No. 24-

IN THE

Supreme Court of the United States

EDWARD RANDOLPH TURNBULL IV,

Petitioner,

v.

BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner sued state bar officials after they mishandled his grievances against attorneys who falsely accused him of illegal conduct. His suit alleged that the officials discriminated against him in violation of his First and Fourteenth Amendment rights. He sought a limited injunction that would require those officials to reconsider his grievances in accordance with the Constitution; he did not ask for those officials to reach a particular outcome once they did so. The Fifth Circuit nonetheless dismissed Petitioner's claims on standing grounds, concluding that he lacked a redressable interest in securing an unbiased tribunal to hear his grievances.

The question presented is whether private citizens have standing to seek injunctive relief against local and state officials to compel them to conduct administrative proceedings in accordance with the First and Fourteenth Amendments.

PARTIES TO THE PROCEEDINGS

Petitioner Edward Randolph Turnbull IV was the appellant in the United States Court of Appeals for the Fifth Circuit and the plaintiff in the United States District Court for the Western District of Texas.

Respondents were the appellees in the United States Court of Appeals for the Fifth Circuit and defendants in the United States District Court for the Western District of Texas. They are: the Commission for Lawyer Discipline; the Office of the Chief Disciplinary Counsel; Amanda M. Kates; John S. Brannon; Timothy J. Baldwin; Daniel Martinez; Daniela Grosz; Jenny Hodgkins; Laura Gibson; Cindy V. Tisdale; Sylvia Borunda Firth; Benny Agosto, Jr.; David N. Calvillo; Elizabeth Sandoval Cantu; Luis Cavazos; Craig Cherry; Jason Charbonnet; Kelly-Ann F. Clarke; Jeff Cochran; David C. Courreges; Thomas A. Crosley; Steve Fischer; Lucy Forbes; Gregory M. Fuller; August W. Harris III; Matthew J. Hill; Forrest L. Huddleston; Lori M. Kern; Modinat Kotun; Bill Kroger; Dwight McDonald; Carra Miller; Lawrence Morales II; Lydia Elizondo Mount; Kimberly M. Naylor; Jeanine Novosad Rispoli; Michael J. Ritter; Audie Sciumbato; Mary L. Scott; John Sloan; D. Todd Smith; G. David Smith; Paul K. Stafford; Alex J. Stelly, Jr.; Nitin Sud; Radha Thiagarajan; Robert L. Tobey; Aaron Z. Tobin; Andrew Tolchin; G. Michael Vasquez; Kimberly Pack Wilson; and Kennon L. Wooten.

SUMMARY OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

Turnbull v. Bd. of Dirs. of the State Bar of Tex., No. 1:23-cv-314 (W.D. Tex., judgment entered on February 27, 2024; *Turnbull v. Bd. of Dirs. of the State Bar of Tex.*, No. 24-50260 (5th Cir.), judgment entered on November 27, 2024.

Turnbull v. Off. of Disciplinary Couns., No. 2:23-cv-01619-RAJ (W.D. Wash.), judgment entered on December 27, 2024; *Turnbull v. Off. of Disciplinary Couns.*, No. 25-585 (9th Cir.), notice of appeal received on January 29, 2025.

Turnbull v. Comm'n for Lawyer Discipline, No. D-1-GN-24-002025 (Tex. 201st Dist. Ct.), judgment entered on August 6, 2024, August 9, 2024, and August 13, 2024; *Turnbull v. Comm'n for Lawyer Discipline*, No. 15-24-00095-CV (Tex. 15th Ct. of Appeals), notice of appeal received on September 4, 2024.

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INTRODUCTION

This case arises out of frivolous threats of criminal charges that attorneys for a large corporation brought against Petitioner. Although those threats led nowhere in any court of law, they tarnished Petitioner's reputation in the Houston legal community and inflicted lasting, irreparable damage on his law practice.

Petitioner sought redress through Texas's attorney discipline system. He filed grievances with Respondents, who are various state bar officials charged with faithfully applying state and federal law to impartially resolve the public's complaints against attorneys who have committed professional misconduct. Respondents did not meet those obligations. Instead, they refused to follow longstanding disciplinary procedure, discriminated against Petitioner based on his political beliefs, and allowed a material conflict of interest to sway the outcome of his grievances.

Left with no other recourse, Petitioner turned to the federal courts to vindicate his constitutional rights in free speech and equal protection of the law. Relying on a remarkably broad reading of *Linda R.S. v. Richard*, 410 U.S. 614 (1973), the Fifth Circuit held that Petitioner lacks a judicially cognizable interest in the prosecution or non-prosecution of a fellow attorney. In so holding, the Fifth Circuit ignored the crucial distinction between a challenge to a prosecutorial charging decision (which *Linda R.S.* prohibits) and a challenge to invidious discrimination in the application of a state's enforcement policy (which this Court has endorsed on several occasions post-*Linda R.S.*).

This is not the first occasion that the Fifth Circuit's misunderstanding of *Linda R.S.* has restricted injured citizens from pursuing actionable claims against state and local officials. Nor is it likely to be the last. The Court should grant certiorari to align the Fifth Circuit with the holdings of this Court and the other circuits which have considered analogous claims.

OPINIONS BELOW

The Fifth Circuit's November 27, 2024, opinion affirming the district court is not published in the Federal Reporter but is available at 2024 WL 4903274. The magistrate judge's report and recommendation that Petitioner's claims be dismissed for lack of standing is not published in the Federal Register but is available at 2024 WL 832880. The district court's order adopting the report and recommendation is not published in the Federal Register but is available at 2024 WL 818394.

JURISDICTION

The Fifth Circuit issued its opinion and judgment on November 27, 2024. Pet. App. L & M. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Article III, Section 2 of the United States Constitution provides that the "judicial power shall extend to all cases, in law and equity, arising under this Constitution" and "the laws of the United States." U.S. Const. art. III § 2.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I.

The Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.* amend. XIV.

STATEMENT

A. Factual Background

Petitioner is a criminal defense attorney from Houston. He and his law firm, the Turnbull Legal Group ("TLG"), represent defendants charged with crimes in courts across Texas. Pet. App. A ¶ 21. For several years, TLG subscribed to Microsoft Corporation's OneDrive cloud service to store important documents and data, including case-critical attorney work product and discovery received from the State. Pet. App. A ¶ 22.

In October 2019, without prior notice or any warning, Microsoft denied TLG access to *all* data that had been stored on its OneDrive account, and remotely removed all of TLG's data from its in-office hard drive. Pet. App. A ¶ 23. This devastated Petitioner's ability to serve his clients. Pet. App. A ¶¶ 23–24. After almost three weeks of non-responsive replies from Microsoft, Petitioner and TLG filed suit against Microsoft and obtained a temporary restraining order against Microsoft. Pet. App. A ¶ 25.

In retaliation for Petitioner's pursuit of civil recourse against Microsoft for its improper denial and remote seizure of all of TLG's data and subsequent refusal to return the data, Microsoft took a series of actions that affect Petitioner to this day. First, Microsoft's attorneys threatened Petitioner with criminal charges and bar complaints, and threatened to file public pleadings claiming Petitioner possessed and publicized child pornography. Next, Microsoft's attorneys filed publicly accessible pleadings containing those false and baseless allegations that Petitioner shared or made public images of child exploitation imagery, and that those images were being preserved for a criminal investigation and bar complaint. Pet. App. A ¶ 33. Microsoft's attorneys did so despite knowing that the disputed OneDrive data was received by TLG from the Harris County District Attorney's office in the ordinary course of discovery, and as part of a "phone dump" in a case TLG was counsel. The data did not contain any illegal images or violate Microsoft's Terms of Service. Pet. App. A ¶¶ 26–28.

In addition, to date (and more than five years later), Microsoft's attorneys have refused to communicate and correct erroneous and knowingly false reports made to the National Center for Missing and Exploited Children (NCMEC); consequently, the false reports claiming Petitioner and TLG's staff and attorneys possessed and publicized child pornography remain with the federal and state agencies NCMEC regularly shares information with, including the Federal Bureau of Investigation, Immigration and Customs, the Postal Inspection Service, and the Secret Service. Pet. App. A ¶¶ 29, 40.

This egregious campaign violated multiple provisions of the Texas Disciplinary Rules of Professional Conduct. In February 2021, Petitioner turned to the State Bar of Texas ("State Bar"), comprised of the Board of Directors, the Commission for Lawyer Discipline ("CFLD"), the Board of Disciplinary Appeals ("BODA"), the Office of the Chief Disciplinary Counsel ("CDC"), and other State Bar staff to report the Microsoft attorneys' professional misconduct. *See* TEX. DISCIPLINARY R. PROF'L CONDUCT 8.03(a). Petitioner filed grievances with the CDC alleging that the Microsoft attorneys violated Texas's disciplinary rules. Pet. App. A ¶ 42, 56–57.

There were various administrative failures in how Respondents—including the CDC, various state bar officials, and the CFLD—processed his grievances:

(1) Petitioner's initial grievances were dismissed without a full explanation as to why they were dismissed, in contravention of Texas law, *see* TEX. GOV'T CODE § 81.072(b)(2);

(2) The CDC dismissed Petitioner's grievances that Microsoft's attorneys misrepresented the truth and were dishonest in their pleadings filed with a court, but, less than one year later, the CDC instituted disciplinary petitions against Sydney Powell, Attorney General Ken Paxton, and First Assistant Attorney General Brent Webster based on the exact same category of misconduct, *see* TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(3);

(3) The CDC wrongly treated Petitioner's subsequent grievances, which alleged additional and distinct allegations of misconduct, as one collective grievance and dismissed them;

(4) The CDC thereafter arbitrarily refused to accept Petitioner's amended grievances, in contravention of Texas law, *see* TEX. R. DISCIPLINARY P. 2.10(A); and

(5) Subsequently, the Assistant Disciplinary Counsel for the CDC failed to disclose a conflict of interest when he dismissed Petitioner's grievances (that the investigator previously was employed by the firm representing Microsoft in related bar proceedings in Washington), and discriminated against Petitioner based on his political views.

Pet. App. A ¶¶ 55–66. In sum, Respondents failed to provide Petitioner with an impartial venue to air his complaints against the Microsoft attorneys who harmed him and violated the law in so doing.

B. Procedural History

Petitioner brought federal and state law claims in the Western District of Texas. Relevant here, he alleged a federal equal protection claim and federal free speech and expression claims. Pet. App. A ¶¶ 242–51. Petitioner asserted three injuries: first, an injury from having his grievance decided by a tribunal with an actual conflict

of interest, in violation of due process; second, an injury resulting from the State Bar's intentional discrimination against him, in violation of equal protection; and third, an injury in the form of a chill on his rights to speak and associate deriving from the State Bar of Texas's deliberate disfavoring of his grievance due to his disfavored political opinions. Pet. App. A ¶¶ 242–54.

The district court dismissed Petitioner's claims for lack of standing. It adopted the magistrate judge's report and recommendation, which reasoned that he failed to set out any redressable claims because he "has no constitutionally protected interest in the outcome of the State Bar's investigation of his grievances." Pet. App. B at 5. The Fifth Circuit affirmed, following a prior "panel of our court . . . that a plaintiff generally has no standing to pursue complaints about the prosecution of state bar grievances against individuals other than themselves." Pet. App. M at 1 (citing *Martinez v. State Bar of Tex.*, 797 F. App'x at 168 (2020)). The court then cited *Linda R.S.* for the proposition that "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." Pet. App. M at 1. On this basis, and without oral argument being permitted, the court affirmed the dismissal of Petitioner's federal-law claims for lack of standing and his state-law claims for lack of supplemental jurisdiction.

The Fifth Circuit denied Petitioner's request to file an out-of-time petition for rehearing *en banc*. Pet. App. N. This petition now follows.

REASONS FOR GRANTING THE PETITION

I. This Court's Review Is Needed to Clarify Its Redressability Precedent.

Standing is at once essential to "the idea of separation of powers," *Allen v. Wright*, 468 U.S. 737, 752 (1984) and yet can frequently and notoriously be "a concept of uncertain meaning and scope." *Flast v. Cohen*, 392 U.S. 83, 95 (1968). That tension is apparent from cases—like this one—in which a plaintiff sues to ensure that state or local officials handle administrative proceedings or criminal prosecutions in accordance with the Constitution. In *Linda R.S.*, perhaps the Court's most famous precedent in this arena, the question presented was whether a private citizen had Article III standing to force a district attorney to initiate a criminal prosecution. A mother sought an injunction that would have required the local district attorney to prosecute her child's father for refusing to pay child support. 410 U.S. at 614. Her claims rested on a Texas penal statute making it a criminal offense for "any parent" to "willfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under eighteen years of age." *Id.* at 615 (citing Art. 602, VERNON'S ANN. TEX. PENAL CODE). The district court dismissed the mother's case for lack of standing, and the Court affirmed. *Id.* at 614.

The Court held that the plaintiff lacked standing because she "failed to allege a sufficient nexus between her injury and the government action which she attacks to justify judicial intervention." *Id.* at 617-18. This was because she "made no showing that her failure to secure support payments"—the injury-in-fact she claimed—

"results from the nonenforcement, as to her child's father." *Id.* at 618. And that was because "[a]lthough the Texas statute appears to create a continuing duty, it does not follow the civil contempt model whereby the defendant 'keeps the keys to the jail in his own pocket' and may be released whenever he complies with his legal obligations." *Id.* "On the contrary, the statute creates a completed offense with a fixed penalty," so "if appellant were granted the requested relief, it would result only in the jailing of the child's father." *Id.* "The prospect that the prosecution will, at least in the future, result in payment of support can, at best, be termed only speculative." *Id.* After announcing this holding, the Court added in language best understood as elaboration, if not outright dicta, that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Id.* at 619. Five years later, this Court made clear that *Linda R.S.* was a redressability decision, noting that "standing was denied not because of the absence of a subject-matter nexus between the injury asserted and the constitutional claim, but instead because of the unlikelihood that the relief requested would redress appellant's claimed injury." *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 79 n.24 (1978).

Outside the Fifth Circuit, nothing in *Linda R.S.* has been understood to preclude standing when "victims or potential victims of criminal acts sue to correct allegedly unlawful prosecutorial conduct." *Nader v. Saxbe*, 497 F.2d 676, 681, 681 n.27 (D.C. Cir. 1974). Indeed, as many post-*Linda R.S.* cases have recognized, there is a difference between an impermissible challenge to a particular prosecutorial charging decision, on the one hand, and a permissible challenge to the discrimination-infected law

enforcement policy, on the other. *See Soto v. Flores*, 103 F.3d 1056, 1066 (1st Cir. 1997) (plaintiffs "must show that there is a policy or custom of providing less protection to victims of domestic violence than to victims of other crimes, that gender discrimination is a motivating factor, and that [they were] injured by the practice."); *Eagleston v. Guido*, 41 F.3d 865, 878 (2d Cir. 1994) (adopting similar standard); *Hynson v. City of Chester Legal Dep't*, 864 F.2d 1026, 1030–31 (3d Cir. 1988) (same); *Jones v. Union County*, 296 F.3d 417, 426–27 (6th Cir. 2002) (same); *Hilton v. City of Wheeling*, 209 F.3d 1005, 1007 (7th Cir. 2000) ("[S]elective withdrawal of police protection, as when the Southern states during the Reconstruction era refused to give police protection to their black citizens, is the prototypical denial of equal protection."); *Ricketts v. City of Columbia*, 36 F.3d 775, 780 (8th Cir. 1994) ("We agree that if discrimination against women were the purpose behind a municipal custom of providing less protection for victims of domestic abuse, then an equal protection claim would arise."); *Estate of Macias v. Ihde*, 219 F.3d 1018, 1028 (9th Cir. 2000) ("There is a constitutional right, however, to have police services administered in a nondiscriminatory manner"); *Watson v. City of Kansas City*, 857 F.2d 690, 695–96 (10th Cir. 1988) (similar)).

These circuit cases frequently reach that outcome by reference to the famous footnote in *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 197 n.3 (1989) that the "State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause." (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)). What is more, this Court has endorsed a similar rule in the administrative law context. Over twenty-five years ago, when a group of

voters sued to require the Federal Election Commission to enforce its reporting requirements against an advocacy group, the Court found redressability satisfied because "those adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground"—even if the agency might not ultimately reach a different outcome. *Fed. Elec. Comm'n v. Akins*, 524 U.S. 11, 25-26 (1998).

The Fifth Circuit has misunderstood these distinctions. Instead, it has read *Linda R.S.* to fashion a brute rule barring suits brought "to challenge the policies of the prosecuting authority unless she herself is prosecuted or threatened with prosecution." *Lefebure v. D'Aquilla*, 15 F.4th 650, 652 (5th Cir. 2021). Under the Fifth Circuit's reading of *Linda R.S.* as articulated in *Lefebure*, even a crime victim could not pursue claims against a district attorney contending that the prosecutor's policy was openly discriminatory. *Id.* at 654. That holding resulted in a forceful dissent, which distinguished failure-to-prosecute claims (for which plaintiffs lack standing) from claims of failure to *protect*, an independent equal protection violation. *Id.* at 664 (Graves, J., dissenting). In the dissent's view, the plaintiff "articulate[d] a failure-to-protect injury that we have recognized for at least twenty years—and one that invokes the original concerns of the Equal Protection Clause." *Id.* at 668 (Graves, J., dissenting).

Collectively, the Court's precedents teach that plaintiffs have an equal-protection interest in fair prosecution policies. *E.g.*, *DeShaney*, 489 U.S. at 197 n.3. The Fifth Circuit's outlier rule—which it followed

in Petitioner's case, *infra* Part II—extends far beyond the limited holding of *Linda R.S.* This Court should grant certiorari to dispel the misunderstanding created by *Linda R.S.*'s dicta and harmonize the circuit court decisions that properly read *Linda R.S.* and the Fifth Circuit's decisions that improperly expand it.

II. The Decision Below Is Incorrect.

In its unpublished opinion, the Fifth Circuit affirmed the district court's dismissal of Petitioner's federal claims for lack of standing. Pet. App. M at 2. As a matter of first principles, Petitioner demonstrated an injury-in-fact; established that his injury is traceable to Respondents; and explained how his injury would be redressed by a favorable decision. The Fifth Circuit misapplied *Linda R.S.* and its own precedent to find this showing inadequate.

A. Petitioner has Article III standing.

Because Petitioner was harmed by Respondents' intentional discriminatory treatment, Respondents alone caused Petitioner's harm, and this suit serves as Petitioner's only means of redress, Petitioner has affirmatively established Article III standing.

Petitioner alleged that he "suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Respondents' intentional, discriminatory conduct violated Petitioner's right to equal protection because Respondents treated Petitioner differently from

similarly situated individuals and violated Petitioner's free speech rights by retaliating against him. Because Petitioner's claims are for Respondents' intentional discriminatory treatment, Respondents' conduct imperiled Petitioner's protected liberty interests in equal protection and free speech.

Those injuries are "fairly traceable" to Respondents, rather than the independent action of some third party not before the Court. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976). Respondents exercise unique administrative control over the Texas attorney discipline system. Specifically, Respondents are responsible for, among other things, "foster[ing] and maintain[ing] on the part of [Texas attorneys] high ordeals and integrity, learning, competence in public service, and high standards of conduct." Tex. Gov't Code § 81.012(3). This includes the Texas attorney discipline system. *See generally id.* §§ 81.071–086 (outlining State Bar Board of Directors', CFLD's, and CDC's duties within the Texas attorney discipline system). Most importantly, in this suit, Petitioner complains only of the conduct of Respondents. Specifically, Petitioner has consistently complained of: Respondents' refusal to follow the legally required disciplinary procedure; Respondents' discriminatory treatment of Petitioner; and Respondents' intentional cover-up of a material conflict of interest. Pet. App. A ¶¶ 55–66. Although the conduct of Microsoft's attorneys initially brought Petitioner to Respondents, it is the conduct of Respondents—not any other third party not before the Court—that Petitioner alleges imperiled his constitutional equal protection and free speech rights.

Finally, Petitioner's injury is likely to be redressed through his requested judicial relief. *Lujan*, 504 U.S. at 561. Having been subjected to litigation tactics that transgressed all reasonable ethical boundaries, Petitioner turned to Respondents and filed his grievances as permitted—and required—by various Texas rules regulating the legal profession. Importantly, Respondents, acting on behalf of the State Bar, provided the *exclusive* forum for Petitioner to seek redress for violations of the Texas Disciplinary Rules of Professional Conduct. *See* TEX. DISCIPLINARY R. PROF'L CONDUCT 8.03; *see also* TEX. DISCIPLINARY R. PROF'L CONDUCT preamble ¶ 15. Respondents' discriminatory treatment of Petitioner's grievances, surreptitious procedural irregularities, and conflict of interest cannot be remedied in manner other than by maintaining suit against Respondents.

B. The Fifth Circuit misapplied *Linda R.S.* and its own precedent.

The magistrate judge could only reach a contrary conclusion as to redressability by reference to *Lefebure*'s admonition that "victims do not have standing based on whether other people—including their perpetrators—are investigated or prosecuted." Pet. App. B at 5 (quoting *Lefebure*, 15 F.4th at 652). The Fifth Circuit likewise relied on *Linda R.S.*'s dicta that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Pet. App. M at 2. This reliance was error: *Linda R.S.* does not bar Petitioner's claims. Unlike the mother in *Linda R.S.*, Petitioner's injuries would be redressed by his requested injunctive relief by requiring Respondents to: (i) follow the procedures set out by law; (ii) treat Petitioner as Respondents have

treated similarly situated individuals, and (iii) refrain from discriminating against Petitioner. Pet. App. A ¶¶ 113–21. Moreover, unlike the mother in *Linda R.S.*, Petitioner's only means of redress is by maintaining suit against Respondents. And unlike the mother in *Linda R.S.*, Petitioner complains solely of the conduct of Respondents—not any other third party not before the Court.

The Fifth Circuit also erred because it failed to distinguish between Petitioner's theories for relief. Neither *Lefebure* nor *Linda R.S.* is an obstacle on their own terms to Petitioner's standing based on the State Bar's adjudication of his grievance by a panel with a conflict-of-interest nor on the basis of political discrimination. Neither theory of standing depends on the State Bar's prosecution of anyone else: all that each requires is for the State Bar to adjudicate Petitioner's claim through its regular procedures, before a panel free of impermissible conflicts that does not consider Petitioner's political positions or associations in its decision-making process. Both injuries can be remedied regardless of whether the State Bar ultimately prosecutes any of the Microsoft attorneys; as a consequence, Petitioner's injuries do not require "the judiciary to dictate prosecutorial or investigative decisions to the executive branch," *Lefebure*, 15 F.4th at 655.

Moreover, Petitioner's intentional-discrimination injury derives at least in part from the State Bar's refusal to protect his reputation, if not his physical safety. After all, as he alleges, the Microsoft attorneys have inflicted serious harm to his reputation based on their knowingly false public allegations that amount to professional

misconduct. At most, Petitioner is not asking to judicially impose a prosecution or non-prosecution policy for future crimes, or even proposing that the addressing of his grievances against Microsoft's attorneys, will, like *Linda R.S.*, cause those attorneys to do something different (such as, in *Linda R.S.*, induce the husband to pay child support). The investigation or prosecution itself would alleviate his ongoing reputational injury and would, in essence, protect him from the ongoing professional harm that injury inflicts.

Lefebure and *Linda R.S.* are an uncomfortable fit for Petitioner's case for yet another reason: both depended on the unique relationship between the Executive branch and its traditionally unilateral authority to enforce criminal laws and the appropriate restraint the judiciary must show those decisions in a system of separated powers. Whatever longstanding deference that courts show law-enforcement agencies in their decisions whether to prosecute a criminal wrongdoer, courts have not shown any analogous deference in reviewing either the reasoning or result of a judicial actor's decisions. Review of how the State Bar, a quasi-judicial body organized as a subordinate unit of the Texas judicial branch, exercises its quasi-judicial authority is a far cry from a policy obligating a district attorney to jail a child-support debtor. *Linda R.S.*, 410 U.S. at 618 ("Thus, if appellant were granted the requested relief, it would result only in the jailing of the child's father.").

Compounding these errors, the Fifth Circuit also relied on its own, unpublished opinion in *Martinez v. State Bar of Texas* to affirm the district court's dismissal of Petitioner's claims for lack of Article III standing. *See* Pet. App. M at 1. In *Martinez*, a convicted criminal filed

a grievance against his defense attorney, alleging that, but for his attorney's ineffective assistance of counsel, he would not have been convicted. 797 F. App'x at 167–68. After the State Bar dismissed his grievance, he filed suit against the State Bar, alleging that it "breached a contract" by allowing his attorney to file an untimely response, conspired against him, denied him due process by following the appropriate procedures, and interfered with his First Amendment rights by finding his allegations meritless. *Id.* at 167. The district court dismissed his case for lack of Article III standing, and the Fifth Circuit affirmed. *Id.* at 168.

Unlike the plaintiff in *Martinez*, Petitioner does not complain of the investigatory or prosecutorial *outcome* of his grievances; rather, Petitioner complains of Respondents' discriminatory treatment of Petitioner and Respondents' failure to follow the legally required procedures, which afforded him specific rights. His requested relief would not mandate the prosecution of his grievances; rather, it would merely require Respondents to conduct proceedings in accordance with basic constitutional norms. Importantly, the convicted criminal in *Martinez* could relieve his injury by pursuing habeas relief based on the ineffective assistance of counsel; by contrast, Petitioner's only means of redress is to maintain suit. And in all events, the Fifth Circuit's broad statement in *Martinez* that a plaintiff lacks "a cognizable interest in the procedures used to consider his bar grievance," 797 F. App'x at 167, cannot be reconciled with this Court's precedent affirming that plaintiffs may challenge unequal enforcement of state laws, *e.g.*, *DeShaney*, 489 U.S. at 197 n.3.

III. This Case Is an Excellent Vehicle to Address the Question Presented.

This case is an excellent vehicle to resolve the question presented. Both the district court and the Fifth Circuit squarely addressed whether Petitioner has standing, Pet. App. D at 1, Pet. App. M at 2–3, and the Fifth Circuit invoked *Linda R.S.* to conclude that Petitioner lacks a redressable interest in the state bar administrative proceedings, Pet. App. M at 1. This appeal therefore presents an ideal opportunity for the Court to revisit *Linda R.S.* and ensure that it is being interpreted harmoniously with the full body of this Court's standing precedent. The Court has granted certiorari on multiple occasions in recent terms to correct the Fifth Circuit when it has strayed from this Court's teachings on Article III standing. *E.g.*, *Murthy v. Missouri*, 603 U.S. 43 (2024); *California v. Texas*, 593 U.S. 659 (2021). The Court should do so again here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A — FIRST AMENDED COMPLAINT IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION, FILED MAY 25, 2023

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS,
AUSTIN DIVISION

CASE NO. 1:23-cv-00314

JURY TRIAL DEMANDED

EDWARD RANDOLPH TURNBULL IV,

Plaintiff,

v.

COMMISSION FOR LAWYER DISCIPLINE; THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL; SEANA WILLING, IN HER OFFICIAL CAPACITY AS CHIEF DISCIPLINARY COUNSEL OF THE STATE BAR OF TEXAS, AND IN HER INDIVIDUAL CAPACITY; AMANDA M. KATES, IN HER OFFICIAL CAPACITY AS ASSISTANT DISCIPLINARY COUNSEL FOR THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL, AND IN HER INDIVIDUAL CAPACITY; JOHN S. BRANNON, IN HIS OFFICIAL CAPACITY AS ASSISTANT DISCIPLINARY COUNSEL FOR THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL, AND IN HIS INDIVIDUAL CAPACITY; TIMOTHY J.

Appendix A

BALDWIN, IN HIS OFFICIAL CAPACITY AS ADMINISTRATIVE ATTORNEY FOR THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL, AND IN HIS INDIVIDUAL CAPACITY; DANIEL MARTINEZ, IN HIS OFFICIAL CAPACITY AS ASSISTANT DISCIPLINARY COUNSEL FOR THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL, AND IN HIS INDIVIDUAL CAPACITY; DANIELA GROSZ, IN HER OFFICIAL CAPACITY AS ASSISTANT DISCIPLINARY COUNSEL FOR THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL, AND IN HER INDIVIDUAL CAPACITY; JENNY HODGKINS, IN HER OFFICIAL CAPACITY AS THE EXECUTIVE DIRECTOR & GENERAL COUNSEL WITH THE BOARD OF DISCIPLINARY APPEALS, AND IN HER INDIVIDUAL CAPACITY; LAURA GIBSON, CINDY V. TISDALE, SYLVIA BORUNDA FIRTH, BENNY AGOSTO, JR., DAVID N. CALVILLO, ELIZABETH SANDOVAL CANTU, LUIS CAVAZOS, CRAIG CHERRY, JASON CHARBONNET, KELLY-ANN F. CLARKE, JEFF COCHRAN, DAVID C. COURREGES, THOMAS A. CROSLEY, STEVE FISCHER, LUCY FORBES, GREGORY M. FULLER, AUGUST W. HARRIS III, MATTHEW J. HILL, FORREST L. HUDDLESTON, LORI M. KERN, MODINAT KOTUN, BILL KROGER, DWIGHT MCDONALD, CARRA MILLER, LAWRENCE MORALES II, LYDIA ELIZONDO MOUNT, KIMBERLY M. NAYLOR, JEANINE NOVOSAD RISPOLI, MICHAEL J. RITTER, AUDIE SCIUMBATO, MARY L. SCOTT, JOHN SLOAN, D. TODD SMITH, G. DAVID SMITH, PAUL K.

Appendix A

STAFFORD, ALEX J. STELLY JR., NITIN SUD, RADHA THIAGARAJ AN, ROBERT L. TOBEY, AARON Z. TOBIN, ANDREW TOLCHIN, G. MICHAEL VASQUEZ, KIMBERLY PACK WILSON, AND KENNON L. WOOTEN IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS,

Defendants.

Filed May 25, 2023

PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF WESTERN DISTRICT OF TEXAS:

COMES NOW, Plaintiff, Edward Randolph Turnbull IV ("Mr. Turnbull" or "Plaintiff"), and files this Original Complaint complaining of the Board of Directors of the State Bar of Texas ("SBOT"); the Commission for Lawyer Discipline (the "CFLD"); the Office of the Chief Disciplinary Counsel (the "CDC"); Seana Willing, in her official capacity as the Chief Disciplinary Counsel of the State Bar of Texas, and in her individual capacity; Amanda M. Kates, in her official capacity as the Assistant Disciplinary Counsel for the CDC, and in her individual capacity; John S. Brannon, in his official capacity as the Assistant Disciplinary Counsel for the CDC, and in his individual capacity; Timothy J. Baldwin, in his official capacity as the Administrative Attorney for the Office of the CDC, and in his individual capacity; Daniel Martinez,

in his official capacity as the Assistant Disciplinary Counsel for the Office of the CDC, and in his individual capacity; Daniela Grosz, in her official capacity as the Assistant Disciplinary Counsel for the Office of the CDC, and in her individual capacity; Jenny Hodgkins, in her official capacity as the Executive Director & General Counsel with the Board of Disciplinary Appeals, and in her individual capacity (collectively, the "Defendants"). In support thereof, Mr. Turnbull would respectfully show the Court as follows:

I.
PARTIES

1. Plaintiff Edward Randolph Turnbull IV is an individual who resides in Harris County, Texas. Mr. Turnbull is the owner and founder of Turnbull Legal Group, PLLC ("TLG").

2. Defendant the Board of Directors of the State Bar of Texas is an agency of the State of Texas. The SBOT may be served with summons in this matter by serving Ross Fischer, General Counsel for the SBOT, at 1414 Colorado St., Austin, Texas 78701, or wherever he may be found.

3. Defendant the Commission for Lawyer Discipline is a standing committee of the State Bar of Texas. The CFLD may be served with summons in this matter by serving Roberto Ramirez, Chair of the Commission for Lawyer Discipline, at 1414 Colorado St., Austin, Texas 78701, or wherever he may be found.

4. Defendant the Office of the Chief Disciplinary Counsel is a standing committee of the State Bar of Texas. The CDC may be served with summons in this matter by serving Seana Willing at 1414 Colorado St., Austin, Texas 78701, or wherever she may be found.

5. Defendant Seana Willing, in her individual capacity and in her official capacity as the Chief Disciplinary Counsel for the State Bar of Texas, is an individual who resides in Travis County, Texas. She may be served in her official capacity with summons in this matter at 1414 Colorado St., Suite 200, Austin, Texas 78701, or wherever she may be found.

6. Defendant Amanda M. Kates, in her individual capacity and in her official capacity as the Assistant Disciplinary Counsel for the Office of the CDC, is an individual who resides in Travis County, Texas. She may be served in her official capacity with summons in this matter at 1414 Colorado St., Austin, Texas 78701, or wherever she may be found.

7. Defendant John S. Brannon, in his individual capacity and in his official capacity as the Assistant Disciplinary Counsel for the Office of the CDC, is an individual who resides in Travis County, Texas. He may be served in his official capacity with summons in this matter at 4801 Woodway Drive, Houston, Texas 77056, or wherever he may be found.

8. Defendant Timothy J. Baldwin, in his individual capacity and in his official capacity as the Administrative

Attorney for the Office of the CDC, is an individual who resides in Travis County, Texas. He may be served in his official capacity with summons in this matter at 4801 Woodway Drive, Suite 315-W, Houston, Texas 77056, or wherever he may be found.

9. Defendant Daniel Martinez, in his individual capacity and in his official capacity as the Assistant Disciplinary Counsel for the Office of the CDC, is an individual who resides in Bexar County, Texas. He may be served in his official capacity with summons in this matter at 1414 Colorado St., Austin, Texas 78701, or wherever he may be found.

10. Defendant Daniela Grosz, in her individual capacity and in her official capacity as the Assistant Disciplinary Counsel for the Office of the CDC, is an individual who resides in Travis County, Texas. She may be served in her official capacity with summons in this matter at 6533 E. Hill Dr., Apt 19, Austin, TX 78731-4338, or wherever she may be found.

11. Defendant Jenny Hodgkins, in her individual capacity and in her official capacity as the Executive Director & General Counsel with the Board of Disciplinary Appeals, is an individual who resides in Travis County, Texas. She may be served in her official capacity with summons in this matter at 205 W. 14th St., Austin, TX, 78711, or wherever she may be found.

12. Defendant Laura Gibson is the President of the State Bar and a member of the State Bar Board of Directors.

13. Defendant Cindy V. Tisdale is the President-Elect of the State Bar and a member of the State Bar Board of Directors.

14. Defendant Sylvia Borunda Firth is the Immediate Past President of the State Bar and a member of the State Bar Board of Directors.

15. Defendant Chad Baruch is a member of the State Bar Board of Directors and Chair of the Board.

16. Defendants Benny Agosto, Jr., David N. Calvillo, Elizabeth Sandoval Cantu, Luis Cavazos, Craig Cherry, Jason Charbonnet, Kelly-Ann F. Clarke, Jeff Cochran, David C. Courreges, Thomas A. Crosley, Steve Fischer, Lucy Forbes, Gregory M. Fuller, August W. Harris III, Matthew J. Hill, Forrest L. Huddleston, Lori M. Kern, Modinat Kotun, Bill Kroger, Dwight McDonald, Carra Miller, Lawrence Morales II, Lydia Elizondo Mount, Kimberly M. Naylor, Laura Pratt, Jeanine Novosad Rispoli, Michael J. Ritter, Audie Sciumbato, Mary L. Scott, John Sloan, D. Todd Smith, G. David Smith, Paul K. Stafford, Alex J. Stelly Jr., Nitin Sud, Radha Thiagarajan, Robert L. Tobey, Aaron Z. Tobin, Andrew Tolchin, G. Michael Vasquez, Kimberly Pack Wilson, and Kennon L. Wooten are members of the State Bar Board of Directors ("the State Bar Defendants").

17. As members of the State Bar Board of Directors, the State Bar Defendants have responsibility for the implementation and enforcement of statutes and policies challenged herein. *See* Tex. Govt. Code § 81.020(a) ("The

governing body of the state bar is the board of directors."). The State Bar Defendants are sued in their official capacities.

18. The State Bar Defendants were, at all relevant times, acting under color of state law in implementing the statutes and policies challenged herein.

II.
JURISDICTION AND VENUE

19. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1331 because the claims asserted in this Complaint arise under the Constitution and the laws of the United States. Specifically, Mr. Turnbull is suing Defendants for violations of the Equal Protection and First Amendment provisions of the Constitution under 42 U.S.C. § 1983. Mr. Turnbull also states claims for violations of the Texas Constitution, Art. 1 §§ 13 and 19. This Court may exercise supplemental jurisdiction over the state law claims under the Texas Constitution under 28 U.S.C. § 1367. Additionally, or in the alternative, the Court has jurisdiction over Mr. Turnbull's state law claims under 42 U.S.C. § 1988.

20. Venue is proper in the Western District of Texas, Austin Division, because each Defendant either resides in Travis County or has their principal office located there. Tex. Civ. Prac. & Rem. Code Ann. § 15.002. In addition, Austin, Texas is where the underlying events took place,

and Austin, Texas is located within the Western District of Texas.

III.
FACTUAL BACKGROUND

A. The Underlying Facts

21. Mr. Turnbull's firm, TLG, is a criminal defense firm based in Houston, Texas. TLG represents defendants charged with crimes in Texas state courts through court appointments or by private engagement in matters ranging from DWI to Capital Murder. During the relevant time period, Mr. Turnbull and TLG were actively representing roughly fifty-five criminal defendants, many of whom were incarcerated in the Harris, Brazos, and Montgomery County jails.

22. Since 2015 TLG had been a subscriber of Microsoft Corporation's ("Microsoft") OneDrive cloud service. TLG used OneDrive to store important documents and data, including case-critical attorney work product and discovery received from the State of Texas ("TLG's Data").

23. On October 4, 2019, Microsoft notified TLG that it had been locked out of its OneDrive account. Without prior notice or warning of any kind, TLG was denied access to all of TLG's Data stored on its OneDrive account. In addition, Microsoft remotely removed nearly all locally stored documents and data from TLG's individual computers and hard drives. As a result, TLG's attorneys and staff were unable to access almost all of TLG's Data,

including case files containing privileged information, stored locally and on OneDrive.

24. After locking TLG out of its OneDrive account, Microsoft sent TLG a single, vague notification that TLG had violated its Terms of Service without further explanation. Between October 8, 2019, to October 23, 2019, TLG contacted Microsoft no fewer than fourteen times via telephone, email, chat support, and visits to Microsoft retail locations seeking an explanation for the alleged violation. Mr. Turnbull and TLG explained to Microsoft that the withheld data included time-sensitive and privileged attorney work product for hundreds of present and past clients of TLG, along with documents supplied and owned by the State of Texas. TLG continuously emphasized the urgency of this matter, explaining that many of its incarcerated clients' cases would be delayed and negatively affected if Microsoft continued to withhold TLG's Data.

25. On October 28, 2019, after almost three weeks of nonresponsive replies from Microsoft, Mr. Turnbull and TLG filed suit against Microsoft and obtained a temporary restraining order (TRO). TLG forwarded the TRO to Microsoft that same day. Only at that point, more than twenty-five days after blocking TLG's access to its OneDrive account and removing work product and discovery from TLG's computers, did Microsoft respond with relevant information.

26. On October 29, 2019, Brien Jacobsen, an attorney from Microsoft's in-house counsel, responded to TLG by

email and a telephone conversation with Mr. Turnbull the following day. During this conversation, Mr. Jacobsen claimed that Microsoft had detected and flagged two images of child pornography among TLG's Data, that the flagged material had been removed from TLG's account, and that TLG had been reported to the federal authorities. No other details or additional information was provided. Mr. Turnbull explained that as a criminal defense firm, TLG receives large caches of evidence from Texas' state prosecutors' offices, which are then loaded *en masse* onto TLG's OneDrive account. He further explained that State prosecutors' offices are not legally permitted to provide illegal material to TLG. If a case file in TLG's OneDrive account contained any inappropriate images, they were erroneously included in data received from the State of Texas and were likely from a disk or phone dump conducted by law enforcement and given to TLG within large amounts of evidence that included texts, images, app conversations, and offense reports, and was done without anyone from TLG or the supplying District Attorney's office knowing what was contained within the data.

27. In response, Mr. Jacobsen stated that Mr. Turnbull's explanation was none of his concern. He insisted that Microsoft had permanently terminated TLG's account, that it would not be reinstated, and that none of TLG's Data would be returned. Mr. Turnbull requested that Microsoft contact the federal authorities where the flagged images had been sent so that Microsoft could determine the images origin, contact the appropriate state agency, and resolve the issue. Mr. Jacobsen refused to comply with this request and again reiterated that Microsoft did not

reinstate accounts or return any withheld data, regardless of the circumstances.

28. It is worth noting that, at any time, Mr. Jacobsen and Microsoft (and shortly thereafter, Microsoft's locally retained counsel) could have quickly and easily discovered that there was no child pornography in TLG's Data. The flagged images were two copies of one picture, which originated from a legal website that contained adult pornography. More importantly, Microsoft could have quickly and easily determined that the images in question originated from a case the Harris County District Attorney's office was prosecuting, belonged to the State of Texas, and were uploaded to TLG's OneDrive account as a part of a 3,000+ page phone dump the day before, on October 3, 2019.

29. After Mr. Turnbull's conversations with Mr. Jacobsen, Microsoft retained Mary Olga Lovett and Rene Trevino of Greenberg Traurig, LLP as local counsel and Mr. Jacobsen became, and remains, Microsoft's attorney supervising and directing the litigation, Ms. Lovett, and Mr. Trevino. Between November 1, 2019, and November 22, 2019, Mr. Turnbull had multiple conversations with Mrs. Lovett and Mr. Trevino, where he explained the cause of the flagged images and the time-sensitive nature of TLG's Data. Mrs. Lovett and Mr. Trevino represented to Mr. Turnbull that there were long-standing internal policies at Microsoft that needed to be resolved before they could arrange for the return of TLG's Data. In reliance upon Mrs. Lovett and Mr. Trevino's representations, Mr. Turnbull agreed to Microsoft's requests to extend

the pending TRO hearing and modify the TRO. Mrs. Lovett and Mr. Trevino assured Mr. Turnbull that they understood and sympathized with TLG's position, and that Microsoft was working towards a resolution of its internal policies so that TLG's Data could be quickly returned. Mrs. Lovett and Mr. Trevino further agreed that they would communicate with the federal agencies where the flagged images had been forwarded to determine whether Mr. Turnbull, TLG, or any TLG attorneys or staff, had been reported. ***Finally, Mrs. Lovett and Mr. Trevino agreed to help stop or reverse whatever reports, if any, had been made to federal authorities. But Mrs. Lovett, Mr. Trevino, and Microsoft misled Mr. Turnbull in making these false representations and failed to fulfill a single one of these promises.***

30. On December 8, 2019, after not hearing back from Mrs. Lovett, Mr. Trevino, or Microsoft, Mr. Turnbull sent an email requesting an update on the return of TLG's files and Microsoft's conversation with the federal authorities to correct and remove any false and misleading information that had been reported about Mr. Turnbull, TLG, or any of TLG's attorneys and staff. In this email, Mr. Turnbull assured Microsoft of their continued confidentiality regarding this matter and reminded Microsoft of TLG's urgent need to resolve the matter in hopes that TLG would not be required to hire outside counsel.

31. On December 14, 2019, Mr. Turnbull spoke with Mrs. Lovett or Mr. Trevino about the status of the matter. During this conversation, Mr. Turnbull was informed that Microsoft's new position was that it was impossible to

return access to any of TLG's Data. Mrs. Lovett and Mr. Trevino claimed this was a technical impossibility rather than a company policy problem, as they had previously claimed. Mrs. Lovett, Mr. Trevino, Mr. Jacobsen, and Microsoft knew the dire situation facing TLG and its clients, and they knew that Microsoft had flagged only two potentially inappropriate images out of the thousands of files on TLG's OneDrive account. Even still, Microsoft refused to return a single one of TLG's case files or work product.

32. Realizing an impasse had been reached, on January 27, 2019, TLG retained Jeremy Doyle and Solace Southwick of Reynolds Frizzell, LLP. Over the course of the following months, Mrs. Lovett and Mr. Trevino had multiple conversations with Mr. Doyle and Mrs. Southwick about the return of TLG's Data. During these conversations, Mrs. Lovett and Mr. Trevino alternated between technical and policy issues as an excuse for Microsoft's failure to return TLG's Data. The newest explanation Mrs. Lovett and Mr. Trevino offered was that TLG's Data was placed in a format that made it impossible to be returned—a claim that Mrs. Lovett, Mr. Trevino, and Microsoft were later forced to admit was false.

33. On February 6, 2020, Mr. Doyle, Mrs. Southwick, and Mr. Turnbull attended a meeting at the Greenberg Traurig office with Mrs. Lovett, Mr. Trevino, and Mr. Jacobsen. ***During this meeting, Mrs. Lovett unequivocally told Mr. Turnbull that if he continued his efforts to obtain TLG's Data through injunctive relief, they would pursue a criminal investigation against***

Mr. Turnbull and TLG, involve the State Bar, and file public pleadings that stated TLG and Mr. Turnbull had shared child exploitation images. Mrs. Lovett was directed and supported in these threats by Mr. Trevino and Mr. Jacobsen, who remained silent throughout these threats. Mr. Turnbull asked Mrs. Lovett, Mr. Trevino, Mr. Jacobsen, and Microsoft not to take any of these actions, especially without providing further explanation. However, on February 7, 2020 (the very next day), ***Mrs. Lovett and Mr. Trevino, on behalf of Mr. Jacobsen and Microsoft, filed false and baseless pleadings alleging that Mr. Turnbull and TLG took "direct actions of sharing or making public images of child sexual exploitation imagery" and therein claimed to be preserving the evidence for a criminal investigation.***

34. On February 17, 2020, with Mrs. Lovett, Mr. Trevino, and Mr. Jacobsen present in the courtroom, the Harris County District Court conducted an evidentiary hearing. Mr. Turnbull provided testimony regarding TLG's loss of access to its case materials for almost five months, forcing TLG to start from scratch rebuilding its files on its most urgent matters. Mr. Turnbull further testified that TLG had to turn down additional engagements while TLG and Mr. Turnbull scrambled to represent its current clients without case files or attorney work product, all due to the actions of Microsoft and its lawyers.

35. On February 21, 2020, during a status conference held in the Harris County District Court, Mr. Turnbull relayed information he received from the Harris County

District Attorney's Office stating that the two flagged images were actually the same image, differing only in size, that the image had a logo on it from a legal adult pornography web site, showed no genitalia, and that the image did not constitute child pornography under Texas law. On March 4, 2020, Steven Driver, the Chief of The Cyber Crimes Division at the Harris County District Attorney's Office, sent an email confirming this information.

36. On February 25, 2020, the court found "irreparable harm to TLG, its law practice, and its clients as a result of Microsoft's actions" and entered an injunction requiring Microsoft to immediately return all of TLG's Data, except for the two allegedly offensive images. The court further stated, "[i]t appears to the Court . . . that, unless Microsoft is ordered to return TLG's case files and attorney work product, Microsoft will continue to withhold that information from TLG. The Microsoft Services Agreement states that all of the case files and attorney work product at issue are owned by TLG, and Microsoft does not claim any ownership in that data. Microsoft has no legal right to TLG's case files and attorney work product." Two days after the court signed this order, Microsoft shipped a hard drive containing most of TLG's Data from Seattle to Houston. The following day, the rest of TLG's Data was shipped on a second hard drive and received on February 29, 2020. Nearly five months after unilaterally removing and blocking all access to TLG's Data, ***and after falsely claiming it was impossible to return***, Microsoft managed to return almost one terabyte of data within three days.

37. On February 27, 2020, six days after it was established that the initial two images were not child pornography and almost five months after TLG's OneDrive account had been suspended and revoked, Mr. Trevino sent an email to Mr. Doyle and Mrs. Southwick claiming two additional images had been discovered during the initial suspension and revocation. Mr. Doyle and Mrs. Southwick requested that ***Mrs. Lovett, Mr. Trevino, and Microsoft supply proof of this claim or confirm/admit that they had subsequently accessed TLG's OneDrive account and searched TLG's Data, including privileged information.*** Mrs. Lovett, Mr. Trevino, Mr. Jacobsen, and Microsoft failed to provide the requested information or respond to Mr. Doyle and Mrs. Southwick's requests in any way.

38. After TLG's Temporary Injunction hearing, the Harris County District Attorney's Office (the Chief Cyber Crimes Prosecutor and the District Attorneys' Cyber Crimes Investigators) reviewed the initial two images for a second time and again confirmed what the office had previously stated: the two initially flagged images were the same image (differing only in size), the image had a logo on it from a legal adult pornography website, the image showed no genitalia, and the image did not constitute child pornography under Texas law. Additionally, they confirmed that the two additional images were again duplicate images of only one picture, in two different sizes. Just as with the first image Microsoft erroneously flagged, the second image did not constitute child pornography under Texas law. Finally, the District Attorney's office confirmed that all of the flagged images

were evidence from a phone dump that had been provided to TLG by the Harris County District Attorney's Office in *The State of Texas v. Jonathan Green*.

39. Based on Mrs. Lovett, Mr. Trevino, and Mr. Jacobsen's violations of the Texas Disciplinary Rules of Professional Conduct, Mr. Turnbull and TLG engaged Gaines West, the undersigned attorney, and West, Webb, Allbritton & Gentry, P.C. On January 11, 2021, Mr. West sent a letter to Mrs. Lovett asking her to explain why her actions, and Mr. Trevino's and Mr. Jacobsen's actions, did not violate the Texas Disciplinary Rules of Professional Conduct. Mrs. Lovett, Mr. Trevino, and Mr. Jacobsen failed to respond in any way until the Grievances outlined below were filed against them with the State Bar of Texas.

40. On August 24, 2021, Mrs. Lovett, Mr. Jacobsen, and Microsoft were again asked to communicate with the National Center for Missing & Exploited Children ("NCMEC"), and any federal and state agencies where the image(s) and accompanying data had been forwarded, to stop, reverse, and remove whatever false and misleading TLG firm and personal information that had been reported. These authorities likely include the FBI, Immigration and Customs, the Post Inspection Service, and the Secret Service. Even though Mrs. Lovett, Mr. Trevino, and Mr. Jacobsen knew the false and misleading nature of the reported information, and the damage it can cause TLG, and any TLG attorney or support staff included, they again directly refused. ***To date, Mrs. Lovett, Mr. Trevino, Mr. Jacobsen, and Microsoft have refused to contact NCMEC and the other applicable***

federal and state agencies to correct and remove the reported information—information that falsely lists Mr. Turnbull, TLG attorneys, and TLG support staff as having illegally possessed and made public child pornography.

B. Introduction to the Texas Attorney Disciplinary Process

41. Mr. Turnbull's claims concern Defendants' abuses of the Texas attorney disciplinary process and selective prosecution for violations of the Texas Disciplinary Rules of Professional Conduct ("TDRPC"). Accordingly, a brief explanation of the first step of Texas's attorney disciplinary process is necessary. The disciplinary process begins when a Grievance is filed with the CDC. Upon receipt, the CDC must determine whether the Grievance, on its face, alleges professional misconduct. If the CDC determines that the Grievance alleges professional misconduct, it is classified as a Complaint. The CDC must then review the Complaint to determine whether "Just Cause" exists to believe that the attorney in question has committed acts that violate the TDRPC. Once the Grievance is upgraded to a Complaint, it is sent to the respondent-attorney for response. If a Grievance fails to allege a violation of the TDRPC, then the Grievance is classified as an Inquiry and dismissed, but that determination may be appealed by the Complainant pursuant to Rule 2.10 of the Texas Rules of Disciplinary Procedure. The "Just Cause" determination stage of the disciplinary process is non-adversarial and the CDC's decision is unaffected by any previous "Just Cause" determination.

C. The Grievances

42. On February 10, 2021, Mr. Turnbull submitted Grievances to the CDC against Mrs. Lovett, Mr. Trevino, and Mr. Jacobsen ("Respondent Attorneys") based on their false, improper, and unjustified statements and behavior detailed above (collectively, the "First Grievances").

43. Between March 22, 2021, and March 25, 2021, Mr. Turnbull received correspondence from the CDC notifying him that his First Grievances against Mrs. Lovett (March 22, 2021), Mr. Jacobsen (March 24, 2021), and Mr. Trevino (March 25, 202 1) had been classified as an Inquiry and dismissed.

44. On April 9, 2021, Mr. Turnbull appealed the dismissal of the First Grievances against Mrs. Lovett and Mr. Trevino to the Board of Disciplinary Appeals ("BODA").

45. On May 14, 2021, Mr. Turnbull received a letter from Jenny Hodgkins, the Executive Director and General Counsel for BODA (dated May 13, 2021), informing Mr. Turnbull that BODA had granted his appeals to the dismissal of the First Grievances against Mrs. Lovett and Mr. Trevino, "finding that the grievance alleges a possible violation of the following Texas Disciplinary Rules of Professional Conduct: Rule(s) 3.02; 4.04." Thereafter, the First Grievances against Mrs. Lovett and Mr. Trevino, each of which had been upgraded by BODA from an Inquiry to a Complaint, were returned to the CDC for investigation and a determination of

whether there was Just Cause to believe the Respondent Attorneys had committed professional misconduct. The letter from Ms. Hodgkins confirmed Mr. Turnbull's interest in the Grievances, assuring him that the Office of Chief Disciplinary Counsel "will notify both parties of each step of the process, including asking the attorney to respond to the complaint."

46. On June 18, 2021, Murray Fogler, counsel for the Respondent Attorneys, submitted his consolidated response to the Grievances.

47. On July 7, 2021, Mr. Turnbull submitted his reply in support of the First Grievances.

48. On July 15, 2021, Mr. Fogler submitted his sur-reply.

49. On July 28, 2021, Mr. Turnbull submitted his reply to Mr. Fogler's July 15, 2021, sur-reply.

50. On August 16, 2021, Mr. Turnbull received correspondence from John S. Brannon, the Assistant Disciplinary Counsel for the CDC (dated August 13, 2021), notifying Mr. Turnbull that the CDC had placed the First Grievances against Mrs. Lovett and Mr. Trevino on a Summary Disposition Panel ("SDP") docket. In other words, the CDC employees and officers decided themselves there was no Just Cause to proceed with the First Grievances, instead of referring the Grievances to an Investigatory Hearing ("IVH") panel, which is done in similar matters.

51. On August 16, 2021, Mr. West sent an email to John Brannon, the Assistant Disciplinary Counsel for the CDC, challenging and questioning the CDC's placement of the First Grievances on a Summary Disposition Panel docket.

52. On August 27, 2021, Mr. West sent another email to Mr. Brannon and Mr. Baldwin, with an attached article discussing Sidney Powell's scheduled Investigatory Hearing. In the email, Mr. West questioned Mr. Brannon and Mr. Baldwin about the CDC's apparent double standard, as evidenced by the referral to the SDP of the First Grievances against Mrs. Lovett and Mr. Trevino compared to the actions taken against Ms. Powell. Mr. West further requested that Mr. Brannon and Mr. Baldwin forward the August 27, 2021, email and the August 16, 2021, email to the SDP.

53. On September 21, 2021, Mr. Turnbull received correspondence from Timothy Baldwin, the Administrative Attorney for the CDC notifying him that the Summary Disposition Panel of the District 4 Grievance Committee dismissed the First Grievances. Under Rule 2.13 of the Texas Rules of Disciplinary Procedure, there is no appeal from a determination by the Summary Disposition Panel that the Complaint should be dismissed, and neither the Complainant nor the Respondent Attorney may participate in the Summary Disposition process.

54. On November 18, 2021, Mr. Turnbull submitted a public information request seeking all documents and materials maintained by Mr. Brannon related to the First Grievances, and all documents and materials supporting

the CDC's determinations regarding the First Grievances. Under section 81.072(b)(2) of the Texas Government Code, Mr. Turnbull, as the Complainant, has a statutory right to a full explanation on dismissal of an Inquiry or Complaint. Mr. Turnbull was never given any explanation for the dismissal of his Complaint.

55. On November 22, 2021, Ms. Claire Reynolds, the Public Affairs Counsel for the CDC, denied Mr. Turnbull's Public Information Request on the grounds that "[c]onfidential attorney disciplinary matters are not subject to the Public Information Act."

56. On May 2, 2022, Mr. Turnbull submitted new Grievances to the CDC against Mrs. Lovett and Mr. Trevino based on their wrongful withholding of property that belonged to TLG and Mr. Turnbull, their contradictory and untrue explanations as to why Microsoft did not return TLG's property, their threats to pursue a false and baseless criminal investigation, and their refusal to contact the appropriate federal and/or state agencies to have reports containing false and misleading information removed and corrected (the "Second Grievance"). The Second Grievance raised, for the first time, allegations of misconduct based on new and distinct TDRPC violations and one factual event that had not yet occurred when the First Grievances were submitted.

57. On May 9, 2022, Mr. Turnbull submitted new Grievances to the CDC based on fraud and misrepresentations made by Mrs. Lovett and Mr. Trevino in their responses submitted to the CDC

during the First Grievances, specifically an email chain that, upon information and belief, Mrs. Lovett and Mr. Trevino fraudulently altered and misrepresented before submitting it to the Chief Disciplinary Counsel (the "Third Grievance").

58. On March 1, 2022, and on May 25, 2022, the CFLD filed Disciplinary Petitions against first Sydney Powell,[1] and then Attorney General Ken Paxton[2] and his First Assistant Brent Webster[3] (the "PPW Disciplinary Petitions") based on allegations that these attorneys misrepresented the truth and were dishonest in their pleadings filed with a court. A determination of Just Cause by the CDC is a precondition of filing a Disciplinary Petition. Accordingly, through the PPW Disciplinary Petitions, the CFLD and the CDC gave clear instructions that filing pleadings with a court that misrepresent the truth, and are considered to be dishonest, constitute professional misconduct in Texas.

59. Although the Second Grievance and the Third Grievance were submitted to the CDC one week apart,

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1. *Commission for Lawyer Discipline v Sidney Powell*, Cause No. DC-22-02562, In the 116th Judicial District Court of Dallas County, Texas.

2. *Commission for Lawyer Discipline v. Warren Kenneth Paxton, Jr.*, Cause No. 471-02574-2022, In the 471st District Court of Collin County, Texas.

3. *Commission for Lawyer Discipline v. Brent Webster 202101679*, Cause No. 22-0594-C9368, In the 368th District Court of Williamson County, Texas.

each Grievance asserted entirely different allegations based on distinct factual events. Despite submitting two separate Grievances, the CDC treated the two Grievance submissions as one. Accordingly, the Second Grievance and the Third Grievance are hereinafter collectively referred to as the "2022 Grievances."

60. On June 9, 2022, Mr. Turnbull received correspondence from Daniela Grosz, the Assistant Disciplinary Counsel for the CDC (dated May 31, 2022), informing him that the CDC had dismissed the 2022 Grievances based on the unsupported claim that the "allegations have been previously considered and dismissed by a Summary Disposition Panel of the Grievance Committee." However, as previously stated, the 2022 Grievances asserted allegations of misconduct based on new and distinct TDRPC violations, a factual event that had not yet occurred when the First Grievances were submitted, and professional misconduct that occurred during the First Grievances process.

61. On June 30, 2022, on behalf of Mr. Turnbull, Mr. West sent a letter to BODA appealing the dismissal of the 2022 Grievances. The letter requesting the appeal carefully outlined the new (and different) allegations and the factual event detailed in the 2022 Grievances that were not a part of the First Grievances.

62. On July 25, 2022, Mr. Turnbull received correspondence from Jenny Hodgkins, the Executive Director and General Counsel for BODA (dated July 22, 2022) notifying him that BODA affirmed the dismissal

of the 2022 Grievances. In its letter, BODA also stated that "[t]he Board's decision is final." On its face, BODA's dismissal letter fails to comply with requisite service requirements and improperly denies Mr. Turnbull the right to amend the 2022 Grievances in violation of the Texas Rules of Disciplinary Procedure ("TRDP"). Pursuant to TRDP 2. 10, Mr. Turnbull has a right to amend his Grievances within 20 days of BODA's correspondence affirming the CDC's dismissal.

63. On July 28, 2022, Mr. West sent a letter to BODA regarding its letter stating that "[t]he Board's decision is final," urging BODA to reconsider its decision and permit Mr. Turnbull to amend the 2022 Grievances.

64. On August 11, 2022, Mr. Turnbull submitted separate amended Grievances for the Second Grievance and the Third Grievance to the CDC (collectively, the "Amended Grievances").

65. On September 6, 2022, Mr. Turnbull received a package containing the Amended Grievances and a letter from Daniel Martinez, Assistant Disciplinary Counsel for the CDC (dated August 31, 2022), informing Mr. Turnbull that the Amended Grievances were being returned and "no further amendments or re-filing will be accepted by our office."

66. On January 24, 2023, Mr. Turnbull received an anonymous email with a profile summary on John Brannon, current Assistant Disciplinary Counsel for the CDC and formerly a partner at the law firm of Thompson

& Knight, LLP. Mr. Brannon, as indicated above, oversaw Mr. Turnbull's First Grievances against Ms. Lovett and Mr. Trevino and notified Mr. Turnbull of their dismissals on August 16, 2021. Upon investigating the significance of this information, Mr. Turnbull learned that on August 1, 2021, Thompson & Knight, where Mr. Brannon was formally a partner, merged into and became Holland & Knight, the firm representing Mr. Jacobsen in Mr. Turnbull's Grievances filed with the Washington State Bar Association. Less than three weeks after his former law firm merged into and became the same firm representing Mr. Jacobsen and Microsoft, Mr. Brannon notified Mr. Turnbull that the Grievances he was supervising had been placed on a Summary Disposition Panel docket. Mr. Brannon, throughout the grievance process that lasted for more than one and a half years, never disclosed this conflict of interest, nor did he recuse himself, violating multiple rules of professional misconduct. This conflict of interest was never disclosed to Mr. Turnbull during the Texas grievance processes, despite the obvious conflict of interest Mr. Brannon had, and despite Mr. Jacobsen's role supervising and directing the Microsoft litigation and supervising and directing Ms. Lovett and Mr. Trevino during their unethical behavior.

67. Mr. Turnbull has submitted Grievances to the CDC based on the following unethical behavior of the Respondent Attorneys:

1. Making false statements to Mr. Turnbull regarding the impossibility of Microsoft returning TLG's Data and failing to disclose

necessary information regarding the flagged images in violation of TDRPC 4.01(a) and (b);

2. Intentionally neglecting and repeatedly refusing to contact the appropriate federal and/or state agencies to have the reported misleading and patently false child pornography possession/distribution allegations removed and corrected in violation of TDRPC 3.02, 3.03(b) and (c), 4.01(a), 4.04(a), and 8.04(a)(3);

3. Filing meritless public pleadings with false allegations of child pornography possession/distribution in a court and threatening to pursue a false and baseless criminal investigation against Mr. Turnbull and TLG's attorneys and staff in violation of TDRPC 3.01, 3.04(c)(3) and (c)(5), 4.01(a) and (b), and 8.04(a)(3);

4. Threatening to pursue a false and baseless disciplinary investigation against Mr. Turnbull in violation of TDRPC 4.04(a) and (b);

5. Submitting altered evidence to the CDC—an altered email—during the grievance process in violation of TDRPC 8.01(a), 8.01(b), 8.04(a)(1) and 8.04(a)(3); and,

6. Conducting an improper search of TLG's account/confidential and privileged information in violation of TDRPC 8.04(a)(3).

68. Despite Mr. Turnbull's thorough explanations of the Respondent Attorneys' unethical conduct, the CDC has maintained the erroneous position that Mr. Turnbull's Grievances do not allege professional misconduct. Further, the CDC's findings in Mr. Turnbull's Grievance matters directly contradict the CDC and CFLD's actions taken against Attorney General Ken Paxton, Brent Webster, and Sidney Powell.

69. Defendants do not enforce the Texas Disciplinary Rules of Professional Conduct equally amongst attorneys charged with unethical conduct. Rather, upon information and belief, Defendants use the Texas grievance process as a tool to prosecute certain prominent lawyers and protect others. As a result of Defendants' selective prosecution, Mr. Turnbull has been unfairly denied relief and his constitutionally protected speech against certain well-connected lawyers and corporations has been chilled. Moreover, if Defendants are permitted to continue such clear abuses of Texas's grievance process, the entire system of self-governance enjoyed by Texas attorneys will suffer and potentially fail. Defendants' actions will likely cause lawyers at small law firms, solo practitioners, and members of the public to have their free speech chilled when speaking out about the alleged actions of attorneys and corporations. Members of the public, including clients, will see Defendants' selective enforcement as a tool well-connected lawyers and corporations use to insulate themselves from accountability while accumulating more wealth and power. The public will be dissuaded from seeking redress through the Texas State Bar, which will eventually result in the loss of the ability of Texas lawyers

to engage in self-governance. But regardless of whether the Texas legislature intervenes to change this structure in the future, the Constitution prohibits state governments from denying equal protection of law and from denying the First Amendment right to free speech and expression.

70. Mr. Turnbull attempted every avenue with the Texas State Bar to make his voice heard and to give Defendants the opportunity to remedy their failure to enforce the law equally. Microsoft's attorneys performed multiple acts of misconduct, including falsely claiming in public pleadings that Mr. Turnbull, his attorneys, and staff shared and made public child pornography. Unfortunately, Texas courts have previously decided that behavior like this is protected by the judicial-proceedings privilege and attorney immunity if it occurs within the context of litigation. But the courts ruled in this way with the expectation that recipients of such misconduct would have a remedy through the Disciplinary Proceedings of the State Bar of Texas. What remedy is left when the CDC refuses to act on unethical behavior where the offending attorney has immunity? What remedy is left, if there is no legal cause of action and/or the CDC refuses to act, when an attorney threatens to pursue a baseless criminal investigation, or submits altered evidence to a court or tribunal, or refuses to correct allegations claiming the possession and publicizing of child pornography when that attorney knows the allegation is patently false and misleading? On information and belief, the CDC did not even investigate Mr. Turnbull's claims, but simply dismissed them without any explanation. It's unlikely that Mr. Turnbull and his attorneys and staff are the

first people or small organization that Microsoft and its attorneys have treated in this manner. What remedy is left for laypersons or other small businesses if the CDC is not ordered to begin treating everyone involved in the Texas legal system, regardless of their economic and/or political status, fairly and unbiased?

71. Moreover, the "Just Cause" standard outlined in Rule 1.06(Z) of the Texas Rules of Disciplinary Procedure[4] was devised to set a low bar so that an attorney's behavior and actions would require accountability by the Respondent attorney charged with violating portions of the TDRPC. Defendants, in violating Plaintiff's constitutional protections, arbitrarily decide who will face either an Evidentiary Panel's review, or a District Court's review, of their actions. In 2003, the state law was amended to allow an Investigatory Hearing panel to determine Just Cause and whether an attorney must select either an Evidentiary Panel review or District Court review. Inexplicably, Defendants in this matter, including Ms. Willing, Ms. Kates, Mr. Brannon (who had a conflict), Mr. Baldwin, Mr. Martinez, and Ms. Grosz, made the determination to send Mr. Turnbull's Grievances to the SDP, finding that no Just Cause existed for further

4. Rule 1.06(Z) of the Texas Rules of Disciplinary Procedure defines "Just Cause" as such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.

proceedings. Examining Defendants' decisions to not find Just Cause in Mr. Turnbull's Grievances against the backdrop of decisions to send Grievances filed against Attorney General Ken Paxton, Brent Maxwell, and Sidney Powell to an IVH, simply underscores the arbitrariness of Defendants' decision–making and illegal actions.

72. Based on the above, Mr. Turnbull has exhausted all administrative remedies available to him and now brings this lawsuit against Defendants.

IV.
CAUSES OF ACTION

Count I – Equal Protection Claim under 42 U.S.C. § 1983

73. Mr. Turnbull re-alleges each of the preceding paragraphs as fully set forth herein.

74. Congress enacted § 1 of the Civil Rights Act of 1871, 17 Stat. 13, the precursor to § 1983, shortly after the end of the Civil War "in response to the widespread deprivations of civil rights in the Southern States and the inability or *unwillingness of authorities* in those States *to protect those rights or punish wrongdoers*." *Felder v. Casey*, 487 U.S. 131, 147 (1988) (emphasis added). Mr. Turnbull has standing to assert these claims under section 1983 because he is the person aggrieved by the Defendants' unwillingness to protect his rights as a Complainant and to punish the wrongdoing of the Respondents in the First, Second, and Third Grievances.

The Defendants, having established and implemented a grievance process to benefit members of the public who might be harmed by the wrongful actions of attorneys, has in this instance erected barriers that make it more difficult for Complainants like Mr. Turnbull to obtain those benefits on an equal basis with similarly situated persons. Furthermore, the separation of powers doctrine does not deprive Mr. Turnbull of standing because—unlike a crime victim seeking to compel prosecution by the executive branch—the issues in this case occur entirely within the judicial branch. Indeed, the legal profession in Texas is meant to be a self-governing profession. As a member of the profession, Mr. Turnbull has not only a privilege, but a duty, to raise ethical violations when they occur. *See* TDRPC 8.03.

75. Defendants deprived Mr. Turnbull of his right to equal protection of the law afforded to him by the Fourteenth Amendment of the United States Constitution insofar as Defendants' treatment of Mr. Turnbull's Grievances when compared to the Defendants' treatment of what appears now to be politically motivated Grievances filed against Attorney General Ken Paxton, Brent Maxwell, and Sidney Powell. Ultimately, Defendants arbitrarily and capriciously treated three similar situations in a manner that has resulted in Mr. Turnbull being discriminated against, and did so because of prejudice in favor of politically popular parties or because of John Brannon's conflict of interest causing him to discriminate against Mr. Turnbull. As a result, Defendants acted arbitrarily and with discriminatory intent in dismissing Mr. Turnbull's Grievances with the intent to chill his speech and inhibit his equal right to file a Grievance and have it heard.

76. The United States Constitution requires courts to grant equal protection of its laws. The Fourteenth Amendment states in pertinent part, "No State . . . shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. AMEND. XIV, § 1. Yet, Defendants chose to treat Mr. Turnbull differently. More specifically, Mr. Turnbull filed Grievances against Mrs. Lovett and Mr. Trevino, as outlined above, for filing pleadings against Mr. Turnbull that asserted false information Mrs. Lovett and Mr. Trevino knew to be false. Defendants dismissed Mr. Turnbull's Grievances.

77. Specifically, Seana Willing, Amanda M. Kates, John S. Brannon, Timothy J. Baldwin, Daniel Martinez, and Daniela Grosz, in their individual capacities, intentionally or recklessly deprived Mr. Turnbull of his Equal Protection Rights when they determined that Just Cause did not exist and dismissed his Grievances. By determining that Just Cause did not exist for the Turnbull's Grievances, while finding Just Cause to bring the PPW Disciplinary Petitions, Mr. Turnbull was intentionally or recklessly treated differently from others similarly situated when there was no rational basis for the difference in treatment.

78. In addition, John S. Brannon, in his individual capacity, intentionally or recklessly deprived Mr. Turnbull of his Equal Protection Rights when Brannon failed to disclose or recuse himself from the grievance process due to his connection with Holland & Knight, the firm representing Mr. Jacobsen in Mr. Turnbull's Grievances filed with the Washington State Bar Association. Mr.

Jacobsen is also the lead attorney in Mr. Turnbull's ongoing litigation against Microsoft in Texas. Mr. Brannon, acting with an improper conflict of interest, discriminated against Mr. Turnbull when he determined that the First Grievances, which had been upgraded to Complaints by BODA, should be dismissed and placed them on the Summary Disposition Panel docket rather than referring the First Grievances to an Investigatory Hearing Panel. By determining that Just Cause did not exist for the First Grievances, while finding Just Cause to bring the PPW Disciplinary Petitions, Mr. Turnbull was intentionally or recklessly treated differently from others similarly situated when there was no rational basis for the difference in treatment.

79. Likewise, Seana Willing, in her individual capacity, intentionally or recklessly deprived Mr. Turnbull of his Equal Protection Rights when she presented his Grievances to a Summary Disposition Panel instead of an Investigatory Hearing Panel. By determining that Just Cause did not exist for the Turnbull's Grievances, while finding Just Cause to bring the PPW Disciplinary Petitions, Mr. Turnbull was intentionally or recklessly treated differently from others similarly situated when there was no rational basis for the difference in treatment.

80. Moreover, Daniela Grosz, in her individual capacity, intentionally or recklessly deprived Mr. Turnbull of his Equal Protection Rights when Grosz erroneously concluded that the 2022 Grievances asserted allegations that had previously been considered and dismissed by the Summary Disposition Panel.

81. Moreover, Daniel Martinez, in his individual capacity, intentionally or recklessly deprived Mr. Turnbull of his Equal Protection Rights when Martinez erroneously returned the Amended Grievances and advised Mr. Turnbull that no further amendments or re-filing would be accepted by the CDC.

82. On the other hand, the CFLD and CDC filed Disciplinary Petitions against Attorney General Ken Paxton, First Assistant Brent Webster, and Sidney Powell based on allegations that these attorneys misrepresented the truth and were dishonest in their pleadings filed with a court. In summary, Defendants dismissed Mr. Turnbull's Grievances on the purported ground that they failed to articulate professional misconduct, but the CFLD and the CDC's Disciplinary Petitions against Paxton, Webster, and Powell were for the exact same alleged conduct—filing pleadings with a court that misrepresent the truth and are considered to be dishonest. As such, according to Defendants, two separate parties can commit the exact same conduct, but who the party is will determine whether it is professional misconduct or even worthy of passing the Inquiry stage of the Texas grievance process.

83. Ultimately, Defendants do not enforce the TDRPC equally amongst attorneys. Instead, Defendants use the TDRPC and the grievance process as tools to prosecute certain lawyers and protect others, unequally. Defendants arbitrarily denied Mr. Turnbull's Grievance filings because of who he is and who his Grievances were filed against. Mr. Turnbull is a criminal defense attorney and Mrs. Lovett and Mr. Trevino are attorneys for Greenberg

Traurig who represented a large business—Microsoft. Because of Mr. Turnbull's political affiliation as a criminal defense attorney, i.e., his politically unpopular and unpowerful state, and Mrs. Lovett and Mr. Trevino's political affiliation as attorneys for a prominent law firm representing a large business, Defendants dismissed Mr. Turnbull's Grievances and gave a free pass to attorneys in more politically popular roles. In the end, Defendants discriminated against Mr. Turnbull and arbitrarily chose *not* to further examine and discipline Mrs. Lovett and Mr. Trevino for the exact same professional misconduct Defendants have filed suit to punish Attorney General Ken Paxton, First Assistant Brent Webster, and Sidney Powell. As a result of Defendants' unequal treatment of similarly situated attorneys, Mr. Turnbull has been deprived of his Equal Protection rights in violation of the Fourteenth Amendment of the Constitution and 42 U.S.C. § 1983.

84. Mr. Turnbull has a clearly established constitutional right to be free from deprivation, by persons acting under color of state law, of his right to equal protection of the law under the Fourteenth Amendment.

85. A person acting under color of law is not entitled to qualified immunity when no reasonable public official could reasonably have believed that treating Mr. Turnbull's Grievances differently from the PPW Disciplinary Petitions was not a violation of Mr. Turnbull's rights.

86. Furthermore, Seana Willing, Amanda M. Kates, John S. Brannon, Timothy J. Baldwin, Daniel Martinez, and Daniela Grosz are not entitled to absolute immunity

as "quasi-judicial" agency officials because they do not perform functions similar to those of judges or prosecutors in a setting similar to that of a court. Specifically, as set out above, the CDC does not afford Complainants the type of safeguards necessary to control unconstitutional conduct and insulate the decisionmakers from political influence, and the determination of Just Cause is not made in an adversary process, nor is it correctable on an appeal in which a Complainant may participate.

87. As a direct result of Defendants' intentional and deliberate conduct and actions, Mr. Turnbull was deprived of his constitutional rights, causing injury and damages.

Count II – First Amendment Claim under 42 U.S.C. § 1983

88. Mr. Turnbull re-alleges each of the preceding paragraphs as fully set forth herein.

89. Defendants have retaliated against Mr. Turnbull for exercising free expression.

90. Defendants deliberately and intentionally deprived Mr. Turnbull of the rights afforded to him under the First Amendment of the United States Constitution. Defendants deprived Mr. Turnbull of his right to freedom of speech insofar as Defendants' actions caused Mr. Turnbull to suffer an injury that would chill the speech of a person of ordinary firmness from continuing to engage in filing Grievances under the Texas grievance process. Defendants' intentional actions have chilled the speech of

Mr. Turnbull in pursuing Grievances against Mrs. Lovett and Mr. Trevino.

91. Mr. Turnbull engaged in protected activity when he spoke up as a concerned citizen on matters of public concern—i.e., Mrs. Lovett and Mr. Trevino's false representations, threats, and other misconduct in the practice of law as outlined above—and filed Grievances with Defendants. However, Defendants sought to silence Mr. Turnbull by dismissing his Grievances without any adequate justification. As mentioned above, Defendants pick and choose who to grant Grievance examinations against, or pursue their own actions against, based on prominence, popularity, political affiliation, and professional association. Defendants' selective prosecution leads to inconsistent results and unequal treatment. Some attorneys have complaints filed against them by Defendants for the exact same conduct that Defendants have dismissed at the Inquiry stage. This case is an example of just that illegal and perplexing dual standard.

92. Defendants' selective enforcement of the law injured Mr. Turnbull's freedom of expression and damaged him by preventing him from having his professional conduct Complaint heard. Defendants' selective prosecution has chilled Mr. Turnbull's speech by preventing him from being heard in the Texas state grievance process and silencing his complaints for professional misconduct. Mr. Turnbull has brought forth multiple Grievances showing, on their face, violations of the Texas Disciplinary Rules of Professional Conduct by Mrs. Lovett and Mr. Trevino for misrepresenting the truth and being dishonest in their

pleadings filed with a court and with the Defendants. Defendants have curtailed Mr. Turnbull's right to speak by dismissing these Grievances without a hearing and further examination of their conduct, and by preventing Mr. Turnbull from testifying before any IVH panel.

93. This injury would chill the speech of a person of ordinary firmness from bringing other Grievances under Texas' grievance process. Without the assurance that Defendants will treat claimants equally, and prosecute each Grievance according to the letter of the law, members of the public are discouraged from pursuing Grievances against Texas attorneys. Defendants engage in selective enforcement of the law and hide behind TRDP 2.16 while they issue a No Just Cause determination to dismiss politically unpopular—yet valid—Grievances. Ultimately, Defendants unequal treatment of attorneys based on their popularity, prominence, political affiliation, and professional association, will lead to the destruction of the entire self-regulation system Texas attorneys currently enjoy. Ordinary members of the public, both lawyers and clients, will be dissuaded from seeking to resolve Grievances through the State Bar of Texas as they recognize that Defendants play politics with the attorney disciplinary system and quietly bury unpopular speech by disposing of politically disfavored Grievances through summary disposition and by concealing any rationale for Defendants' actions as "confidential," even from the Complainant who filed the Grievance. Defendants' brazenness in treating participants, like Mr. Turnbull in this matter, differently based on political association and based on the contents of the expression will chill the

speech of ordinary members of the public seeking to hold lawyers accountable.

94. Defendants were motivated to silence Mr. Turnbull by dismissing his Grievances without any investigation based on Mr. Turnbull's political/professional association and based on the contents of his Grievances, which targeted politically well-connected attorneys who represented a very large and prominent business—Microsoft. Defendants dismissed Mr. Turnbull's Grievances at the Inquiry stage without any investigation and without allowing Mr. Turnbull to testify. By contrast, the CFLD and CDC filed Disciplinary Petitions against Attorney General Ken Paxton, First Assistant Brent Webster, and Sidney Powell to punish them for similar conduct Mr. Turnbull complained of. Thus, by dismissing Mr. Turnbull's Grievances founded on clear alleged violations of ethical rules at the Inquiry stage—the very first stage, without any investigation and without allowing any testimony—coupled with Defendants' own actions showing that Defendants' believe that allegations of the very same conduct constitute a violation of the Texas Disciplinary Rules of Professional Conduct, Defendants have shown that the motivation for their arbitrary dismissal of Mr. Turnbull's Grievances was based on the content of Mr. Turnbull's speech calling out politically powerful lawyers for professional misconduct. Defendants' arbitrary and capricious treatment of Mr. Turnbull's speech punishes the exercise of important public expression about the legal profession and chills members of the public from speaking out against lawyers and corporations who will be perceived as above the law as a result of Defendants' actions.

95. In addition, John S. Brannon's dismissal of the First Grievances and placement of the First Grievances on the Summary Disposition Panel caused a *chilling effect* on Mr. Turnbull's speech. Mr. Brannon's actions were motivated by his desire to protect Mrs. Lovett, Mr. Trevino, and more importantly, Greenberg Traurig, LLP and Microsoft, and his desire to prohibit Mr. Turnbull from speaking further on the subject matter of the First Grievances. Mr. Brannon's actions did suppress Mr. Turnbull's speech, at least in part, and were motivated by the desire to stop Mr. Turnbull from continuing to pursue the First Grievances. Mr. Turnbull is not required to show that his speech was completely suppressed, rather he only needs to show that Mr. Brannon's action had a chilling effect on his speech, or in other words, that his speech was adversely affected by Mr. Brannon's actions. By way of example, Mr. Turnbull was now no longer able to present his valid grievance to an Investigatory Hearing Panel, thereby causing a *chilling effect* on his speech. Ultimately, Mr. Brannon is well aware of the effect of placing a grievance on the Summary Disposition Panel. Grievances do *not* survive this panel.

96. Mr. Turnbull can further show that Mr. Brannon's actions had a chilling effect because a person of ordinary firmness would have discontinued pursuing his/her grievance once dismissed by Mr. Brannon and then by the Summary Disposition Panel. The fact that Mr. Turnbull pursued an appeal of these dismissals does not allow Mr. Brannon to escape liability for attempting to chill Mr. Turnbull's speech. In other words, the fact that Mr. Turnbull is an unusually determined complainant does *not* shield Mr. Brannon from liability.

97. Furthermore, by treating Mr. Turnbull's 2022 Grievances as having been previously considered and dismissed, Ms. Grosz retaliated against Mr. Turnbull for exercising his freedom of speech in the First Grievances.

98. Likewise, by refusing to accept Mr. Turnbull's Amended Grievanes, Mr. Martinez retaliated against Mr. Turnbull for exercising his freedom of speech in his prior Grievances.

99. As a result of Defendants' violation of Mr. Turnbull's freedom of speech, Mr. Turnbull has suffered injury.

100. Defendants have enforced the unconstitutional laws and policies challenged here while acting under color of state law.

Count III – Claims under Tex. Const. Art. 1 § 19

101. Mr. Turnbull re-alleges each of the preceding paragraphs as fully set forth herein.

102. Defendants deprived Mr. Turnbull of the rights afforded to him under Article 1, Section 19, of the Texas Constitution. Defendants deprived Mr. Turnbull of his right to due course of the law under Section 19 of the Texas Constitution insofar as Defendants' application of TRDP 2.16 has deprived Mr. Turnbull of the right to a full and fair explanation for why his Grievances were dismissed on the purported ground that it lacked "Just Cause." Tex. R. Disc. Pro. 2.16. This explanation for Defendants' arbitrary

dismissal of Mr. Turnbull's Grievances is required by Article 1, Section 13, of the Texas Constitution, and Section 81.072(b)(2) of the Texas Government Code.

103. Section 81.072(b)(2) states, "[t]he supreme court shall establish minimum standards and procedures for the attorney disciplinary and disability system. The standards and procedures for processing Grievances against attorneys must provide for: (2) a full explanation to each complainant on dismissal of an inquiry or a complaint." Tex. Gov't. Code Ann. § 81.072(b)(2). Accordingly, Complainants like Mr. Turnbull and the Grievances that he filed, have a right to a full and fair explanation and Defendants have arbitrarily denied that right. Because Defendants denied Mr. Turnbull's property right to a full and fair explanation for the reasons his Grievances were dismissed, Defendants have violated Mr. Turnbull's right to due course of law under the Texas Constitution.

104. In addition, Defendants deprived Mr. Turnbull of his right to due process as their disciplinary process is fundamentally unfair. Defendants acted like a biased political body instead of an impartial tribunal. Ultimately, Defendants must act in a fair and open manner so that participants and the public have confidence that the disciplinary process is not just a sham set up to dismiss Grievances against politically popular lawyers without any investigation or hearing, just as Defendants did here. Instead, our courts have to be open, just as the Texas Constitution demands. If our courts must be open, the Texas grievance system governed by the judicial branch has to be open too.

105. As Article 1, Section 13 of the Texas Constitution states, "[a]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Tex. Const. Art. 1. § 13. Defendants are in violation of Section 13 of the Texas Constitution because they have refused to provide Mr. Turnbull due course of law as they have been anything but open during this disciplinary process.

106. Finally, under Section 29 of the Texas Constitution, Defendants cannot claim sovereign immunity to avoid their blatant violations of the rights afforded to Mr. Turnbull as a Texas citizen. Tex. Const. Art. I, § 29. The Bill of Rights under the Texas Constitution are expressly exempted from Defendants' government power.

Count IV – Claim under Tex. Const. Art. 1 § 3

107. Mr. Turnbull re-alleges each of the preceding paragraphs as fully set forth herein.

108. Defendants have deprived Mr. Turnbull of his right to equal protection of the law under Article 1. Section 3 of the Texas Constitution insofar as the application of TRDP 1.06(Z), 2.10, and 2.16 resulted in Mr. Turnbull being treated differently than other similarly situated complainants in being denied a full and fair explanation for why his Grievances were dismissed for lacking "Just Cause." Defendants have acted arbitrarily because they have denied Mr. Turnbull the recommendation/reasoning for their determination that they would provide to other similarly situated complainants. For example, just one

step further in the disciplinary process, Defendants tell complainants everything, including whether an attorney receives a *private reprimand*, information the general public would never be told.

109. Defendants use the confidentiality provision of Rule 2.16 of the TRDP to hide their reasoning, or lack thereof, for the No Just Cause determination. Defendants hide behind the confidentiality provision when it is convenient for them and when they desire to arbitrarily assign a Grievance to the SDP without giving any justification for their actions. As a result of Defendants' unequal treatment, the application of Rule 2.16 of the TRDP is unconstitutional pursuant to Section 13 of the Texas Constitution.

Count V – Claims under Tex. Const. Art. 1 § 13

110. The Texas Constitution requires Texas courts to be open and the Texas Legislature, under Section 81.072(b)(2), guarantees complainants, like Mr. Turnbull, the right to a full and fair explanation. Tex. Const. Art. 1. § 13. The Texas Constitution provides Mr. Turnbull due course of law through the right to open courts and a transparent process, which Defendants have altogether deprived Mr. Turnbull of.

111. The Texas Constitution's guarantee of open courts requires that Defendants' self regulated disciplinary proceedings be transparent and requires Defendants to give complainants "a full explanation" "on dismissal" as promised by the Texas Government Code. *See* Tex.

GOV'T. CODE §81.072(b)(2); *see also* TEX. CONST. ART. 1. § 13. Defendants' denial of that full explanation is a denial of Mr. Turnbull's substantive due process right to a transparent disciplinary proceeding, which is necessary to uphold the Texas Constitution's requirement that our courts be "open."

112. Ultimately, Defendants' arbitrary and capricious decision to dismiss Mr. Turnbull's Grievances, the reason for which is concealed by Defendants' refusal to provide reasons for the No Just Cause determination, will eventually lead to the demise of the legal system's right to self-regulate. Lawyers have earned the privilege of being a self-regulated profession, yet Defendants threaten this very ideal with arbitrary and capricious decisions like the one before the Court today.

V.
REQUEST FOR INJUNCTIVE RELIEF

113. Mr. Turnbull re-alleges each of the preceding paragraphs as fully set forth herein.

114. Mr. Turnbull requests the Court issue a temporary mandatory injunction against the CFLD, enjoining it to re-open the Grievances against Mrs. Lovett and Mr. Trevino.

115. Mr. Turnbull's application for injunctive relief against the CFLD, the CDC, and the SBOT is authorized pursuant to *City of Elsa v. M.A.L.*, wherein the Texas Supreme Court held that governmental entities may be

sued for injunctive relief under the Texas Constitution. 226 S.W.3d 390 (Tex. 2007) ("In this case we reaffirm that . . . governmental entities may be sued for injunctive relief under the Texas Constitution."). A temporary mandatory injunction is proper when it "is necessary to prevent irreparable injury or extreme hardship." *Health Care Serv. Corp. v. E. Texas Med. Ctr.*, 495 S.W.3d 333, 339 (Tex. App.—Tyler 2016, no pet.).

116. Furthermore, Mr. Turnbull is entitled to permanent injunctive relief against Seana Willing, Amanda M. Kates, John S. Brannon, Timothy J. Baldwin, Daniel Martinez, and Daniela Grosz, in their official capacities, prohibiting them from continuing to engage in ultra vires actions, without legal authority, including depriving Mr. Turnbull of his right to equal protection under the law by treating Mr. Turnbull's Grievances differently from the PPW Disciplinary Petitions.

117. In addition, Mr. Turnbull is entitled to permanent injunctive relief against Ms. Hodgkins and Mr. Martinez, in their official capacities, prohibiting them from continuing to engage in ultra vires actions, without legal authority, including depriving Mr. Turnbull of his procedural due process rights by denying Mr. Turnbull of the right to amend his Second and Third Grievances or have his Amended Grievances considered.

118. If the application for injunctive relief against the CFLD, the CDC, and the SBOT is not granted, Mr. Turnbull and the legal profession will suffer irreparable injury. Specifically, Defendants' actions have chilled

Mr. Turnbull's speech and inhibited his equal right to file a Grievance complaining of professional misconduct and have his complaints heard against individuals who knowingly sought to publicly disclose false information about Mr. Turnbull. The legal profession, and thereby Mr. Turnbull, will be kept from any mechanism to reprimand attorneys who misrepresent the truth and file dishonest pleadings with a court.

119. In addition, Mr. Turnbull will experience an irreparable injury because he will be altogether deprived of his right to due course of law under the Texas Constitution. The Texas constitution provides Mr. Turnbull due course of law through the right to open courts and a transparent process. However, Mr. Turnbull has yet to see an open court or a full and fair explanation for the reason his complaints were dismissed, both of which are violations of his constitutional rights. Ultimately, Defendants must act in a fair and open manner in order to maintain any confidence from attorneys licensed in Texas and the public. If Texas's attorney disciplinary system purports to be anything more than a sham organization that exists only to dismiss Grievances against politically popular lawyers without an investigation or hearing, then Defendants cannot continue to act with impunity. The legal profession, and thereby Mr. Turnbull, will be irreparably injured by Defendants' arbitrary and capricious decisions outlined throughout this Complaint. Texas lawyers have the privilege of self-governance. However, if Defendants are permitted to maintain the status quo without interference from this Court, the privilege that is our self-regulated profession will be lost.

120. Mr. Turnbull seeks and is entitled to injunctive relief prohibiting the CFLD, the CDC, and the SBOT from causing Mr. Turnbull, and the rest of the legal profession, irreparable injury.

121. Mr. Turnbull requests the Court hold a hearing on his request for relief and enter a temporary mandatory injunction enjoining the CFLD, the CDC, and the SBOT, and their officers, agents, and employees, to re-open the Grievances against Mrs. Lovett and Mr. Trevino.

VI.
ATTORNEY'S FEES

122. Pursuant to 42 U.S.C. §§ 1983 and 1988, Mr. Turnbull is entitled to recover reasonable and necessary attorneys' fees that are equitable and just. *See* 42 U.S.C. §§ 1983, 1988.

VII.
DEMAND FOR JURY TRIAL

123. Mr. Turnbull demands trial by jury on all triable issues and tenders the jury fee herewith.

VIII.
PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Mr. Turnbull prays that each of the Defendants be cited to appear and answer herein and that:

(a) The Court issue an order enjoining the CFLD, the CDC, and the SBOT to re-open the Grievances against Mrs. Lovett and Mr. Trevino;

(b) The Court issue an order enjoining Defendants to disclose to Mr. Turnbull the reasons his Grievances were dismissed;

(c) The Court deem Rule 2.16 of the Texas Disciplinary Rules of Procedure unconstitutional as applied;

(d) The Court hold that the Defendants' unequal treatment amongst attorneys when applying the Texas Disciplinary Rules of Professional Conduct is unconstitutional;

(e) The Court award Mr. Turnbull First Amendment retaliation damages;

(f) The Court award Mr. Turnbull attorney's fees and costs of court pursuant to 42 U.S.C. §§ 1983 and 1988 or any other applicable provisions of federal law; and

(g) For such other and further relief, in law or in equity, general or special, to which Mr. Turnbull may be justly entitled.

Respectfully submitted,

West, Webb, Allbritton & Gentry, P.C.
1515 Emerald Plaza
College Station, Texas 77845
Telephone: (979) 694-7000
Facsimile: (979) 694-8000

By: */s/ Gaines West*
GAINES WEST
State Bar No. 21197500
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APPENDIX B — REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION, FILED JANUARY 25, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

1-23-CV-314-RP

EDWARD TURNBULL, IV,

Plaintiff,

v.

BOARD OF DIRECTORS OF
THE STATE BAR OF TEXAS, *et al.*,

Defendants.

Filed January 25, 2024

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE:

Before the court are Defendants' Motions to Dismiss (Dkts. 22, 24, 27, 32, 35, 38, and 46) and all related

briefing.[1] Having considered the pleadings, the relevant case law, and the entire case file, the undersigned submits the following Report and Recommendation to the District Court.

I. BACKGROUND[2]

Edward Turnbull, IV brings suit against the Board of Directors of the State Bar of Texas ("SBOT"), the Commission for Lawyer Discipline (CLD"), the Office of the Chief Disciplinary Counsel, and over fifty individuals associated with SBOT and/or the CLD. Dkt. 20 (FAC) ¶¶ 2-18. Turnbull, a Houston-based criminal defense attorney, submitted multiple grievances against three attorneys representing Microsoft in a dispute between Turnbull and Microsoft. The grievances were dismissed, and no punitive action was taken against the attorneys. Turnbull asserts the grievances' dismissals violated his rights.

Turnbull asserts a federal equal protection claim, contending that his grievances were treated differently than "Defendants' treatment of what appears now to be

1. The motions were referred by United States District Judge Robert Pitman to the undersigned for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. *See* Text Orders dated August 22, 2023.

2. At this stage of the case, the court accepts all well-pleaded facts as true.

politically motivated Grievances filed against Attorney General Ken Paxton, Brent Maxwell, and Sidney Powell." FAC ¶ 75. He asserts a federal free speech/expression claim, contending that "Defendants' actions caused Mr. Turnbull to suffer an injury that would chill the speech of a person of ordinary firmness from continuing to engage in filing Grievances under the Texas grievance process." *Id.* ¶ 90. Turnbull asserts a state due process claim, contending that "Defendants' application of [Texas Rule of Disciplinary Procedure] 2.16 has deprived Mr. Turnbull of the right to a full and fair explanation for why his Grievances were dismissed on the purported ground that it [sic] lacked 'Just Cause.'" *Id.* ¶ 102. Finally, he asserts a state law equal protection claim, contending that he was "treated differently than other similarly situated complainants in being denied a full and fair explanation for why his Grievances were dismissed for lacking 'Just Cause.'" *Id.* ¶ 108. Turnbull seeks injunctive and declaratory relief, damages, and attorneys' fees.

Each defendant or defendant groups has filed a motion to dismiss, many making similar or overlapping arguments. The court will begin with Defendants' standing arguments, as that issue is dispositive.

II. STANDING

A. Applicable Law

Federal Rule of Procedure 12(b)(1) governs motions to dismiss for lack of subject-matter jurisdiction. FED. R. CIV. P. 12(b)(1). When the court lacks the statutory

or constitutional power to adjudicate a case, the case is properly dismissed for lack of subject-matter jurisdiction. *Hooks v. Landmark Indus., Inc.*, 797 F.3d 309, 312 (5th Cir. 2015). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). "Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Id.*

Federal courts cannot consider the merits of a case unless it "presents an 'actual controversy,' as required by Art. III of the Constitution and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201." *Mississippi State Democratic Party v. Barbour*, 529 F.3d 538, 544 (5th Cir. 2008) (quoting *Steffel v. Thompson*, 415 U.S. 452, 458 (1974)). The many doctrines that have fleshed out the "case or controversy" requirement—standing, mootness, ripeness, political question, and the like—are "founded in concern about the proper—and properly limited—role of the courts in a democratic society." *Id.* (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975))). These "doctrines state fundamental limits on federal judicial power in our system of government." *Id.*

"The "essence" of standing is "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Barbour*, 529 F.3d at 544 (citing *Warth*, 422 U.S. at 498). In order to have standing, "a plaintiff must show: (1) it has suffered, or imminently will suffer, a concrete and particularized injury-in-fact; (2) the injury is fairly traceable to the defendant's conduct; and

(3) a favorable judgment is likely to redress the injury." *Id.* (quoting *Houston Chronicle Publ'g Co. v. City of League City, Tex.*, 488 F.3d 613, 617 (5th Cir. 2007)). An injury in fact is an invasion of a legally protected interest which is "actual or imminent, not conjectural or hypothetical." *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

B. Analysis

Several Defendants' motions argue Turnbull lacks standing to assert his federal claims. *See* Dkt. 27, 35, 38, 46. Turnbull filed nearly identical responses on this issue. *See* Dkt. 36, 47, 50. Defendants argue that the Fifth Circuit and lower courts have applied Supreme Court precedent to hold that a person lacks standing to pursue claims related to how the State Bar handles grievances against other individuals. In response, Turnbull argues he has standing because he is the person aggrieved by the handling of the grievances.

In 1973, in *Linda R.S. v. Richard D.*, the Supreme Court reiterated its prior holdings that "a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution." 410 U.S. 614, 619 (1973) (citing *Younger v. Harris*, 401 U.S. 37, 42 (1971); *Bailey v. Patterson*, 369 U.S. 31, 33 (1962); *Poe v. Ullman*, 367 U.S. 497, 501 (1961)). In 2020, relying on *Linda R.S.*, the Fifth Circuit affirmed the dismissal of a plaintiff's suit against the State Bar of Texas for how it handled his grievance against his attorney, holding the "Constitution

does not require the State to take any particular action in response" to his grievance. *Martinez v. State Bar of Texas*, 797 F. App'x 167 (mem.) (5th Cir. March 6, 2020). District courts have similarly held that:

> Plaintiff does not possess a federally-protected constitutional right to compel the State Bar of Texas to investigate Plaintiff's grievance against Turner and to render a decision to his liking. Any right to such an investigation exists wholly and completely as a result of state law. The failure of state officials to fulfill their duties under state law does not give rise to a federal constitutional claim.

Arabzadegan v. McKeeman, No. A-06-CA-297-LY, 2006 WL 1348202, at *2 (W.D. Tex. May 4, 2006); *see also Read v. Hsu*, No. 1:18-CV-662-RP, 2018 WL 10761921, at *2 (W.D. Tex. Nov. 13, 2018) (citing *Geiger v. Jowers*, 404 F.3d 371, 374 (2005)); *Raines v. Sandling*, No. A-14-CA-496-SS, 2014 WL 2946656, at *6 (W.D. Tex. June 27, 2014) (dismissing claim as frivolous); *Brinson v. McKeeman*, 992 F. Supp. 897, 908–09 (W.D. Tex. 1997) (dismissing claim as frivolous). In 2021, the Fifth Circuit went so far as to apply *Linda R.S.* to hold that a sexual assault survivor does not have standing to sue the district attorney for failure to prosecute her rapist. *Lefebure v. D'Aquilla*, 15 F.4th 650, 652 (5th Cir. 2021). "[E]ach of us has a legal interest in how we are treated by law enforcement—but not a legally cognizable interest in how others are treated by law enforcement. [V]ictims do not have standing based on whether other people—including their perpetrators—are investigated or prosecuted." *Id.*

In response to the overwhelming case law that he has no constitutionally protected interest in the outcome of the State Bar's investigation of his grievances, Turnbull makes generic arguments about the purpose of section 1983, reasserts that he has been injured by Defendants' actions, and contends he has no other means to redress the complained-about attorneys' actions because he is still in litigation with them. First, Turnbull cites no authority that he has been injured in any constitutionally-recognized way by the handling of his grievances. Second, if he is still involved in litigation with the complained-of attorneys and their actions in that litigation are problematic, his obvious means of redress is to raise his concerns with the trial court.

Turnbull also argues he has stated a class of one equal protection claim because his grievances were dismissed while grievances against Powell, Paxton, and Webster went forward. However, Turnbull continues to ignore that he has no constitutionally protected interest in the outcome of any grievances he filed against other people. *See Linda R.S.*, 410 U.S. at 619 ("a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another"). Turnbull's arguments fail to convince the court he has standing to pursue his federal claims in light of the many cases holding otherwise.

C. Conclusion

Turnbull lacks standing to pursue his federal constitutional claims. Accordingly, those claims should be dismissed without prejudice. The remainder of Turnbull's

claims are stateconstitutional claims. As the court lacks subject matter jurisdiction as to Turnbull's federal claims, it cannot exercise supplemental jurisdiction over his state-law claims. The undersigned will recommend those claims be dismissed without prejudice.

Because the standing issue is determinative of all of Turnbull's claims, the undersigned does not reach Defendants' remaining arguments.

III. RECOMMENDATIONS

The undersigned **RECOMMENDS** that the District Court **GRANT** Defendants' Motions to Dismiss (Dkt. 27, 35, 38, 46) and **DISMISS** this case for lack of subject matter jurisdiction. Because the court did not reach the remaining Motions to Dismiss (Dkt. 22, 24, and 32) they can be dismissed without prejudice.

IV. OBJECTIONS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served

with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).

SIGNED January 25, 2024.

/s/
Mark Lane
United States Magistrate Judge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION, FILED FEBRUARY 27, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EDWARD TURNBULL, IV,

Plaintiff,

v.

BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS, *et al.*,

Defendants.

1:23-CV-314-RP

ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Mark Lane concerning Defendants'[1] Motions to Dismiss, (Dkts. 22, 24, 27, 32, 35, 38, and 46). (R. & R., Dkt. 57). Plaintiff timely filed objections to the report and recommendation. (Objs., Dkt.

1. Plaintiff Edward Turnbull, IV ("Plaintiff") sued the Board of Directors of the State Bar of Texas ("SBOT"), the Commission for Lawyer Discipline ("CLD"), the Office of the Chief Disciplinary Counsel, and over 50 individuals associated with SBOT and/or the CLD. (Dkt. 20, at ¶¶ 2–18).

58).[2] Two responses to Plaintiff's objections were also filed, urging the Court to adopt the report and recommendation. (Dkts. 60, 61).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Plaintiff timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Plaintiff's objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 57), is **ADOPTED**.

IT IS FURTHER ORDERED that Defendants' Motions to Dismiss, (Dkt. 27, 35, 38, 46), are **GRANTED**. Plaintiff's claims against Defendants are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. The remaining Motions to Dismiss, (Dkt. 22, 24, and 32), are **DISMISSED WITHOUT PREJUDICE**.

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2. It appears that Plaintiff inadvertently filed identical objections twice. (*Compare* Dkt. 58 *with* Dkt. 59). Accordingly, the Court considers these identical, and only cites to the first docket entry.

The Court will enter final judgment by separate order.

SIGNED on February 27, 2024.

/s/Robert Pitman
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

APPENDIX D — FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION, FILED FEBRUARY 27, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EDWARD TURNBULL, IV,

Plaintiff,

v.

BOARD OF DIRECTORS OF THE
STATE BAR OF TEXAS, *et al.*,

Defendants.

1:23-CV-314-RP

FINAL JUDGMENT

On this date, the Court adopted United States Magistrate Judge Mark Lane's report and recommendation concerning Defendants'[1] Motions to Dismiss, (Dkts. 22, 24, 27, 32, 35, 38, and 46). (R. & R., Dkt. 57). The Court's Order dismissed without prejudice Plaintiff's claims

1. Plaintiff Edward Turnbull, IV ("Plaintiff") sued the Board of Directors of the State Bar of Texas ("SBOT"), the Commission for Lawyer Discipline ("CLD"), the Office of the Chief Disciplinary Counsel, and over 50 individuals associated with SBOT and/or the CLD. (Dkt. 20, at ¶¶ 2–18).

against Defendants for lack of subject matter jurisdiction.

As nothing remains to resolve, the Court renders final judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS FURTHER ORDERED that the case is CLOSED.

SIGNED on February 27, 2024.

/s/Robert Pitman
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

APPENDIX E — ORDER OF THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 201ST JUDICIAL DISTRICT, DATED AUGUST 6, 2024

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
201ST JUDICIAL DISTRICT

EDWARD RANDOLPH TURNBULL, IV,

Plaintiff,

COMMISSION FOR LAWYER
DISCIPLINE, *et al.*,

Defendants.

CAUSE NO. D-1-GN-24-002025

ORDER GRANTING THE COMMISSION FOR LAWYER DISCIPLINE'S MOTION TO DISMISS

On this day, the Court considered the Commission for Lawyer Discipline's Motion to Dismiss (the "Motion") this lawsuit filed by Plaintiff, Edward Randolph Turnbull, IV. After considering said Motion, the pleadings, arguments of counsel, and all other evidence on file, the Court hereby **GRANTS** the Commission for Lawyer Discipline's Motion to Dismiss this lawsuit as frivolous.

IT IS THEREFORE ORDERED that Plaintiff's lawsuit against the Commission for Lawyer Discipline is **DISMISSED as frivolous and with prejudice.**

Appendix E

SIGNED this the 6th day of August, 2024.

/s/ Karin Crump
PRESIDING JUDGE
KARIN CRUMP
250TH DISTRICT COURT

APPENDIX F — ORDER GRANTING DANIELA GROSZ AND DANIEL MARTINEZ'S MOTION TO DISMISS, DATED AUGUST 6, 2024

IN THE DISTRICT COURT OF
TRAVIS COUNTY TEXAS,
201ST JUDICIAL DISTRICT

EDWARD TURNBULL, IV,

Plaintiff,

v.

COMMISSION FOR LAWYER
DISCIPLINE, *et al.*,

Defendants.

CAUSE NO. D-1-GN-24-002025

ORDER GRANTING DANIELA GROSZ AND DANIEL MARTINEZ'S MOTION TO DISMISS

On this day, the Court considered Daniela Grosz and Daniel Martinez's Motion to Dismiss (the "Motion") this lawsuit filed by Plaintiff, Edward Randolph Turnbull, IV. After considering said Motion, the pleadings, arguments of counsel, and all other evidence on file, the Court hereby **GRANTS** Daniela Grosz and Daniel Martinez's Motion to Dismiss this lawsuit as frivolous.

IT IS THEREFORE ORDERED that Plaintiff's lawsuit against Daniela Grosz and Daniel Martinez is **DISMISSED as frivolous and with prejudice**.

SIGNED this the 6th day of August, 2024.

Karin Crump
PRESIDING JUDGE
KARIN CRUMP
250TH DISTRICT COURT

APPENDIX G — ORDER OF THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 201ST JUDICIAL DISTRICT, DATED AUGUST 6, 2024

IN THE DISTRICT COURT OF
TRAVIS COUNTY TEXAS
201ST JUDICIAL DISTRICT

EDWARD RANDOLPH TURNBULL, IV,

Plaintiff,

v.

COMMISSION FOR LAWYER DISCIPLINE, *et al.*,

Defendants.

CAUSE NO. D-1-GN-24-002025

ORDER ON STATE BAR DEFENDANTS' PLEA TO THE JURISDICTION

Before the Court is the State Bar Defendants'[1] Plea to the Jurisdiction, challenging Plaintiff Edward Randolph

1. The State Bar Defendants refers to the Board of Directors of the State Bar of Texas, Cindy V. Tisdale, Steve Benesh, Laura Gibson, Kennon Lily Wooten, Kade [sic] W. Browning, Elizabeth Sandoval Cantu, Luis Cavazos, Jason Charbonnet, Craig Cherry, Kelly-Ann F. Clarke, Jeff Cochran, David C. Courreges, Thomas A. Crosley, August W. Harris III, Britney E. Harrison, Noelle Hicks, Matthew J. Hill, Forrest L. Huddleston, Kristina N. Kastl,

Turnbull, IV's ("Plaintiff") standing to bring claims against the State Bar Defendants (the "Plea"). Upon considering the Plea, the pleadings, any response, any reply, the arguments of counsel, and applicable authorities, the Court finds the Plea should be GRANTED in all things.

The Court, therefore, ORDERS that the claims alleged against the State Bar Defendants in Plaintiff's Petition are hereby DISMISSED WITH PREJUDICE.

SO ORDERED this the 6th day of August, 2024.

/s/ Karin Crump
JUDGE PRESIDING
KARIN CRUMP
250TH DISTRICT COURT

Lori M. Kern, Bill Kroger, Hisham Masri, Dwight McDonald, Rudolph K. Metayer, Lawrence Morales II, Kimberly N. Naylor, Rosalind V.O. Perez, Christopher D. Pineda, Chris Popov, Laura Pratt, Shannon Quadros, Michael J. Ritter, Audie Sciumbato, John Sloan, G. David Smith, Paul K. Stafford, Alex J. Stelly Jr., Nitin Sud, Carlo Taboada, Radha Thiagarajan, Dr. Martin A. Tobey, Aaron Z. Tobin, G. Michael Vasquez, Stephen J. Venzor, and Michael J. Wynne.

APPENDIX H — ORDER OF THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 201ST JUDICIAL DISTRICT , DATED AUGUST 6, 2024

IN THE DISTRICT COURT OF
TRAVIS COUNTY TEXAS
201ST JUDICIAL DISTRICT

EDWARD TURNBULL, IV,

Plaintiff,

v.

COMMISSION FOR LAWYER DISCIPLINE, *et al.*,

Defendants.

CAUSE NO. D-1-GN-24-002025

ORDER GRANTING THE CHIEF DISCIPLINARY COUNSEL (SEANA WILLING), JOHN S. BRANNON, AND AMANDA KATES'S MOTION TO DISMISS

On this day, the Court considered the Chief Disciplinary Counsel (Seana Willing), John S. Brannon, and Amanda Kates's Motion to Dismiss (the "Motion") this lawsuit filed by Plaintiff, Edward Randolph Turnbull, IV. After considering said Motion, the pleadings, arguments of counsel, and all other evidence on file, the Court hereby **GRANTS** the Chief Disciplinary Counsel (Seana Willing), John S. Brannon, and Amanda Kates's Motion to Dismiss this lawsuit as frivolous.

IT IS THEREFORE ORDERED that Plaintiff's lawsuit against the Chief Disciplinary Counsel (Seana Willing), John S. Brannon, and Amanda Kates is **DISMISSED as frivolous and with prejudice**.

SIGNED this the 6th day of August, 2024.

/s/ Karin Crump
PRESIDING JUDGE
KARIN CRUMP
250TH DISTRICT COURT

APPENDIX I — ORDER OF THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 201ST JUDICIAL DISTRICT, DATED AUGUST 9, 2024

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
201ST JUDICIAL DISTRICT

EDWARD RANDOLPH TURNBULL, IV,

Plaintiff,

COMMISSION FOR LAWYER
DISCIPLINE, *et al.*,

Defendants.

CAUSE NO. D-1-GN-24-002025

ORDER GRANTING STATE BAR DEFENDANTS' RULE 91A MOTION TO DISMISS

On July 29, 2024, the Court presided over a hearing on State Bar Defendants'[1] Rule 91A Motion to Dismiss

1. The State Bar Defendants refers to the Board of Directors of the State Bar of Texas, Cindy V. Tisdale, Steve Benesh, Laura Gibson, Kennon Lily Wooten, Kade [sic] W. Browning, Elizabeth Sandoval Cantu, Luis Cavazos, Jason Charbonnet, Craig Cherry, Kelly-Ann F. Clarke, Jeff Cochran, David C. Courreges, Thomas A. Crosley, August W. Harris III, Britney E. Harrison, Noelle Hicks, Matthew J. Hill, Forrest L. Huddleston, Kristina N. Kastl, Lori M. Kern, Bill Kroger, Hisham Masri, Dwight McDonald, Rudolph K. Metayer, Lawrence Morales II, Kimberly N. Naylor, Rosalind V.O. Perez, Christopher D. Pineda, Chris Popov, Laura Pratt, Shannon Quadros, Michael J. Ritter, Audie Sciumbato,

("State Bar Motion to Dismiss"). All parties appeared through counsel of record at the hearing. The State Bar Motion to Dismiss, filed on July 8, 2024, sought to dismiss all claims by Plaintiff Edward Randolph Turnbull, IV's ("Plaintiff") against the State Bar Defendants. At the time of the hearing, the State Bar Defendants' Plea to the Jurisdiction (the "State Bar Plea") had been on file for one week.

The State Bar Plea and the State Bar Motion to Dismiss contain nearly identical arguments regarding this Court's lack of jurisdiction over this lawsuit based on the State Bar Defendants' governmental immunity. For reasons unknown to the Court, however, the parties did not schedule a hearing on the State Bar Plea until August 26, 2024, a date that is beyond the Court's deadline to rule on the State Bar Motion to Dismiss pursuant to Rule 91a.3 of the Texas Rules of Civil Procedure.

On August 6, 2024, after carefully considering the pleadings, including the State Bar Motion to Dismiss and the State Bar Plea, Plaintiff's Response, and the arguments of counsel, the Court determined that the jurisdictional issues presented in both the State Bar Plea and the State Bar Motion to Dismiss should be considered first and granted the State Bar Plea. *See, e.g., Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004) ("The trial court must determine at its earliest opportunity whether it has the constitutional or statutory

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John Sloan, G. David Smith, Paul K. Stafford, Alex J. Stelly Jr., Nitin Sud, Carlo Taboada, Radha Thiagarajan, Dr. Martin A. Tobey, Aaron Z. Tobin, G. Michael Vasquez, Stephen J. Venzor, and Michael J. Wynne.

authority to decide the case before allowing the litigation to proceed."); *see also Harris Cnty. v. Deary*, No. 01-23- 00516-CV, 2024 Tex. App. LEXIS 407, at *17 (Tex. App.—Houston [1st Dist.] Jan 23, 2024, no pet.) ("When a Rule 91a motion seeks dismissal on jurisdictional grounds based on governmental immunity, we may treat the motion as a plea to the jurisdiction by a governmental unit…").

However, the Court FINDS that the hearing date for the State Bar Plea has not yet passed and, as a result, the Court's Order on the State Bar Defendants' Plea should be and is VACATED.

ACCORDINGLY, the Court HEREBY VACATES the Order on The State Bar Defendants' Plea to the Jurisdiction.

The Court FURTHER FINDS that The State Bar Defendants' 91A Motion to Dismiss is meritorious and should be GRANTED.

The Court, therefore, GRANTS The State Bar Defendants' Motion to Dismiss and ORDERS that the claims alleged against the State Bar Defendants in Plaintiff's Petition are hereby DISMISSED WITH PREJUDICE.

SO ORDERED this 9th day of August, 2024.

/s/ Karin Crump
JUDGE PRESIDING
KARIN CRUMP
250TH DISTRICT COURT

APPENDIX J — ORDER OF THE 201ST DISTRICT COURT OF TRAVIS COUNTY, TEXAS, DATED AUGUST 13, 2024

IN THE DISTRICT COURT
201ST DISTRICT COURT
TRAVIS COUNTY, TEXAS

EDWARD RANDOLPH TURNBULL, IV,

Plaintiff,

COMMISSION FOR LAWYER DISCIPLINE, *et al.*,

Defendants.

NO. D-1-GN-24-002025

ORDER GRANTING DEFENDANT JENNY HODGKINS' PLEA TO THE JURISDICTION

On this day, the Court considered the Plea to the Jurisdiction of Defendant, Jenny Hodgkins, filed in response to Plaintiff's claims against her, and the argument of counsel and parties.

Having reviewed the evidence and heard all arguments, this Court finds that Defendant Hodgkins's Plea is meritorious and should be **GRANTED** in its entirety.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that all of Plaintiff's claims filed against Defendant Jenny Hodgkins in all capacities in the above-

referenced case are hereby dismissed in their entirety with prejudice to refiling same.

August 13, 2024

/s/ Maya Gamble
Honorable Judge Presiding

MAYA GUERRA GAMBLE
459th DISTRICT COURT

APPENDIX K — ORDER OF THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 201ST JUDICIAL DISTRICT, DATED AUGUST 27, 2024

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
201ST JUDICIAL DISTRICT

EDWARD RANDOLPH TURNBULL, IV,

Plaintiff,

v.

COMMISSION FOR LAWYER DISCIPLINE, *et al.*,

Defendants.

CAUSE NO. D-1-GN-24-002025

ORDER DISMISSING STATE BAR DEFENDANTS' PLEA TO THE JURISDICTION

On August 26, 2024, the Court heard State Bar Defendants' Plea to the Jurisdiction (Plea) filed on July 22, 2024. Attorney Brooke Noble appeared for Board of Directors of the State Bar of Texas (The State Bar Defendants). Attorney Jay Rudinger appeared for Plaintiff Edward Turnbull. The Court took judicial notice of all pleadings and all prior orders on file in this cause.

Appendix K

After considering the pleadings and arguments of counsel, the Court FINDS that The State Bar Defendants' Rule 91a Motion to Dismiss was granted by Judge Karin Crump on August 9, 2024, by which "the claims alleged against the State Bar Defendants in Plaintiff's Petition" were dismissed with prejudice.

The Court FURTHER FINDS that Defendant Jenny Hodgkins's Plea to the Jurisdiction was "granted in its entirety" by Judge Guerra Gamble on August 13, 2024, by which "Plaintiffs claims filed against Defendant Jenny Hodgkins in all capacities" were dismissed in their entirety with prejudice.

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The Court FURTHER FINDS that those prior orders have already dismissed Plaintiff's claims against The State Bar Defendants and Defendant Jenny Hodgkins, with prejudice, and thereby leaving this Court without subject-matter jurisdiction.

IT IS THEREFORE ORDERED that The State Bar Defendants' Plea to the Jurisdiction is hereby DISMISSED for want of subject-matter jurisdiction.

Signed on this twenty-sixth day of August 2024,

/s/ Daniella Deseta Lyttle
DANIELLA DESETA LYTTLE
Judge Presiding, 261st District Court

APPENDIX L — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED NOVEMBER 27, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-50260
Summary Calendar

EDWARD TURNBULL, IV,

Plaintiff-Appellant,

versus

BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS; COMMISSION FOR LAWYER DISCIPLINE; OFFICE OF THE CHIEF DISCIPLINARY COUNSEL; SEANA WILLING; AMANDA M. KATES; JOHN S. BRANNON; TIMOTHY J. BALDWIN; DANIEL MARTINEZ; DANIELA GROSZ; JENNY HODGKINS; LAURA GIBSON; CINDY V. TISDALE; SYLVIA BORUNDA FIRTH; CHAD BARUCH; BENNY AGOSTO, JR.; *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-314

Before DENNIS, HO, and OLDHAM, *Circuit Judges.*

Appendix L

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that appellant pay to appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

APPENDIX M — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED NOVEMBER 27, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-50260
Summary Calendar

EDWARD TURNBULL, IV,

Plaintiff-Appellant,

versus

BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS; COMMISSION FOR LAWYER DISCIPLINE; OFFICE OF THE CHIEF DISCIPLINARY COUNSEL; SEANA WILLING; AMANDA M. KATES; JOHN S. BRANNON; TIMOTHY J. BALDWIN; DANIEL MARTINEZ; DANIELA GROSZ; JENNY HODGKINS; LAURA GIBSON; CINDY V. TISDALE; SYLVIA BORUNDA FIRTH; CHAD BARUCH; BENNY AGOSTO, JR.; *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Texas. USDC No. 1:23-CV-314.

Before DENNIS, HO, and OLDHAM, Circuit Judges.

Appendix M

PER CURIAM:*

Plaintiff-Appellant Edward Turnbull, IV brought a lawsuit against Defendant-Appellees the Board of Directors of the State Bar of Texas ("SBOT"), the Commission for Lawyer Discipline ("CLD"), the Office of the Chief Disciplinary Counsel, and over fifty individuals associated with SBOT and CLD. Plaintiff submitted state bar grievances against three attorneys representing Microsoft in a dispute between Plaintiff and Microsoft. The grievances were dismissed, and no action was taken against the attorneys. Plaintiff brought the instant federal lawsuit asserting that the state bar's dismissal of the grievances violated his rights. Specifically, Plaintiff alleged: (1) a federal equal protection claim because his grievances were treated differently than others; (2) a federal free speech and expression claim because Defendants' actions caused him to suffer an injury that would chill the speech of a person of ordinary firmness from continuing to engage in filing grievances under the Texas grievance process; (3) a state due process claim because Defendants deprived Plaintiff of the right to a full and fair explanation for why his grievances were dismissed; and (4) a state law equal protection claim because Defendants treated Plaintiff differently than other similarly situated complainants. The district court dismissed each of the federal claims for lack of Article III standing and dismissed the state law claims for lack of supplemental jurisdiction.

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* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

We agree with the district court's disposition. A panel of our court has held that a plaintiff generally has no standing to pursue complaints about the prosecution of state bar grievances against individuals other than themselves. *See, e.g., Martinez v. State Bar of Tex.*, 797 F. App'x 167, 168 (5th Cir. 2020); *see also Linda R.S. v. Richard D.*, 410 U.S. 614, 619, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973) ("[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."). Plaintiff has presented no compelling reason why *Martinez* should not apply here; the district court therefore properly dismissed Plaintiff's federal claims for lack of Article III standing. Similarly, we affirm the district court's decision to decline to exercise supplemental jurisdiction over the remaining state law claims. *See Brookshire Bros. Holding v. Dayco Prods., Inc.*, 554 F.3d 595, 602 (5th Cir. 2009) ("The general rule is that a court should decline to exercise jurisdiction over remaining state-law claims when all federal-law claims are eliminated before trial.").

AFFIRMED.

MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED NOVEMBER 27, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
OFFICE OF THE CLERK

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 24-50260 Turnbull v. Board of Directors
USDC No. 1:23-CV-314

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App.

P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that appellant pay to appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,
LYLE W. CAYCE, Clerk
By: /s/ Lisa E. Ferrara
Lisa E. Ferrara, Deputy Clerk

APPENDIX N — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED DECEMBER 17, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-50260

EDWARD TURNBULL, IV,

Plaintiff-Appellant,

versus

BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS; COMMISSION FOR LAWYER DISCIPLINE; OFFICE OF THE CHIEF DISCIPLINARY COUNSEL; SEANA WILLING; AMANDA M. KATES; JOHN S. BRANNON; TIMOTHY J. BALDWIN; DANIEL MARTINEZ; DANIELA GROSZ; JENNY HODGKINS; LAURA GIBSON; CINDY V. TISDALE; SYLVIA BORUNDA FIRTH; CHAD BARUCH; BENNY AGOSTO, JR.; *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-314

ORDER:

Appendix N

IT IS ORDERED that Appellant's opposed motion for leave to file petition for rehearing en banc out of time is DENIED.

/s/ James L. Dennis
JAMES L. DENNIS
United States Circuit Judge

APPENDIX O — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE, FILED DECEMBER 27, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. 3:23-cv-01619-RAJ

EDWARD RANDOLPH TURNBULL IV,

Plaintiff,

v.

OFFICE OF DISCIPLINARY COUNSEL, *et al.*,

Defendants.

HONORABLE RICHARD A. JONES, United States District Judge.

ORDER

I. INTRODUCTION

THIS MATTER comes before the Court on Defendants' Motion to Dismiss ("Defendants' Motion"). Dkt. # 20.[1] The

1. Defendants originally filed the Motion to Dismiss, Dkt. # 20, and Reply Brief, Dkt. # 26, under seal. After the Court denied Defendants' Motion to Seal, Dkt. # 28, Defendants refiled these

parties do not request oral argument, and the Court does not find it necessary. The Court has reviewed the motions, the materials filed in support and opposition of the motion, the balance of the record, and the governing law. For the reasons stated below, the Court GRANTS Defendants' Motion. Accordingly, the Court dismisses Plaintiff's claims with prejudice and without leave to amend.

II. BACKGROUND

Plaintiff, Edward Randolph Turnbull IV, filed this action against the Washington State Bar and the Washington State Bar disciplinary attorneys ("WSBA Defendants").[2] Mr. Turnbull asserts that the WSBA Defendants improperly handled two grievances he filed against an attorney barred in Washington State. In the

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motions with modified redactions. The Court cites to the modified Motion to Dismiss, Dkt. # 31, and Reply, Dkt. # 33, throughout the Order.

2. The "WSBA Defendants" include the WSBA's Office of Disciplinary Counsel; WSBA disciplinary attorneys Chief Disciplinary Counsel Doug Ende and Managing Disciplinary Counsel Craig Bray; the Disciplinary Board, including former review committee members Lisa Marsh, Natividad Valdez, and Gerald Kroon; and current and former members of the WSBA's Board of Governors, including Hunter M. Abell, Daniel D. Clark, Francis Adewale, Tom Ahearne, Sunitha Anjilvel, Todd Bloom, Lauren Boyd, Jordan Couch, Matthew Dresden, Kevin Fray[sic], P.J. Grabicki, Carla Higginson, Erik Kaeding, Russell Knight, Kristina Larry, Rajeev Majumdar, Tom McBride, Nam Nguyen, Bryn Peterson, Kari Petrasek, Brett Purtzer, Mary Rathbone, Serena Sayani, Kyle Sciuchetti, Alec Stephens, Brian Tollefson, Allison Widney, and Brent Williams-Ruth.

Complaint, Plaintiff asserts that the WSBA Defendants violated: 1) the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; 2) the First Amendment of the United States Constitution; 3) article I, section 3 of the Washington Constitution; 4) article I, section 5 of the Washington Constitution; and 5) article I, section 10 of the Washington Constitution. *See* Dkt. # 5 ¶¶ 65-105. Along with Plaintiff's Complaint, he filed various exhibits with supporting documentation. *See* Dkts. # 5-1-5-21, Exs. A-U. The Court summarizes the relevant background below.

Mr. Turnbull is a criminal defense attorney, based in Texas, who represents defendants in a wide array of criminal matters. *See* Dkt. # 5 ¶ 16. In his practice, Mr. Turnbull subscribes and uses Microsoft's OneDrive Cloud Service to store work-product for his criminal cases. *See id.* ¶ 17. Plaintiff alleges he was locked out of his Microsoft account without warning in October 2019. *See id.* ¶ 18. After a three-week delayed response, Microsoft's representatives informed Mr. Turnbull that illegal child sexual abuse images stored in his account had been flagged, removed from his account, and reported to federal authorities. *See id.* ¶ 21. These images were evidence in one of Plaintiff's criminal defense cases. *See id.* Mr. Turnbull disputed this issue with Microsoft's Team and sought injunctive relief in Texas state court (the "Microsoft dispute"). *See id.* ¶¶ 21-30. On February 25, 2020, a Texas court ordered Microsoft to return all of the data to Mr. Turnbull with the exception of two sensitive images. *Id.* ¶ 31.

Plaintiff alleges that before the Texas court made its ruling in the Microsoft dispute, the opposing attorneys representing Microsoft made misrepresentations, false statements, and threats to initiate criminal and disciplinary investigations against Mr. Turnbull and his firm. *See* Dkt. # 5 ¶ 34. Plaintiff asserts that this conduct violated Texas and Washington professional rules of conduct. *See id.*

After the ruling in the Microsoft dispute, Plaintiff filed grievances with disciplinary bodies in Texas and Washington State regarding the alleged unethical conduct of the attorneys. In September 2021, Mr. Turnbull's grievances against the Texas attorneys involved in the Microsoft dispute were dismissed ("Texas disciplinary decision"). *See id.* ¶¶ 35-36, 43; Dkt. # 5-6, Ex. F at 6-7. Mr. Turnbull alleges that the person overseeing the Texas disciplinary proceedings had a non-disclosed conflict of interest that impacted the outcome of the decision. *See* Dkt. # 5 ¶ 59.

In Washington, Mr. Turnbull submitted a grievance with Washington's Office of Disciplinary Counsel ("ODC"), where declarations, letters of support, and other documents were filed. *See id.* ¶¶ 39-45. On October 19, 2021, ODC dismissed the first grievance. *See id.* ¶ 46. Mr. Turnbull appealed and filed a second grievance, without success. *See id.* ¶¶ 46-58. ODC dismissed these grievances stating Mr. Turnbull grievance did not provide sufficient evidence to prove the allegations against the Washington attorney. *See* Dkt. # 5-9, Ex. I; *see also* Dkt. # 5 ¶ 61. Mr. Turnbull asserts ODC improperly relied on the Texas

disciplinary decision in dismissing his grievances. *See* Dkt. # 5 ¶¶ 43, 62-63.

Mr. Turnbull filed the instant lawsuit on October 19, 2023. Dkt. # 1. On December 8, 2023, Plaintiff filed a First Amended Complaint. Dkt. # 5. On June 10, 2024, the WSBA Defendants filed a Motion to Dismiss asking the Court to dismiss Plaintiff's claims for a lack of standing and failure to state a claim. Dkt. # 31.[3]

III. LEGAL STANDARDS

A. Rule 12(b)(1)

To establish Article III standing, a plaintiff must show that (1) he or she has suffered an actual or imminent injury in fact, which is concrete and particularized; (2) there is a causal connection between the injury and conduct complained of; and (3) it is likely that a favorable decision in the case will redress the injury. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). To survive a motion to dismiss, a plaintiff must allege "specific facts plausibly explaining" each of the standing requirements. *Barnum Timber Co. v. United States Environmental Protection Agency*, 633 F.3d 894, 899 (9th Cir. 2011) (noting that *Lujan* was a summary judgment case and the plaintiff's burden is lower at the pleading stage).

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3. Defendants make several arguments in the Motion to Dismiss. The Court finds that it need not reach Defendants' qualified immunity argument in order to resolve the motion.

B. Rule 12 (b)(6)

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint upon the plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) dismissal may "be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A plaintiff's 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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). Although Federal Rule of Civil Procedure 8 does not require "detailed factual allegations," it demands more than "an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (requiring the plaintiff to "plead[ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"); *see also* Fed. R. Civ. P. 8(a)(2).

When considering a Rule 12(b)(6) motion, the court takes the well-pleaded factual allegations as true and views such allegations in the light most favorable to the plaintiff. *See Wyler Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). The court need not, however, accept as true a legal conclusion presented as a factual allegation, *Iqbal*, 556 U.S. at 678, nor is the court required to accept as true "allegations that are merely conclusory, unwarranted deductions of fact,

or unreasonable inferences," *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

A court is not required to "accept as true allegations that contradict matters properly subject to judicial notice or by exhibit." *Id.* "[O]n a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court the motion must be treated as one for summary judgment under Rule 56." There are two exceptions to this rule. First, a court may consider material submitted as part of the complaint or material under the incorporation by reference doctrine which "permits a court to consider a document 'if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim.'" *Steinle v. City & Cnty. of San Francisco*, 919 F.3d 1154, 1162-63 (9th Cir. 2019) (citations omitted). Second, a court may take judicial notice of matters of public record. *Id.* at 789 (citing *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

IV. ANALYSIS

Mr. Turnbull attached twenty-one exhibits, totaling five hundred and thirty-four pages, to his Amended Complaint. *See* Dkts. # 5-1-5-21, Exs. A-U. The information in these exhibits pertains to the grievances Plaintiff filed with ODC, which is at the center of this matter. Although the parties do not expressly ask the Court to take judicial notice of the exhibits, the Court does so as the Complaint extensively relies on these exhibits, the documents are central to the basis of Plaintiff's claims, and they are useful in resolving this matter. The Court considers Defendants' Motion below.

Appendix O

A. Motion to Dismiss for Lack of Standing

The WSBA Defendants assert Plaintiff "lacks standing to complain about the dismissal of his grievances or the lack of disciplinary action taken against others." Dkt. # 31 at 8. Plaintiff argues that he has met the elements to establish standing. Dkt. # 23 at 4-5. Mr. Turnbull's asserts he has suffered an injury from the ODC's "improper treatment of his grievances" that has exacerbated the alleged issues with the Texas disciplinary proceedings. *See* Dkt. # 23 at 5. Mr. Turnbull reiterates throughout his brief that ODC improperly dismissed his complaints without proper review, particularly because he asserts that the dismissal was based on the Texas disciplinary decision. *See id.* at 4-7.[4]

"A threshold question in every federal case is . . . whether at least one plaintiff has standing." *Thomas v. Mundell*, 572 F.3d 756, 760 (9th Cir. 2009) (citation omitted). "For standing to exist, the plaintiff must 'allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *Doyle v. Oklahoma Bar Ass'n*, 998 F.2d 1559, 1566 (10th Cir. 1993) (quoting *Allen v. Wright*, 468 U.S. 737, 751, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984)).

4. From the voluminous record before the Court, there is no information to corroborate this allegation. Rather, the information provided to the Court contradicts the assertion. Some of the briefing responding to the grievance mentions the Texas disciplinary decision. *See* Dkt. # 5-8, Ex. H. However, the dismissal letter makes no mention of the Texas disciplinary decision. *See* Dkt. #5-9, Ex. I.

An unsuccessful grievant "lacks standing to sue those charged with investigating and resolving complaints concerning attorney conduct." *Clark v. Wells Fargo Bank*, No. 20-cv-00253, 2021 U.S. Dist. LEXIS 61575, 2021 WL 1232785, at *12 (D. Or. Mar. 31, 2021).[5] "[O]ne does not have standing to assert a violation of rights belonging to another, since the person entitled to a right is the only one who can be directly injured by its deprivation." *Doyle*, 998 F.2d at 1566 (citations omitted) (emphasis in original). In a case concerning attorney discipline, "the only one who stands to suffer direct injury in a disciplinary proceeding is the lawyer involved." *Id.* at 1567.

Plaintiff cannot establish standing for claims relating to WSBA's Defendants dismissal of his grievances and decision to not discipline the complained-of attorney. Here, the Complaint does not allege that the Washington State Bar did something to Plaintiff to cause an injury. Rather, the Complaint's injuries stem from the WSBA's alleged failure to take action against the complained-of attorney. *See Linda R.S. v. Richard D.*, 410 U.S. 614, 619, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973); *see also Doyle*, 998 F.2d at

5. In *Clark v. Wells Fargo Bank*, Judge Aiken of the District of Oregon wrote that: "Although the Ninth Circuit does not appear to have addressed this issue, courts including the Second, Third, Sixth, and Eleventh Circuits have followed *Doyle* to hold that private citizen complainants lack standing to challenge a state bar's handling of a complaint against an attorney. . . This Court finds the analysis in *Doyle* and those cases persuasive and adopts it here." 2021 U.S. Dist. LEXIS 61575, 2021 WL 1232785, at *12 (citations omitted). This Court finds *Doyle* and the caselaw persuasive and likewise follows it for the purposes of resolving Defendants' Motion.

1567 (finding private plaintiff has standing because he has no right to compel disciplinary proceeding; the only person who stands to suffer direct injury is the lawyer involved); *Scheidler v. Avery*, No. 12-cv-5996, 2015 U.S. Dist. LEXIS 155494, 2015 WL 7294544, at *8 (W.D. Wash. Nov. 17, 2015) (dismissing claims against WSBA for plaintiff's lack of standing where plaintiff argued WSBA failed to discipline attorneys), *aff'd*, 695 F. App'x 188 (9th Cir. 2017). On this basis, Plaintiff, as a grievant, has not suffered a direct injury to establish standing to sue WSBA Defendants.

To the extent Mr. Turnbull attempts to assert separate constitutional injuries stemming from the grievance process, these assertions are also insufficient to establish standing and fail to state a claim. As discussed in more detail below, these injuries are speculative and contradicted by records provided by Plaintiff. Therefore, they are not sufficiently particularized as required for Article III standing to sue the WSBA Defendants or to state a claim.

B. Motion to Dismiss for Failure to State a Claim

Although the claims against the WSBA Defendants must be dismissed for lack of standing alone, the Court will address the alternative merits argument. The Court agrees with Defendants that Plaintiff's conclusory allegations against fail to demonstrate under federal or state law that: (1) Plaintiff has a valid equal protection claim against the WSBA Defendants; (2) Plaintiff has asserted a valid free speech claim; or (3) Plaintiff has been deprived due process rights. Accordingly, for the reasons

stated below, the Court dismisses the claims against the WSBA Defendants.

1. Equal Protection

Plaintiff argues that he has asserted a valid claim for equal protection because WSBA Defendants "intentionally treated Turnbull differently from others similarly situated when they failed to properly review his grievances." Dkt. # 23 at 6-7; *see also* Dkt. # 5 ¶¶ 66-73. Defendants argue that Plaintiff Turnbull does not allege that he is a part of a protected class, so he can only establish his equal protection claim through a class-of-one theory, which he fails to do. *See* Dkts. # 31, 33. The Court agrees that the class-of-one theory is the only viable way Mr. Turnbull could make this claim. For the reasons stated below, the Court finds that Plaintiff fails to meet his burden.

To maintain a claim for class-of-one equal protection, a plaintiff must show he has been "(1) intentionally (2) treated differently from others similarly situated and that (3) there is no rational basis for the difference in treatment." *SmileDirectClub, LLC v. Tippins*, 31 F.4th 1110, 1122-23 (9th Cir. 2022) (quoting *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000) (per curiam)). "[T]he class-of-one doctrine does not apply to forms of state action that 'by their nature involve discretionary decision-making based on a vast array of subjective, individualized assessments.'" *Towery v. Brewer*, 672 F.3d 650, 660 (9th Cir. 2012) (quoting *Engquist v. Oregon Dep't of Agric.*, 553 U.S. 591, 603, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008)).

"Absent any pattern of generally exercising the discretion in a particular manner while treating one individual differently and detrimentally, there is no basis for Equal Protection scrutiny under the class-of-one theory." *Id.* at 660-61.

Courts within the Ninth Circuit have "enforced the similarly-situated requirement with particular strictness when the plaintiff invokes the class-of-one theory." *Leen v. Thomas*, No. 12-cv-01627, 611 F. Supp. 3d 955, 2020 WL 1433143, at *6 (E.D. Cal. Mar. 24, 2020) (internal quotation omitted). "Class-of-one plaintiffs must show an extremely high degree of similarity between themselves and the persons to whom they compare themselves." *Id.* (internal quotation omitted); *see also Hood Canal Sand & Gravel, LLC v. Brady*, 129 F. Supp. 3d 1118, 1125 (W.D. Wash. 2015) (stating that a plaintiff bringing an equal protection claim under a class of one theory "must demonstrate that they were treated differently than someone who is prima facie identical in all relevant respects").

Plaintiff cannot validly assert a class-of-one theory based on the Complaint and the accompanying exhibits. First, ODC engages in a subjective decision-making process while reviewing attorney grievances so the class of one standard is not applicable. *See Towery*, 672 F.3d at 660. Plaintiff provides explanation or argument on this point. See generally Dkt. # 22 at 6-7. Second, even if the class-of-one theory applied, Mr. Turnbull's Complaint fails to plead any facts to demonstrate that ODC or WSBA Defendants treated Plaintiff differently than other grievant. *See generally* Dkt. # 5. Accordingly, Plaintiff cannot state

an equal protection claim as the Court cannot reasonably infer from the dismissal of Plaintiff's grievances that the WSBA Defendants must have selectively prosecuted his grievances. *See id.* ¶ 72.

2. Free Speech

Plaintiff alleges WSBA Defendants "retaliated against him for exercising free expression," Dkt. # 5 ¶ 76, and the "selective prosecution has chilled [Plaintiff's] speech by preventing him to be heard . . . and silencing his complaint for professional misconduct." *Id.* ¶ 79. Plaintiff alleges "ordinary members of the public . . . will be dissuaded from seeking resolve grievances through the WSBA Defendants" seemingly because he alleges "Defendants play politics with the attorney disciplinary system" and were "motivated to protect Microsoft" throughout the grievance process. *See id.* ¶¶ 80-81. The WSBA Defendants argue that Plaintiff has failed to demonstrate that Defendants intended to chill his free speech rights, thus cannot plausibly plead a free speech claim. *See* Dkt. # 33 at 16-19.[6]

"[T]he right of access to the agencies and courts to be heard . . . is part of the right of petition protected by the First Amendment." *Cal. Motor Transp. Co. v. Trucking*

6. The Court will only analyze the First Amendment claims under the U.S. Constitution because Mr. Turnbull has failed to respond to WSBA Defendant's argument regarding his free speech claim under article 1, section 5 of the Washington State Constitution.

Unlimited, 404 U.S. 508, 513, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972). While there is a constitutional right to petition the government, "this right is uni-directional; it does not require government officials or politicians to respond, or even listen, to citizens." *Rodriguez v. Newsom*, 974 F.3d 998, 1010 (9th Cir. 2020). Section 1983 claims based on a First Amendment violation are generally framed as retaliation claims, requiring a plaintiff to "plausibly allege that (1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity; and (3) the protected activity was a substantial or motivating factor in the defendant's conduct." *Capp v. Cnty. of San Diego*, 940 F.3d 1046, 1053 (9th Cir. 2019) (citation omitted).

At most, Mr. Turnbull's assertion for the second element of his free speech claim is highly speculative. Mr. Turnbull cannot meet the pleading burden to assert that the Defendants' action, the dismissal of his grievances, would chill a person of ordinary firmness from continuing to engage in the protected activity, the filing attorney grievances. Plaintiff does not allege that the WSBA Defendants took any action beyond dismissing his grievance that would suggest that the consequences would dissuade a complainant from filing an attorney grievance with ODC. If this was sufficient, then whenever the WSBA Defendants dismissed a grievance and the grievant alleged the WSBA had an improper, speech-chilling motive for dismissal, a plaintiff could allege the dismissal

would chill the protected activity. A plaintiff needs to allege something more than a defendant's dismissal of a grievance to plausibly assert the action had a chilling-effect on speech. *See, e.g., Capp v. Cnty. of San Diego*, 940 F.3d 1046, 1055 (9th Cir. 2019) (finding that the "threat of losing custody of one's children is a severe consequence that would chill the average person from voicing criticism of official conduct"). Accordingly, under the stated facts, the Court cannot reasonably make the inferential jump, that dismissal of a grievance has a chilling effect under the First Amendment, that would be necessary to find that Plaintiff stated a claim to withstand a motion to dismiss.

Mr. Turnbull likewise has failed to assert that deterring the filing of grievances was a substantial or motivating factor of the WSBA Defendants conduct. There is nothing from the Complaint or exhibits that demonstrates that the WSBA Defendants dismissed the grievance because they were motivated to prevent and inhibit Plaintiff, or others, from filing attorney grievances.

Accordingly, the Court finds that Plaintiff has failed to state a claim that the WSBA Defendants violated his rights under the First Amendment.

3. Due Process

Mr. Turnbull argues WSBA Defendants violated his "right to due process under Washington law because they failed to review both of his grievances," particularly

his second grievance which he asserts was arbitrarily dismissed. Dkt. # 23 at 7-8. The WSBA Defendants contend that the voluminous record demonstrates the ODC's robust procedures satisfy procedural due process requirements as a matter of law. Dkt. # 31 at 19.

No person shall be deprived of life, liberty, or property, without due process of law. Wash. Const. art. I, § 3. Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. *Nieshe v. Concrete Sch. Dist.*, 129 Wash. App. 632, 640, 127 P.3d 713 (2005). Due process is a flexible concept, calling for such procedural protections that a particular situation demands. *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). State action that results in the deprivation of constitutionally protected interests is not necessarily unconstitutional; it is only the deprivation of such interests without due process of the law that offends the constitution. *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990). Procedures that provide proper notice and an appellate process will generally satisfy procedural due process requirements. *See, e.g., In re Disciplinary Proceeding Against Blanchard*, 158 Wash. 2d 317, 331 (2006) ("An attorney has a due process right to be notified of clear and specific charges and to be afforded an opportunity to anticipate, prepare, and present a defense.").

Mr. Turnbull fails to articulate a meaningful due process argument in response to Defendants' Motion. At most, Mr. Turnbull argues that the second dismissal was arbitrary because it was based Plaintiff claims it was based on the same facts as the first grievance. Dkt. # 23 at 8. However, exhibits filed by the Plaintiff contradict this assertion. The exhibits confirm that the WSBA Defendants reviewed but still decided to dismiss the second grievance and affirm the dismissals. *See* Dkt. # 5-14, Ex. N; Dkt. #5-21, Ex. U. For example, in dismissing the second grievance, ODC explained why it believed that the grievances were already considered by the dismissal of the first grievance. *See* Dkt. # 5-14, Ex. N. ODC did not simply arbitrarily dismiss the grievances as Plaintiff suggests.

Furthermore, the Amended Complaint and exhibits demonstrate ODC has a procedural process that provides notice, an opportunity to respond, to develop facts, and to be represented by counsel. *See* Dkt. # 5; *see also* Dkt. # 5-1-5-21, Exs. A-U. Plaintiff fully participated in this process. Accordingly, considering the information available, the Court concludes Plaintiff cannot plausibly state a due process claim.

4. Article 1, Section 10 of the Washington State Constitution

Plaintiff asserts the WSBA Defendants violated article 1, section 10 of the Washington State Constitution.

See Dkt. # 5 ¶ 105. WSBA Defendants argue that the Court should dismiss this claim because Washington courts reject these types of claims because they lack support of augmented legislation. *See* Dkt. # 33 at 21. Mr. Turnbull makes no argument about this claim in his opposition brief. *See generally* Dkt. # 22.

Washington courts have consistently rejected invitations to establish a cause of action for damages based upon constitutional violations "without the aid of augmentative legislation[.]" *Sys. Amusement, Inc. v. State*, 7 Wash. App. 516, 517, 500 P.2d 1253 (1972). The Court will dismiss this claim because Mr. Turnbull makes no argument opposing dismissal of this claim and Washington law supports dismissing the claim. *See Clem v. Lomeli*, 566 F.3d 1177, 1182 (9th Cir. 2009); *see also HRSA-ILA Funds v. Adidas AG*, No. 23-cv-00629, 2024 U.S. Dist. LEXIS 146715, 2024 WL 3848440, at *7 (D. Or. Aug. 16, 2024) (noting party's failure to respond meaningfully in the briefing results in waiver).

C. Dismissal Without Leave to Amend

The WSBA Defendants argue that the Court should dismiss the Complaint with prejudice and without leave to amend. *See* Dkt. # 33 at 21-22. Although Plaintiff asks the Court for leave to amend in the event of dismissal, Plaintiff does not set forth any argument to support amendment. *See* Dkt. # 22. After considering the information provided by the parties, the Court concludes that amendment would be futile.

"Under Federal Rule of Civil Procedure 15(a), leave to amend shall be freely given when justice so requires," but a "district court may exercise its discretion to deny leave to amend due to 'undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party ..., [or] futility of amendment.'" *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)).

The Court has reviewed the extensive information Plaintiff has filed in this matter and concludes that Plaintiff lacks standing and cannot state a claim for which relief can be granted. Plaintiff cannot plead facts to cure his lack of injury for his allegation that the WSBA Defendants failed to properly consider and dismiss his grievances. Furthermore, the Court does not believe that Plaintiff can plead facts that are consistent with and do not contradict the facts in the voluminous record to support his claimed constitutional injuries. Accordingly, the Court determines that amendment would be futile and will dismiss Plaintiff's claims with prejudice.

V. CONCLUSION

For the reasons stated above, the Court finds that it lacks subject matter jurisdiction to hear these claims because Plaintiff has failed to establish a cognizable injury required for Article III standing. Additionally, the Court

finds that the allegations in the Amended Complaint fail to state a claim for which relief can be granted. For those reasons, the Court GRANTS Defendants' Motion to Dismiss. Dkt. # 31.

Dated this 27th day of December, 2024.

/s/ Richard A. Jones
The Honorable Richard A. Jones
United States District Judge

APPENDIX P — JUDGMENT OF THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON AT SEATTLE, FILED DECEMBER 31, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EDWARD RANDOLPH TURNBULL IV,

Plaintiff,

v.

OFFICE OF DISCIPLINARY COUNSEL, *et al.*,

Defendants.

JUDGMENT IN A CIVIL CASE

CASE NO: 3:23-cv-01619-RAJ

____ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

Appendix P

THE COURT HAS ORDERED THAT:

Judgment is entered in favor of Defendants Washington State Bar Association Office of Disciplinary Counsel; Washington State Bar Association disciplinary attorneys Chief Disciplinary Counsel Doug Ende and Managing Disciplinary Counsel Craig Bray; the Disciplinary Board, including former review committee members Lisa Marsh, Natividad Valdez, and Gerald Kroon; and current and former members of the Washington State Bar Association's Board of Governors, including Hunter M. Abell, Daniel D. Clark, Francis Adewale, Tom Ahearne, Sunitha Anjilvel, Todd Bloom, Lauren Boyd, Jordan Couch, Matthew Dresden, Kevin Fray[sic], P.J. Grabicki, Carla Higginson, Erik Kaeding, Russell Knight, Kristina Larry, Rajeev Majumdar, Tom McBride, Nam Nguyen, Bryn Peterson, Kari Petrasek, Brett Purtzer, Mary Rathbone, Serena Sayani, Kyle Sciuchetti, Alec Stephens, Brian Tollefson, Allison Widney, and Brent Williams-Ruth, against Plaintiff Edward Randolph Turnbull IV.

DATED this 31st day of December, 2024.

RAVI SUBRAMANIAN,
Clerk of the Court

By: /s/ Victoria Ericksen
Deputy Clerk