vaccination policy upon its employees (which included the residents) to ensure the continued receipt of improper Medicaid/ Medicare funds and at the same time sanction Dr. Cordova for requesting that the federal courts give full faith and credit to the decision that is preclusive to this case.

IV. THE FAILURE OF THE LOWER COURTS TO ADDRESS THE UNDISPUTED EXISTENCE OF A CONCURRENT CONFLICT OF INTEREST REPRESENTS A DEPARTURE FROM THE ACCEPTED COURSE OF JUDICIAL PROCEEDINGS AND REQUIRES THIS COURT'S SUPERVISORY POWER TO RESTORE PUBLIC CONFIDENCE IN THE ADVERSARY SYSTEM.

The entire justice system is built upon the unshakeable foundation that truth is its object. If courts allow untruthfulness or lack of candor to enter into the decision-making process, the entire system loses validity. When attorney misconduct or abusive litigation tactics result in a favorable judgment to offending parties, the available remedies to a litigant under the rules diminish substantially. However, this case does not just involve misconduct by the opposing parties that received a favorable judgment. The fact that counsel for the Lafayette General Defendants, had a concurrent conflict of interest during this litigation with Dr. Cordova's previous lead counsel is not in dispute. This concurrent conflict of interest

⁵ ROA.1574. ROA.1576-1578. ROA.5896.

was neither disclosed to nor waived by Dr. Cordova and is a sufficient legal basis to vacate a judgment.

More importantly, public confidence in the legal system is eroded by the spectacle of a lawyer (Gibson) who owes a duty to his client's adversary (Bezous) concurrently. The undisclosed concurrent conflict of interest taints any victory obtained by the Respondents in this case and mandates reversal. The Rules of Professional Conduct impose an ethical duty upon lawyers to honor our obligations to protect the public, the client, the profession, and the justice system from those who either cannot or will not abide by the ethical rules which we self-impose. The duty to report misconduct embraces the principle that, as officers of the court, our collective vigilance supports our system of justice and the public we serve.

Unfortunately, the lower courts' rulings in this case exemplify why lawyers are reluctant to report misconduct despite our fundamental obligation to do so. When Dr. Cordova raised the issue of attorney misconduct in the 60(b) Motion filed at the district court level, the district court denied the Motion and ordered that the undersigned counsel and Dr. Cordova pay both of the Respondents' attorney's fees "due to plaintiff's unreasonable attempts at continuing this litigation." The Fifth Circuit also imposed sanctions for a frivolous appeal effectively rewarding the Respondents for their egregious conduct in this case.

The decisions rendered by the lower courts in this case suggest to lawyers and clients that reporting misconduct is not an obligation of attorneys and judges within our legal system; but instead suggests that raising issues of misconduct and fraud should be regarded as forbidden, sanctionable, and vexatious.

Dr. Cordova respectfully requests this Court's intervention to restore public integrity in the judicial system and to clarify a lawyer's duties to avoid the disorder and chaos that this case has produced. Additionally the penalty of sanctions, attorney's fees, or costs should not be used to limit or curb actions where there is a legal argument available to the affected client. It is the attorney's core function to present a client's colorable arguments/claims and the core function of the judicial system to hear those claims in court proceedings even if such arguments expose corruption or implicate the integrity of officers of the court. The idea of the adversary system is that both sides will be heard. This cannot happen when a litigant is excluded from judicial proceedings and then selectively punished for seeking redress for legitimate grievances.



CONCLUSION

This case exemplifies the worst possible outcome for a plaintiff—dismissal of his case without a single opportunity to be heard by any court due to no fault of his own. Enforcing any judgment gained against a litigant in this manner is unconscionable but when a judgment is obtained against a frontline hero at the height of the COVID-19 pandemic, it puts our entire system in disrepute. Petitioner respectfully requests that this Court review the past orders in this matter and ensure that the tactics employed do not happen to any other litigant in the future. The alternative is to clear the way for those who engage in gamesmanship, selective use of the law, misrepresentations, procedural maneuvering, and strategic omissions to perfect and reprise their schemes to deny litigants access to justice and further target litigants and their lawyers with impunity.

Respectfully submitted,

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