No.

IN THE

Supreme Court of the United States

MAURICE JAMES SALEM, PETITIONER

v.

ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, an Illinois state agency, and JEROME LARKIN, officially and individually

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Whether enforcing the statutory requirement of the appearance of conflict-of-interest, 28 U.S.C. § 455(a), will restore the public's record-low confidence in the judiciary or severely injured the public's view of our judicial system and its reputation if this Court does not grant this Petition?

2. Whether a court *with* an alleged conflict of interest, should be the same court to rule on its own conflict-of-interest?

3. Whether the baseless dismissal of Salem's Complaint against government officials, under Rule 12(b), further erodes the public's confidence in our judiciary?

4. Whether the Seventh Circuit erroneously conducted a fact-finding to determine to impose sanctions?

STATEMENT OF RELATED CASES

United States Court of Appeals for the Seventh Circuit's *en banc* decision, Salem v. Illinois Attorney Registration and Disciplinary Commission, et al., No. 22-3222, decision dated: October 27, 2023 (App. 15a)

United States Court of Appeals for the Seventh Circuit, reissued decision, Salem v. Illinois Attorney Registration and Disciplinary Commission, et al., No. 22-3222, decision dated: September 28, 2023 (App. 1a)

United States Court of Appeals for the Seventh Circuit's Order, Salem v. Illinois Attorney Registration and Disciplinary Commission, et al., No. 22-3222, Order Impose Fine dated: October 27, 2023 (App. 12a)

United States District Court for the Northern District of Illinois, *Salem v. Larkin*, et al., No. 20-CV-06531, decision dated: November 23, 2022. (App. 17a).

United States District Court for the Western District of Michigan, Northern Division, *Salem v. Larkin, et al.*, Case No. 2:20-CV-220, decision dated: November 2, 2020. (App. 37a).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

OPINIONS BELOW

The Seventh Circuit's *en banc* decision, October 27, 2023, (App. 15a). The Seventh Circuit's decision, September 28, 2023, (App. 1a), affirming the District Court Judge's order granting Defendants' Rule 12(b) Motion to Dismiss, as well as an Order Denying Petitioner Salem's Motion to Change Venue and an Order denying Salem's Motion to Recuse, dated November 23, 2022 (App. 17a). The U.S. District Court for the Western District of Michigan, Order send Salem to Illinois for Decision on change of venue, November 2, 2020. (App. 37a).

JURISDICTION

The judgment of the court of appeals, *en banc*, was entered on October 27, 2023. (App. 15a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) based on the Seventh Circuit September 28, 2023, final judgment (App. 1a).

RELEVANT PROVISIONS INVOLVED

1. 28 U.S.C. § 455(a) & (b):

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

2. 42 U.S.C. 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

INTRODUCTION

This appeal was taken not just from the District Court Judge's order granting Defendants' Rule 12(b) Motion to Dismiss (Doc # 39), but also, and more importantly, an appeal from Order Denying Salem's Motion to Change Venue, (Doc. 17), and from an Order denying Motion to Recuse, (Doc. 21). The Seventh Circuit's decision affirmed the denial of Salem's motions to change venue & to recuse, as well as affirming the dismissal on the complaint. Salem seeks a reversal on the lower courts' refusal to grant either his Motion to change

venue or recuse and/or the dismissal of his Verified Complaint.

The Defendants-Respondents are the Illinois Attorney Registration and Disciplinary Commission ("ARDC") and its Administrator Larkin, who controls and regulates the law licenses of all attorneys and judges in the district and venue. Salem's initial Motions to change venue or recuse is based on actual and appearance of a conflict of interest between a judge, whose law license is controlled by the Defendants, and the Defendants being a party before that same judge, pursuant to 28 U.S.C. § 455(a) & (b).

To believe there is no actual conflict of interest is to blatantly ignore reality. Nonetheless, at the very least an appearance of conflict of interest is an issue, which the Seventh Circuit failed to consider. Salem filed a Petition for Writ of Mandamus immediately after his motion to change venue or recuse were denied, which preserved the issue of appearance of conflict on appeal in the Seventh Circuit. By not addressing this issue the lower court not only erred on the law, but also endanger court's reputation given the publicly obvious conflict of interest and the record low confidence the public has of our judicial system, according to Gallup Polls in both September 2021 and 2022.

The Seventh Circuit dismissed the Complaint relying on its misapplication of the case, *Paul v. Davis* 424 U.S. 693 (1976), which requires a fundamental right be violated in order to plead a "class-of-one" discrimination or substantive due process. However, this was a clear error by the Seventh Circuit because Salem's claim was the loss of his law license, a property right, which is a fundamental right. When the Illinois Supreme Court entered its Order was when the substantive due process and class-of-one discrimination claim

arose, and NOT the publishing of the defamatory dishonesty statement on the ARDC website. This was the reason that neither side cited the *Paul v. Davis* case, because it's not applicable.

Given the articles written[1] about this case, the local attorneys, judges and law professors' view of this case, this case is no longer about Salem, it's about the lower courts who refused to change venue or recuse where there is a blatant conflict of interest. This case has become an embarrassment for the lower courts because Salem has, in effect, won this case by publicly exposing the Respondents ARDC and Larkin, who were forced to submit a frivolous and irrelevant responses in their court filings, as shown by the public response in this case. No impartial and reasonable person can possibly see it in any other way. The conflict of interest is the basis of Salem's two motions for either a change of venue or recusal. Given that the 2017 Administrative fact-finding Hearing Board & 2018 Review Board ruled in Salem's favor, and there is no other fact-finding, the public's record-low confidence in our judicial system will be further diminished if this Court does not grant this Petition.

At the very least , if this Court should not grant this Petition, then it should just enter an order allowing the Judge in the Western District of Michigan to rule on the issue of conflict of interest. This would help a great deal in restoring the public's record low confidence, as well as Salem's confidence, in

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[1] October 27, 2017, article in the Chicago Law Bulletin, see **Complaint Exhibit B**. (App. A, pdf. Pg. 37), and Legal Ethics Lawyer Ed Clinton Jr., "ARDC Review Board Recommends A Censure For Maurice J. Salem," (Nov. 5, 2018) (App. Q, pdf. Pg 357).

our judiciary. Otherwise, Salem has resolved that he would no longer, in good conscious, be able to practice law in the lower courts.

STATEMENT

I. Legal Background

A. Actual and Apparent Conflict of Interest, 28 U.S.C. § 455(a) & (b), the Motions for Change of Venue and Recuse should not have been denied.

The Seventh Circuit obviously misread Salem's reasoning for wanting to change venue. There were two (2) motions filed by Salem, one to change venue and the other to recuse the District Court Judge from this case. The Motion to Recuse raised the issue as to whether there was an actual and/or an apparent conflict of interest under 28 U.S.C. 455(a) & (b). Obviously, Salem was not just claiming that all Judges in the District should be recused, only the ones with a law license controlled by the Defendants-Respondents. If that happens to be all the Judge's in the District then change of venue must be granted.

Having petitioned for a Writ of Mandamus, Salem preserved on appeal his right to argue the "appearance" of conflict of interest between the presiding District Court Judge and the Respondents, who have control over the Judge's law license, as well as the law licenses of any counsel Salem will need at trial for representation in this District. See, December 4, 2020, denial of a Writ of Mandamus. *In Re: Maurice J. Salem*, Petitioner, Appeal No. 20-3310. In the Seventh Circuit the sole route to review a refusal to disqualify pursuant to § 455(a) is an immediate application for writ of manda-

mus, a party who fails to seek mandamus waives its right to raise the issue in a post-judgment appeal. *United States v. Horton*, 98 F.3d 313, 316 (7th Cir. 1996). The appearance of impropriety may require disqualification even absent ground for disqualification specifically enumerated in § 455(b). *In re Hatcher*, 150 F.3d 631, 637 (7th Cir. 1998).

By not considering how the conflict of interest appears to the public the Seventh Circuit's panel made a statutory error under 28 U.S.C. 455(a), *which requires strict compliance.* Congress created this statute because it was concerned about the public's confidence in our judicial system. The current public's confidence in our judicial system has now reached a record low, according to Gallup Polls in both September 2021 and 2022.

The Seventh Circuit's error in not considering the *appearance* of conflict of interest, coupled with the fundamental legal error in appellate court practice, as described below in this Petition, is what will lead to further lowering the public's record-low confidence in our judicial system if Salem's Motions to change venue or recuse is not granted.

B. Salem's Verified Complaint should not have been dismissed on basis of *Paul v. Davis* case because it is irrelevant to these claims. The *Paul v. Davis* case requires that the claim involve a fundamental right. However, the loss of Salem's license is a property right is a fundamental right, which gave rise to these claims in the Complaint and that's why neither side cited the case.

The substantive due process and "class-of-one" discrimination claims arose after the Illinois Supreme Court imposed the second most severe punishment next to disbarment, where even the 2017 fact-finding Hearing Board held that Salem's violation was "less egregious" than all prior cases where censure was imposed.

Respondent Larkin's dishonesty statement in the ARDC website did not exist when the substantive due process and "class-of-one" discrimination claims arose. It was only when the Illinois Supreme Court imposed a punishment that was the second most severe punishment next to complete disbarment that those claims arose. Salem's law license is a fundamental right. *Supreme* Court of N.H. *v. Piper*, 470 U.S. 274, 281 (1985) ("The opportunity to practice law is a 'fundamental right' which falls within the ambit of the Privileges and Immunities Clause."). Thus, it was Salem's fundamental right that was violated that raised his substantive due process and "class-of-one" discrimination claims. Thus, *Paul v. Davis* 424 U.S. 693 (1976), does not bar Salem's Complaint and that's why neither side cited the case.

It was the severity of the unprecedented punishment, where even censure was too much & unprecedented that gave rise to substantive due process and the class-of-one discrimination claims. The punishment recommended by the 2017 Hearing Board, censure, was the least severe that could have been imposed. However, in all prior cases where censure was imposed the attorneys committed an intentional act for profit. That's why even censure was too extreme and unprecedented to impose against Salem, in that no attorney was ever punished for such an unintentional violation the did not involve profit, as Salem was punished. This gave rise to the substantive due process claim because such a punishment for a minor unintentional act will shock the conscience of any reasonable person.

The discrimination claim is based on the fact that Respondent Larkin never previously requested such a punishment against an attorney for such a minor unintentional violation and where there exists overwhelming evidence of *ill will and malice* against Salem was shown in his Opening Brief. A suspension "until further order of court" is the most serious sanction, next to disbarment, that can be imposed. *In re Timpone*, 208 Ill 2d 371, at 804. Thus, it was ridiculous to mention the *Rooker-Feldman doctrine*, whether the ARDC Hearing is Judicial or an Administrative Proceeding, because these claims arose after the Illinois Supreme Court granted Larkin's requested punishment and Salem never had an opportunity to plead the substantive due process and the class-of-one discrimination claims.

II. Factual Background and Procedural History

Respondent Larkin, with *ill will and malicious intent* to injure Salem, published a false and disparaging statement on their official state ARDC website regarding Salem. Larkin stated that Salem's license to practice law was suspended "indefinitely[2]" on the basis that Salem was dishonest to the public, see **Exhibit A** to the Verified Complaint, (App. A, pdf. Pg. 35). This statement is absolutely *retaliatory* and *vindictive* and a false statement made on the basis of *ill will and malice*, for which Larkin refused Salem's oral and written pleas to remove it and still has not removed it. See list of overwhelming reasons to justify the *ill will and malice* in Salem's Opening Brief. The discrimination claim is not only seeking damages against Larkin, individually, but Salem is also seeking an injunction against Larkin and the state agency the ARDC to remove that false statement from the ARDC website, under class of one discrimination and substantive due process claims.

On January 29, 2019, Salem was suspended from the practice of law, which has now lasted four years, for a minor unintentional violation. This gave rise to Salem's substantive due process and discrimination under a "class of one" claims. Such unprecedented and extreme punishment, depriving Salem of his fundamental right to property, i.e., his license to practice law,[3] which is his livelihood, for an unintentional, inadvertent error

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[2] On the ARDC website it states Salem was suspended "indefinitely."

[3] The suspension of a license to practice law by any court, leads to suspension from all courts in the United States via *reciprocal discipline* policy of all courts.

in filling out an appearance form in a six-year-old case that caused no harm to anyone,[4] will *absolutely shock the conscious of any impartial and reasonable person.* Moreover, the indefinite suspension of Salem's license to practice law also violated the Equal Protection Clause of the Fourteenth Amendment, as a class of one discrimination, because it was a *vindictive* act based on Respondents' *ill will and the malicious intent to injure* Salem.

Petitioner Salem has a history of successfully suing corrupt government officials and billion-dollar corporation to protect the public's civil rights. Salem never gave corrupt officials an excuse to attack him. However, now for the first time, in Chicago, he has been attacked without a pretext of wrongdoing by the Respondents in this Petition.

A. Petitioner Salem's Relevant History to the Claims herein

If you google "History Channel Columbia University South Africa apartheid divestment." It will state that the Divestment Movement was first started by Columbia University students. That was Salem who started the movement with other students and you can see a picture of him carrying a waist high banner with four other students that stated, "APARTHEID KILLS."

In 1983, Salem graduated from Columbia University with a degree in nuclear engineering and applied physics. After taking some graduate courses in

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[4] These were adjudicated facts by the ARDC Hearing Board that were also upheld on appeal by the Review Board.

plasma physics, he joined the U.S. Navy as an engineering officer, 1984-1987. Salem then worked for General Dynamics as a nuclear engineer for the Trident Submarine, 1987-1989. He then attended Pace University School of Law and left after successfully completing one-year of law school in 1991. Salem took the State Law Clerk exam in 1991 and scored the highest score to become a law clerk for the Westchester County Law Department, where he practiced law from 1991 to 2004. In 2002, Salem passed the New York bar exam prior to completing law school. He later completed his law degree from Quinnipiac University to obtain a license to practice law. He mainly practiced civil rights law in federal courts in and outside New York State.

One of Salem's duties as a law clerk from 1991 to 2003, was to collect all relevant appellate court decision from the New York Law Journal. He created booklets that indexed the decisions and describe how they affect Family Court practice.[5] This work gave Salem experience and knowledge in appellate court practice.

Thus, Salem did not receive his license to practice law in 2003, as the Seventh Circuit panel stated. Salem has been practicing law since 1991 as a law clerk for the Westchester County's Law Department in New York. Salem's application for admission to practice law in Illinois was permitted by three (3) members of the seven-member of the character and fitness committee who dissented from the majority who denied Salem. However, all seven-member found Salem to be honest.[6]

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[5] This is public interest law dealing with child abuse and neglect, child support and juvenile delinquency.

[6] the majority wrote under a Section entitled "Candor before the Court," that Salem "To his credit, Applicant exhibited some degree of candor before the Committee." On page 18, the Dissent wrote:

Salem has been active in his community fighting back against injustice and corrupt government officials, just as he did when he started the Apartheid Divestment Movement in college in 1981. In 1992, Salem commenced a federal court action against the Chief of East Fishkill Police and his Lieutenant, claiming that they commenced criminal charges against him for corrupt reasons. In 1996, a federal court jury found that they committed fraud against Salem.[7] After this experience Salem learned to be extremely careful not to violate any laws or rules to give corrupt government officials a pretext to attack him again.

Since 1990s Salem continued to advocate against corruption and became politically active in his town, county and state politics. There are more examples of how Salem fought against corrupt government officials in New York and Illinois that are too many to describe in this limited-size petition, except to say that in the 1990s, Salem became the Chairman of the East Fishkill Democratic Committee, who are of no relation to the Democrats of today. He was able to get state court judges on the ballots who, with Salem, fought corruption and promoted civil rights.

After leaving the Westchester County's Law Department, in 2004, Salem maintained a law practice

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"He was candid before the committee and provided witnesses attesting to his good character."

[7] In New York, in the civil rights case, *Salem v. Town of East Fishkill*, Case No 92-cv-6192, in the U.S. District Court, for the Southern District of New York, a jury found in 1996 that Salem did not make a false report to the East Fishkill Chief of Police and his Lieutenant and that they brought false charges against Salem. The jury awarded Salem $15,000.00, but more importantly the jury confirmed Salem's honesty and integrity.

in New York and in the federal courts of various states including Illinois and strictly followed all the laws and rules without ever violating them. Salem strict adherence to all laws and rules was based on his experience of government officials using such violations as a pretext to attack him.

Salem has been admitted to practice law in the U.S. District Courts for the Southern District of New York, the Western District of Michigan, the Northern District of Indiana, the Northern District of Illinois, the Eastern and Western Districts of Wisconsin, as well as the U.S. Court of Appeals for the Second, Fifth, Sixth and Seventh Circuits. With the exception of this incident, Salem has always been in good standing in all the courts he was admitted into. Salem also maintained his work in developing his theory in quantum physics, which he completed and published in 2019.

Salem worked on mainly civil rights cases suing large corporations, government officials and their agencies for discriminating against minorities and women and, as Salem's history reveals and this case shows, he has been repeatedly attacked by corrupt government officials for fighting corruption. However, in Chicago for the first time, corrupt government officials attacked Salem *without even a pretext of wrongdoing*. In this case, as shown in the 2017 ARDC Hearing Board's 38-page decision that states, at page 26:

> For these reasons, we find the Administrator proved by clear and convincing evidence that Respondent held himself out as an Illinois attorney in the forcible detainer matter. We wish to make clear we do not find Respondent did so intentionally. Rule5.5(b)(2) does not include an element of intent. (***emphasis added***)

With respect to Salem's letterhead, at page 30, it states:

> For the reasons we have set forth above, we do not find any evidence in the record of dishonest intent or knowing misconduct with respect to Respondent's letterhead. Therefore, we find the Administrator did not prove Respondent engaged in dishonest conduct. (***emphasis added***)

This was the only fact-finding that took place in this matter. There can be no dispute that no dishonesty was found. Moreover, the 2017 Hearing Board fact finding was affirmed by the 2018 Review Board's decision. (V. Compl. ¶53).

Thereafter, Respondent Larkin filed a Petition for Leave to File an Appeal to the Illinois Supreme Court. Based on the rules Salem was not required to answer. Salem had the 38-page decision by the Hearing Board and the Review Board decision to support him and they were attached to Larkin's petition. Also, Salem believed that even if the Illinois Supreme Court granted Larkin leave to appeal, Salem would have an opportunity to Respond, but that was not what occurred. The Illinois Supreme Court just responded with an Order granting the punishment Larkin sought, which was the most severe punishment next to disbarment. This for the first time gave rise to substantive due process and class-of-one discrimination claims. These claims could not have been previously pleaded because they did not exist.

At a subsequent ARDC hearing for reinstatement there were many witnesses, including judge David

Delgado,[8] a police officer, a doctor and a pastor testified in Salem's favor. Mr. Mahboob Ali testified that Salem has a reputation in the Asian community of winning every case he takes. (Tr. 327, Ln. 4-9). However, Salem corrected Mr. Ali by testifying that he settles most of his cases. Salem has overwhelming evidence of his competence in trial and appellate level litigation. Salem won five (5) appeals in the Seventh Circuit and two (2) appeals in the Illinois Northern District Court overturning a Bankruptcy Court Judge in two separate cases. Salem won an appeal in the Sixth Circuit, and has extensive appellate court knowledge from his law clerk work in New York. Thus, Salem can qualify as an expert in appellate practice.

This is why sanctioning Salem for filing "frivolous" appeals, considering the obvious conflict of interest and the totality of circumstances in this case will further erode record-low public confidence in our judiciary.

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[8] Judge David Delgado testified in favor of Salem by saying: "Well, as far as I'm concerned, your [Salem's] competence shouldn't even be an issue here. I yielded to you because I feel and I -- well, let me -- I don't want to overrule -- I don't want to overstep my boundaries because I'm a witness. You're about as competent as they come." Tr. 114, 17-22.

REASONS FOR GRANTING THE PETITION

I. To enforce the statutory requirement of the appearance of conflict-of-interest, pursuant to 28 U.S.C. § 455(a), in order to restore the public's record-low confidence in our judiciary.

Petitioner Salem appealed from two orders denying his two (2) motions seeking to either change venue or recuse any judge where there is a conflict of interest, which upon information and belief, may be all the Judges in the District, including the Judges in the Seventh Circuit.

Salem said in oral arguments before the Seventh Circuit, the facts have been published in this case and they are in the record for the public to see. Thus, Salem claimed he had already won this case. Now this case is not about Salem, it's about our judiciary.

It defies common sense and the most fundamental logic to believe there is no actual conflict of interest, 28 U.S.C. § 455(b), between a judge and a defendant who controls the Judge's law license and his ability to maintain his employment as a judge. Nonetheless, even if such a baffling conclusion is accepted, in that there is no actual conflict of interest, then there is absolutely no possibility that there is no appearance of a conflict of interest, pursuant to § 455(a). Courts have been ignoring this Section of the law, § 455(a), Appearance of Conflict of Interest, as the lower court did in this case. Since it is a statutory requirement it must be strictly applied.

The Seventh Circuit panel obviously misread Salem's reasoning for wanting to change venue. There were two (2) motions filed by Salem, one to change

venue and the other to recuse the District Court Judge. The Motion to Recuse raised the issue as to whether there was an actual and/or an apparent conflict of interest under 28 U.S.C. 455(a) & (b). Obviously, Salem was not just claiming that all Judges in the District should be recused, as the Seventh Circuit panel believed, only the judges with law license controlled by Defendant-Respondent Larkin. If that happens to be all the Judge's in the District then change of venue may be appropriate.

Having petitioned for a Writ of Mandamus, Salem preserved on appeal his right to argue the "appearance" of conflict of interest between the presiding District Court Judge and the Appellees, who have control over his law license, as well as the law licenses of any counsel Salem will need at trial for representation in this District. See, December 4, 2020, denial of a Writ of Mandamus. *In Re: Maurice J. Salem*, Petitioner, Appeal No. 20-3310. In the Seventh Circuit the sole route to review a refusal to disqualify pursuant to § 455(a) is an immediate application for writ of mandamus, a party who fails to seek mandamus waives its right to raise the appearance issue in a post-judgment appeal. *United States v. Horton*, 98 F.3d 313, 316 (7th Cir. 1996). The appearance of impropriety may require disqualification even absent ground for disqualification specifically enumerated in § 455(b). *In re Hatcher*, 150 F.3d 631, 637 (7th Cir. 1998).

By not considering how the conflict of interest appears to the public (App. 1a) the Seventh Circuit panel made a statutory error under 28 U.S.C. 455(a), *which requires strict compliance.* Congress created this statute because it was concerned about the public's confidence in our judicial system. The current public's confidence in our judicial system has now reached a record

low, according to Gallup Polls in both September 2021 and 2022.

This error of ignoring the appearance of conflict of interest, coupled with the fundamental legal error in appellate court practice, as described in this Petition, is what will lead to further reducing the public's confidence in our judiciary, if neither of Salem's Motions to change venue nor recuse is granted. Moreover, the Seventh Circuit's blatant disregard to undisputed facts and blatant disregard to the rule of law, together with sanctioning Salem, will certainly further erode public's already record-low confidence in the judiciary.

II. To prevent a court *with* an alleged conflict-of-interest, from being the same court to rule on its own conflict-of-interest.

Salem initially commenced this action in the nearest district court to the Northern District of Illinois because he was concerned in having a court with an alleged conflict of interest, ruling on whether it had a conflict of interest. Salem commenced the case in the U.S. District Court for the Western District of Michigan, Northern Division, *Salem v. Larkin, et al.*, Case No. 2:20-CV-220, decision dated: November 2, 2020. (App. 37a).

Over Salem's objection, the Judge in the Western District of Michigan directed Salem to file the action in the Northern District of Illinois and seek a change of venue there. (App. 37a) *Id.* However, Salem did not believe that a court with an alleged conflict of interest should be the court to rule on the conflict of interest because such a ruling would also be subject to a conflict of interest. It would defy common sense to have someone

with a conflict of interest determine whether they had a conflict of interest.

At the very least , if this Court should not grant this Petition, then it should just enter an order allowing the Judge in the Western District of Michigan to rule on the issue of conflict of interest. This would help a great deal in restoring the public's record low confidence, as well as Salem's confidence, in our judiciary. Otherwise, Salem has resolved that he would no longer, in good conscious, be able to practice law in the lower courts.

III. To prevent the baseless dismissal of Salem's Complaint against government officials, under Rule 12(b), otherwise it will further erode the public's record low confidence in our judiciary.

A. The Government Fake Dishonesty Statement

Larkin argues that the Illinois Supreme Court, an appellate court, made factual determination about Salem and it found Salem to be dishonest. Larkin stated that Salem's license to practice law was suspended "indefinitely[9]" on the basis that Salem was dishonest to the public, see **Exhibit A** to the Verified Complaint, (App. A, pdf. Pg. 35). However, the 2017 Hearing Board was the only fact-finding forum in this matter and it determined Salem was honest. The Hearing Board determined Salem's intent, not only by referring to documented evidence in the record, but also by the credit-

[9] On the ARDC website it states Salem was suspended "indefinitely."

ability of Salem's in-person testimony; this required the Hearing Board to observe Salem's demeanor during his testimony, the testimony of witnesses and their demeanor and the admitted exhibits under the Illinois Rules of Evidence. *In re Spak*, 188 Ill. 2d 53, 66 (1999).

This is something that the Illinois Supreme Court Judges who ordered the second most severe punishment against Salem could not have done because Salem was not present before them and there was no fact-finding hearing held before them. The Illinois Supreme Court Judges were not present at the only fact-finding trial, the 2017 Hearing Board trial, to observe the witnesses' testimony, the exhibits and their reactions. The Illinois Supreme Court should not, and cannot, second guess the Hearing Board on issues of creditability and honesty. *Tully v. McLean*, 409 Ill. App 3d 659, 670-71 (2011) (a reviewing court, therefore, must not substitute its judgement for that of the trial court regarding the credibility of witnesses); *United States v. Huebner*, 752 F.2d 1235, 1241 (7th Cir. 1985) (noting that factual findings that depend on credibility determinations based on the *demeanor of witnesses at trial* are accorded great weight on appeal).

The Illinois Supreme Court can only reverse the ARDC Hearing Board if it believes the fact-finding was *against the manifest weight of the evidence. In re Smith*, 168 III. 2d 269, 283, 669 N.E.2d 896 (1996); *In re Timpone*, 157 III. 2d 178, 196, 623 N.E.2d 300 (1993). The Seventh Circuit panel in this case stated:

> Larkin argued that Salem's representation had been a deliberate attempt to mislead. The Supreme Court of Illinois likely agreed with that view, because it imposed the discipline Larkin sought—though it did not issue an opinion.

But this was just an allegation made by Larkin and he also made the same allegation to the only fact-finding body in this entire matter, which was the 2017 ARDC Hearing Board, where witnesses' testimony and Exhibits were presented to a three-member Board. Thus, the Illinois Supreme Court, as matter of appellate practice, could have ignored that the Board's fact-finding. The Illinois Supreme Court could have found against the manifest weight of the evidence and re-manded the case, but it could not have determined that Salem was dishonest, which is the opposite of what the Hearing Board found. Moreover, in a petition for rein-statement, Salem asked the Illinois Supreme Court whether it found Salem to be dishonest, it did not an-swer, and again issued a one-sentence order denying Salem's petition for reinstatement.

If you agree with the Seventh Circuit panel on this appellate issue, then there is absolutely no doubt that you do not understand the most basic and fundamental appellate procedure. This is such a basic rule in appellate procedure that to violated it constitutes a gross injustice that will shock any an appellate attorney, an appellate judge or a law professor who teaches appellate procedure.

At the 2017 ARDC Hearing Board trial, the state court judge that ARDC brought to testify, testi-fied in Salem's favor on all issues. This is the opposite of what ARDC's counsel stated in oral argument. After the 2017 The ARDC Hearing Board trial and after Larkin was humiliated in the Chicago Law Bulletin and by other legal commentators such as shown in Salem's Appendix, Larkin appeal to the ARDC Review Board, but he changed his punishment demand from complete disbarment to 90 days "and order of the court." This was meant to deceive the public because it is not just 90

days, the order of the court requires years of litigation, with discovery & trial before another Hearing Board. A suspension "until further order of court" is the most serious sanction, next to disbarment, that can be imposed. *In re Timpone*, 208 Ill 2d 371, 386, 804 N.E.2d 560 (2004). Salem is still suspended from January 29, 2019, four years and counting.

After the Review Board affirmed the Hearing Board's fact-finding, Larkin's petitioned the Illinois Supreme Court for Leave to Appeal only, no answer was required. Salem had the fact-finding decision of the ARDC Hearing Board and the affirming Review Board decision to support him, which were attached to Larkin's petition. The worse-case situation Salem believed was that the Illinois Supreme Court would grant Larkin's Petition for Leave to Appeal and he would have an opportunity to respond. The worst-case situation did not happen. The Illinois Supreme Court simply issued a one-sentence order granting Larkin the exact punishment he wanted. This was a gross miscarriage of justice and unbelievable because it was the highest court in Illinois that did this, which was a violation of the most basic and fundamental appellate court practice, if the Illinois Supreme Court found Salem to be dishonest.

B. Salem's Verified Complaint should not have been dismissed on basis of the *Paul v. Davis* case, which requires that the claim involve a fundamental right. However, loss of Salem's license, a property, is a fundamental right. This gave rise to the substantive due process and "class-of-one" discrimination claims, which arose after the Illinois Supreme Court imposed the second most severe punishment next to disbarment.

In the *Paul v. Davis* 424 U.S. 693 (1976) case, the Court required that the claim involved be a fundamental right. Larkin's dishonesty statement did not exist when the substantive due process and "class-of-one" discrimination claims arose. It was only when the Illinois Supreme Court imposed a punishment that was the second most severe punishment next to complete disbarment that those claims arose. Salem's law license is a property and a fundamental right. *Supreme* Court of N.H. *v. Piper,* 470 U.S. 274, 281 (1985) ("The opportunity to practice law is a 'fundamental right' which falls within the ambit of the Privileges and Immunities Clause."). It was Salem's fundamental right that was violated and gave rise to his substantive due process and "class-of-one" discrimination claims and thus, *Paul v. Davis* 424 U.S. at 693, does not bar this action.

It was the severity of the unprecedented punishment, where even censure was too much & unprecedented that gave rise to substantive due process and the class-of-one discrimination claims. The punishment recommended by the 2017 Hearing Board, censure, was the least severe that could have been imposed. However, in all prior cases where censure was imposed the attorneys committed an intentional act for profit.

That's why even censure was too extreme and unprecedented to impose against Salem, in that no attorney was ever punished for such an unintentional violation.

The discrimination claim is based on the fact that Larkin never previously requested such a punishment against an attorney for such a minor unintentional violation and where there exists overwhelming evidence of *ill will and malice* against Salem, which is shown in his Opening Brief. A suspension "until further order of court" is the most serious sanction, next to disbarment, that can be imposed. *In re Timpone*, 208 Ill 2d 371, at 804. Thus, it was ridiculous to mention the *Rooker-Feldman doctrine*, whether the ARDC Hearing is Judicial or an Administrative Proceeding, because these claims arose after the Illinois Supreme Court granted Larkin's requested punishment and Salem never had an opportunity to plead them.

Larkin, with *ill will and malicious intent* to injure Salem, published a false and disparaging statement on the official state ARDC website regarding Salem. Larkin stated that Salem's license to practice law was suspended "indefinitely[10]" on the basis that Salem was dishonest to the public, see **Exhibit A** to the Verified Complaint, (App. A, pdf. Pg. 35). This statement is absolutely *retaliatory* and *vindictive* and a false statement made on the basis of *ill will and malice*, for which Larkin refused Salem's oral and written pleas to remove it and still has not removed it. See list of overwhelming reasons to justify the *ill will and malice* in Salem's Opening Brief. The discrimination claim is not

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[10] On the ARDC website it states Salem was suspended "indefinitely."

only seeking damages against Larkin, individually, but Salem is also seeking an injunction against Larkin and the state agency the ARDC to remove that false statement from the ARDC website, under class of one discrimination and substantive due process.

Suspending Salem from the practice of law is in violation of his substantive due process rights and discrimination under a class of one. Such unprecedented and extreme punishment, depriving Salem of his fundamental right to property, i.e., his license to practice law,[11] which is his livelihood, for an unintentional, inadvertent error in filling out an appearance form in a six-year-old case that caused no harm to anyone,[12] will *absolutely shock the conscious of any reasonable person.* Moreover, the indefinite suspension of Salem's license to practice law also violated the Equal Protection Clause of the Fourteenth Amendment, as a class of one discrimination, because it was a *vindictive* act based on Larkin's *ill will and the malicious intent to injure* Salem.

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[11] The suspension of a license to practice law by any court, leads to suspension from all courts in the United States via *reciprocal discipline* policy of all courts.

[12] These were adjudicated facts by the ARDC Hearing Board that were also upheld on appeal by the Review Board.

IV. To prohibit the U.S. Court of Appeals for the Seventh Circuit, from conducting a fact-finding to determine sanctions rather than requiring an evidentiary hearing.

1. The Sanctions

In this Case, the Seventh Circuit panel ordered Petitioner Salem to show cause why he should not be sanctioned for filing this "frivolous" appeal. To determine whether Salem should be sanctioned the Seventh Circuit conducted its own fact-finding, which is a violation of the most fundamental and basic rules of appellate practice, in that an appellate court cannot conduct a fact-finding. There should be at the very least an evidentiary hearing.

The Seventh Circuit entered an order stating that "Our opinion ordered Maurice Salem to show cause why he should not be penalized for frivolous litigation. He chose not to respond to that order, except by referring to his petition for rehearing." (App. 12a). What the Seventh Circuit panel failed to understand is that their decision was so baseless and frivolous (App. 1a), together with many of its decisions within the past 15 years, that if there was no reversal in this decision, it will shock any experienced appellate attorney, judge or law professor who teaches appellate practice.

The Seventh Circuit panel ruled that the Illinois Supreme Court, an appellate court, could determine that Salem was dishonest, when the 2017 fact-finding Hearing Board found Salem to be honest. Salem concluded that if this decision is not reversed, it would be unethical for him to represent any client in the lower courts if this Court does not grant this Petition, which

will correct the lower courts and set a precedent that will restore the public's confidence in our judiciary.

2. The fact-finding by Seventh Circuit.

The three (3) Seventh Circuit appeals cited by the panel, as being frivolous or vexing, were cherry-picked, while ignoring all the cases Salem won and his successful litigation, as mentioned above in Salem's history of successful trial and appellate performance. Nonetheless, these three cases were not frivolous for the following reasons:

***A. Estate of Wattar v. Fox*, 71 F.4th 547, 554–55 (7th Cir. 2023).**

Keep in mind that once an attorney is suspended in one court, all the court's he is admitted to automatically suspends him through a *reciprocal discipline policy*, which all courts have. Salem has always been in good standing in all the court he was admitted into. The sanctions imposed against Salem in this case was by Bankruptcy Court Judge Cox, who Salem successfully reversed on appeal in two (2) separate cases in the District Court.

Bankruptcy Court Judge Cox sanctioned Salem and his two clients for filing two (2) Motions in 2016, seeking to sue the bankruptcy trustee under a *Bivens* action. The sanctions imposed against Salem and his two clients restricted their ability to file any documents without leave from the bankruptcy court and Salem fined $20,000 in sanctions.

After Salem showed that the 2016 Motions were not repetitive, the panel ruled out the repetitiveness of the 2016 Motions as a basis for sanctions, stating: "Salem's

focus on *repetitiveness* misses the point." *Id.* at 55. The panel held that the 2016 Motions did not state a *prima facie* case on the basis that a *Bivens* action was precluded, in that a bankruptcy trustee is not a government official who can be sued under a *Bivens* action. The panel in *Wattar* believed that this was such a frivolous legal theory that it warranted the sanction Judge Cox imposed.

However, the panel in the *Wattar* case failed to explain that if Salem's legal theory that a bankruptcy trustee is a federal government agent who can be sued under a *Bivens* action is so frivolous that it warrants sanction, then how would that apply to the U.S. Court of Appeals for the Third Circuit that upheld that exact theory. *In re J&S Props., LLC*, 872 F.3d 138, 143 (3d Cir. 2017) (holding that "bankruptcy trustees are government officials, entitled . . . to qualified immunity from § 1983 claims"). The Third Circuit held that a bankruptcy trustee was a "government official," and thus a federal agent, who can be sued under a *Bivens* action. However, the Ninth Circuit held: *In re Greene*, 980 F.2d 590, 597 (9th Cir. 1992) (holding that "the trustee is a representative of the estate, not an officer, agent, or instrumentality of the United States"). Thus, given the split between the Third and Ninth Circuit Courts on this issue and the fact that all the Bankruptcy Court Judges in the Northern District of Illinois jointly moved to have the Seventh Circuit panel in *Wattar* case to reissue its decision and publish it to make it precedential, then how can such a theory be so frivolous as to warrant sanctioning Salem.

B. Zausa v. Zausa (*Pellin*), No. 18-1896 (7th Cir. Nov. 1, 2018)

In the *Zausa v. Pellin* case, Salem represented Jack Zausa's wife and sued Pellin in Indiana under diversity jurisdiction. There was no issue between Jack Zausa and Pellin in that there was diversity jurisdiction with respect to the breach of contract claim Jack Zausa had against Pellin. However, since Jack Zausa's wife was entitled to whatever money Jack Zausa received from Pellin, she was named the Plaintiff. The only claim that exists was between Jack Zausa and Pellin for breach of contract and there was diversity jurisdiction between these two parties. However, for Jack Zausa's wife, Terri Zausa, to raise the claim she was named the Plaintiff who sued her husband Jack Zausa as the Defendant and Pellin as a third-party Defendant.

District Court Judge Moody ruled that since Terri and Jack Zausa were both domiciled in Illinois there was no diversity jurisdiction and sanctioned Salem. However, if Salem simply left Jack Zausa's name out of the caption there would not have been an issue according to the reasoning of Judge Moody. In fact, during oral argument in the Seventh Circuit Judge Hamilton asked counsel for Pellin, what if Salem had a caption, without Jack Zausa's name, would there be a diversity jurisdictional problem? Salem lost on the diversity jurisdictional issue because of a labeling issue and was sanctioned to pay attorney's fees for commencing the action.

However, the panel in *Zausa* did not address the issue of how Salem had previously reversed Judge Moody on appeal in another case, *Iqbal v. Patel, et al.*, No. 14-1959 (7th Cir. 2015), but where Judge Moody did not reinstate the case until almost four (4) years later

when Judge Moody had an opportunity to sanction Salem in the *Zausa* case in 2018.

C. Salem v. Egan, No. 19-2477 (7th Cir. Mar. 10, 2020).

The issue in this case is where was Salem domiciled: New York or Illinois. As described in Salem history, and indeed as described by the panel's decision in this case, Salem maintain a law practice in New York and in Illinois and other states mainly in the federal courts. Salem showed overwhelming evidence of having a residence in New York and Illinois. Salem cited a case the Seventh Circuit decided about a similar issue for a man who had a residence in Florida and Illinois, where the facts were similar to Salem's case, *Galva Foundry Co. v. Heiden*, 924 F.2d 729, 729 (7th Cir. 1991), the panel in *Heiden* ruled he was domiciled in Florida. However, the panel in *Salem v. Egan* rendered an opposite ruling holding that Salem was domiciled in Illinois.

Even assuming that the panel in *Salem v. Egan* got it right, despite this panel recognizing that Salem had a law practice in New York, a residence in New York and even the same issue was raised in a New York court where Salem was found to be domiciled in New York, at the very least it was not a frivolous case – so much for the rule of law.

The sanctions imposed under these circumstances will not only chill legitimate litigation, but also further erode the loss of public confidence in the judicial branch of our government, particularly given the public's current record low confidence in our court system.

V. This Seventh Circuit panel's decision disregards the facts, coupled with the most basic and fundamental error in appellate practice and it's futile attempt to smear Salem's reputation, together with the undisputable appearance of conflict of interest that will further decrease public confidence in the judiciary if the change of venue or the recusal motion is not granted.

On Netflix there is a movie called "The Chicago Seven," where the district court judge, who presided over the case, showed obvious bias in favor of the prosecutor. He held the defendants' attorney in contempt several times and entered an order incarcerating all seven defendants. However, at the end of the movie the following words flashed on the screen: "The U.S. Court of Appeals for the Seventh Circuit Vacated the Order." What this did is give the public as sense of justice existing in our judicial system, in that, although judges are human who reflect the same faults as members of society, there is a functional higher court that is a gatekeeper to ensure justice will eventually prevail.

Now that the Seventh Circuit failed in its gatekeeping duty, it is up to this Court to ensure that in our judiciary, justice will eventually prevail.

Salem's public reputation is well documented and established over his lifetime in fighting government corruption. It is Larkin's reputation that is problematic given the October 27, 2017, article in the Chicago Law Bulletin, where Salem exposed the ARDC as being an agency that was captured and compared it to "Harvey Weinstein." Salem was quoted in the article as saying that like the Weinstein situation "Everybody knows

Censure For Maurice J. Salem," (Nov. 5, 2018) (App. Q, pdf. Pg 357),[13] and there are more articles.

Salem is an author and is writing another book about his life experience and this case and would prefer to end his book in the same way as the Chicago Seven movie did. Salem contends that it is in the interest of this Court to uphold its duty to the public, protect its reputation and ensure public confidence in our judiciary.

It's not just this case that erodes the public confidence, within the past 15 years Salem has been observing too many cases that were wrongly decided. Nonetheless, no appellate law professor or a seasoned appellate attorney will agree with the panel's ruling in this case because the errors are so fundamental in appellate practice that to even raise such issue is ridiculous and laughable. Finally, this legal commentator stated:

> Judicial misconduct breaks down the very fiber of what is necessary for a functional judiciary- citizens who believe their judges are fair and impartial. The judiciary cannot exist without the trust and confidence of the people. Judges must, therefore, be accountable to legal and ethical standards. In holding them accountable for their behavior, judicial conduct review must be performed without invading the independence of judicial decision-making. This task can be daunting.

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[13] October 27, 2017, article in the Chicago Law Bulletin, see **Complaint Exhibit B**. (App. A, pdf. Pg. 37), and Legal Ethics Lawyer Ed Clinton Jr., "ARDC Review Board Recommends A Censure For Maurice J. Salem," (Nov. 5, 2018) (App. Q, pdf. Pg 357).

https://www.unodc.org/dohadeclaration/en/news/2019/08/judicial-misconduct-and-public-confidence-in-the-rule-of-law.html

CONCLUSION

This case is not about the Petitioner Salem because Salem has exposed the facts to the public, which agrees with Salem as shown in the public articles written about this case and public discussions among attorneys, judges, and law professors. This case is now about our judiciary and restoring the public's confidence in our judicial system. For this reason, this Court should grant this Petition.

Respectfully submitted,

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APPENDIX

85 F.4th 438
United States Court of Appeals, Seventh Circuit.

Maurice J. SALEM, Plaintiff-Appellant,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF the SUPREME COURT OF ILLINOIS and Jerome Larkin, its Administrator, in official and individual capacities, Defendants-Appellees.

No. 22-3222

Argued September 21, 2023Decided September 28, 2023

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 20-CV-06531 — **John J. Tharp, Jr.**, *Judge.*

Attorneys and Law Firms

Maurice J. Salem, Attorney, Law Offices of Salem & Associates, P.C., Palos Heights, IL, for Plaintiff-Appellant.

Steven Robert Splitt, Attorney, Attorney Registration & Disciplinary Commission, Chicago, IL, for Defendants-Appellees.

Before Easterbrook, Rovner, and Pryor, Circuit Judges.

Opinion

Easterbrook, Circuit Judge.

In 2003 Maurice J. Salem received a license to practice law in New York. He applied for admission in Illinois too but was turned down. Yet between 2004 and 2019 he maintained an active practice in Illinois, where he resides, through permission to appear *pro hac vice*—Latin meaning "for this event" or "on this occasion"—based on his license to practice in New York. The Attorney Registration and Disciplinary Commission charged him with misconduct for representing that he was licensed to practice law in Illinois. A hearing board received evidence, found that he had made such a representation inadvertently, and recommended censure. A review board agreed. But Jerome Larkin, the ARDC's Administrator, asked the Supreme Court of Illinois to go further and forbid any state court from allowing Salem to proceed *pro hac vice* for at least 90 days.

Larkin argued that Salem's representation had been a deliberate attempt to mislead. The Supreme Court of Illinois likely agreed with that view, because it imposed the discipline Larkin sought—though it did not issue an opinion. The court's order states:

> Petition by the Administrator of the Attorney Registration and Disciplinary Commission for leave to file exceptions to the report and recommendation of the Review Board. Allowed. Respondent Maurice James Salem is suspended from the practice of law for ninety (90) days and until further order of the Court.

Salem, who now asks the federal judiciary to disagree with the state court's disposition, did not do himself any favors when he ignored the petition and allowed Larkin's arguments to go unanswered in the state's

highest court. The lack of opposition may explain the court's belief that it did not need to write an opinion resolving a contested matter.

Salem's federal suit, based on 42 U.S.C. § 1983, asks for money damages to compensate him for both the suspension order (which remains in force) and how the ARDC has described that suspension. Its website states:

> Mr. Salem is licensed in New York but was never licensed in Illinois. He has, however, maintained a law office in Cook County, Illinois, for several years. The Supreme Court of Illinois suspended him for ninety days and until further order of the Court for dishonestly holding himself out to the public as an Illinois lawyer.

Salem contends that the word "dishonestly" in this description is false and maintains that principles of equal protection and substantive due process entitle him to relief. He does not present any claim under state tort law, nor has he asked a state court to direct the ARDC to change the website's language.

The federal suit did not go well for Salem. The judge dismissed it on the pleadings, ruling that the district court lacks jurisdiction to review the state Supreme Court's decision and that the state court's decision supplies all the basis needed for the ARDC's choice of language. 2022 U.S. Dist. LEXIS 212408 (N.D. Ill. Nov. 23, 2022).

Salem devotes the bulk of his appellate brief to contending that the federal district judge in Illinois should not have resolved the suit that Salem himself filed in Illinois. According to Salem, every district judge in Illinois is disqualified because he or she has a

law license and so is potentially subject to the authority that the Supreme Court of Illinois and its agency the ARDC exercise over the bar. Salem proposed that the judge "transfer venue" to Michigan to put it before a federal judge who does not have any potential conflict.

A statute, 28 U.S.C. § 1404(a), permits a district court to change venue "to any other district or division where it might have been brought or to any district or division to which all parties have consented." The ARDC and Larkin have not consented to litigate this suit in Michigan, and Illinois is the only state in which "it might have been brought". The ARDC is part of the state of Illinois; it does not do business in Michigan and has never had dealings with Salem there. Salem, who does not mention § 1404 in his opening brief (and does not discuss the relevant language in his reply brief), lacks any legal support for the proposition that a district judge can order the ARDC to defend itself in Michigan.

Apparently Salem believes that a disqualified district judge can send the litigation anywhere. He does not supply either authority or argument for this novel proposition. He did not bother to do the legal research to discover how federal courts proceed when all of a district's judges are disqualified. When none of the judges is available, the Chief Judge of the Court of Appeals will designate a judge from another district within the circuit to resolve the case. 28 U.S.C. § 292(b). If every judge in the circuit is disqualified, the Chief Justice of the United States can designate a judge from outside the circuit. 28 U.S.C. § 292(d). In neither event will a disqualified district judge "transfer venue" as Salem proposes.

So we must ask: are all district judges in Illinois disqualified? The answer is no. Although a judge "shall

disqualify himself in any proceeding in which his impartiality might reasonably be questioned", 28 U.S.C. § 455(a), the impartiality of the district judges in Illinois cannot be questioned "reasonably" in a case of this nature. The standard is objective, assessed from the perspective of an observer who possesses all material facts. *Liteky v. United States*, 510 U.S. 540, 548, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994); *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988); *United States v. Herrera-Valdez*, 826 F.3d 912, 917 (7th Cir. 2016); *In re National Union Fire Insurance Co.*, 839 F.2d 1226, 1228–29 (7th Cir. 1988). And the first material fact that any reasonable observer will possess is that federal judges do not need law licenses. They hold office by virtue of the President's appointment (following advice and consent of the Senate), not by virtue of anything any state does. As far as the Constitution is concerned, law licenses are unnecessary—indeed, the Constitution was adopted long before states began to license the practice of law. (Until the twentieth century, most legal practice was court-specific rather than a privilege conferred by a state-issued license. See Benjamin H. Barton, *An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation—Courts, Legislatures, or the Market?*, 37 Ga. L. Rev. 1167, 1172 & n.17 (2003).)

We appreciate that some federal judges may want to retain law licenses should they decide to return to practice. Perhaps such a judge's impartiality could be questioned "reasonably" if a given state had developed a reputation for commencing disciplinary proceedings against judges who issue adverse rulings. But Salem does not contend that the ARDC ever has done so for any federal judge—and our own research did not turn

up any example, though federal judges in Illinois (and in other states) regularly resolve suits in which state licensing officials are parties. A fully informed observer therefore would not believe that a federal judge would favor the state licensing officials to protect his own interests.

An informed observer also would know that none of the language in the Code of Conduct for United States Judges—or any of the advisory opinions issued under that Code—suggests that federal judges recuse in suits against officials responsible for the regulation of the state bar. Salem's argument to the contrary is unsupported. He does not cite any language in the Code of Conduct, any statute beyond § 455, or any judicial opinion holding that recusal is required in this circumstance. (Salem does mention § 455(b)(1) as well as § 455(a). Subsection (b)(1) is transparently irrelevant. It says that a judge is disqualified if "he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding". None of those things applies just because a judge is licensed to practice law.) It follows that the district judge is not disqualified.

Now for Salem's substantive contentions. The decision of the Supreme Court of Illinois suspending Salem from the practice of law cannot be collaterally attacked in civil litigation. It could have been reviewed by the Supreme Court of the United States but cannot be reviewed by a district court. That's the holding of *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), which like this suit arose from a state court's order regulating its bar.

Salem contends that the *Rooker-Feldman* doctrine does not apply because he seeks damages from

the ARDC and Larkin rather than an order setting aside the Supreme Court's decision. We need not decide when, if ever, a request for damages is outside the scope of the *Rooker-Feldman* doctrine, because the ARDC is a state agency and this suit rests on 42 U.S.C. § 1983. States and their agencies are not "persons" for the purpose of § 1983 and therefore cannot be sued for damages under that statute. *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). State officials sued in their official capacities are treated as states. *Ibid.* Salem has sued Larkin in his personal as well as his official capacity, but Larkin cannot be personally liable for decisions made by the Supreme Court of Illinois.

This leaves the argument that the statement on the ARDC's website entitles Salem to damages. The fact that the ARDC and Larkin in his official capacity are "the state" knocks out any § 1983 damages remedy against them, but Larkin in his personal capacity might be deemed liable for the language to which Salem objects, for Larkin could tell his subordinates to change it. But liable under the Constitution? The word "dishonestly" is defamatory and could support a tort claim—to which Larkin could interpose the defense of truth or a privilege to report the Supreme Court's decision—but Salem does not invoke state law. He relies instead on equal protection and substantive due process.

Let us start with the latter. Substantive due process protects fundamental rights with deep historical provenance. See *Dobbs v. Jackson Women's Health Organization*, — U.S. ——, 142 S. Ct. 2228, 213 L.Ed.2d 545 (2022); *Washington v. Glucksberg*, 521 U.S. 702, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). Freedom from being described as "dishonest" (or the equivalent)

by a state actor is not a fundamental right. Indeed, we know from *Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976), that it is not a constitutional right of any kind.

Public officials distributed posters describing Davis as an "active shoplifter", and he sought a remedy under § 1983. The Court held, however, that defamation is a subject for state tort law and does not deprive a person of either "liberty" or "property" for the purpose of the Due Process Clause in the Fourteenth Amendment. *Paul* added that stigma leading to the deprivation of some other interest, such as employment, might entail liberty or property and require a hearing—but Salem does not contend that the statement on the ARDC's site has caused such a loss. It is the decision by the Supreme Court of Illinois, not what the ARDC said about that decision, that ended Salem's opportunity to seek *pro hac vice* status. And Salem received a hearing before that judicial decision was reached. (Salem also had but did not use an opportunity to present his arguments to the Supreme Court of Illinois.)

As for the equal-protection theory: Salem describes himself as a "class of one" who has been victimized by the ARDC's malice. This appears to be just artful pleading of a defamation theory, which is no sounder under the Equal Protection Clause than under the Due Process Clause. At all events, a rational basis suffices for public acts challenged under the Equal Protection Clause, see *Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000), and we agree with the district judge that the decision of the Supreme Court of Illinois, read against the background of Larkin's application for Salem's suspension, supplies a rational basis for the ARDC's summary. In equal-

protection law, it is enough if a rational basis may be *conceived*; the basis need not be proved by evidence. See, e.g., *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993); *National Paint & Coatings Association v. Chicago*, 45 F.3d 1124, 1127-28 (7th Cir. 1995). Conceiving a rational basis for calling Salem's conduct "dishonest" does not require mental gymnastics.

This has been frivolous and vexatious litigation, an attempt by a disappointed party to strike back at his adversaries after losing in court. The attempt was doomed by inattention to basic legal rules. Salem makes assertions about venue without analyzing the language of § 1404, about how to handle recusals without mentioning § 292, and about judicial ethics without mentioning the Code of Conduct. He seeks damages against a state agency and its administrator under § 1983 without mentioning *Will*, relies on the Due Process Clause without mentioning *Paul*, and seeks a trial on an equal-protection theory without mentioning the rule that the rational-basis approach asks what is conceivable, not what a trier of fact believes. In other words, Salem's contentions reflect ignorance of the law, indifference to the law, or both.

This is not the first time the federal judiciary has encountered inappropriate behavior from Salem. For example, in a defamation suit that Salem filed in federal court complaining about statements an expert witness made during other litigation, Salem described himself as a citizen of New York in an effort to support jurisdiction based on diversity of citizenship. A federal district judge concluded that Salem, who has lived in Illinois since 2003, was untruthful; we affirmed. *Salem v. Egan*, 803 Fed.Appx. 928 (7th Cir. 2020) (nonprecedential disposition). In a similar case that a

district court dismissed for want of jurisdiction, Salem promptly refiled in another district court, apparently believing that subject-matter jurisdiction is district-court specific. A district judge deemed this frivolous and ordered Salem to pay his adversary's legal fees. We affirmed, agreeing with the district judge that Salem's conduct was sanctionable. *Zausa v. Zausa* (*Pellin*), 754 Fed.Appx. 427 (7th Cir. 2018) (nonprecedential disposition). The attorneys' fees awarded in *Pellin* remain unpaid.

Salem's preposterous arguments in a long-running bankruptcy proceeding so frustrated the bankruptcy judge that she barred him from continuing to represent any of the parties and fined him $20,000. The district court affirmed, as did we. *Estate of Wattar v. Fox*, 71 F.4th 547, 554-55 (7th Cir. 2023). The bankruptcy court imposed that fine years ago, but Salem has yet to pay even one dollar of the award.

The state courts of Illinois are not the only forum in which Salem's practice has been suspended. Following his suspension in state court, the Northern District of Illinois imposed reciprocal discipline. After receiving that suspension order, Salem served discovery requests on opposing counsel in a pending case. That led to a complaint and discipline for unauthorized practice of law. (Salem asserted that he didn't know that serving discovery requests constitutes the practice of law. The court didn't believe him—nor was the excuse adequate even if Salem was as ignorant as he professed.) We have revoked his right to practice in the Seventh Circuit. And officials in New York, having learned what was happening, suspended Salem's right to practice there. *Matter of Salem*, 194 A.D.3d 20, 142 N.Y.S.3d 102 (2021). That suspension remains in force. Upshot: Salem is not authorized to practice law in

New York, in Illinois, in the Seventh Circuit, or in the Northern District of Illinois. But he continues to file pestiferous suits on his own behalf, of which this one is an example.

Salem's cavalcade of frivolous suits must stop. The sanctions imposed in *Estate of Wattar* and *Pellin* were designed to discourage frivolous litigation by making this conduct costly, but that does not work if Salem thumbs his nose at the court and fails to pay. Litigation can require hefty outlays from defendants, expenses that they should not be forced to bear unless a suit presents plausible claims. Salem must explain why additional sanctions—including attorneys' fees and financial penalties—should not be imposed in this case. He must understand that, unless he pays all outstanding fines and awards of fees, plus any additional award in this case, we will issue an order under *Support Systems International, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995), that protects other persons by preventing him from filing or pursuing any civil suit until all outstanding awards have been satisfied.

The district court's judgment is affirmed. Salem has 14 days to show cause why he should not be subject to sanctions, including an order to pay the defendants' attorneys' fees, under Fed. R. App. P. 38.

United States Court of Appeals, Seventh Circuit.

Maurice J. SALEM, Plaintiff-Appellant,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF the SUPREME COURT OF ILLINOIS and Jerome Larkin, its Administrator, in official and individual capacities, Defendants-Appellees.

No. 22-3222

Before Easterbrook, Rovner, and Pryor, Circuit Judges.

October 27, 2023

O R D E R

Our opinion ordered Maurice Salem to show cause why he should not be penalized for frivolou s litigation. He chose not to respond to that order, except by referring to his petition for rehearing. The petition for rehearing is full of invective but does not demonstrate that the appeal was anything other than frivolous. Many of the panel's principal holdings are not even mentioned, so Salem has bypassed any opportunity to show that the bulk of his arguments were legally plausible.

As our opinion observed, Salem has been sanctioned in other cases and has failed to pay. Under the circumstances, a substantial penalty in this case is appropriate and will be joined with an order that will prevent Salem from burdening other parties with the

expense of litigation until he has satisfied all outstanding sanctions.

We fine Salem $5,000, payable immediately to the Clerk of Court. Until this fine and all sanctions imposed in other cases have been paid in full, Salem is forbidden from litigating as either attorney or a party in any court of this circuit. Clerks of court will return, unfilled, any papers that Salem tenders. See *Support Systems International, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995). This limit does not apply to criminal litigation or to any collateral attack on a criminal judgment against Salem. Salem may request relief from this order at any time with proof that all sanctions have been satisfied, or in two years with details about what remains to be paid and why full payment has not been made.

As our opinion observed, Salem has been sanctioned in other cases and has failed to pay. Under the circumstances, a substantial penalty in this case is appropriate and will be joined with an order that will prevent Salem from burdening other parties with the expense of litigation until he has satisfied all outstanding sanctions.

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United States Court of Appeals, Seventh Circuit.

Maurice J. SALEM, Plaintiff-Appellant,

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ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF the SUPREME COURT OF ILLINOIS and Jerome Larkin, its Administrator, in official and individual capacities, Defendants-Appellees.

No. 22-3222
October 27, 2023

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 20-CV-06531, John J. Tharp, Jr., *Judge.*

Attorneys and Law Firms

Maurice J. Salem, Palos Heights, IL, Pro Se.

Steven Robert Splitt, Attorney, Attorney Registration & Disciplinary Commission, Chicago, IL, for Defendants-Appellees.

Before Frank H. Easterbrook, Circuit Judge, Ilana Diamond Rovner, Circuit Judge, Doris L. Pryor, Circuit Judge

ORDER

Plaintiff-Appellant filed a petition for rehearing and rehearing en banc on October 12, 2023. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all the judges on the

panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

42 F.Supp.3d 763
United States District Court, N.D. Illinois, Eastern Division.

Maurice James SALEM, Plaintiff,

v.

Jerome LARKIN, officially and individually, and Illinois Attorney Registration and Disciplinary Commission, an Illinois state agency, Defendants.

No. 20-CV-06531

Signed November 23, 2022

Attorneys and Law Firms

Maurice James Salem, Palos Heights, IL, Pro Se.
Steven R. Splitt, Attorney Registration & Disciplinary Commission, Chicago, IL, for Defendants.

MEMORANDUM OPINION AND ORDER

John J. Tharp, Jr., United States District Judge

Maurice James Salem sues the Illinois Attorney Registration and Disciplinary Commission ("ARDC"), and its Administrator, Jerome Larkin, alleging that defendants' constitutional violations led to his suspension from the practice of law. Salem also alleges that defendants violated the Equal Protection Clause by posting a false disciplinary summary about him on the ARDC website. Lacking jurisdiction pursuant to the *Rooker-Feldman* doctrine, the Court dismisses the claims challenging Salem's suspension. That doctrine does not deny the Court jurisdiction over Salem's false-

the Hearing Board findings and agreed with the censure recommendation.

One further avenue of appeal is available to parties seeking review of disciplinary proceedings. Either party to a disciplinary proceeding may file a Petition for Leave to File Exceptions ("PLE") to the Illinois Supreme Court. Ill S. Ct. R. 753(e)(1). A party filing a PLE must explain to the Supreme Court not only why the Supreme Court should review the petition but also why the Review Board's decision was incorrect. Ill S. Ct. R. 753(e)(3). If the Supreme Court allows exceptions, it may "enter a final order as recommended by the Review Board or as otherwise determined by the Court;" remand the case back to the Hearing Board or Review Board; or accept the matter for further consideration and invite further briefing. Ill S. Ct. R. 753(e)(5). A party opposing the PLE has an opportunity to file an answer explaining why the petition should not be granted. Ill S. Ct. R. 753(e)(4).

In Salem's case, Larkin filed a PLE before the Illinois Supreme Court, again arguing that Salem should be suspended from practicing law for ninety days until further order of the court for wrongfully holding himself out as an Illinois attorney. Salem did not answer Larkin's PLE. The Illinois Supreme Court allowed Larkin's exceptions but did not accept the matter for further consideration. Instead, the court entered a final order suspending Salem from practicing law for ninety days or until further order. The Illinois Supreme Court did not explain the basis for its order.[2]

After the Illinois Supreme Court suspended Salem, the ARDC posted a summary of Salem's disciplinary proceedings under his profile on its website. The summary explains that "the Supreme Court of Illinois suspended [Salem] for ninety days and until

further order of the Court for dishonestly holding himself out to the public as an Illinois lawyer." Compl. Ex. A, ECF. No. 1.

Salem sued the ARDC and Larkin, in his official and individual capacities, in this Court. His complaint purports to assert three "causes of action," but no such creatures exist in federal pleadings. *Bartholet v. Reishauer A.G. (Zurich)*, 953 F.2d 1073, 1078 (7th Cir. 1992) (" 'Cause of action' does not appear in the Rules of Civil Procedure, which uses 'claim for relief' to denote a rejection of both common law and code approaches" to pleading practice). What Salem denotes as "causes of action" are legal theories that assertedly provide a basis for the legal relief sought by Salem's claims. "Complaints plead claims, which is to say grievances." *ACF 2006 Corp. v. Mark C. Ladendorf, Att'y at L., P.C.*, 826 F.3d 976, 981 (7th Cir. 2016). "A claim is the aggregate of operative facts which give rise to a right enforceable in the courts." ***769** *Florek v. Village of Mundelein*, 649 F.3d 594, 599 (7th Cir. 2011) (cleaned up).

As the opening of his complaint sets forth (albeit unintentionally), Salem asserts two claims. Compl. ¶ 1, ECF No. 1 ("This ... action is based on two (2) separate and distinct acts performed by the Defendants"). The first claim is based on publication of the disciplinary summary on the ARDC website (*id.* ¶ 2); the second, on his suspension from practicing law (*id.* ¶ 3). As to the publication claim, Salem asserts that it entitles him to relief because the publication violated the Equal Protection Clause. Salem alleges that his suspension and subsequent reinstatement proceedings violated both his substantive and procedural due process rights. Salem seeks damages as well as an injunction directing

defendants to remove the disciplinary summary from the ARDC website.

Defendants move to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), asserting that the Court lacks jurisdiction over Salem's claims and that Salem fails to state a claim for relief. Salem abandoned his procedural due process theory in his response and sur-reply briefs, agreeing with the defendants that "the Third Cause of Action can be dismissed" under Rule 12(b)(1) pursuant to the *Rooker-Feldman* doctrine. Pl.'s Sur-Reply at 7, ECF No. 36; *see also* Pl.'s Resp. at 6-7, ECF No. 32. Salem has therefore failed to meet his burden of showing that the Court has subject-matter jurisdiction over the claims supporting his "Third Cause of Action," namely that defendants violated his procedural due process rights during his suspension and subsequent reinstatement proceedings. *See City of Evanston v. Barr*, 412 F. Supp. 3d 873, 880 (N.D. Ill. 2019). The Court therefore addresses only his remaining claims.

DISCUSSION

When faced with both a motion to dismiss for lack of jurisdiction and a motion for failure to state a claim, a court must address the threshold jurisdictional issues presented under Rule 12(b)(1) first. *See Chen v. Yellen*, No. 3:20-CV-50458, 2022 WL 2818709, at *2 (N.D. Ill. July 19, 2022). Accordingly, the Court begins with jurisdiction.

I. Subject-Matter Jurisdiction

In evaluating a 12(b)(1) motion, this Court accepts as true all well-pleaded factual allegations and

draws reasonable inferences in the plaintiff's favor. *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995). To evaluate jurisdictional facts, however, the Court may also look beyond the complaint to any evidence submitted on the issue. *Capitol Leasing Co. v. F.D.I.C.*, 999 F.2d 188, 191 (7th Cir. 1993) (per curiam). The Court looks to Salem's allegations, as well as the exhibits submitted by both parties, in assessing jurisdiction.

Defendants argue that the Court lacks jurisdiction over Salem's claims pursuant to the *Rooker-Feldman* doctrine. Under that doctrine, no federal court, apart from the Supreme Court, may exercise jurisdiction to review a state court decision. *Nesses v. Shepard*, 68 F.3d 1003, 1004 (7th Cir. 1995) (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)).[3] The *Rooker-Feldman* doctrine is a corollary to Congress's grant of exclusive appellate jurisdiction over final state-court judgements to the U.S. Supreme Court. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005); 28 U.S.C. § 1257. *Rooker-Feldman* therefore automatically bars any claim that facially seeks to set aside a final state-court judgment. *See Taylor v. Fed. Nat'l Mortg. Ass'n*, 374 F.3d 529, 532 (7th Cir. 2004).

Rooker-Feldman also prohibits another type of claim that impedes upon the Supreme Court's appellate jurisdiction over state court decisions: one that is "inextricably intertwined" with a state court judgement. *Id.* at 532-33. Even if a party is not directly seeking to overturn a state-court judgment, a federal court must decline to exercise jurisdiction if it is "in

essence being called upon to review the state-court decision." *Levin v. Att'y Registration & Disciplinary Comm'n of Supreme Ct. of Illinois*, 74 F.3d 763, 766 (7th Cir. 1996) (quoting *Feldman*, 460 U.S. at 483–84 n.16, 103 S.Ct. 1303). In this inquiry, the cause of plaintiff's injury is key. *See Commonwealth Plaza Condo. Ass'n v. City of Chicago*, 693 F.3d 743, 746 (7th Cir. 2012); *Holt v. Lake Cnty. Bd. of Comm'rs*, 408 F.3d 335, 336 (7th Cir. 2005). If a state-court judgment caused the injury that the plaintiff asks a federal court to redress, a federal court would have to review that judgment to provide relief. But that would involve impermissible appellate review that *Rooker-Feldman* prohibits. By contrast, an injury that occurs independently of the state-court judgment does not require review of that judgment and is therefore redressable by a federal court. *Exxon Mobil*, 544 U.S. at 293, 125 S.Ct. 1517; *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 555 (7th Cir. 1999). The Court thus examines Salem's claims and determines whether the Illinois State Court decision to suspend him caused his alleged injuries.

Salem first alleges that defendants violated the Equal Protection Clause by publishing a false statement about Salem on the ARDC website. The published statement is false, according to Salem, because the ARDC Hearing and Review Boards did not find the misconduct that the ARDC alleged, and the Illinois Supreme Court did not explicitly affirm that factual finding. Salem alleges that defendants published the statement to harass him in retaliation for his lawsuit against and criticism of the ARDC.

Setting aside, for now, the merits of Salem's false-publication claim, that claim does not implicate the *Rooker-Feldman* doctrine. "The *Rooker-Feldman*

doctrine applies when the state court's judgment is the source of the injury of which plaintiffs complain in federal court." *Richardson v. Koch L. Firm, P.C.*, 768 F.3d 732, 733 (7th Cir. 2014). Here, the source of Salem's claimed injury—the alleged falsity of the published statement—does not hinge upon the Illinois Supreme Court's actions in granting Larkin's PLE. Evaluating the truth of the ARDC's statement about Salem would perhaps involve examining the Illinois Supreme Court decision, but it would not require the Court to review state-court action. Whatever the reasoning behind the Illinois Supreme Court's decision, the ARDC's allegedly misleading portrayal of the decision, rather than the decision itself, caused Salem's alleged reputational injury. Because his injury exists independently from the state-court judgment, the *Rooker-Feldman* doctrine, at least, does not bar Salem's claim based upon defendants' allegedly false publication.

The doctrine does, however, doom Salem's claims challenging his suspension. Salem alleges that the defendants violated the Equal Protection Clause by vindictively suspending him and violated his substantive due process rights by suspending him from the practice of law in Illinois *sua sponte*. Although Salem sues the ARDC and Larkin, rather than the Illinois Supreme Court, these claims challenge action by the Illinois Supreme Court—namely, his suspension.[4] Indeed, Salem recognizes that only the Illinois Supreme Court has the power to suspend an individual from practicing law in Illinois.[5] The Seventh Circuit, moreover, has barred virtually identical claims pursuant to *Rooker-Feldman*, even when a plaintiff sues the ARDC instead of the state supreme court. *See Levin*, 74 F.3d at 767. By "fail[ing] to allege any injury

independent of the Illinois Supreme Court's disciplinary hearings and its final decision" to suspend him, Salem "impermissibly attack[s]" the state-court judgment. *Id.*

Nevertheless, Salem argues that the Court may hear his case because he is not asking the Court to reinstate his law license, but rather is seeking to recover damages for the defendants' constitutional violations. This Court may exercise jurisdiction over a claim, *Rooker-Feldman* notwithstanding, when a plaintiff alleges that "out-of-court events have caused injury that the state judiciary failed to detect and repair." *Iqbal v. Patel*, 780 F.3d 728, 730 (7th Cir. 2015). For example, in *Iqbal*, the Seventh Circuit held that a federal court had jurisdiction over a claim where the plaintiff sought damages for a fraud that occurred prior to and independently of state court litigation. *Id.* If a plaintiff seeks to recover for the out-of-court misconduct that caused injury independent from a court judgment, rather than to overturn the judgment itself, the court held, the plaintiff's claim may proceed. *Id.* Salem attempts to equate his claims with the fraud claim alleged in *Iqbal*.

Salem fails to persuade the Court. Regardless of Salem's requested form of recovery, the ultimate source of his injury is the Illinois Supreme Court's suspension. In both of the putative constitutional "causes of action" set forth in his complaint, Salem alleges that "Defendant Larkin vindictively injured [him] by depriving him of his fundamental right to property, i.e. his license to practice law." Compl. ¶ 120, ECF No. 1 (emphasis omitted); *see also id.* ¶ 131 (characterizing the alleged deprivation as of the "fundamental right to [Salem's] property, which is his license to practice law in all states" (emphasis omitted)). Salem's "only support

for damages" is dependent upon the result of defendants' alleged constitutional violations: his suspension. *Johnson v. Supreme Ct. of Illinois*, 165 F.3d 1140, 1142 (7th Cir. 1999).

Moreover, the defendants' alleged misconduct did not cause an injury that occurred "out-of-court," like the prelitigation fraud alleged in *Iqbal*. Salem's substantive due process claim challenges the state court's adjudication of his case, a claim that necessarily involves in-court injury and review of the state-court judgment. *See Levin*, 74 F.3d at 767. In fact, Feldman itself involved similar claims. *See* 460 U.S. at 486-87, 103 S.Ct. 1303 (claim that state court arbitrarily and capriciously denied Feldman's petition to waive bar admission was jurisdictionally barred). That is the kind of "avenue[ ] of attack on attorney discipline" that courts have repeatedly shut down. *See Johnson*, 165 F.3d at 1141 (collecting cases).

The injury stemming from defendants' alleged discrimination is also inextricable from the Illinois Supreme Court decision. Even if the defendants' motivation for pursuing disciplinary action against Salem were, as he alleges, discriminatory retaliation for his lawsuit or public criticism, the misconduct that Salem complains of is the wrongful pursuit of charges. If Salem's own conduct justified the defendants' decision to initiate disciplinary proceedings, his Equal Protection claim would fail no matter the defendants' motivation. *See Miller v. City of Monona*, 784 F.3d 1113, 1121-22 (7th Cir. 2015). To find that the defendants unlawfully pursued charges against Salem, therefore, this Court would have to evaluate the validity of the Illinois Supreme Court's decision that discipline was warranted. That would run afoul of *Rooker-Feldman*. *Kelley v. Med-1 Sols., LLC*, 548 F.3d 600, 605 (7th Cir.

2008) (invoking *Rooker-Feldman* because determining whether defendants' representations to state court were unlawful would require reviewing the state-court decision); *Levin*, 74 F.3d at 767 n.4 (finding that plaintiff's allegations about the ARDC's "unlawful prosecution" were "merely another way to contest his disciplinary proceedings").

That Salem could have reported the ARDC's alleged misconduct to the Illinois Supreme Court reinforces the interdependence of Salem's claims and the state-court judgment. The state court, and barring that, the U.S. Supreme Court, were the proper fora in which to raise Salem's claims. *See Johnson*, 165 F.3d at 1142. Salem cannot recover damages for constitutional violations that occurred during his ARDC proceeding when he never raised them himself. "A litigant may not avoid the *Rooker-Feldman* doctrine by withholding arguments from the state court." *Id.*

Salem resists this conclusion, arguing that he could not have raised his substantive due process claims or discrimination claims before the Illinois Supreme Court. When a plaintiff lacks a reasonable opportunity to litigate claims in state court due to state-court rules or procedures, the *Rooker-Feldman* doctrine may not apply. *Jakupovic v. Curran*, 850 F.3d 898, 904 (7th Cir. 2017). *But see Kelley*, 548 F.3d at 607 (questioning the validity of the "reasonable opportunity" doctrine after *Exxon Mobil*). Salem argues that he did not have a chance to challenge the ARDC Review Board's decision because the Illinois Supreme Court issued its decision *sua sponte*. A comparison of the Illinois Supreme Court Rules and the filings in Salem's case, however, rebuts that argument.

A party opposing a PLE may file an answer within fourteen days after the PLE is due, which is

within thirty-five days of the filing of the Review Board's report. Ill. Sup. Ct. R. 753(e)(1), (4). In Salem's case, the Review Board filed its report on October 31, 2018. Defs.' Mem. in Supp. of Mot. to Dismiss, Ex. 3 (ARDC Review Board R. & R.), ECF No. 25-1. Salem therefore had until December 5, 2018 to answer Larkin's PLE. Without any response from Salem, the Illinois Supreme Court filed its order on January 29, 2019. Defs.' Mem. in Supp. of Mot. to Dismiss, Ex. 5 (Illinois Supreme Court Order), ECF No. 25-1. Far from issuing its order *sua sponte*, the Illinois Supreme Court waited until Salem's time to respond expired to issue its order. Salem had every reasonable opportunity to litigate his claims before the state court; he just missed the deadline to do so.

Salem further argues that he could not appeal the ARDC Review Board's decision because discrimination and substantive due process claims require a fact-finding hearing, which cannot be adjudicated by an appellate court. Perhaps because no such authority exists, Salem cites nothing to support this proposition. An evidentiary hearing is not a prerequisite for state supreme court or U.S. Supreme Court review of claims asserting constitutional violations. *See, e.g., In re Bell*, 147 Ill. 2d 15, 34, 167 Ill.Dec. 963, 588 N.E.2d 1093, 1101 (1992) (addressing attorney's argument that ARDC Hearing and Review Boards denied him due process without conducting separate evidentiary hearing). Moreover, no such evidentiary hearing requirement appears in Illinois Supreme Court Rule 753(e), which governs the procedures for filing and review of PLEs. In short, Salem was "aware of the proceedings against him, ... participated in those proceedings, and ... had an opportunity to present [his] constitutional claims in

those proceedings." *Leaf v. Supreme Ct. of State of Wis.*, 979 F.2d 589, 599 (7th Cir. 1992). He cannot now use the federal district courts to assert the claims he failed to pursue in the appropriate fora.

Finally, Salem contends that he could not raise the constitutional violations before the Illinois Supreme Court because his injury arose only after the Illinois Supreme Court's order. That argument only proves that Salem's constitutional claims depend upon the Illinois Supreme Court's suspension decision. Having returned to the core principles animating the *Rooker-Feldman* doctrine, the Court concludes that it lacks jurisdiction over any of Salem's suspension-based claims. Defendants' motion to dismiss those claims pursuant to Federal Rule of Civil Procedure 12(b)(1) is therefore granted.

II. Failure to State a Claim

When the jurisdictional dust settles, only Salem's false-publication claim remains. Salem alleges that the ARDC and Larkin discriminated against him as a "class of one" by publishing the false statement. Compl. ¶ 114, ECF No. 1. Defendants move to dismiss this claim under Rule 12(b)(6). To survive such a motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

D.B. ex rel. Kurtis B. v. Kopp, 725 F.3d 681, 684 (7th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937).

Before addressing the substance of Salem's Equal Protection Claim, the Court considers the defendants' statutory defenses.[6] It has long been established *774 that states and their agencies are not "persons" subject to suit under § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 64, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Accordingly, none of Salem's claims against the ARDC, a state agency, may proceed. *See Johnson*, 165 F.3d at 1140-41. Because Larkin "is a proxy for the ARDC," Salem cannot proceed with any official-capacity damages suit against Larkin either. *Ditkowsky v. Stern*, 581 F. App'x 571, 572-73 (7th Cir. 2014).

A plaintiff may, however, seek to enjoin a state official from acting unconstitutionally on the state's behalf. *See Ex Parte Young*, 209 U.S. 123, 163, 28 S.Ct. 441, 52 L.Ed. 714 (1908); *accord Berger v. N. C. State Conf. of the NAACP*, — U.S. ——, 142 S. Ct. 2191, 2197, 213 L.Ed.2d 517 (2022). Salem, therefore, may seek prospective injunctive relief against Larkin for unconstitutional actions performed in his official capacity. *See Kolton v. Frerichs*, 869 F.3d 532, 536 (7th Cir. 2017). And Salem may pursue a § 1983 claim for individual-capacity damages against Larkin. *See Johnson*, 165 F.3d at 1141.

The question before the Court is whether Salem states an Equal Protection Claim against Larkin for damages and injunctive relief based on Larkin's publication of allegedly false statements on the ARDC website. In its more commonly invoked form, the Equal Protection Clause of the Fourteenth Amendment protects individuals against state and local government discrimination on the basis of protected classes.

Geinosky v. City of Chicago, 675 F.3d 743, 747 (7th Cir. 2012). Courts have also interpreted the Equal Protection Clause to forbid government law enforcement officials from arbitrarily and irrationally targeting individuals to harass them. *Id.* Although a plaintiff usually must plead differential treatment from other similarly situated individuals to state an Equal Protection claim, that requirement is redundant when the alleged harassment "has no conceivable legitimate purpose." *Id.* at 748. For example, in *Geinosky*, in the absence of a conceivable rational explanation for issuing a plaintiff dozens of bogus parking tickets, the plaintiff did not have to include in his complaint the obvious observation that other Chicago drivers were treated differently. *Id.*

Salem does not identify any similarly situated individuals whom Larkin treated more favorably. He correctly notes that he did not need to do so if Larkin's alleged conduct was so irrational that it foreclosed "any reasonably conceivable state of facts that could provide a rational basis for the classification." *Miller*, 784 F.3d at 1121 (quoting *Scherr v. City of Chicago*, 757 F.3d 593, 598 (7th Cir. 2014)). But it is the plaintiff's burden to "negative any reasonably conceivable state of facts that could provide a rational basis" for the aberrational treatment, *id.*, and Salem falls well short of meeting this requirement. Merely alleging that Larkin harbored retaliatory motives is not enough to state a "class-of-one" claim, particularly where it is possible to conceive of a rational basis for the action; "a given action can have a rational basis and be a perfectly logical action for a government entity to take even if there are facts casting it as one taken out of animosity." *Id.*

It does not tax the imagination to conceive of a rational basis for publication of the summary of the

ARDC's action against Salem. As discussed, Larkin asked the Illinois Supreme Court to suspend Salem's license, citing Salem's misleading representations that he was an Illinois attorney. Salem did not answer Larkin's PLE, and the Illinois Supreme Court entered its suspension order. The Illinois Supreme Court did not explain its decision, but it is reasonable to infer that Larkin interpreted the Illinois Supreme Court order as accepting his evidence of Salem's dishonest conduct. And it is more than "conceivable" that Larkin was following his regulatory duties by posting a summary of this reasonable interpretation on the ARDC website.

Salem therefore fails to state an Equal Protection claim, and the Court grants defendants' motion to dismiss. Moreover, because the public records submitted in this case support a rational purpose for posting Salem's disciplinary summary, any further amendment of the complaint would be futile. Accordingly, the Court dismisses Salem's claim based on Larkin's allegedly false publication with prejudice. *See Vitrano v. United States*, 721 F.3d 802, 809 (7th Cir. 2013).

* * *

For the foregoing reasons, the Court grants defendants' Rule 12(b)(1) motion to dismiss Salem's claims challenging his suspension. Because those claims are dismissed on jurisdictional grounds, they are dismissed without prejudice, but they cannot be reasserted in a federal court. The Court also grants defendants' Rule 12(b)(6) motion to dismiss Salem's claim challenging the publication of his disciplinary history with prejudice. Judgment will be entered in favor of the defendants and the case will be terminated.

Footnotes

1In summarizing the relevant background facts, the Court accepts as true the well-pleaded allegations in Salem's complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). The Court may also consider matters of public record without converting a motion to dismiss into a motion for summary judgment. *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1080-81 (7th Cir. 1997). The Court takes judicial notice of the filings in Salem's ARDC and Illinois Supreme Court proceedings because those documents are matters of public record. *See Bilal v. Wolf*, No. 06 C 6978, 2009 WL 1871676, at *1 (N.D. Ill. June 25, 2009); *Bartoli v. Att'y Registration & Disciplinary Comm'n*, No. 97 C 3412, 1998 WL 100246, at *1 (N.D. Ill. Feb. 24, 1998).

2Pursuant to the Illinois Supreme Court's order, Salem had to seek reinstatement after the suspension period expired. At the time Salem filed this lawsuit, the Hearing Board had rejected Salem's reinstatement request and Salem was appealing that decision to the Review Board.

3As the Seventh Circuit has confirmed, "[s]pecific congressional authorization of collateral review of state court judgments is the exception to this rule. For example, habeas corpus under 28 U.S.C. § 2241 provides for collateral review of state court judgments by inferior federal courts and is an exception to the general principle of *Rooker–Feldman.*" *Garry v. Geils*, 82 F.3d 1362, 1365 n.4 (7th Cir. 1996).

4Although Salem alleges that the Illinois Supreme Court suspended his law license, that is a mischaracterization of the state Supreme Court's order. Salem was never admitted to the Illinois bar, so he

never had an Illinois law license that the Illinois Supreme Court could suspend. Instead, the Illinois Supreme Court suspended Salem "from the practice of law," which in Salem's case is the ability to appear in Illinois courts *pro hac vice*. Defs.' Mem. in Supp. of Mot. to Dismiss, Ex. 5 (Illinois Supreme Court Order), ECF No. 25-1.

5Salem mistakenly refers to the Illinois Supreme Court as the ARDC's "highest administrative appellate body." Compl. ¶¶ 71-73, ECF No. 1. The ARDC is a distinct administrative agency that the Illinois Supreme Court created to supervise registration and discipline of the attorneys of the Illinois bar. Ill. S. Ct. R. 751(a). Only the Illinois Supreme Court has the power to suspend an attorney's law license or prevent an attorney from practicing *pro hac vice*. Ill. S. Ct. R. 770.

6The defendants argue that this Court should dismiss the entire complaint for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) because defendants are immune from suit under the Eleventh Amendment. Whether a defendant is a "person" subject to suit under § 1983 involves a statutory defense, rather than a constitutional one. Consistent with the principle of avoiding unnecessary constitutional questions, the Seventh Circuit has instructed district courts to address the question of statutory status as a "person" before wading into murky Eleventh Amendment waters. *See, e.g., Thomas v. Illinois*, 697 F.3d 612, 613-14 (7th Cir. 2012); *Sanders v. Ind. Dep't of Child Servs.*, 806 F. App'x 478, 480 (7th Cir. 2020). Because § 1983 does not explicitly invoke a federal court's jurisdiction, the determination of the proper defendants to sue addresses the plaintiff's ability to state a claim, rather than assert subject-matter jurisdiction. *See Ross v. Illinois*, 48 F. App'x 200,

202-03 (7th Cir. 2002) (vacating with instructions to dismiss for failure to state a claim under 12(b)(6) where district court dismissed § 1983 claim against state on jurisdictional grounds); *Obazuaye v. Ill. Dep't of Hum. Servs.*, No. 21-2426, 2022 WL 1830686, at *1 (7th Cir. June 3, 2022) (holding district court correctly dismissed § 1983 suit against state agency under 12(b)(6) after finding that state agency is not a "person" subject to suit).

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN NORTHERN DIVISION

MAURICE JAMES SALEM, Plaintiff, v. JEROME LARKIN, et al., Defendants.

Case No. 2:20-cv-220

HONORABLE PAUL L. MALONEY

ORDER Plaintiff MAURICE JAMES SALEM has filed a motion for leave to file his complaint in the Western District of Michigan. (ECF No. 1.) Plaintiff's motion acknowledges that this district does not meet the venue requirements set forth in 28 U.S.C. § 1391(b)(1) and (b)(2). The Court agrees. Based on the facts alleged by Plaintiff, the Western District of Michigan is not the proper venue for this case. Plaintiff, however, moves this Court to accept venue pursuant to 28 U.S.C. § 1404. "Only the district court in which the action is pending can order a change of venue." *See* 15 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3844 (4th ed.) (discussing procedure for change of venue). As an initial matter, Plaintiff's case must begin in a district that meets the venue requirements in Section 1391. He may then seek a change of venue under Section 1404. Plaintiff's motion is respectfully DENIED and Plaintiff's case is DISMISSED. Plaintiff's application to proceed *in forma pauperis* (ECF No. 6) is DENIED as moot. **IT IS SO ORDERED.**

Dated: November 2, 2020

/s/ Paul L. Maloney Paul L. Maloney United States District Judge