

APPENDIX A

Opinion by the United States Court of Appeals for the
Eleventh Circuit.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17256
Non-Argument Calendar

D.C. Docket No. 8:16-cv-02587-MSS-MAP

MELVIN BLOUGH,

Plaintiff-Appellant

versus

NICK NAZARETIAN,

Individually and in his official capacity as a Justice
within the Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,

TRACY SHEEHAN,

Individually and in his official capacity as a Justice
within the Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,

LAUREL M. LEE,

Individually and in his official capacity as a Justice
within the Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,

MARY ELIZABETH KUENZEL,

Individually and in her official capacity as Clerk of the
Court in the District Court of Appeal of the State of
Florida Second District,

JOHN A. TOMASINO,

Individually and in his official capacity as Clerk of the
Court in the Supreme Court of the State of Florida.

JAMES S. MOODY, JR.,

Individually and in his official capacity as a Justice
within the United States District Court for the Middle
District of Florida Tampa Division,

Defendants-Appellees.

Appeal from the United States District Court
For the Middle District of Florida

(August 21, 2017)

Before ED CARNES, Chief Judge, MARTIN and
ANDERSON, Circuit Judges.

PER CURIAM:

Melvin Blough, proceeding pro se, sued federal District
Judge James S. Moody, Jr., Florida Circuit Court Judges
Tracy Sheehan, Laurel Lee, and Nick Nazaretian; Florida
Second District Court of Appeal Clerk of Court Mary
Elizabeth Kuenzel; and Florida Supreme Court Clerk of
Court John Tomasino, asserting claims against them in
their individual and official capacities under 42 U.S.C.
section 1983 and Bivens v. Six Unknown Named Agents
of Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct.
1999 (1971), for violations of his federal civil rights. The
district court dismissed Blough's complaint for failure to
state a claim against the defendants on which relief could

be granted. This is Blough's appeal.

I

Blough's claims arise from events surrounding his Florida state court divorce proceedings.¹ While that divorce case was pending, Blough filed a lawsuit in federal court requesting that the district court issue a declaratory judgment ordering two state court judges to enforce, among other federal statutes, the Uniformed Services Former Spouse's Protection Act, 10 U.S.C. section 1408. Judge Moody presided over that federal case, found that the two state court judges were entitled to judicial immunity, and dismissed Blough's claims against them.

Meanwhile, in the state court divorce proceeding, Blough filed a motion for the court to take judicial notice of the federal statutes (including the Uniformed Services Former Spouse's Protection Act) that he contended preempted Florida divorce law, which Judge Sheehan denied without comment. Blough then filed a motion requesting that Judge Sheehan recuse herself, and she granted the motion.

The divorce case was reassigned to Judge Lee, and Blough filed a motion requesting that Judge Lee reconsider Judge Sheehan's denial of his request for a hearing on his judicial notice motion. Judge Lee denied his motion for reconsideration, and then later recused herself from the case. After the case was reassigned to Nazaretian, Blough filed an emergency motion for

¹ Because this is an appeal from a Federal Rule of Civil Procedure 12(b)(6) dismissal, "we draw the facts from [Blough's] complaint, accepting those facts as true and construing them in the light most favorable to [him]." *Butler v. Sheriff of Palm Beach Cty.*, 685 F.3d 1271, 1263 n.2 (11th Cir. 2012).

reconsideration of Judge Sheehan's and Judge Lee's denials of his requests for a hearing. Judge Nazaretian denied that motion.

When Judge Nazaretian presided over hearings in the divorce proceeding, he limited the discussions to Florida divorce law and would not permit Blough to argue that federal law preempted state law. At the final hearing in the divorce case, Blough elected to submit written narratives and exhibits in lieu of making a closing argument. When Judge Nazaretian issued a final judgment in the case, the judgment order did not refer to Blough's written narratives or exhibits and it resolved all of the issues under Florida divorce law despite Blough's contentions that federal law governed the case.

II.

Blough then sued the defendants asserting claims under section 1983 and Bivens in violations of his Fifth and Fourteenth Amendment due process rights. The district court sua sponte dismissed those claims after finding it lacked jurisdiction over the claims against Judges Sheehan, Lee, and Nazaretian and that Judge Moody was entitled to judicial immunity.²

² It appears that the district court did not give Blough notice of its intent to dismiss his complaint before it entered the dismissal order. While the district court should have first given Blough notice of its intent to dismiss the complaint for failure to state a claim, that failure does not require reversal. The legal inadequacies of Blough's claims against the defendants are apparent from the complaint's allegations and could not be remedied by amending the complaint. See Byrne v. Nezhat, 261 F.3d 1075, 1127 n.99 (11th Cir. 2001),

III.

Under the Rooker-Feldman doctrine the district court (and we) lack jurisdiction over Blough's claims against Judges Sheehan, Lee, and Nazaretian. See D.C. Court of Appeals v. Feldman, 460 U.S. 462, 103 s. Ct. 1303 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 s. Ct. 149 (1923). "The doctrine is a jurisdictional rule that precludes the lower federal courts from reviewing state court judgments." Alvarez v. Att'y Gen. for Fla., 679 F.3d 1257, 1262 (11th Cir. 2012). It is confined to 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceeding commenced and inviting district court review and rejection of those judgments'. Id. The doctrine "operates as a bar to federal court jurisdiction where the issue before the court was inextricably intertwined with the state court judgment" such that "the federal claim would succeed only to the extent that the state court wrongly decided the issues". Id. at 1262-63 (quotation marks omitted).

Blough's claims against Judges Sheehan, Lee, and Nazaretian rely on their alleged failure to recognize that federal law preempted Florida divorce law, which led them to erroneously apply Florida law in his divorce proceedings. Blough asserts in his complaint that as a result of the judges' application of Florida law, he was denied his "Fifth and Fourteenth Amendment right to procedural and substantive due process." Those claims

abrogated on other grounds by Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639, 128 s. Ct. 2131 (2008) (noting that "reversal of a sua sponte dismissal without notice may not be mandated if amendment [of the complaint] would be futile or if it is patently obvious that the plaintiff could not prevail") (alteration in original) (quotation marks omitted).

were brought by Blough (a state court loser) who complains of injuries caused by the state court divorce judgment, and those claims would succeed “only to the extent that the state court wrongly decided” the preemption issue. Alvarez, 679 F.3d at 1262-63. As a result, the district court properly found that under the Rooker-Feldman doctrine it lacked subject matter jurisdiction over those claims.³

As for Blough’s claims against Judge Moody, “[j]udges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the ‘clear absence of all jurisdiction.’” Bolin v. Story, 225 F.3d 124, 1239 (11th Cir. 2000) (quoting Stump v. Sparkman, 435 U.S. 349, 356-57, 98 s. Ct. 1099, 1105 (1978)). “This immunity applies even when the judge’s acts are in error, malicious, or were in excess of his or her jurisdiction.” Id. Blough’s claims against Judge Moody arise from Judge Moody’s finding that Blough’s claims against the two state court judges were barred by judicial immunity. Judge Moody acted in his judicial capacity when he made the finding and dismissed Blough’s claims against those two state court judges, and his actions were not taken in the “clear absence of all jurisdiction.” As a result, the district court properly found that Judge Moody was entitled to judicial immunity.⁴

AFFIRMED

³ While Blough contends that the Rooker-Feldman doctrine does not apply to his claims against Judges Sheehan, Lee, and Nazretian because those judges jurisdiction to enter the orders that he is challenging on appeal, he is wrong. See Fla. Stat. section 26.012; see also Dessler v. Dessler, 967 So. 2d 1009, 1010 (Fla. 4th DCA 2007) (“There can be no dispute that the circuit court has subject matter jurisdiction over cases involving dissolution of marriage.”)

⁴ Blough also asserted claims against Mary Elizabeth Kuenzel and John Tomasino, which the district court dismissed for failure to state a claim. He concedes on appeal that the district court properly dismissed his claims against Kuenzel and Tomasino.

APPENDIX B

**Order of Dismissal With Prejudice by the United States
District Court Middle District of Florida Tampa Division.**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MELVIN E. BLOUGH,

Plaintiff,

v.

Case No. 8:16-cv-2587-MSS-MAP

NICK NAZARETIAN,
TRACY SHEEHAN,
LAUREL M. LEE,
MARY ELIZABETH KUENZEL,
JOHN A. TOMASINO,
and JAMES S. MOODY, JR.,

Defendant.

_____ /

ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE comes before the Court *sua sponte*. Plaintiff, Melvin E. Blough, filed a Complaint against Defendants, Nick Nazaretian, Tracy Sheehan, and Laurel M. Lee, in their individual capacities and official capacities as Circuit Court Judges in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (collectively "Defendant State Judges"); James S. Moody, Jr., individually and in his capacity as a Federal Judge within the United States District Court for the Middle District of Florida Tampa Division (Defendant State

Judges and Defendant Moody collectively “Defendant Judges”); Mary Elizabeth Kuenzel, individually and in her official capacity as Clerk of the Court in the District Court of Appeal of Florida Second District; and John A. Tomasino, individually and in his official capacity as Clerk of the Court in the Supreme Court of the State of Florida (Defendant Kuenzel and Defendant Tomasino collectively “Defendant Clerks”). (Dkt. 1)

The Complaint filed on September 17, 2016 contains allegations that the Defendants, by virtue of their respective positions as judicial officers or employees of the courts, have engaged in systemic judicial abuse that has denied Plaintiff protections afforded to him under federal laws. Plaintiff seeks \$2,000,000 in damages from the Defendants based on actions taken in their official capacities concerning Plaintiff’s state marriage dissolution proceedings. Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court finds that Plaintiff’s suit is barred by Judicial Immunity, Absolute Immunity afforded to Court Clerks, Eleventh Amendment Immunity, and the *Rooker-Feldman* doctrine. Accordingly, the Court **DISMISSES with prejudice** Plaintiff’s action for the reasons stated herein.

I. BACKGROUND

Plaintiff’s claims arise from the dissolution of marriage proceedings held in state court in Hillsborough County, Florida. (Dkt. 1) Plaintiff alleges a litany of facts concerning the Defendants’ respective roles in his marriage dissolution proceedings, which Plaintiff alleges Culminated in the violation of his due process rights afforded by the Fifth and Fourteenth Amendment to the U.S. Constitution. (Id.)

The crux of Plaintiff's Complaint is that the Defendants, and several other circuit court judges, refused to recognize and/or apply the Uniformed Services Former Spouse's Protection Act, 10 U.S.C. 1408 ("FSPA") and 42 U.S.C. Section 659 (collectively ("Federal Statutes")) during their respective involvement in his marriage dissolution proceeding. ¹ (Id.) Plaintiff alleges that the Federal States preempt state divorce law. (Id.) Notwithstanding this preemption, Plaintiff alleges that the Defendant State Judges refused to apply the Federal Statutes and applied state divorce law in his marriage dissolution proceeding. (Id.) Plaintiff contends that this refusal violates the Supremacy Clause of the U.S. Constitution. (Id.) Plaintiff also alleges that the Defendant Judges refusal to recognize the applicability of the Federal Statutes to his divorce proceedings and Defendant Moody's refusal to issue a declaration concerning the Federal Statutes deprive the Defendant Judges of their entitlement to immunity. (Id.) The respective actions of the Defendants are summarized as follows.

Defendant Federal Judge Moody

On January 16, 2014, Plaintiff filed an action in federal court against two circuit judges (who are not parties to this action) concerning their refusal to apply the Federal Statutes to his marriage dissolution proceedings. See Blough v. Foster, et al., Case No: 8:14-cv-115-JSM-MAP ("Foster Action"). In the Foster Action, Plaintiff sought a declaration from the federal district court to

¹ Plaintiff alleges that the "judicial abuse" involved fifteen judges and two clerks of the court over a three-year period but the named Defendants are those who provided the most direct injury to Plaintiff. (Dkt. 1 at 8)

enforce the judicial authority of the Supremacy Clause of the Federal Constitution in providing federal 'direction' of state [court] judges as mandated by the text of the Supremacy Clause in requiring that state court Judges Barber and Foster enforce the claimed federal statutes which did preempt specific State of Florida statutes.

(Dkt. 1 at 9) (internal citations omitted) On May 5, 2014, Defendant Moody granted the defendant circuit judges' motion to dismiss, citing the defendant circuit judges' entitlement to immunity. See Foster Action Order at Dkt. 19. Defendant Moody dismissed with prejudice Plaintiffs action in that case finding that leave to file an amended complaint would be futile since Plaintiff's claims were barred. See id.

Plaintiff filed a Petition for Writ of Mandamus asking the Eleventh Circuit to order the district court "to vacate its dismissal of his civil rights complaint ..." See Foster Action at Dkt. 20. The Eleventh Circuit denied the writ with instructions to the Clerk for the Middle District of Florida to treat the writ as a notice of appeal. See Foster Action at Dkt. 21. On March 6, 2015, the Eleventh Circuit, via a *sua sponte* Order, denied as moot Plaintiff's appeal "because his wife withdrew her divorce petition subsequent to the district court's dismissal." See Foster Action at Dkt. 24.

Removal and Remand of Plaintiff's State Marriage Dissolution Action

In the Complaint, Plaintiff contends that he filed a motion to keep his marriage dissolution proceedings in federal district court but Judge Whittemore denied the request. (Dkt. 1 at 18) This contention refers to the fact that on February 18, 2016, during the time the Foster Action was pending before Defendant Moody, Plaintiff filed a notice of removal concerning his state divorce action styled as Marie B. Blough v. Melvin E. Blough, Case No. 2012914683, In The Circuit Court of the Thirteenth Judicial Circuit In And For Hillsborough County, Florida Family Law Division. See Blough v. Foster et al., 8:14-cv-408 –JDW-MAP at Dkt. 1) The removal of that action proceeded in federal court before Judge Whittemore. (“Second Federal Action”)

The docket in the Second Federal Action shows that the party designations were as follows: Plaintiff as the plaintiff, Ms. Blough as the respondent, and Judges Foster and Barber as the defendants. On February 21, 2014, Plaintiff filed a Motion to Transfer the Second Federal Action to Judge Moody who was presiding over the Foster Action. (Second Federal Action at Dkt. 4) On March 7, 2014, Ms. Blough filed a Motion to Remand the Second Federal Action (Second Federal Action at Dkt. 5), which Judge Whittemore granted on March 26, 2014, noting that “Ms. Blough’s state court complaint seeking dissolution of a marriage does not arise under federal law” and supplemental jurisdiction based upon the Foster action before Judge Moody was unavailable to provide ancillary jurisdiction over the Second Federal Action. (Second Federal Action at Dkt. 8)

Plaintiff filed an Emergency Motion to Stay on March 31, 2014 (Second Federal Action at Dkt. 9), which Judge Whittemore denied on April 1, 2014. Plaintiff filed an Emergency Petition for Writ of Mandamus on April 15,

2014. (Second Federal Action at Dkt. 11) That same day, Judge Whittemore entered an endorsed order concerning Plaintiff's Emergency Petition for Writ of Mandamus, which stated "[t]o the extent Plaintiff seeks relief in the district court, the motion is DENIED. The clerk is directed to forward a copy of Plaintiff's motion to the Eleventh Circuit Court of Appeals." (Second Federal Action at Dkt. 12) On May 14, 2014, the Eleventh Circuit denied Plaintiff's Emergency Petition for Writ of Mandamus (Second Federal Action at Dkt. 13)

Defendant State Judges

After Judge Whittemore granted Ms. Blough's Motion to Remand, Plaintiff proceeded back to state court with respect to his marriage dissolution action. The allegations regarding the Defendant State Judges' involvement can be summarized as follows. Defendant Sheehan denied without comment Plaintiff's Motion for a Hearing on his Motion to take Judicial Notice of information concerning the application of the Federal Statutes to his marriage dissolution proceedings. (Dkt. 1 at 18-20) Defendant Lee ignored an alleged conflict of interest and denied without comment Plaintiff's Motion for Reconsideration of Defendant Sheehan's denial of Plaintiff's Motion for a Hearing. ² (Id. at 20-21) Defendant Nazaretian thereafter denied Plaintiff's Emergency Motion for Reconsideration of Defendant Sheehan's and Defendant Lee's denials. (Id. at 27-33)

² Plaintiff alleges that Defendant Lee was aware at the time she denied his Motion for a Hearing that "she had a serious conflict of interest having recently retained a prior employee of Respondent's counsel as her Judicial Assistant." (Dkt. 1 at 20) Defendant Lee recused herself from the case.

Clerk of the Court Defendant Kuenzel

Plaintiff filed a Petition for Writ of Mandamus in which he requested the Second District Court of Appeal require that Defendant Nazaretian “take judicial notice confirming Plaintiff’s entitlement to the claimed Federal Statutes.” (Dkt. 1 at 23) Plaintiff alleges that he explained to the appellate court that the Defendant State Judges’ denied his previous motions for a hearing. (Id.) Plaintiff alleges that the Second District Court of Appeal denied the writ on November 17, 2015 because “the matter [had not been] set for hearing before the trial court.” (Id. at 24) (brackets in original) Plaintiff filed a Motion for Clarification and an Emergency Motion for Relief. (Id.) The Second District Court of Appeal construed Plaintiff’s Motion for Clarification as a Motion for Rehearing and denied both the Motion for Rehearing and Emergency Motion for Relief. (Id.) Plaintiff attributes these denials to Defendant Kuenzel and alleges that the actions were taken with the concurrence of appellate Judges Crenshaw, Morris, and Lucas. (Id. at 23)

Clerk of the Court Defendant Tomasino

Plaintiff appealed the actions by the Second District Court of Appeal to the Florida Supreme Court in the form of a Petition for Writ of Mandamus. (Id. at 25) On March 31, 2016, Defendant Tomasino, in his capacity as the Florida Supreme Court Clerk of Court, summarily dismissed Plaintiff’s Petition for Writ of Mandamus. (Id. at 25-26) Plaintiff attributes the dismissal of his Petition for Writ of Mandamus to Defendant Tomasino and alleges that this action was taken with the concurrence of the Florida Supreme Court Judges Pariente, Lewis, Canady, Polston, and Perry. (Id.)

II. LEGAL STANDARD

The threshold for surviving a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a low one. Quality Foods de Centro Am., S.A. V. Latin Am. Agribusiness Dev. Corp., S.A. et al., 711 F.2d 989 (11th Cir. 1983). A Plaintiff must plead only enough facts to state a claim to relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1968-69 (2007) (abrogating the “no set of facts test” standard for evaluating a motion to dismiss established in Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Although a complaint challenged by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff is still obligated to provide the “grounds” for his entitlement to relief, and “formulaic recitation of the elements of a cause of action will not do.” Berry v. Budget Rent A Car Sys., Inc., 497 F. Supp. 2d 1351, 1364 (S. D. Fla. 2007) (quoting Twombly, 127 S. Ct. at 1964-65).

In evaluating the sufficiency of a complaint in light of a motion to dismiss, the well pleaded facts must be accepted as true and construed in the light most favorable to the plaintiff. Quality Foods, 711 F.2D AT 994-995. However, the dismissal is warranted if, assuming the truth of the factual allegations of the plaintiff’s complaint, there is a dispositive legal issue that precludes relief. Neitzke v. Williams, 490 U.S. 319, 326 (1989). Although *pro se* pleadings are liberally construed and held to a less stringent standard than pleadings drafted by an attorney, they must nonetheless state a cognizable claim and comport with the Federal Rules of Civil Procedure, which require, *inter alia*, a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(A)(2).

III. DISCUSSION

The Court finds that Plaintiff's Complaint lacks merit and orders that it be dismissed on several grounds.

Judicial Immunity

Plaintiff's claims against the Judges are barred by judicial immunity. "Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction." Bolin v. Story, 225 F.3d 1234, 1239 (11th Cir. 2000)) (citations omitted). "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial." Hyland v. Kolhage, 267 Fed. Appx. 836, 839-40 (11th Cir. 2008) (quoting Mireles v. Waco, 502 U.S. 9, 11 (1991)). Thus, "[t]his immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the protection of benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences." Pierson v. Ray, 380 U.S. 547, 553-554 (1967) (internal quotation marks omitted). As such, this immunity also applies when the judge's acts are in error or in excess of his or her jurisdiction. Bolin, 225 F.3D at 1240.

It is clear that all of Plaintiff's allegations regarding all of the Defendant Judges stem from their actions taken while acting in their judicial capacity. Specifically, all the claims concern actions allegedly taken by them while

presiding over Plaintiff's marriage dissolution proceeding or challenges thereto. Plaintiff contends that the Defendant Judges are not entitled to immunity because they acted in clear absence of all jurisdiction. Tis contention is without merit. It is clear that the Defendant Judges had jurisdiction over the matters before them concerning Plaintiff's marriage dissolution proceedings. Further, the allegations in Plaintiff's Complaint make it clear that Plaintiff's challenge is to the Defendant State Judges' determination that state divorce law applied to Plaintiff's divorce proceedings. The allegations also make it clear that Plaintiff's challenge regarding Defendant Moody concerns Defendant Moody's determination that the circuit court state judges were immune from Plaintiff's previous suit and refusal to issue a declaration concerning the Federal Statutes. Accordingly, Plaintiff's action is due to be dismissed on judicial immunity grounds.

Absolute Immunity Afforded to Court Clerks

To the extent Plaintiff seeks to impose liability on the Defendant Clerks based on actions taken at the direction or with the concurrence of their respective courts' judges, the claim is barred by absolute immunity. "Court clerks enjoy a 'narrower ambit of immunity than judges.'" Hyland, 267 Fed. Appx. at 842 (quoting Tarter v. Hury, 646 F.2d 1010, 1013 (5th Cir. 1981)). ³ "Court clerks 'have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's direction, and only qualified immunity from all other actions for damages.'" Id. Absolute

³ See Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (11th Cir. 1981) (adopting a binding precedent all decisions of the former Fifth Circuit issued on or after September 30, 1981).

immunity from damages actions applies, only in a narrow range of actions, for clerks of court acting in a non-routine manner under command of court decrees or under explicit instructions of a judge. Damages will not be awarded for a clerk's actions of this type even if in bad faith or malice." Hyland, 267 Fed. Appx. at 842 (quoting Williams v. Wood, 612 F.2d 982, 985 (5th Cir. 1980)).

Plaintiff specifically alleges that the actions by the Defendant Clerks were undertaken at the direction or with the concurrence of the respective judges of the courts by which they were employed. Accordingly, Plaintiff's claims against the Defendant Clerks are barred by absolute immunity afforded to court clerks acting under the direction of a judge or under the court's orders.

Eleventh Amendment Immunity

In addition, Plaintiff's claims against the Defendant State Judges and the Defendant Clerks are barred by Eleventh Amendment Immunity to the extent the claims seek to impose liability against the state via the actions of the Defendants undertaken in their official capacities as state officials. See Kaimowitz v. The Fla. Bar, 996 F.2d 1151, 1155 (11th Cir. 1993) ("The Eleventh Amendment prohibits actions against state courts and bars."); see also, Manders v. Lee, 338 F.3d 1304, 1308 (11th Cir. 2003). ("The Eleventh Amendment protects a State from being sued in federal court without the State's consent."); DeKalb County School District v. Schrenko, 109 F.3d 680, 688 (11th Cir. 1997) (absent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated the state's Eleventh Amendment immunity by exercising its power with respect to rights protected by the Fourteenth

Amendment”). “It is also well-settled that the Eleventh Amendment immunity bars suits brought in federal court when the State itself is sued and when an ‘arm of the State’ is sued.” Manders, 338 F.3d at 1308 (citing Mt. Healthy City Sch. District Bd. of Education v. Doyle, 429 U.S. 274, 280 (1977)).

Thus, Eleventh Amendment immunity extends to lawsuits against state officials acting in their official capacities. Id. This immunity also extends to the judiciary as an arm of the state. See e.g. Jones v. Rothenberg, No: 10-cv-20745, 2010 WL 2650899,* 2 (S.D. Fla. June 30, 2010) (“The Eleventh Amendment bars Plaintiff’s claims against Judge Rothenberg. Federal courts cannot exercise jurisdiction in suits brought by citizens against their own state. The judiciary is an arm of the state, thus the Amendment prohibits actions against state courts.”) (citing Kaimowitz, 996 F2d at 1155) (internal citation omitted); Kicklighter v. Goodrich, 162 F. Supp, 3d 1363 (S.D. Ga. 2016) (finding that under Georgia law county clerk of superior court was an arm of the state and was thus entitled to Eleventh Amendment Immunity). As a result, parties with claims against a non-consenting State or its state officials acting in their official capacities must resort to the State’s own courts. Manders, 338 F.3d at 1308.

Accordingly, Plaintiff’s claims are due to be dismissed based on Eleventh Amendment Immunity.

Rooker-Feldman Doctrine

Moreover, Plaintiff’s claims against the DEFENDANT State Judges and the Defendant Clerks are barred by the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine Provides that federal courts are prevented from exercising

jurisdiction over cases brought by state-court losers complaining of injuries from state-court judges. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 281 (2005). The doctrine prevents federal courts from exercising jurisdiction to review state court decisions where (1) the party in the federal court is the same party as in state court; (2) the state court ruling was a final or conclusive judgment; (3) the party seeking relief had a reasonable opportunity to raise the claims in state court; and (4) the issues raised in federal court were adjudicated by the state court or intertwined with the state court's judgment. Amos v. Glynn Co. Bd. of Tax Assessors, 347 F.3d 1249, 1266 n. 11 (11th Cir. 2003). As such, "federal courts are not a forum for appealing state court decisions." Staley v. Ledbetter, 837 F.2d 1016, 1018 (11th Cir. 1988). See also Rubins v. Noriega, 2010 WL 234894, *3 (s.d. Fla. 2010) (finding that the *Rooker-Feldman* doctrine prevents the court from reviewing claims which should have been raised in state court appellate proceeding).

Plaintiff's Complaint lists grievances stemming from the Defendant State Judges' decisions made and the Defendant Clerks' actions taken in connection with Plaintiff's marriage dissolution proceedings, particularly with respect to the application of state law rather than the Federal Statutes to his marriage dissolution proceedings. Plaintiff had sufficient opportunities to challenge the judicial rulings and actions in the state trial and appellate courts and availed himself of those options. Plaintiff, displeased with the results of those state rulings, now seeks to file those claims concerning the Federal Statutes and their applicability to his marriage dissolution proceedings in federal court. This Plaintiff cannot do because Plaintiff's claims against the Defendants are barred by the *Rooker-Feldman* doctrine.

Accordingly, it is hereby **ORDERED** that Plaintiff's Complaint is **DISMISSED** with prejudice as the claims therein are barred by Judicial Immunity, Absolute Immunity afforded to Court Clerks, Eleventh Circuit Immunity, and/or the *Rooker-Feldman* doctrine. The Clerk is **DIRECTED** to **TERMINATE** any pending motions as they are moot and **CLOSE** this case.

DONE and **ORDERED** in Tampa, Florida, this 12th day of October, 2016.

/s/ Mary S. Scriven
MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person

APPENDIX C

**Order Denying Plaintiff's Motion to Reconsider the Order
of Dismissal by the United States District Court Middle
District of Florida Tampa Division.**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MELVIN E. BLOUGH,

Plaintiff,

v.

Case No. 8:16-cv-2587-MSS-MAP

NICK NAZARETIAN,
TRACY SHEEHAN,
LAUREL M. LEE,
MARY ELIZABETH KUENZEL,
JOHN A. TOMASINO,
and JAMES S. MOODY, JR.,

Defendant.

ORDER

THIS CAUSE comes before the Court for consideration of Plaintiff's Motion to Reconsider the Order of Dismissal. (Dkt. 32) ("Motion to Reconsider") Plaintiff seeks reconsideration of the Court's Order (Dkt. 31) dismissing his Complaint with prejudice. Upon consideration of all relevant filings, case law, and being fully advised, the Court **DENIES** Plaintiff's Motion to Reconsider for the reasons stated herein.

In the Complaint, Plaintiff sought damages against several state judges, a federal district judge, a supreme

court clerk of the court, and a district court of appeal clerk of court, all in their official and individual capacities, for actions taken with respect to Plaintiff's marriage dissolution proceedings. (Dkt. 1) The Court entered a *sua sponte* Order finding that Plaintiff's action was barred by judicial immunity, absolute immunity afforded to court clerks, Eleventh Amendment immunity, and/or Rooker-Feldman doctrine. As such, the Court dismissed Plaintiff's action with prejudice.

Plaintiff now seeks reconsideration of that Order arguing that judicial immunity, qualified immunity, Eleventh Amendment immunity, and the Rooker-Feldman doctrine do not operate as a bar to his suit. (Dkt.32 at 2-3) Plaintiff also asserts that his Complaint adequately states a claim for relief. ¹ (Id. at 4)

Presumably, Plaintiff submits his Motion to Reconsider pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, which permits a Court to relieve a party from a judgment, order, or proceeding in a limited number of circumstances including (1) mistake or neglect; (2) newly discovered evidence; (3) fraud; (4) when a judgment is void; or (5) when a judgment has been satisfied. Fed. R. Civ. P. 60(b)(1)-(5). Rule 60 also includes a catchall

¹ Plaintiff also appears to assert that he was not afforded fourteen (14) days to respond to a Motion to Dismiss filed by Defendants Nazaretian, Sheehan, and Lee (Dkt. 29). The Court first notes that the Court entered its Order dismissing Plaintiff's Complaint *sua sponte*; therefore it did not rule on the Motion to Dismiss but rather denied the Motion to Dismiss as moot. As such, there was no need to await for a response to the motion. The Court further notes that even if it had considered the Motion to Dismiss and afforded Plaintiff the opportunity to file a response in opposition it would have had no impact on the Court's determination that Plaintiff's claims were barred.

provision authorizing relief from a judgment, order, or proceeding based on “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6). The Eleventh Circuit has cautioned that alteration of a judgment, order, or proceeding “is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances.” Cavaliere v. Allstate Ins. Co., 996 F.2d 1111, 1115. It is well-settled that a motion for reconsideration cannot be used “to relitigate old matters, raise arguments or present evidence that could have been raised prior to the entry of judgment.” Michael Linet, Inc. v. Village of Wellington, 408 F.3d 757, 763 (11th Cir. 2005). Thus “[i]t is not enough that a grant of the Rule 60(b) motion might have been permissible or warranted; rather, [a party] must show a justification so compelling that the district court [i]s required to vacate the order.” Donley v. City of Morrow, Ga., 2015 WL 508826, *6 (11th Cir. Feb. 9, 2015)

Here, it is clear that Plaintiff attempts to relitigate old matters. Specifically, Plaintiff argues that his action is not barred by judicial immunity, Eleventh Amendment Immunity, and/or the Rooker-Feldman doctrine. The Court previously found each of these contentions to be without merit, and Plaintiff offers no compelling argument to the contrary. The Court did not address whether Plaintiff's action was barred by qualified immunity because a qualified immunity analysis was rendered unnecessary in light of the other bars to Plaintiff's action. Further, because the Court found that Plaintiff's action was barred it did not address specifically the merits of whether the Complaint states a claim for relief. Plaintiff has failed to show exceptional circumstances or justification so compelling that the Court should vacate its Order.

Accordingly, it is hereby **ORDERED** that Plaintiff's Motion to Reconsider the Order of Dismissal (Dkt. 32) is **DENIED**.

DONE and **ORDERED** in Tampa Florida, this 24th day of October, 2016.

/s/ Mary S. Scriven
MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person

APPENDIX D

CONSTITUTIONAL PROVISIONS, STATUTES

CONSTITUTION

Article III, section 2: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States....

AMENDMENTS TO THE CONSTITUTION

U.S. Const. amend V: “nor be deprived of life, liberty, or property, without due process of law ...”.

U.S. Const. amend XIV, Section 1: “nor shall any state deprive any person of life, liberty. Or property, without due process of law....”.

UNITED STATES CODE

U. S. C. Title 28, Part IV, Chapter 81, section 1254.

Courts of appeal, certiorari; certified questions:

Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods –

(1) By writ of certiorari granted upon the petition of any party to any civil or case, before or after rendition of judgment or decree.

U. S. C. Title 28, Part V, Chapter 133 – Review

Miscellaneous Provisions – Supreme Court; time for appeal or certiorari; docketing; stay. Section 2101 (c):

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be

taken or applied for within ninety days after the entry of such judgment or decree.

U.S.C. Title 10, Subtitle A, Part II, Chapter 71, section 1408: The relevant provisions of the federal Uniformed Services Former Spouses' Protection Act (hereafter "FSPA"), Pub. L. 97-252; September 8, 1982, are codified at and provides, in pertinent part; (a)4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which – (B) are deducted from the retired pay of such member ... as a result of a waiver of retired pay required by law in order to receive compensation under Title 5 or Title 38. U.S.C. Title 10, Section 1408(a)(4)(B) was renumbered 1408(a)(4)(B)(ii) in legislation signed December 23, 2016.

U.S.C. Title 42, Chapter 7, Subchapter IV, Part D, section 659(h): "Moneys subject to process as alimony: (2) Certain amounts excluded. In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which" "(B) are required by law to be, and are, deducted from the remuneration or other payment involved, including Federal employment taxes, and fines and forfeitures ordered by court-martial.

APPENDIX E

<u>VOL.</u>	<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION OF DOCUMENT</u>
1.	1.	Complaint as filed with the United States District Court for the Middle District of Florida in Case No.: 8:16-cv-2587-T-35MAP.
2.	2.	Defendant's Motion to Dismiss.
2.	3.	Plaintiff's Motion to Reconsider the Order of Dismissal.
2.	4.	Plaintiff's (Appellant's) Transcript and Statement of Evidence in Support of Record on Appeal.
2.	5.	Appellant's (Petitioner's) Appeal to the United States Court of Appeals for the Eleventh Circuit.
2.	6.	Initial Brief of Defendants/ Appellees, Nick Nazaretian, Laurel M. Lee, and Tracy Sheehan to the Eleventh Circuit.
2.	7.	Brief of Defendant James S. Moody, Jr..
2.	8.	Appellant's Reply Brief.
2.	9.	Notice of mandate.

APPENDIX F

Opinion by the United States Court of Appeals for the
Eleventh Circuit in a related case.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12190
Non-Argument Calendar

D.C. Docket No. 8:17-cv-00371-VMC-TBM

MELVIN BLOUGH,

Plaintiff-Appellant

versus

MORRIS SILBERMAN,
individually and in his official capacity
as a justice within the Florida Second
District Court of Appeals,
MARVA CRENSHAW,
individually and in her official capacity
as a justice within the Florida Second
District Court of Appeals,
DANIEL H. SLEET,
individually and in his official capacity
as a justice within the Florida Second
District Court of Appeals,

Defendants-Appellees.

Appeal from the United States District Court
For the Middle District of Florida

(November 7, 2017)

Before HULL, MARCUS and JULIE CARNES, Circuit Judges.

PER CURIAM:

Melvin E. Blough appeals the district court's dismissal of his case barred by the doctrine of judicial immunity. Prior to the filing of this suit, the Circuit Court of Hillsborough County, Florida entered a "Final Judgment of Dissolution of Marriage." Finalizing Blough's divorce from his wife. Blough appealed, but the state appellate court, consisting of the Honorable Morris Silberman, the Honorable Marva Crenshaw, and the Honorable Daniel H. Sleet ("the defendant") affirmed the divorce decree. On appeal, Blough argues that the district court erred in dismissing his case, because the defendants were not entitled to judicial immunity since they improperly affirmed the decision of the state trial court, in violation of the Supremacy clause of the Constitution. After careful review, we affirm.

We review de novo the dismissal of a complaint based on judicial immunity. *Smith v. Shook*, 237 F.3d 1322, 1325 (11th. Cir. 2001).

"Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction." *Bolin v. Story*, 225 F.3D 1234, 1239 (11th. Cir. 2000) (quotations omitted). Whether a judge's actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events

occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity. Scott v. Hayes, 719 F.2d 1562, 1565 (11th. Cir. 1983). Determination of whether an act is "judicial," depends on "the nature of the act itself, i.e. whether it is a function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in his judicial capacity. Mireles v. Waco. 502 U.S. 9, 12 (1991).

Here, the district court properly dismissed Blough's complaint because the defendants were entitled to judicial immunity. Blough's amended complaint reflected that his sole allegations against the defendants were that they affirmed the circuit court's entry of final judgment in the divorce case. As a result, the defendant's actions were taken in their judicial capacity, and their action, entering an order affirming the decision of the circuit court, was a judicial act. Scott, 719 F.2d at 1565; Mireles, 502 U.S. at 12. And even if Blough established that the defendants acted in bad faith or with malice – which he has not – this would not overcome their judicial immunity. Pierson, 386 U.S. at 554. What's more, Blough does not argue, and there is no indication from his complaint that, the defendant lacked jurisdiction to hear his case; rather, he only asserts that they improperly failed to apply federal law. Bolin, 225 F.3d at 1239. Accordingly, the district court properly dismissed Blough's suit because the defendants were entitled to judicial immunity, and we affirm.

AFFIRMED

No. 17-

In The
Supreme Court of the United States

MELVIN BLOUGH,

Petitioner,

v.

NICK NAZARETIAN, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

Exhibits to Appendix E

Volume 1 of 2

APPENDIX E

INDEX

<u>VOL.</u>	<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION OF DOCUMENT</u>
1.	1.	Complaint as filed with the United States District Court for the Middle District of Florida in Case No.: 8:16-cv-2587-T-35MAP.

CORPORATE DISCLOSURE STATEMENT

There are no corporate interests.

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF FLORIDA TAMPA
DIVISION

MELVIN E. BLOUGH

Plaintiff,

v.

NICK NAZARETIAN,

Individually,

NICK NAZARETIAN,

in his official capacity as a

Justice within

the Thirteenth Judicial

Circuit in and for

Hillsborough County, State

of Florida,

TRACY SHEEHAN,

Individually,

TRACY SHEEHAN,

in her official capacity as a

Justice within the Thirteenth

Judicial Circuit in and for

Hillsborough County, State

of Florida,

LAUREL M. LEE,

Individually,

LAUREL M. LEE,

in her official capacity as a

Justice within The Thirteenth)

COMPLAINT

And Demand for
Jury Trial

Case No:

8:16-cv-2587-T35-MAP

1. Plaintiff; Melvin E. Blough, is a natural person residing at 803 Tomahawk Trail, Brandon, Florida.
2. Defendant; Nick Nazaretian is a Circuit Court Judge within the Thirteenth Judicial Circuit in and for Hillsborough County; State of Florida. Administrative office located at Room 422, 800 East Twiggs Street, Tampa, Florida. Nick Nazaretian is sued individually and in his official capacity as a Circuit Court Judge.
3. Defendant; Tracy Sheehan, is a Circuit Court Judge within the Thirteenth Judicial Circuit in and for Hillsborough County; State of Florida. Administrative office located at Room 2011, 301 North Michigan Ave., Plant City, Florida. Tracy Sheehan is sued individually and in her official capacity as a Circuit Court Judge.
4. Defendant; Laurel M. Lee, is a Circuit Court Judge within the Thirteenth Judicial Circuit in and for Hillsborough County; State of Florida. Administrative office located at Room 2016, 301 North Michigan Ave., Plant City, Florida. Laurel M. Lee sued individually and in her official capacity as a Circuit Court Judge.
5. Defendant; Mary Elizabeth Kuenzel, is the Clerk of the Court in the District Court of Appeal of the State of Florida Second District. Administrative office located at 1005 East Memorial Blvd., Lakeland, Florida. Mary Elizabeth Kuenzel is sued individually and in her official capacity as a Clerk of the Court.
6. Defendant; John A. Tomasino, is the Clerk of the Court in the Supreme Court of the State of Florida. Administrative office located at 500 South Duval Street, Tallahassee, Florida. John A. Tomasino is sued individually and in his official capacity as a Clerk of the Court.

7. Defendant; James S. Moody, Jr., is a District Court Judge within the United States District Court for the Middle District of Florida Tampa Division. Administrative office located at 801 North Florida Avenue, Tampa, Florida. James S. Moody is sued individually and in his official capacity as a District Court Judge.

PRELIMINARY STATEMENT

8. This Complaint presents a direct challenge to the authority of the United States Constitution (hereafter "Constitution") by judges and clerks of the court within federal and state courts. The controversy providing the basis upon which the authority of the Constitution has been challenged; by fifteen judges and two Clerks of the Court over a three year period, does manifest in the unlawful denial of those protections granted to combat-disabled veterans by two federal statutes which preempt State of Florida divorce statutes in the equitable distribution of property and payment of alimony in state divorce courts. The documented judicial abuse by Defendants in their refusal to enforce the specific federal statutes claimed; and to which entitlement had been proven, is in violation of Article VI Clause 2 of the Constitution, the authority of the United States Congress to enact laws to be enforced by all state court judges, the preemption mandated by the United States Supreme Court in *Mansell v. Mansell*, U.S. Sup. Ct. 490, U.S. 581 (1989), the Oath of office taken by the Defendants, and Article I sections 9 and 21 of the Florida Constitution.

9. Defendants are entitled to neither judicial immunity nor qualified immunity from their actions. Defendants' unlawful actions were taken in the clear absence of all jurisdiction over the subject matter and did violate clearly established Federal Constitutional and proven statutory

rights of which Defendants were made aware of prior to the committing said violations.

10. The judicial abuse of Plaintiff's due process rights by Defendants; in challenging the authority of the Constitution, is systemic to federal and state courts in the intentional denial of those Fifth and Fourteenth Amendment due process rights of Plaintiff and all other combat-disabled veterans' who may choose to litigate the claimed federal statutes. The allegations presented in this Complaint are augmented by the total absence of judicial precedents in federal courts and the limited number of substantive judicial precedents provided by state courts relative to the two federal statutes presented, the ease with which Defendants chose to violate the requirements of Article VI Cl. 2 of the Federal Constitution, and the consistency with which Plaintiff's due process rights have been violated by the courts over the prior three years.

STATEMENT OF JURISDICTION

11. Federal subject matter jurisdiction over the legal claims as stated in this Complaint are brought to this Court pursuant to Article III, Section 2, Clause 1 of the Constitution which extends to all cases, in Law and Equity, arising under the laws of the United States.

12. The willful and continuous pattern of violations to Plaintiff's Constitutional and federal statutory rights by Defendants individually; and in their official capacities, clearly documents a rigorous standard of culpability and causation, and thereby a cause of action against Defendants. The extensive factual documentation presented provides proof to the alleged violations well beyond the "plausibility" standard set by the Court in *Ashcroft v. Iqbal*, 556 U.S. 662, (2009) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

13. This Court has personal jurisdiction over the Defendants; who are sued in their individual and official capacity, as Defendants are not entitled to the court-born doctrines of judicial (absolute) or qualified immunity due to the fact that Defendants did act in the “clear absence of all jurisdiction over the subject matter” and did violate clearly established federal statutory and United States Constitutional rights “of which a reasonable person would have known”.

14. This Complaint documents the legal existence of Plaintiff's capacity to bring suit against Defendant's; and Defendant's capacity to be sued with the specificity required under Rule 9(a) of the Federal Rules of Civil Procedure in pleading special matters.

15. The venue requirements of USC Title 28, Part IV, Chapter 87, section 1391(a)(1)/(b)(1)/(c)(1) are met by all parties.

FACTUAL ALLEGATIONS

16. Defendants did knowingly usurp the authority of the Constitution, the United States Congress, and the United States Supreme Court by refusing to enforce two specific federal statutes which did preempt two specific State of Florida statutes as mandated by Article VI Clause 2 of the Constitution and the United States Supreme Court in *Mansell v. Mansell*, 490 U.S. 581 (1989).

17. Absolute immunity is not available to Defendant judges in that said judges did violate Article VI Clause 2 of the Constitution and knowingly perform a judicial act in the “clear absence of all jurisdiction over the subject matter”.

18. Qualified immunity is not available to Defendant clerks of the court in that said clerks of the court did knowingly perform judicial acts which were contrary to

clearly established law at the time and could have been expected to have known that their conduct would violate statutory or constitutional rights.

19. Defendants did deny Plaintiff's Fifth and Fourteenth Amendment procedural and substantive due process rights to the protections of two federal statutes which preempted Florida divorce statutes and did thereby unlawfully take Plaintiff's Fifth Amendment property interests without due process of law.

20. The willful and intentional judicial abuse of Plaintiff's Constitutional and federal statutory rights by Defendants; which has been continuous over the prior three years and has involved fifteen judges and two clerks of the court, has caused Plaintiff severe emotional harm and mental anguish which cannot be compensated for by any remedy which the state appellate court may afford to the Final Judgement under appeal.

21. Americans do not go to war for motherhood, apple pie or baseball; but rather for the rights guaranteed to each of them under the United States Constitution. The abusive, unlawful, and painful actions knowingly taken by Defendant's over the prior three years has forever taken away the promise of said guarantees in the mind of a severely disabled combat veteran and for that loss each Defendant must pay.

FACTS IN SUPPORT OF ALLEGATIONS PRESENTED

22. It is difficult to summarily document three years of continuous judicial abuse by fifteen judges and two clerks of the court. The initial act of judicial abuse did occur during the transcribed hearing of June 10, 2013 at which time Circuit Court Judge Barber did state that he would not allow the Uniformed Services Former Spouses' Protection Act (hereafter "FSPA") to be litigated in the initial divorce action. The judicial abuse in the current

litigation has hopefully ended with the destruction of that evidence which was admitted into evidence at the conclusion of the Final Hearing and the blatant denial of Plaintiff's procedural and substantive due process rights.

23. For purposes of this Complaint the documentation of factual proof is limited to what each Defendant knew, when they knew it, and what each Defendant did with said knowledge. The extensive record of intervening motions, evidence, transcriptions, orders, etc. will be presented during the course of the trial as said items are not necessary to invoke the authority of this Court.

24. The following documentation reflects the laws, facts, documentation which was presented to each of the Defendants and what each of the Defendants did with that knowledge in the form of Orders and Final Judgements. Although the judicial abuse did involve fifteen judges and two clerks of the court over a three year period, the named Defendants are limited to those who did provide the most direct injury to Plaintiff.

District Court Judge James S. Moody, Jr.:

25. Listing of documentation specific to the Complaint of judicial abuse against District Court Judge James S. Moody, Jr.:

A. In Plaintiff's January 16, 2014 Verified Complaint for Declaratory Judgment (exh. 1); Plaintiff did request that the United State District Court; in the person of Judge James S. Moody, Jr., to recognize Plaintiff's entitlement to the protections of the same federal statutes which are alleged to have been violated in this Complaint. This Complaint continues to complain of those same judicial abuses as the initial Complaint; which subsequent judges have not only failed to resolve, but have expanded upon. The initial Complaint did request that Judge Moody; in

the form of a Declaratory Judgment. "enforce the judicial authority of the Supremacy Clause of the Federal Constitution in providing federal 'direction' of state [court] judges as mandated by the text of the Supremacy Clause" in requiring that state court Judges Barber and Foster enforce the claimed federal statutes which did preempt specific State of Florida statutes. Plaintiff's initial request; and this request, are consistent with the following principles which were noted by the United States Supreme Court in *Gregory v. Ashcroft*, 501 U.S. 452 (1991):

"Our Constitution establishes a system of dual sovereignty between the States and the Federal Government. This Court also has recognized this fundamental principle. In *Taffin v. Levitt*, 493 U.S. 455 (1990), '[w]e beg[an] with the axiom that, under our federal system, the States possess sovereignty concurrently with that of the Federal Government, subject only to limitations impose by the Supremacy Clause. ... Perhaps the principal benefit of the federalist system is a check on abuses of government power. 'The constitutionally mandated balance of power between the States and the Federal Government was adopted by the Framers to ensure the protection of our fundamental liberties'. *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985).

B. The initial Complaint; and the Amended Complaint required under Court Order (exh. 2), did also Complain of judicial abuse by State of Florida Circuit Court Judge Thomas Barber and Judge Robert Foster in denying Plaintiff's Fourteenth Amendment due process rights to the same federal statutes which Plaintiff does claim of in the current Complaint. The judicial abuse by Judges Barber and Foster was a secondary issue and was well documented by those exhibits attached to the initial Complaint.

26. The following facts did establish Judge Moody's responsibility to take the judicial actions requested within the Initial Complaint for Declaratory Judgment, as amended:

1. Documentation that state court Judges Barber and Foster had denied Plaintiff's proven statutory entitlement to two federal statutes which did preempt State of Florida statutes in litigation before the respective state divorce court judges. The claimed statutes were and continue to be the Uniformed Services Former Spouses' Protection Act (hereafter "FSPA") under USC Title 10, section 1408(a)(4) and USC Title 42, section 659(h)(2)(B).

2. The initial Complaint did include extensive documentation of due process violations by state court Judges Barber and Foster; including but not limited to, the transcript of the June 10, 2013 hearing at which Judge Barber stated that he would not permit the FSPA to be litigated in his courtroom.

3. The mandate by the United States Supreme Court in *Mansell*, supra. required preemption of those state statutes which are in direct conflict with claims of entitlement under the FSPA:

"Because domestic relations are preeminently matters of state law, we have consistently recognized that Congress, when it passes general legislation, rarely intends to displace state authority in this area.... The instant case, however, [the FSPA] presents one of those rare instances where Congress has directly and specifically legislated in the area of domestic relations."

4. Proof of Plaintiff's entitlement to the statutory protections of the FSPA was established before Judge

Moody in documentation of Plaintiff's Armed Forces Form DD-214 (military discharge papers indicating retirement under Title 10 U.S.C. section 1201 Retirement Permanent Disability) and Plaintiff's Veterans Affairs Form 21-651 (waiver of military disability retirement pay to receive USC Title 38 veterans' disability compensation from the Veterans Administration). Judge Moody was provided copies of Plaintiff's Armed Forces Form DD-214 and Veterans Affairs Form 21-651 as attachments to the initial Complaint. Judge Moody was notified that said documents are acceptable into evidence as self-authenticating documents under Title VII, Chapter 90, section 90.902 of the Florida statutes.

5. The requirement of Article VI Cl. 2 of the Constitution that the claimed and proven entitlement to the federal statutes be enforced by state court judges.

6. Documented violations of Plaintiff's Fourteenth Amendment due process rights in the denial of Plaintiff's claim to the protections of two federal statutes. Florida statutes on equitable distribution were preempted (voided) under *Mansell* upon presentation of those evidentiary documents proving Plaintiff's entitlement and state court judges were required to enforce the FSPA and USC Title 42, section 659 (h)(2)(B) under authority of Article VI Clause 2 of the Constitution.

7. Plaintiff did express his initial concerns that a systemic culture of judicial abuse did exist within state courts of equity for the purpose of summarily dismissing the "rules of law" required to be enforced by Article VI Cl. 2 of the Constitution.

8. Plaintiff's claim that the federal statutes were controlling of all issues presented in the state court as 97% of Plaintiff's income and assets were beyond the judicial authority of the state court pursuant to the

protections afforded Plaintiff under the FSPA and the alimony exclusion under USC Title 42, section 659(h)(2)(B). Respondent's income and assets were not at issue in the state court proceeding. State court judges were required to litigate under the claimed federal statutes; to which entitlement had been proven, as mandated by Article VI Clause 2 of the Constitution and the "timely due process requirement" of the Fourteenth Amendment. The issue of divorce was at no point presented in the initial Complaint. State court Judges Barber and Foster refused to recognize and permit litigation of the claimed federal statutes for the purpose of restricting litigation to the State of Florida divorce statutes; which were preempted (voided) by the claimed federal statutes, and then summarily denying Plaintiff's claim to the federal statutes at the Final Hearing. State court judges do not want the Federal Government involved in their courtrooms; most especially domestic matters such as divorce. The opinion by the United States Supreme Court in *Mansell* did anticipate said rejection by state court judges.

9. Although judicial immunity was not an issue in the initial Complaint requesting declaratory judgment; Plaintiff did reference the question of judicial immunity to state court Judges Barber and Foster as they did act "in the complete absence of all jurisdiction" citing *Bradley v. Fisher*, 13 Wall 335, 347 (1872) and *Stump v. Sparkman*, 435 U.S, 349, 355 (1978).

10. Plaintiff did express concern in the initial Complaint that the documented abusive actions by Judge Barber was determined to violate Plaintiff's Federal rights and Judge Barber had no concern over any consequences from his illegal judicial actions.

B. The Order dated May 5, 2014 by Judge James S. Moody, Jr. dismisses; with prejudice, Plaintiff's Verified Complaint for Declaratory Judgment "since the Court

concludes that Plaintiff's claims are barred by the Defendants entitlement to immunity". (exh. 3)

C. The Order dated May 5, 2014 was appealed to the United States Court of Appeals for the Eleventh Circuit and was denied as moot on March 5, 2015 "because his wife withdrew her divorce petition subsequent to the district court's dismissal". (exh. 4)

27. Arguments specific to the liability of Judge James S. Moody as Defendant:

Judge Moody did violate Plaintiff's Fifth Amendment due process right; and sanction the violation of Plaintiff's Fourteenth Amendment due process rights by State court judges Barber and Foster, in declaring Plaintiff's request for Declaratory Judgment to be moot. (exh. 3) Based upon the facts presented to the Court in the initial Complaint of Declaratory Judgment and listed above in items 1 through 10; Judge Moody was at the time of the initial Complaint of Declaratory Judgment required to enforce Plaintiff's proven entitlement to the protections of the same federal statutes as are presented in this Complaint. Judge Moody did intentionally usurp the authority of the Constitution, the United States Congress, and the United States Supreme Court in failing to require that state court Judges Barber and Foster enforce the claimed federal statutes pursuant to Plaintiff's requested Declaratory Judgment as mandated by Article VI Clause 2 of the United States Constitution, the United States Supreme Court in *Mansell*, and the Oath of Office taken by Judge Moody. The circumstances existing at the time of the initial Complaint did transform Judge Moody's discretionary authority to issue the requested Declaratory Judgment into a Constitutional requirement to enforce Plaintiff's federal statutory rights by declaring; in the form of a Declaratory Judgment, those federal statutory rights to which Plaintiff was entitled. The dismissive

actions of Judge Moody were representative of the systemic judicial abuse directed to those combat-disabled veterans' who claim entitlement to the protections of the FSPA.

28. State court Judges Barber and Foster were acting in the absence of all judicial authority by refusing to enforce those federal statutes which preempted (voided) state statutes and then enforcing those state statutes which had been preempted (voided). State court Judges Barber and Foster were required by Article VI Clause 2 of the Constitution to enforce those federal statutes claimed by Plaintiff and did act in the absence of authority by enforcing the voided state statutes. Voided statutes are without legal authority.

29. Judge Moody did not have the judicial authority to allow state court Judges Barber and Foster to do that which Judge Moody could not do himself. Judge Moody did in fact do so by finding state court judges Barber and Foster immune from their actions and then declaring Plaintiff's request for Declaratory Judgment to be moot (i.e. refusing to declare Plaintiff's entitlement to the claimed federal statutes). Judge Moody is not entitled to judicial immunity for the reasons stated in item number 76 below.

30. The willful and intentional judicial abuse of Plaintiff's Constitutional and federal statutory rights by Judge Moody; in declaring as moot, Plaintiff's request for Declaratory Judgment directed to the enforcement of two federal statutes did foster a continuing pattern of judicial abuse by three additional state circuit court judges and two clerks of the court (with concurrence by eight Florida state appellate/supreme court judges which is documented and discussed below).

The failure by Judge Moody to obtain enforcement of those federal statutes to which entitlement was proven has caused losses to Plaintiff beyond those initially caused by state court Judges Barber and Foster. The additional emotional harm, mental anguish, and intentional denial of those Constitutional guarantees for which Plaintiff paid dearly cannot be compensated for by any remedy which the state appellate court may afford to the Final Judgement under appeal.

31. Judge Moody did violate Plaintiff's Constitutional rights by refusing; under the guise of judicial and qualified immunity, to enforce the claimed federal statutes to which entitlement had been proven. The record before Judge Moody did clearly reflect that immunity was not a factor for consideration in the request for Declaratory Judgment; including the following statement to such effect in item 9 of the initial Complaint: "Common law immunity protections are not relevant to this matter; as the requested remedy is limited to equitable relief in the form of declaratory judgment".

32. Plaintiff's intent with the initial Complaint was to gain enforcement of those federal statutes which preempted state statutes via a request for Declaratory Judgment as opposed to bringing suit directly against state court Judges Barber and Foster for violating Article VI Cl 2 of the Constitution. Plaintiff did request the assistance of the Federal Government; in the person of Judge Moody, to enforce those federal statutes which state court judges were refusing to enforce. Plaintiff's actions were clearly provided for based upon the following decision by the United States Supreme Court:

"And in the performance of the duty (duty of Congress to pass laws), the First Congress, at its first session, passed the act of 1798, ch. 20, entitled "An act to establish the judicial courts of the United States." ...

Congress authorized writs of error to be issued from this court to a State court, whenever a right had been claimed under the Constitution or laws of the United States, and the decision of the State court was against it. And to make this appellate power effectual, and altogether independent of the action of State tribunals, this act further provides, that upon writs of error to a State court, instead of remanding the cause for a final decision in the State court, this court may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution.” *Ableman v. Booth*, 62 U.S. 506 (1859).

As a result of Judge Moody’s judicial actions Plaintiff was forced back into the systemic judicial abuse by state court judges who do not want the Federal Government in their courtrooms; most especially in domestic matters. After having been forced through a gauntlet of pre-determined actions by a series of three abusive state trial court judges and two clerk of the court; and with access to the federal courts bared by the Rooker-Feldman doctrine, Plaintiff does find his claims of entitlement to the same federal statutes currently on appeal to the Florida Second District Court of Appeals.

33. Those Florida divorce statutes; which Judge Moody refused to direct state court Judges Barber and Foster to enforce, were voided having been preempted by the federal statutes claimed by Plaintiff. *In Edgar v. MITE Corp*, 457 U.S. 624 (1982). It was Judge Moody(s) legal responsibility; as a United States District Court Judge, under *Ableman*, *supra.*, to require state court Judges Barber and Foster to fill the void by enforcing the claimed federal statutes which preempted the voided state statutes in compliance with Article VI Clause 2 of the Constitution and *Mansell*.

34. It is requested that the judicial acts of Judge Moody be subject to trial by jury; at which time the jury will review all documentation submitted in the initial Complaint, including those exhibits submitted in the initial Complaint which will disprove Judge Moody's assertion that Plaintiff did provide conclusory statements in the absence of evidence.

35. The denial by Judge Moody of Plaintiff's Fifth Amendment procedural and substantive due process rights to the protections of the claimed federal statutes did allow state court judges to continue denying Plaintiff's due process rights culminating with state trial court Judge Nazaretian's abusive denial of Plaintiff's due process rights in the taking of Plaintiff's Fifth Amendment property interests without due process of law during the Final Hearing and the Final Judgment. The judicial conduct of Judge Moody is ripe for litigation in the absence of judicial immunity.

36. Plaintiff did Motion the District Court; in the person of Judge Whittemore, to remove the case from the state court due to continuing judicial abuses by Judge Foster. The Motion was denied on the basis that the subject of the request for removal was based upon a state divorce action of which federal courts have no jurisdiction ("the subject of domestic relations belongs to the States"). The dismissal was in error based upon the comments provide by the United States Supreme Court in *Mansell* as quoted above at item 26-3 above. Plaintiff did not appeal the denial in that Plaintiff had failed to advise Judge Whittemore of the evidentiary facts to prove Plaintiff's entitlement to the statutory exclusions provided to combat-disabled veterans' under the FSPA and USC Title 42, section 659(h)(2)(B) having assumed that the request for removal would be merged with the initial request for declaratory judgment which did contain the evidentiary

facts to prove Plaintiff's entitlement to the statutory exclusions.

Circuit Court Judge Tracy Sheehan

37. Arguments specific to the liability of Judge Tracy Sheehan:

The Motion That the Court Take Judicial Notice (hereafter "Notice") (exh. 5) which was provided to an additional eleven state court judges and two clerks of the court did provide knowledge of the relevant laws and evidentiary facts to prove Plaintiff's entitlement to the statutory exclusions provided to combat-disabled veterans under the FSPA and USC Title 42, section 659(h)(2)(B).

38. The opening paragraph of the Notice reads as follows: "The matters to be noticed provide the judicial basis in Petitioner's Constitutional and statutory entitlements which are controlling in specific matters pending before this Court".

The Notice is a very comprehensive document consisting of a twenty page narrative with twelve supporting evidentiary exhibits proving the judicial basis upon which Plaintiff relied in providing notice to the Defendants as to the proof of Plaintiff's entitlement to the federal statutes claimed, the state divorce statutes which are preempted and the authority for preemption, the mandate under Article VI Clause 2 of the Constitution that state court judges are required to enforce said statutes, the facts and laws sufficient for the Defendants to acquire an understanding of Plaintiff's case.

39. Those copies of Plaintiff's Armed Forces Form DD-214 and Veterans Affairs Form 21-651; which were attached to the Notice and provided to each of the eleven state court judges and the two clerks of the court, are legally acceptable into evidence as self-authenticating documents

under Title VII, Chapter 90, section 90.902 of the Florida statutes.

40. The documentation required to provide proof of Plaintiff's entitlement to the federal statutory protections of the FSPA and USC Title 42, section 659(h)(2)(B) are limited to Plaintiff's Armed Forces Form DD-214 (military discharge papers indicating retirement under Title 10 USC section 1201 Retirement Permanent Disability) and Plaintiff's Veterans Affairs Form 21-651 (waiver of military disability retirement pay to receive USC Title 38 veterans' disability compensation from the Veterans Administration).

41. Plaintiff's Motion to Judge Sheehan for a Hearing on the Notice motion was denied without comment by Judge Sheehan. (exh. 6) Plaintiff did then Motion Judge Sheehan to reclude herself for a variety of reasons including Judge Sheehan refusal to grant a hearing on Plaintiff's Notice motion causing the continued systemic practice of violating Plaintiff's right to due process in the enforce of the claimed federal statutes as required by Article VI Clause 2 of the Federal Constitution. (exh. 7) The Motion to Disqualify Judge Sheehan was granted. (exh.8)

Circuit Court Judge Laurel M. Lee

42. Arguments specific to the liability of Judge Laurel M. Lee:

Upon the case reassigned to Judge Lee; Plaintiff did immediately file a Motion for Reconsideration of Judge Sheehan's denial of Plaintiff's Motion for Hearing on Plaintiff's Notice (exh. 9) which was denied by Judge Lee without comment on August 12, 2015. Judge Lee was aware at the time she denied Plaintiff's Motion for a hearing on Plaintiff's Notice that she had a serious

conflict of interest; having recently retained a prior employee of Respondent's counsel as Judge Lee's Judicial Assistant. Judge Lee did disqualify herself August 21, 2015 (exh. 10).

43. This was an obvious abuse of judicial authority for Judge Lee in choosing to rule upon Plaintiff's Motion for a Hearing on the Notice given the conflict of interest which did exist at that time. The hurried action by Judge Lee does reflect upon the systemic abuse within state courts directed to negating all attempts to enforce the federal statutes claimed by Plaintiff.

Circuit Court Judge Nick Nazaretian

44. Arguments specific to the liability of Judge Nick Nazaretian (limited at this time to those judicial acts which were taken at the time of case was re-assignment from Judge Lee):

The case was immediately re-assigned to Judge Nazaretian and Plaintiff did immediately file an Emergency Motion for Reconsideration of Judge Sheehan's and Judge Lee's denials of Plaintiff's Motion for Hearing on Plaintiff's Notice (exh. 11) which was denied by Judge Nazaretian without comment on August 31, 2015. (exh. 12)

At this point in the litigation one might question the importance of requiring that trial court judges Sheehan, Lee, and Nazaretian take judicial notice of the federal statutes claimed by Plaintiff at the initial stage of the litigation.

Having experienced the open hostility to the introduction of the federal statutes by initial trial court Judges Barber and Foster; Appellant did upon re-assignment of the case, Motion each of the three

subsequent circuit court judges to Take Judicial Notice of the federal statutes to which Plaintiff had claimed and proven entitlement. The purpose in requesting that Judges Sheehan, Lee, and Nazaretian take judicial notice was to prevent those trial court judges who were pre-disposed to deny Appellant's claimed federal statutes from hiding their intentions to deny due process to the enforcement actions required under Article VI Clause 2 of the Constitution and the Supreme Court in *Mansell* and then; after an extended pre-trial discovery period, summarily dismissing Appellant's entitlements after the Final Hearing.

In an effort to force Judge Nazaretian to take timely judicial notice of the federal statutes claimed by Plaintiff; and to which entitlement had been proven, Plaintiff did Petition the appellate court for a writ of mandamus instructing Judge Nazaretian to take said judicial notice confirming Plaintiff's entitlement to the claimed federal statutes and the affect which the federal statutes would have upon the litigating process. The dominance of the federal statutes on the issues presented was such that the Court would be transformed from a court in equity; under State of Florida divorce statutes into a court of law in addressing the federal statutes which preempted (voided) the State of Florida divorce statutes on equitable distribution and alimony.

The purpose in the Petition for Writ Mandamus to the Florida Second District Court of Appeals was the same purpose in the request for Declaratory Judgment from the United States District Court: forcing the lower court to enforce Plaintiff's proven claims of federal statutory entitlement to specific federal statutes which preempted (voided) specific state statutes.

Clerk of the Court Mary Elizabeth Kuenzel

45. Arguments specific to the liability of Clerk of the Court Mary Elizabeth Kuenzel whose actions were taken with the concurrence by Second District Court of Appeals Judges Crenshaw, Morris, and Lucas, JJ:

In a fifty page Petition for Writ of Mandamus (exh.13) (including three volumes of supporting evidence) Petitioner did request that the appellate court require Judge Nazaretian to take said judicial notice confirming Plaintiff's entitlement to the claimed federal statutes. Each of the five Circuit Court judges; Barber, Foster, Sheehan, Lee, and Nazaretian, to whom the Notice motion and request for hearing had been provided did immediately deny Plaintiff's written requests for a hearing on the Notice motion. The appellate court was fully advised; in Plaintiff's Motion That the Court Take Judicial Notice, of Plaintiff's proven entitlement to two claimed federal statutes which did preempt state statutes and were required to be enforced by state court judges under Article VI Clause 2 of the Constitution.

46. In Plaintiff's Reply to Respondent's Response to the Petition for Writ of Mandamus (exh.14) Plaintiff did go into great detail in explaining each of the Motions which Plaintiff filed with the Circuit Court Judges Sheehan, Lee, and Nazaretian in an attempt to schedule a hearing on Plaintiff's Motion as required by Florida evidentiary statutes and the fact that each request was immediately denied by each of the respective judges.

47. In an Order of the Court dated November 17, 2015 the Petition for Writ of Mandamus was denied because "the matter [had not been] set for hearing before the trial court". (exh 15) The response by the Second District Court of Appeals was on its face irrational in that a

hearing had not been held because the three most recent circuit court judges had refused Plaintiff's written requests ("Motions") to schedule a hearing on Plaintiff's Motion.

48. Plaintiff did immediately file a Motion for Clarification of the irrational Order by the Court and also an Emergency Motion for Relief. (exh. 16, 17).

49. The appellate court did respond with an Order of the Court reclassifying Plaintiff's Motion for Clarification into a Motion for Rehearing (which does not require an explanation for the actions taken by the Court) and then denied both the "Motion for Rehearing" and Emergency Motion for Relief without comment. (exh. 18). What did initially appear to be irrational actions by the appellate court; in stating that the Petition was denied because a hearing was not held and then refusing to clarify the Courts irrational response, were in reality additional abusive actions by the Florida Second District Court of Appeals; in the person of the Clerk of the Court with concurrence by three judges on the Court, to deny Plaintiff's proven claims of entitlement to two federal statutes which did preempt state statutes and require enforcement by state court judges under Article VI Clause 2 of the Constitution.

50. Plaintiff's "suggestion" that immediate review by the Florida Supreme Court was necessary to address the willful and intentional refusal by the courts to enforce the federal statutory rights of combat-disabled veterans; which was in violation of the Supremacy Clause of the United States Constitution (exh. 19), was denied in an Order of the Court dated July 28, 2016. (exh. 20) It is difficult to imagine an issue more compelling of review by the Florida Supreme Court than a well documented case of judicial abuse by lower courts denying the Federal

Constitutional and federal statutory rights of combat-disabled veterans.

Clerk of the Court John A. Tomasino

51. Arguments specific to the liability of Clerk of the Court Thomas A. Tomasino whose actions were taken with the concurrence by Florida Supreme Court Judges Pariente, Lewis, Canady, Polston, and Perry, JJ.:

Plaintiff did immediately appeal the actions by the Clerk of the Court for the Florida Second District Court of Appeals to the Florida Supreme Court in a twenty-one page Writ of Mandamus with three volumes of evidence supporting the claims of judicial abuse by the lower courts. (exh. 21) The Florida Supreme Court was fully advised; in Plaintiff's Motion That the Court Take Judicial Notice, of Plaintiff's proven entitlement to two claimed federal statutes which did preempt state statutes and were required to be enforced by state court judges under Article VI Clause 2 of the Constitution.

52. Plaintiff did enclose a cover letter to the Clerk of the Court of the Florida Supreme Court advising Defendant Tomasino that the Clerk of the Court's authority is limited by internal operating procedures. (exh. 22)

53. By correspondence dated March 31, 2016; Florida Supreme Court Clerk John A. Tomasino did summarily dismiss the Petition for Writ of Mandamus. The dismissal did reference a prior case decided by the Florida Supreme Court which did attach a very degrading label to Plaintiff's complaint of judicial abuse. (exh. 23)

54. The lack of hesitation and unprofessional comments with which the appellate court and the Florida Supreme Court dismissed Plaintiff's requests for relief speaks to the direct challenge being brought against the authority

of the United States Constitution by state courts requiring state court judges to enforce those federal statutory protections benefiting combat-disabled veterans under USC Title 10, section 1408(a)(4) (B) and USC Title 42, section 659(h)(2) (B). The judicial abuse of the due process rights of those combat-disabled veterans who claim entitlement to preemptive federal statutes in state divorce courts is pervasive and accepted throughout the judiciary.

Plaintiff did appeal to the higher courts in the form of a request for Declaratory Judgment by the United States District Court and Petitions for Writ of Mandamus to the Florida Second District Court of Appeals and the Florida Supreme Court with hope of avoiding the certain denial of Plaintiff's Federal Constitutional and Federal statutory rights; however was subjected to the same systemic judicial abuse as which Plaintiff had experienced at the trial court level. The final and most abusive judicial actions would come in the person trial court Judge Nick Nazaretian.

TRIAL COURT JUDGE NICK NAZARETIAN

55. Arguments specific to the liability of Judge Nazaretian as Trial Judge:

The Petition for Dissolution of Marriage is very specific as to the federal statutes claimed, does not waste the readers time with "boiler-plate language", and is structured to do justice. (exh. 24)

56. As noted above; in the discussion of Judge Nazaretian's actions at the time this case was re-assigned to him, Judge Nazaretian was provided a copy of Plaintiff's Motion That the Court Take Judicial Notice ("Notice") (exh. 25)

57. Judge Nazaretian did not hold a hearing on Plaintiff's Notice and those hearings which were held; prior to the Final Hearing, were sham hearings as in the case of the hearings held years earlier by Circuit Court Judges Barber and Foster. The hearings were limited to discussions of equitable distribution and alimony under Florida divorce statutes. Circuit Court Judges Barber, Foster and Nazaretian demonstrated no knowledge of the FSPA or the federal statutory exclusion from alimony under USC Title 42, section 659(h)(2)(B). All hearings were transcribed by Plaintiff and will be presented at trial.

58. The Final Hearing before trial court Judge Nazaretian was the most abusive of all the hearings conducted during the three year litigation period beginning June 10, 2013 and ending April 27, 2016. The Final Hearing was transcribed as two large volumes which will not be provided at this time due to their volume; however will be presented upon trial. Judge Nazaretian did control the Final Hearing in such a manner as to deny Plaintiff's procedural and substantive due process rights. Plaintiff had scheduled the hearing for two full days beginning on April 26, 2016 and ending on April 27, 2016. Judge Nazaretian; in collaboration with Respondent's attorney, did restrict the entire hearing to routine testimony on the marital relationship (how many times a week did you go out to eat, what was your standard of living? Who paid for what? How many cars did you have? etc).. Judge Nazaretian did consistently state throughout the hearing that Plaintiff was not to testify about the law. The only opportunity during which Plaintiff was allowed to reference the federal statutes claimed was in the opening statement; which he had prepared in the form of a written narrative (exh. 26) and which Plaintiff read verbatim into the court record (Vol. I page 4 line 18 thru page 10 line 3). Plaintiff did on a number of occasions express concern over the

manner in which the Final Hearing was being conducted by Judge Nazaretian and was soundly rebuffed by Judge Nazaretian.

The Final Hearing continued on with Wife's attorney asking mundane and routine questions about the marital relationship until approx. 10 A.M. of the second day at which time Wife's attorney suggested that written closing arguments be submitted by both parties. Plaintiff did strenuously object because he had not had the opportunity to present his case consisting of four written narratives; fifty-two pages in length, with forty exhibits in support of Plaintiff's written narratives which presented the issues, facts, federal laws, arguments, and conclusions as advocated by Plaintiff. Judge Nazaretian suggested that to conserve the Court's time and the expense of Plaintiff reading the fifty-two page narrative into the record; that he admit the four narratives; consisting of fifty-two pages and the forty exhibits, into the Court record as evidence. Wife's counsel stated that he had no objection and was provided copies of Plaintiff's four narratives and forty exhibits by Plaintiff. Plaintiff then gave the court bailiff copies of the four narratives and forty exhibits which were given to Judge Nazaretian. Judge Nazaretian did then read the title and assign an evidence exhibit number to each of Plaintiff's forty exhibits and each of Plaintiff's four written narratives which were officially entered into evidence by the Court. The trial did then end with Wife's counsel being allowed to submit "closing arguments and a Proposed Final Judgment" to the Court within three weeks. Plaintiff indicated that the four written narratives and forty exhibits admitted into evidence by Judge Nazaretian did totally encompass Plaintiff's closing arguments; however Plaintiff would submit a summary "closing statement" within the three week period. Plaintiff declined to prepare a "Proposed Final Judgment" as the facts and law presented in Plaintiff's four narratives did provide an

issue of “first impression” such that Plaintiff did believe it was appropriate that the trial court review; and become familiar with Plaintiff’s four written narratives, such that the trial court could write a Final Judgment “worthy of review by the United States Supreme Court”.

59. On the day after the Final Hearing Plaintiff did provide a notice of improprieties’ in the Final Hearing and what would prove to be false expectations by Plaintiff. (exh. 27)

60. In Plaintiff’s Statement of Case; (exh. 28) and Rebuttal to Respondent’s Closing Arguments, (exh.29) Plaintiff did discuss the subject matter of the case with the naivety of a child in believing that Judge Nazaretian; regardless of the actions of the prior judges, would be fair in ruling upon those issues, facts, laws, arguments, and conclusions which were well presented in Plaintiff’s four written narratives and supporting exhibits.

61. Neither the Proposed Final Judgment of Dissolution of Marriage prepared by Respondent’s counsel (exh. 30) nor the Final Judgment of Dissolution of Marriage prepared by Judge Nazaretian (exh. 31) made any reference to the issues, laws, facts, arguments, or conclusions as presented within the four written narratives and forty exhibits entered into evidence by Plaintiff at the conclusion of the Final Hearing. All issues were resolved based upon those Florida divorce statutes which were preempted (voided) by those federal statutes claimed by Plaintiff. The Proposed Final Judgment by Respondent’s Counsel and Final Judgement by Judge Nazaretian used the same wording, law, and facts to arrive at the same conclusions. The Final Judgment is void of any reference to the federal statutory exclusions afforded to combat-disabled veterans under USC Title 10, section 1408(a)(4)(B) and USC Title 42, section 659(h)(2)(B).

Upon review of Plaintiff's initial Petitioner for Dissolution of Marriage (exh. 24) and the Final Judgment rendered by Judge Nazaretian (exh. 31); it is impossible to believe that these documents involve the same case.

Plaintiff's Federal Constitutional and Federal statutory rights were blatantly violated by Judge Nazaretian. Judge Nazaretian actions were clearly in absence of all jurisdiction and Judge Nazaretian was fully aware of his absence of jurisdiction and the unlawful nature of his actions. The Final Judgment was based exclusively upon State of Florida divorce statutes and facts which had been preempted (voided) by those federal statutes claimed by Plaintiff.

62. In Petitioner's July 1, 2016 Motion to Challenge the Final Judgment (exh. 32); Petitioner did challenge Judge Nazaretian to void his Final Judgment based upon the requirements of the United States Constitution. The Challenge was summarily denied by Judge Nazaretian in an Order dated July 11, 2016. (exh. 33)

63. On July 5, 2016 Plaintiff did file a Notice of Appeal to the Florida Second District Court of Appeals; and remit the payment to the Clerk of the Court for the Thirteenth Judicial Circuit in and for Hillsborough County, FL.

64. On July 11, 2016 Plaintiff took the extra step of providing a twelve page listing of the trial court record in support of the appeal with the Clerk of the Hillsborough Courts (exh. 34) as provided in Rule 9.200(a)(1) of the Florida Rules of Appellate Procedure. Plaintiff was required to file said listing within ten days of filing the Notice of Appeal and; although under normal circumstances Plaintiff would have relied upon the Clerk of the Court to compile a listing of the record, Plaintiff has come not to trust the actions of court personnel due to the judicial abuse to which Plaintiff has been subjected. On

pages 7-11 of the listing of documents within the trial court record; Plaintiff did list the four written narratives consisting of fifty-two pages and the forty exhibits in support, which were admitted into evidence during the final hearing. Within ten days of providing the listing of the trial court record to the clerk of the court; the clerk of the court did post a listing of "evidence" on the case summary appearing on the clerk of the courts webpage. The forty exhibits and all other items were listed as evidence; however the four written narratives; consisting of fifty-two pages, were not listed.

65. Plaintiff did on July 25, 2016 file a Motion to Compel the Clerk of the Court to present a Complete Record of Evidence in Support of the Appeal. (exh. 35).

66. On July 27, 2016 Plaintiff did advise Judge Nazaretian's Judicial Assistant that those evidentiary documents consisting of four narratives which had been entered into evidence by Judge Nazaretian during the Final Hearing; however had not been entered into evidence with the Clerk of the Court. (exh.36).

67. In an Order dated July 28, 2016 Judge Nazaretian did set a case management conference for August 2, 2016 to address the missing evidentiary documents. (exh. 37)

68. On August 2, 2016; during the course of the scheduled hearing, Plaintiff did file with Circuit Court Judge Nazaretian Petitioner's Motion That the Trial Court File with the Clerk of the Court all Documentation Which was Admitted into Evidence at the Final Hearing. (exh. 38)

69. The attached four narratives; consisting of fifty-two pages, were again provided by Plaintiff and were again admitted into evidence and numbered exhibits 35-38 by Judge Nazaretian. (exh.) Judge Nazaretian offered no explanation for the necessity to resubmit the missing

evidence which did comprise Plaintiff's entire case (issues, facts, laws, arguments, conclusions) and referred to Plaintiff's written narratives as being the "alleged missing documents". It is again noted that the Final Judgment was totally void of any reference to Plaintiff's case as presented in the four narratives (issues, facts, laws, arguments, and conclusions).

Judge Nazaretian did by Order dated August 5, 2016 grant Plaintiff's Motion "to supplement the record". (exh. 40) Appellant's actions were not for the purpose of "supplementing the record"; but rather insuring that the documentary evidence which was initially admitted into evidence by Judge Nazaretian during the Final Hearing (transcript of the Final Hearing of April 27, 2016; Vol. 2 pages 195-197, pages 295-317 lines 8-15, pages 363-366 lines 6-12, pages 368-373 lines 18-4), was again documented within the record on appeal.

LEGAL ARGUMENTS IN SUPPORT OF FACTUAL ALLEGATIONS

70. The allegations presented revolve around the limited; but well settled, question of judicial immunity which has been defined in the common law decisions of the United States Supreme Court in *Bradley v. Fisher*, 13 Wall 335, 347 (1872) and *Stump v. Sparkman*, 435 U.S. 349, 355 (1978). This claim to denial of judicial immunity is not brought on the grounds that Defendants did intentionally deny Plaintiff's Constitutional and statutory rights, act malicious and corruptly, and act in excess of their judicial authority; all of which Defendants did, however is based upon a litany of decisions by the United States Supreme Court stating that **state statutes which are preempted by federal statutes are voided**. In *Edgar v. MITE Corp*, 457 U.S. 624 (1982), *Gibbons v. Ogden*, 9 Wheat (1824), *United States v. Locke*, 529 U.S. 89 (2000), *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) and

Hines v. Davidowitz, 312 U.S. 52 (1941), *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

71. The six Defendants are without judicial authority in having violated Plaintiff's substantive due process rights by restricting litigation to the enforcement of those State of Florida statutes which were preempted (voided) by federal statutes in "clear absence of all jurisdiction" and then refusing to enforce; or instruct others to enforce, the preempting statutes in violation of Article VI Cl. 2 of the United States Constitution. In *Stump*, supra., a "Judicial Act was defined as an act normally performed by a judge" and the "judge possessed 'general jurisdiction' (the ability to decide any matter not specifically withheld from him)". The judicial actions taken by the six Defendants were not in excess of their jurisdiction, but were rather taken without jurisdiction. The judicial actions which could have been lawfully taken by the six Defendants were statutorily limited to the claimed federal statutes which did preempt (void) the state equitable distribution and alimony statutes which were the controlling issues presented. The authority to enforce the preempted (voided) Florida statutes had "specifically" been withheld from the Defendants by Article VI Clause 2 of the Constitution.

72. Plaintiff's Fifth and Fourteen Amendment procedural and substantive due process rights to the claimed federal statutes have been denied as the Defendant's usurped their authority by unlawfully denying Plaintiff's legal rights over the prior three years. The final judicially abusive violations by Judge Nazaretian did include intentionally restricting Plaintiff's procedural and substantive due process right to litigate Plaintiff's case during the Final Hearing and issuing a Final Judgment which was restricted to those voided Florida statutes which had been preempted by the claimed federal statutes.

73. The standard for loss of judicial immunity presented in *Bradley v. Fisher* and *Stump v. Sparkman*, supra. require that there be a “clear absence of all jurisdiction over the subject matter”. The standard for loss of qualified immunity presented in *Harlow et al. v. Fitzgerald*, supra. requires an “objective legal reasonableness of an official’s acts. Where an official could be expected to know that certain conduct would violate statutory or constitutional rights”. It is only under these very narrow standards that this Court is allowed to adjudicate the absence of judicial immunity for Defendants Nazaretian, Sheehan, Lee, Moody and the absence of qualified immunity for Defendants Kuenzel, Tomasino based upon the allegations and facts as stated within this Complaint.

74. The question of immunity under the standard of “clear absence of all jurisdiction over the subject matter” (judicial immunity) and the “objective legal reasonableness of an official’s acts” (qualified immunity) also requires that Defendants have knowledge of want of jurisdiction (were performing acts without jurisdiction) and that [Defendants] could be expected to know that the law governing their conduct would violate statutory or constitutional rights.

All Defendants were fully advised of the federal statutes claimed by Plaintiff, in Plaintiff’s Motion That the Courts Take Judicial Notice (exh. 25) which did include, but was not limited to, Plaintiff’s proven entitlement to the claimed federal statutes, the requirement of all state judges under Article VI Clause 2 of the Constitution, the preemption required by the United States Supreme Court in *Mansell*. Defendant judges were well aware that their judicial actions were in the clear absence of all jurisdiction over the subject matter and Defendant clerks of the court did know their

actions could violate Plaintiff's statutory or constitutional rights.

75. State of Florida divorce statutes; directed to the equitable distribution of property and the award of alimony, were voided by the federal statutes which preempted them. *In Edgar v. MITE Corp*, supra,.

The only judicial authority which Defendants did possess was the federal jurisdiction to enforce the claimed federal statutes to which Plaintiff had establish proof of entitlement.

The Defendants were without authority to enforce the voided state divorce statutes which had been preempted by those federal statutes claimed by Plaintiff. State of Florida divorce court judges are without judicial authority to equitably distribute Plaintiff's property and subject Plaintiff to the payment of alimony (including attorney fees) based upon State of Florida divorce statutes as said authority had been withheld by the federal statutes to which Plaintiff did claim and prove entitlement under the FSPA and the exclusion from alimony under USC Title 42, 659(h)(2)(B). District Court Judge Moody was without judicial authority to allow state court Judge Barber and Foster to equitably distribute Plaintiff's property and subject Plaintiff to the payment of alimony (including attorney fees) based upon State of Florida divorce statutes as said authority had been withheld by the federal statutes to which Plaintiff did claim and prove entitlement under the FSPA and the exclusion from alimony under USC Title 42, 659(h)(2)(B).

In refusing to enforce the federal statutes which had preempted the state statutes the Defendants did violate Article VI Clause 2 of the United States Constitution which requires that "the Laws of the United States shall

be the supreme Law of the Land and the **Judges** in every State shall be bound thereby”.

76. Judge Moody is without judicial immunity in that his actions were in the absence of all judicial authority by permitting Judges Barber and Foster to do that which Judge Moody could not do himself (i. e. refuse to enforce federal statutes). The actions of Judge Moody did provide for the enforcement of voided state statutes by State court judges Barber and Foster (an act without judicial authority) and prevent the enforcement of the claimed federal statutes which preempted the voided state statutes (an act of judicial authority to which Judges Barber and Foster were required and authorized to perform).

77. Congress did intend that the FSPA and the alimony exclusion provision provided by USC Title 42, 659(h)(2)(B) totally displace (not supplement) State of Florida equitable distribution of property and alimony statutes in those divorce proceedings in which one of the parties is a combat-disabled veteran medically retired under USC Title 10, section 1201(b)(3)(B) who has waived his military disability retirement pay to receive USC Title 5 compensation and/or USC Title 38 compensation.

78. The conflicting issues presented in the divorce court proceeding are limited to the distribution of ninety-seven (97%) of Plaintiff's income and assets as property; and the award of ninety-seven (97%) of Plaintiff's income as alimony. The two federal statutes to which Plaintiff has established entitlement did preempt (void) State of Florida divorce statutes and did statutorily exclude ninety-seven (97%) of Plaintiff's income and assets from being equitably distributed as property; and exclude ninety-seven (97%) of Plaintiff's income from being awarded as alimony. The preempted state divorce statutes are in conflict with the claimed federal statutes

such that compliance with both was impossible and the equitable principles upon which Florida divorce statutes are based are obstacles to the accomplishment and execution of the purpose and objectives of Congress in passing the benefits reserved to combat disabled veterans by the those exclusions allowed under section 1408(a)(4)(B) of the FSPA and section 659(h)(2)(B) of the federal alimony statutes.

79. The Clerks of Court are not entitled to qualified immunity because the Defendants did take judicially abusive actions which violated Plaintiff's clearly established federal statutory and United States Constitutional rights of which the Defendant Clerks of the Court had knowledge. *Harlow v. Fitzgerald*, supra,.

80. This Court's subject-matter jurisdiction over judicial acts by the Defendants; individually and as sitting judges, is based upon the absence of judicial immunity which is limited by the specific language of the instrument by which Defendants positions were created and includes the mandate within Article VI Clause 2 the Constitution requiring enforcement of statutes lawfully passed by the United States Congress. Defendant judges did have knowledge of their lack of jurisdiction in the matters before the Court pursuant to Plaintiff's Motion that the Court Take Judicial Notice.

81. This Court's subject-matter jurisdiction over judicial acts by the Defendants; individually and as clerks of the court, is based upon the absence of qualified immunity as Defendants allowed the state court judges to proceed without a hearing on Plaintiff's Motion that the Court Take Judicial Notice of those federal statutes which were claimed by Plaintiff and mandated to be enforced by Article VI Clause 2 of the Federal Constitution before addressing those state divorce statutes which were preempted by the claimed federal statutes. Defendant

Clerks of the Court were made aware that certain conduct would violate specific statutory or constitutional rights of Plaintiff pursuant to Plaintiff's Motion that the Court Take Judicial Notice.

82. The following notifications were presented within the Notice (exh. 25) which was provided to each of the Defendants and did contain the following specific facts such that defendant judges knew that their actions were in the absence of jurisdiction and Defendant clerks of the court could be expected to know that their conduct would violate statutory or constitutional rights and did require compliance with Article VI Clause 2 of the Constitution:

1. Plaintiff did claim entitlement to the protections of the two federal statutes which did preempt (void) State of Florida divorce statutes regarding the equitable distribution of property and the award of alimony.

2. All judges are required to enforce federal statutes under Article VI Clause 2 of the United States Constitution.

3. The mandate by the United States Supreme Court; which has the effect of law under *Cooper v. Aaron*, 358 U.S.1 (1958), that all state courts are subject to the preemption effects of the FSPA. *Mansell*, supra.

4. Plaintiff is a combat-disabled veteran of Vietnam with loss of both feet, loss-of-use of both hands, and nine other combat-related injuries.

5. Plaintiff's entitlement to the claimed federal statutory provisions was not challenged by opposing counsel or by the courts. The following proof contained within Plaintiff's Motion that the Court Take Judicial Notice did provide documentary proof of Plaintiff's entitlement to the federal statutes claimed and

is self-authenticating under Title VII, Chapter 90, sections 90.902(1)/(2)/(4)(5) of the Florida evidentiary statutes:

A. Plaintiff's Military discharge papers (Form DD-214) which reflect Plaintiff's permanent medical retirement pursuant to USC Title 10, section 1201 with decorations awarded to include 2 purple hearts which are awarded for combat-related injuries. Plaintiff's military retirement disability pay under USC Title 10, Subtitle A, Part II, Chapter 61, section 1201(b)(3)(B)(ii) is the source of the compensation cited in USC Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4) of the FSPA and USC Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B) of the alimony statutes. See Count II, item 14 of Plaintiff's Petition for Dissolution of Marriage (exh. 24).

B. Plaintiff's waiver of military retirement disability pay under USC Title 10, section 1201 to receive USC Title 38 veterans' disability compensation effective September 1, 1971. Plaintiff's USC Title 38 veterans' disability compensation is the "Title 38 compensation" as cited in USC Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4)(B) of the FSPA and USC Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B) of the alimony statutes. See Count II, items 16-19 of Plaintiff's Petition for Dissolution of Marriage. (exh. 24).

C. Plaintiff's waiver of military retirement disability pay under USC Title 10, section 1201 to receive credit for military service in the computation of Plaintiff's retirement annuity under USC Title 5 effective December 3, 2005. Plaintiff's USC Title 5 retirement annuity is the "Title 5 compensation" cited in USC Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4)(B) of the FSPA and USC Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B) of the alimony statutes. See Count II, items

20-22 of Plaintiff's Petition for Dissolution of Marriage (exh. 24).

6. Plaintiff's claim that those federal statutes claimed by Plaintiff did control ninety-seven (97%) of issues presented. The issues presented in the divorce court proceeding were limited to the distribution of Plaintiff's income and assets as property; and the award of Plaintiff's income as alimony, as there were no issues with minor children. The two federal statutes claimed by Plaintiff; which preempted State of Florida divorce statutes regarding the equitable distribution of Plaintiff's property and alimony, did statutorily exclude ninety-seven (97%) of Plaintiff's income and assets as property and also statutorily exclude the award of ninety-seven (97%) of Plaintiff's income as alimony. See exhibit 39 which is a composite of the four written narratives which were entered into the state court record as exhibits number 35-38 during the Final Hearing with exhibits 35 and 36 addressing the question of statutory control.

83. None of the six Defendants were entitled to immunity upon acquiring knowledge of the six facts listed above and then taking actions other than enforcing the claimed federal statutes as required by Article VI Clause 2 of the Constitution.

84. Defendants were without jurisdiction because they were Constitutionally and statutorily required to litigate as a "court of law" pursuant to Article VI Cl. 2 and the two federal statutes claimed; however ignored said Constitutional and statutory requirements and unlawfully litigated as a "court of equity" in enforcing state equitable distribution and alimony statutes each of which was totally preempted (voided) by Plaintiff's entitlements under the protections of the FSPA and the alimony exclusion under USC Title 42, section 659(h)(2) (B). The Defendants were without jurisdiction to enforce

state divorce statutes which had been totally voided by the claimed federal statutes (*In Edgar v. MITE Corp*, 457 U.S. 624 (1982) and to which Plaintiff had established proof of entitlement and provided notice to each Defendant. Plaintiff (Husband) did not request alimony from Respondent (Wife) and the remaining peripheral issues (and only remaining issues upon resolution of the property and alimony issues) were the distribution of the marital debt and Respondent's property consisting of funding in Respondent's non-marital bank account. Resolution of the minor peripheral issues; is a function of the federal statutory protections to which Plaintiff is entitled and has been awarded, after first enforcing the federal statutes as required in Article VI Clause 2 of the Constitution as pleaded in exh. 39.

85. The Supremacy Clause of the United States Constitution establishes that the Constitution; and the federal laws made pursuant to it, constitute the supreme law of the land. It provides that state courts are bound by the supreme law; and in case of conflict between the federal and state law, the federal law must be applied. No matter what the federal government or the states might wish to do, they have to stay within the boundaries of the Constitution. This principal was stated by the United States Supreme Court in *Ex parte Young*, 209 U.S. 123 (1908):

"It has been well settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. *Ex parte Young* teaches that, when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is, in that case, stripped of his official or representative character, and is subject in his person to the consequences of his individual

conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.”

86. The Federal Constitution mandates at Article VI Clause 2 that state court judges and clerks of the court do not get to pick and choose those federal statutes which they will enforce and those which they choose not to enforce. The actions by Defendants present a direct challenge to this Constitutional authority.

87. It is important to note that this case is not restricted to the systemic judicial abuse of Plaintiff's Constitutional and federal statutory rights; but the abuse of the same rights to which 117, 065 additional combat-disabled veterans are entitled, and which have been; or will be, denied by the courts if any of the respective combat-disabled veterans are unfortunately subject to State of Florida divorce court proceedings. This process began as a simple divorce proceeding on October 12, 2012 and has evolved into one of the most egregious violations of individual rights one could imagine.

The claimed federal statutory exclusions are limited in their wording such that only one-half of one-percent (0.05%) of America's 22 million veterans qualify for the federal statutory protections claimed by Plaintiff. The 3.8 million veterans in receipt of service-connected disability compensation from the Department of Veterans Affairs (DVA) are not entitled to the benefits of the federal statutes claimed because said veterans were not initially entitled to military disability retirement pay which said veterans did waive to receive DVA service-connected disability compensation. It is illogical that Congress would authorize payments to combat-disabled veterans as compensation for that pain and suffering which they personally endured; and then allow the non-military spouse, to be awarded one-half of the combat-

disabled veteran's monthly disability compensation. Preempting equitable distribution of the combat-disabled veterans property is the purpose in the federal statutory protections provided by the FSPA and the exclusion from the payment of alimony under USC Title 42, section 659(h)(2)(B).

The veteran who brought suit in *Rose v. Rose*, 481 U.S. 619 (1987) was not a combat-disabled veteran; but rather one of the 3.8 million veterans found to be entitled to Department of Veterans' Affairs service-connected disability compensation. There was no Constitutional tort in *Rose*. Mr. Rose was not entitled to the protections of the federal statutes claimed by Plaintiff because Mr. Rose was not medically retired from the military for combat-related injuries which is the basis upon which entitlement is based in both the FSPA and the exclusion from the payment of alimony under USC Title 42, section 659(h)(2)(B).

88. The Court need only review the attached Final Judgment of Dissolution of Marriage (exh. 31) in conjunction with Plaintiff's Petition for Dissolution of Marriage (exh. 24) to realize the extent of judicial abuse inflicted upon Plaintiff by Judge Nazaretian.

89. Judge Nazaretian did completely ignore each of Petitioner's federal statutory claims as presented in detail in the Petition and did also blatantly totally ignore Appellant's fifty-two pages of closing arguments in support of the claimed federal statutes (supported by forty exhibits) and rule exclusively under those Florida divorce statutes which are preempted (voided) by the claimed federal statutes. The judicial abuse by Judge Nazaretian does not qualify for absolute or qualified immunity under those standards established by the United States Supreme Court in *Stump v. Sparkman*, 435 U.S. 349 (1978) and *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

90. The appendix (exh. 41) references a litany of cases (i.e. *Marbury, Martin, Ableman, Cooper, etc.*) directed to the supremacy of the United States Constitution in that no branch of the Federal Government (i.e. Supreme Court, Congress, President); or individual acting under authority of the Federal Government, may violate the United States Constitution as its creator. The Constitutional supremacy attaches to the judges in every state prohibiting violations of the United States Constitution by state court judges. Defendants did knowingly violate Article VI Clause 2 of the United States Constitution in refusing to enforce those federal statutes to which Plaintiff has proven entitlement and therefore judicial immunity is not available to Defendants.

91. During the 3 year period beginning June 10, 2013 with the hearing before Circuit Court Judge Barber to the hearing of August 2, 2016 before Circuit Court Judge Nazaretian; a combination of fifteen State of Florida Circuit Court, State of Florida Appellate Court, State of Florida Supreme Court, and Federal District Court judges did issue eighteen Orders, Opinions, and Judgments for the sole purpose of denying Plaintiff's Constitutional right to procedural and substantive due process such that the enforcement of those federal statutes to which Plaintiff claimed and established entitlement were summarily dismissed at the state trial court level.

92. Judge Nazaretian did falsely represent to Plaintiff that he had a sincere interest in taking the time to learn the federal statutes of which he had little knowledge. It was based upon this misrepresentation by Judge Nazaretian; and the fact all avenues requesting assistance by the higher courts had been exhausted, that the case went through the Final Hearing before Judge Nazaretian.

93. Respondent's counsel did at no point; in Respondent's Answer to the Petition for Dissolution of Marriage, during the course of the Final Hearing, in Respondent's Closing Arguments challenge Plaintiff's statutory claims as initially presented in the Petition for Dissolution of Marriage and then fully developed in the fifty-two page narrative which was admitted into evidence during the Final Hearing. The obvious conclusion is that Respondent's attorney had reason to believe that the outcome was predetermined in that the Court would not enforce the federal statutes consistent with the systemic judicial abuse found throughout this Complaint.

94. Defendants did act in concert with knowledge of due process violations in their consistent refusals to Order that a hearing be held; or hold a hearing as requested, on Plaintiff's Motions That the Courts Take Judicial Notice.

95. The personal views of Defendants; as reflected in their actions, are clearly in conflict with the following judicial mandate by the United States Supreme Court in *Mansell*, supra., and a probable contributing cause of the systemic judicial abuse inflicted upon Plaintiff over three years of litigation:

"Thus, the legislative history (of the FSPA), read as a whole, indicates that Congress intended both to create new benefits for former spouses and to place limits on state courts designed to protect military retirees. Our task is to interpret the statute as best we can, not to second-guess the wisdom of the congressional policy choice. See, e.g. *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam) ('deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice'). We realize that reading the statute literally may inflict economic harm on many former spouses. But we decline to misread the statute in

order to reach a sympathetic result when such a reading requires us to do violence to the plain language of the statute and to ignore much of the legislative history.”

96. All state court Defendants were notified repeatedly in all major filings that theirs was first and foremost a “court of law” governed by Article VI Clause 2 of the Federal Constitution and the federal statutes claimed by Plaintiff and secondarily a “court of equity” in the application of Florida divorce statutes.

97. The judicial actions by Defendants sitting on the United States District Court for the Middle District of Florida, State of Florida Circuit Courts, the Florida Second District Court of Appeals, and the Florida Supreme Court were not “grave procedural errors” but rather conscious judicial violations denying Plaintiff’s Fifth and Fourteenth Amendment right to procedural and substantive due process in the enforcement of federal statutes which preempted (voided) state divorce statutes and were required to be enforced by Article VI Clause 2 of the Federal Constitution and for which judicial immunity does not exist for the respective judges as violations of the United States Constitution are not afforded judicial immunity.

98. Judge Nazaretian did judicially abuse Plaintiff’s due process rights in refusing to initially take judicial notice of Plaintiff’s Federal Constitutional and Federal statutory rights, manipulating the Final Hearing in such a manner as to restrict Plaintiff’s due process right in the presentation of Plaintiff’s case during the Final Hearing; totally ignoring Plaintiff’s four written narratives in preparing the Final Judgment, and destroying Plaintiff’s statement of his case in the four written narratives in an attempt to prevent review by the appellate court.

Plaintiff knows from personal experience that there exists such judicial abuse by state divorce judges that trial court attorney's hesitate to raise the issues presented for fear of retaliation. Federal and state court judges did prematurely dismiss the federal statutes presented. If Plaintiff had not had in his possession the four narratives available for submission as evidence at the close of the Final hearing or had failed to establish that the four narratives were not in the record to be provided to the Appellate Court; Plaintiff's claims of protections by the federal statutes would have never made it out of the trial court. It is Plaintiff's belief that such is the systemic abuse which permeates the courts when combat-disabled veterans attempt to raise these two federal statutes in state divorce courts.

Appellant believes that Judge Nazaretian is the party responsible for the destruction of the original fifty-two page written narrative admitted into evidence at the conclusion of the Final Hearing. This belief is based upon Judge Nazaretian's judicially abusing actions in denying Plaintiff the opportunity to present Plaintiff's case during the Final Hearing coupled with the fact that the Final Judgment was void of any mention of the issues, facts, laws, arguments, and conclusions presented by Plaintiff in the four written narratives which were destroyed. The Clerk of the Court may have destroyed the evidence pursuant to instructions from Judge Nazaretian; however the only party with a reason to destroy the evidence was Judge Nazaretian in an attempt to cover-up the existence of the claimed federal statutes at the trial court level. In the physical absence of Appellant's four written narratives; the issues presented do not exist, as Judge Nazaretian was successful in denying Appellant's procedural due process during the Final Hearing.

99. Plaintiff has met the heightened pleading requirements of Rule 9(a) of the Federal Rules of Civil

Procedure in having demonstrated a legal qualification to sue and made a prima facie case to sue based upon supporting facts that are peculiar to this case and does easily exceed the Rule 8(a) plausibility requirements of *Ashcroft v. Iqbal*, 556 U.S. 662, (2009) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

100. This Complaint is unique in its subject matter and does by necessity go beyond the normal requirements of pleadings to prove not only that the Defendants did act in the absence of jurisdiction, but also that they were aware that their judicial acts were in in the absence of all jurisdiction, in violation of Article VI Clause2 of Constitution, and did violate Plaintiff's federal statutory and Constitutional rights. This Complaint does support a conclusion that the judicial abuse is systemic to the system of federal and state courts.

RELIEF REQUESTED

101. It is well documented that the abusive judicial actions by Defendants were intentional acts that were reasonably foreseeable to cause harm to Plaintiff and in fact did cause severe mental anguish and broken promises of Constitutional guarantees to a combat-disabled veteran who paid dearly for those Constitutional guarantees for which very few Americans pay anything.

102. One may question what "harm" has been caused to Plaintiff that cannot be corrected on appeal to the state court of appeals.

Americans' go to war for the rights guaranteed to each of them by the United States Constitution. The United States Government did; in meeting its Constitutional responsibility to provide for the national defense by raising armies, establish a Constitutional obligation to Plaintiff; a combat-disabled veteran, guaranteeing that

the Federal Government will enforce those provisions of the Constitution including those laws passed by the United States Congress which are required to be enforced by state court judges under Article VI Clause 2. The National debt to combat-disabled veterans is of such importance that the Constitution authorizes the Federal Government to intrude into domestic relations (a subject normally reserved to the states) to protect the interests of combat-disabled veterans. Which the Federal Government did with regard to those federal statutes to claimed by Plaintiff. Those Constitutional guarantee's specific to Plaintiff have been voided in the refusals by federal and state court judges to enforce federal statutes which were enacted by the United States Congress exclusively to the benefit of combat-disabled veterans. The glass umbrella of judicial immunity has been shattered in the violation of those rights guaranteed to Plaintiff by the United States Constitution. No form of relief can be rendered by the state appellate court to mend the broken promises (constitutional guarantees) intentionally inflicted upon Plaintiff over the past three years.

103. Damages are sought in the amount of two million dollars (\$2,000,000).

JURY

104. Trial by jury is requested.

LEGAL CONCLUSIONS

105. Judicial immunity and qualified immunity are important and necessary doctrines to further the public interest in an independent judiciary. However; as the elected voice of the American people, the United States Congress and President of the United States must ask at what cost does the Constitution limit the price of these court-born doctrines? The United States Supreme

Court's concern that the public interest is substantially weakened if a judge allows fear of a suit to affect his decisions is paled by the public disgrace of permitting judges to violate the Federal Constitutional and federal statutory rights of combat-disabled veterans. The crack in the Liberty Bell has been widened by the unconstitutional actions of Defendants.

106. The facts and legal precedents are well developed. Article VI Clause 2 of the United States Constitution requires that judges in every state shall enforce laws duly passed by the United States Congress. Five Florida circuit court judges, two United States district court judges, and eight Florida Appellate Court/Florida Supreme Court judges did concur with two Clerks of the Courts in the denial of Plaintiff's proven entitlement to those federal statutes which preempted (voided) Florida divorce statutes in a Florida divorce court proceeding and were required to be enforced by the five Florida circuit court judges, two United States district court judges, and eight Florida Appellate Court/Florida Supreme Court judges by Article VI Clause 2 of the United States Constitution.

107. The State of Florida judges are not entitled to judicial immunity for their actions in that they were clearly without jurisdiction in the matter (i.e. the state divorce statutes were voided by the federal statutes by which they were preempted and said judges did not enforce the substituted federal statutes as required and for which they authorized to enforce). The authority to enforce State of Florida divorce statutes had been specifically withdrawn from them.

The court-born doctrine of judicial immunity requires that the respective judges have knowledge that they were violating Article VI Clause 2 of the United States Constitution by not enforcing those federal statutes

claimed by Plaintiff. The Defendants did have full knowledge of the law, the facts, and the consequences of their actions prior to taking them. Not one of the fifteen federal and state court judges forced the issue as required by Article VI Clause 2 of the Constitution.

108. The fifteen judges; including the USDC judge who denied Plaintiff's Request for Declaratory Judgment, knew that in denying Plaintiffs' Request That the Court Take Judicial Notice of those protections afforded Plaintiff under the claimed federal statutes which were required to be enforced under Article VI Clause 2, the litigating process would be restricted to the Florida divorce statutes based upon the equitable distribution of property and the award of alimony under the "need and ability to pay" test, both of which were preempted by the claimed federal statutes and thereby voided. The Defendants did perform judicial acts; not in excess of their judicial authority; but rather without judicial authority. The long and well documented history of this case provides clear evidence of the systemic judicial abuse which is directed to the claimed federal statutes to ensure that said statutes are never fully litigated because an unknown number of federal and state court judges do not approve of the purpose and end result of said federal statutes. The judicial abuse; which began with the Barber court stating that it would not permit the FSPA to be pleaded in his courtroom and ending with the destruction of evidence by the Nazaretian court in an attempt have Plaintiff's pleadings withheld from the "court record", are but two examples of the lengths to which state divorce court judges will go to keep the Federal Government out of their courtroom. The objective common to the judicial acts by all six Defendants was to limit; by any means necessary, Plaintiff's proven claims of entitlement to the protections of two federal statutes to the trial court level such that the claims could be summarily dismissed without due process of law.

109. Proof of entitlement was lawfully provided; however the Defendants did put on blinders and refuse to acknowledge Plaintiff's evidentiary proof of entitlement to the claimed federal statutes. The unlawful refusal; by the fifteen federal and state court judges, to take judicial notice of Plaintiff's proven federal statutory entitlements did not void their Constitutional requirement to enforce said federal statutory entitlements under Article VI Clause 2 of the Constitution.

110. There are those who will argue that the "clear lack of subject matter jurisdiction" exception provided in *Bradley and Stump* is applicable only in extreme cases such as a Justice of the Peace presiding over a capital murder case. Plaintiff counters with the valid argument that Congress; in the case at point, did preempt the state statutes with the claimed federal statutes to protect the interests of combat-disabled veterans who have made extreme sacrifices to protect the American way of life. For the Defendants to willfully and knowingly deny the Constitutional rights of combat-disabled veterans is to the extreme referenced by the United States Supreme Court in *Bradley* is sickening to the National conscious.

111. Plaintiff is aware that the Federal Rules of Civil Procedure require only a short and plain statement of the claim for relief. Plaintiff has been subjected to extensive judicial abuse by the courts for over three years and believes this will continue due to the court's firmly entrenched policy of refusing to enforce the federal statutes claimed and universal disdain for pro se(s). This is Plaintiff's last opportunity to obtain justifiable compensation for the emotional and personal injury which he has been subjected to by the mean spirited and unlawful dismissals of Plaintiff's pleadings by the Defendants. With that in mind; Plaintiff has fully documented the record at this time in the litigation

process, in hopes that the United States Supreme Court with stop said abuse.

112. The issues presented in this Complaint would have never “seen the light of day” had this case been brought by other than a combat-disabled veteran. Plaintiff knows from personal experience that trial attorneys are influenced by the personal views of the trial court judges before whom they may appear and will put their professional interests before those of a client who is a combat-disabled veteran.

113. Having appealed to the United States Supreme Court in the past; Plaintiff is fully aware of both the fact that less than one-percent (1%) of Petitions for Writ of Certiorari are accepted by the Court and the extremely difficult administrative process of preparing a case for appeal to said Court. This case is ripe for acceptance by the United States Supreme Court based upon the following considerations: those Constitutional guarantees to a combat-disabled veteran which have been unlawfully voided by Defendants whose actions are without judicial immunity, the fact that the Court did in 1989 instruct the lower courts in *Mansell* of their judicial responsibility to enforce the FSPA as required by Article VI Cl. 2 of the Constitution; and the fact that the lower courts have systemically challenged the Court’s mandate in *Mansell* to the detriment of potentially tens of thousands of severely disabled veterans.

114. The actions taken by the Defendants are an insult to those very special American’s who wrote the United States Constitution and those equally special Americans who gave their lives in service to the United States Constitution.

VERIFICATION

Under penalty of perjury under the laws of the United States of America and the State of Florida; I declare that I have read the foregoing, and that the facts alleged therein are true and correct to the best of my knowledge and belief. I understand that a false statement in this Verification will subject me to penalties of perjury.

**STATE OF FLORIDA
COUNTY OF HILLSBOROUGH**

SWORN TO or affirmed and signed before me on this the 7th day of September, 2016, by Melvin E. Blough, who is personally known to me or who produced identification.

/s/ Jaeda Coleman
JAEDA COLEMAN
NOTARY PUBLIC STATE OF
FLORIDA AT LARGE

ID Produced: Fl Driver License

Dated this 7th day of September, 2016.

Respectfully submitted,

/s/ Melvin E. Blough
Melvin E. Blough
Pro se Plaintiff

803 Tomahawk Trail
Brandon, FL 33511
Telephone: (813) 651-3158
Email: melvin.blough@gmail.com

EXHIBITS WITHIN IN THE FOUR VOLUME
APPENDIX:

Volume 1 of 4

1. Verified Complaint for Declaratory Judgment.
2. Amended Verified Complaint for Declaratory Judgment.
3. Order dated May 5, 2014 by Judge James S. Moody, Jr..
4. Order dated March 5, 2015 by United States Court of Appeal Eleventh Circuit.
5. Petitioner's Motion That Court Take Judicial Notice as filed with the court April 28, 2015.
6. Petitioner's Motion for Referral to General Magistrate for Hearing on Petitioner's Motion That Court Take Judicial Notice and unexecuted Order (stamped Denied June 29, 2015 Tracy Sheehan Circuit Judge).
7. Petitioner's Motion to Disqualify Circuit Court Judge Tracy Sheehan.
8. Order Granting Motion to Disqualify Circuit Court Judge Tracy Sheehan.
9. Petitioner's Motion for Reconsideration of Judge Sheehan's denial of Petitioner's Motion for Referral to General Magistrate for Hearing on Petitioner's Motion That Court Take Judicial Notice and unexecuted Order as filed July 28, 2015 (stamped DENIED by Judge Laurel Lee August 12, 2015). Copy of Notice attached to Petitioner's Motion for Reconsideration.

10. Order of Disqualification signed by Judge Lee on August 21, 2015.

11. Petitioner's Emergency Motion for Reconsideration of Petitioner's Motion for Reconsideration of Judge Sheehan's and Judge Lee's denial of Petitioner's Motion for Referral to General Magistrate for Hearing on Petitioner's Motion That Court Take Judicial Notice and unexecuted Order (copy of Notice attached to Petitioner's Emergency Motion for Reconsideration).

12. Emergency Motion Handling Order denying Petitioner's Motion for Reconsideration of Judge Sheehan's and Judge Lee's denials of Petitioner's Motion for Referral to General Magistrate for Hearing on Petitioner's Motion That Court Take Judicial Notice and unexecuted Order.

Volume 2 of 4

13. Petition for Writ of Mandamus as filed September 11, 2015 with three volume appendix (documentation within index did include Notice and all documentation will be presented at trial).

14. Reply to Respondent's Response to the Petition for Writ of Mandamus.

15. Order of the Court denying Petitioner's Petition for Writ of Mandamus.

16. Petitioner's Motion for Clarification.

17. Petitioner's Emergency Motion for Relief.

18. Order of the Court treating Petitioner's Motion for Clarification and Petitioner's Emergency Motion for Relief as a motion for rehearing and denying said motion.

19. Appellant's Suggestion of Certification to the Florida Supreme Court in the current appeal.

20. Order of the Court denying Appellant's suggestion of certification to the Florida Supreme Court.

21. Petition for Writ of Mandamus with three volume appendix (documentation within appendix did include Notice and all documentation will be presented at trial).

Volume 3 of 4

22. Cover letter dated January 21, 2016 to Thomas Tomasino as Clerk of the Florida Supreme Court.

23. Court Order Dismissing the Petition for Writ of Mandamus.

24. Husband's Petition for Dissolution of Marriage as filed with the Court April 6, 2015.

25. Petitioner's Motion That Court Take Judicial Notice as filed with the Court April 28, 2015.

26. Petitioner Opening Statement at the Final Hearing held on April 26, 2016.

27. Petitioners Notice of Potential Due Process Violations.

28. Petitioner's Statement of Case.

29. Petitioner's Rebuttal top Respondent's Closing Arguments.

30. Respondent/Wife's Proposed Final Judgment of Dissolution of Marriage.

Volume 4 of 4

31. Final Judgment of Dissolution of Marriage as issued by Judge Nazaretian.
32. Petitioner's Motion to Challenge the Final Judgment.
33. Order on Petitioner's Motion to Challenge the Final Judgment.
34. Appellant's Listing of the Trial Court Record in Support of the Appeal.
35. Appellant's Motion to Compel the Clerk of the Court to Present a Complete Record of Evidence In Support of Appellant's Appeal.
36. E-mail notification to Judge Nazaretian's Judicial Assistant regarding the missing trial court evidence.
37. Order Setting Case Management Conference for August 2, 2016 before Judge Nazaretian.
38. Petitioner's Motion That the Trial Court File With the Clerk of the Court All Documentation Which Was Admitted Into Evidence at the Final Hearing.
39. Copies of those four narratives; consisting of fifty-two (52) pages, and a four (4) page listing of Petitioner/Plaintiff's evidence as admitted into evidence at the final hearing on April 27, 2016.
40. Order on Petitioner's Request to Supplement the Record.
41. Legal precedents.

No. 17-

In The
Supreme Court of the United States

MELVIN BLOUGH,

Petitioner,

v.

NICK NAZARETIAN, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

Exhibits to Appendix E

Volume 2 of 2

APPENDIX E

INDEX

<u>VOL.</u>	<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION OF DOCUMENT</u>
2.	2.	Defendant's Motion to Dismiss.
2.	3.	Plaintiff's Motion to Reconsider the Order of Dismissal.
2.	4.	Plaintiff's (Appellant's) Transcript and Statement of Evidence in Support of Record on Appeal.
2.	5.	Appellant's (Petitioner's) Appeal to the United States Court of Appeals for the Eleventh Circuit.
2.	6.	Initial Brief of Defendants/ Appellees, Nick Nazaretian, Laurel M. Lee, and Tracy Sheehan to the United States Court of Appeals for the Eleventh Circuit.
2.	7.	Brief of Defendant James S. Moody, Jr..
2.	8.	Appellant's Reply Brief.
2.	9.	Notice of mandate.

CORPORATE DISCLOSURE STATEMENT

There are no corporate interests.

IN THE UNITED STATES DISTRICT
COURT MIDDLE DISTRICT OF
FLORIDA TAMPA DIVISION

MELVIN E. BLOUGH

Plaintiff,

v.

Case No: 8:16-cv-2587-T-35-MAP

NICK NAZARETIAN,
TRACY SHEEHAN,
LAUREL M. LEE
MARY ELIZABETH KUENZEL,
JOHN A. TOMASINO
JAMES S. MOODY, JR.,

Defendants.

**DEFENDANTS HONORABLE NICK NAZARETIAN,
HONORABLE TRACY SHEEHAN, AND HONORABLE
LAUREL M. LEE'S MOTION TO DISMISS PLAINTIFF'S
COMPLAINT WITH PREJUDICE AND
MEMORANDUM OF LAW**

COMES NOW, Defendants Honorable Nick Nazaretian, Honorable Tracy Sheehan, and Honorable Laurel M. Lee (hereafter Judge Nazaretian, Judge Sheehan, and Judge Lee), individually and in their respective official capacities as Circuit Judges of the Thirteenth Judicial Circuit of the State of Florida in and for Hillsborough County, Florida, by and through undersigned counsel, and

pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby file this Motion to Dismiss Plaintiff's Complaint with Prejudice and respectfully move this Honorable Court for an Order dismissing Plaintiff's Complaint. In support hereof, the Defendants state as follows:

1. Plaintiff filed his Complaint in this matter on September 7, 2016. [Doc. 1}.

2. Judge Nazaretian, Judge Sheehan, and Judge Lee were served with process in this matter on September 13, 2016.

3. Plaintiff's lawsuit stems from his dissolution of marriage proceeding in Hillsborough County, Florida, over which Plaintiff alleges the Judges presided.

4. Plaintiff makes claims of judicial abused and constitutional violations against the Judges with regard to their handling of various matters in his dissolution of marriage proceeding.

5. In response to Plaintiff's Complaint, Judges Nazaretian, Sheehan, and Lee move this Honorable Court for an order dismissing Plaintiff's Complaint with prejudice, based upon the following grounds:

A. Plaintiff's Complaint is barred by judicial Immunity, Qualified Immunity and Eleventh Amendment Immunity.

B. Plaintiff's Complaint is barred by the *Rooker-Feldman* Doctrine and/or Younger Doctrine.

C. Plaintiff's Complaint fails to state a claim of relief.

WHEREFORE, Defendants Honorable Nick Nazaretian, Honorable Tracy Sheehan, and Honorable Laurel M. Lee respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice and grant such other relief as this Court deems appropriate under the circumstances.

MEMORANDUM OF LAW

I. Plaintiff's Allegations ¹

Plaintiff, Melvin E. Blough, *pro se*, sues Judges Nazaretian, Sheehan, and Lee in their individual capacities and in their official capacities as Circuit Court Judges in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida. Plaintiff's claims stem from his dissolution of marriage proceeding in state court in Hillsborough County. ²

Plaintiff's overall complaint appears to be that the Judges in Hillsborough County have refused to recognize and apply the Uniformed Services Former Spouses' Protection Act, 10 U. S. C. A. 1408 ("FSPA") in the dissolution proceedings. ³ Plaintiff argues that the failure to enforce the federal statutes amounts to "judicial

¹ The factual allegations, to the extent discernable, are taken as alleged in the four corners of Plaintiff's Complaint for purposes of this Motion to Dismiss only.

² The Hillsborough County Clerk of the Court docket reflects two dissolution of marriage proceedings: *Blough v. Blough*, 12-DR-014683, closed; and *Blough v. Blough*, 15-DRT-005140, presently pending.

³ Plaintiff complains that Judge Barber, the judge initially presiding over his dissolution of marriage case, stated at a hearing on June 10, 2013 that he would not allow the FSPA to be litigated. [Doc. 1, p.7] Plaintiff previously filed a lawsuit in this Court against Hillsborough

County Circuit Judges Barber and Foster, taking issue with their rulings and failure to apply the FSPA. This Court dismissed the lawsuit. *See* U.S. District Court Case No. 8:14-cv-00115. Plaintiff also sought mandamus relief in this Court which was denied. *See* U.S. District Court Case No. 14-cv-00408.

Abuse” by the Defendants, whose actions were taken in the “clear absence of all jurisdiction over the subject matter” and who Plaintiff argues are not protected by judicial immunity or qualified immunity. [Doc.1 p. 4]. Plaintiff also claims he suffered violations of his due process rights afforded by the Fifth and Fourteenth Amendments to the U. S. Constitution. *Id*

Plaintiff argues that the Judges violated the U.S. Constitution, Congress, and the U. S. Supreme Court by refusing to enforce federal statutes which he argues preempted State law and unlawfully took his “property interests without due process of law.” [Doc. 1, p 6-7]. Plaintiff states that the “judicial abuse” has been continuous over the prior three years and has involved “fifteen judges and two clerks of the court,” causing Plaintiff to suffer emotional harm and mental anguish. *Id.* Plaintiff states that the named Defendants are those who provided the “most direct injury to Plaintiff.”

As to Judge Sheehan, Plaintiff appears to argue that he filed a Motion for a Hearing on his Motion to Take Judicial Notice which was denied without comment by Judge Sheehan. ⁴ He states that the request for judicial notice included information and law pertaining to his argument that the FSPA apply to his divorce proceeding. Plaintiff claims he then moved to recuse Judge Sheehan for a variety of reasons, including her refusal to grant a hearing in violation of his due process rights. [Doc. 1, p 19-20].

Plaintiff states that the dissolution proceeding was then assigned to Judge Lee, and that Plaintiff filed a Motion for Reconsideration of Judge Sheehan’s denial of

⁴ Plaintiff references various exhibits attached as an Appendix to his Complaint. However, the Defendants were not served with a copy of the Appendix and a copy of the Appendix does not appear on the Court docket as it is too voluminous.

his Motion for Hearing, which Judge Lee denied without comment. [Doc. 1, p 20]. Plaintiff claims that Judge Lee was aware that she had a conflict of interest, having retained a prior employee of Respondent's counsel as her judicial assistant. Plaintiff states that Judge Lee recused herself on August 21, 2015. Plaintiff complains that Judge Lee abuse her judicial authority in "choosing to rule upon Plaintiff's Motion for a Hearing on the Notice given the conflict of interest." [Doc. 1, p.20-21].

Plaintiff states that the dissolution proceeding was then assigned to Judge Nazaretian, before whom Plaintiff immediately filed an "Emergency Motion for Reconsideration of Judge Sheehan's and Judge Lee's denials of Plaintiff's Motion for Hearing on Plaintiff's Notice." Judge Nazaretian denied the Emergency Motion without comment. Doc. 1, p21]. Plaintiff then filed a Petition for writ of mandamus with the appellate court requesting the court order Judge Nazaretian to "take judicial notice confirming Plaintiff's entitlement to the claimed federal statutes." [Doc. 1, p 22-23]. The appellate court denied the petition on November 17, 2015. [Doc.1, p. 24]. Plaintiff then attempted to seek review by the Florida Supreme Court, upon which his petition for review was dismissed. Doc.1, p 24-25].

Plaintiff further alleges that the final hearing before Judge Nazaretian was "the most abusive of all hearings." [Doc.1, p. 27]. Plaintiff claims that Judge Nazaretian denied Plaintiff's procedural and substantive due process rights by restricting the hearing to routine testimony on the marital relationship and consistently stating that Plaintiff "was not to testify about the law." [Doc. 1, 28].

Plaintiff argues the only time he was allowed to reference the federal statutes was in his opening statement that he prepared as a written narrative and which he read into the court record. *Id.* Plaintiff also argues that upon expressing concern over the conduct of the hearing, he was rebuffed by Judge Nazaretian. *Id.*

Plaintiff further complains that he did not have the opportunity to present his case consisting of four written narratives with forty exhibits. To conserve time; Judge Nazaretian suggested that Plaintiff read the narratives into the record and admit the written narratives and exhibits into the record as evidence, to which Plaintiff complied. [Doc.1, p 28-29]. Plaintiff alleges Judge Nazaretian restricted Plaintiff's due process rights during the final hearing. [Doc. 1, p. 35].

Plaintiff complains that the Final Judgment prepared by Judge Nazaretian did not reference the arguments contained in Plaintiff's written narratives or the forty exhibits he introduced, and that all issues were resolved based upon Florida divorce statutes. Plaintiff states that Judge Nazaretian falsely represented to Plaintiff that he had a sincere interest in reviewing the federal statutes. [Doc. 1, p. 47]. Plaintiff claims the Final Judgment is therefore void and that Judge Nazaretian violated Plaintiff's federal constitutional and statutory rights and acted in absence of "all jurisdiction." [Doc. 1, p. 30-31]. Plaintiff alleges that Judge Nazaretian ignored Plaintiff's federal statutory claims and ruled exclusively under the Florida statutes, which amounts to judicial abuse. [Doc. 1, p. 46] Plaintiff sought by Motion to challenge the Final Judgment, which Judge Nazaretian denied. *Id.*

Plaintiff then sought appellate review, during which time he learned that the four written narratives he introduced into evidence were not listed in the trial court record. [Doc. 1, p. 32].⁵ Plaintiff filed a Motion with the

⁵ Plaintiff states that Judge Nazaretian is responsible for destroying Plaintiff's statement of his case in the four written narratives in an attempt to prevent review by the appellate court" and "an attempt to

Court and a case management conference was held on August 2, 2016. *Id.* Plaintiff provided the four narratives again and they were admitted into evidence by Judge Nazaretian; Judge Nazaretian also granted Plaintiff's Motion to supplement the record. [Doc. 1, p. 33].

Plaintiff claims that as a result of the actions of the Defendants he has suffered mental anguish. He seeks damages in the amount of two million dollars. [Doc. 1, p. 52-53].

II. Standard for Motion to Dismiss

In reviewing a motion to dismiss, the court must accept all allegations as true and construe them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th. Cir. 2008). "To survive dismissal, the complaint's allegations must plausibly suggest that the [plaintiff] has a right to relief, raising that possibility above a speculative level; if they do not, the plaintiff's complaint should be dismissed." *James River Ins. Co. v. Ground Down Eng'g. Inc.*, 540 F.3d 1270, 1274 (11th. Cir. 2008) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-556 (2007)). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 664, 129 S. Ct. 1937, 173 LEd2d 868 (2009).

"[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 663. It is not enough

cover-up the existence of the claimed federal statutes at the trial court level.” [Doc. 1, p. 50-51].

that a claim is conceivable, the applicable standard is that a claim must be plausible on its face, and is subject to dismissal when the facts pleaded do not meet this requirement. *Sinaltrainal v. Coca Cola Co.*, 578 F.3d 1252, 1261 (11th. Cir. 2009); *Twombly*, 550 U.S. AT 570. The federal pleading rules require a complaint to provide sufficient notice to a defendant regarding the causal connection between the defendant and the plaintiff’s claim, so that a “largely groundless claim” does not proceed through discovery and “take up the time of a number of other people ...” *Dura Pharmaceuticals v. Broudo*, 544 U.S. 336, 347 (2005). “[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts” will not survive a motion to dismiss. *Oxford Asset Mgt., Ltd. V. Jaharis*, 297 F.3d 1182, 1188 (11th. Cir. 2002).

III. Grounds for Dismissal

A. Immunities Bar Plaintiff’s Complaint

i. Judicial Immunity

Plaintiff’s claims against Judges Nazaretian, Sheehan, and Lee are barred by the doctrine of judicial immunity. The doctrine of judicial immunity is founded upon the notion that a judge must “... be free to act upon his own convictions, without apprehension of personal consequences to himself.” *Stump v. Sparkman*, 435 U.S. 349, 356 98 s. Ct. 1099, 55 L.Ed.2d 331 (1978)(citing *Bradley v. Fisher*, 80 U. S. 335, 1871 wl 14737 (1871))). Judges are entitled to immunity when acting in their judicial capacity unless they acted in “clear absence of all

jurisdiction.” *Id.* (citing *Bolin v. Story*, 225 F.3d 1234, 1239 (11th. Cir. 2000)).

Whether a judge’s actions were made while acting in his or her judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge’s chamber or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity. *Scott v. Hayes*, 719 F.2D 1562, 1565 (11TH. Cir. 1983); *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th. Cir. 2005). The immunity extends to circumstances where judges are “accused of acting maliciously and corruptly” in exercise of their judicial decision-making power. *Pierson v. Ray*, 386, U.S. 547, 553-554 (1967).

It is clear on the face of Plaintiff’s Complaint that Plaintiff asserts claims against Judges Nazaretian, Sheehan, and Lee based upon actions taken in their judicial capacity that entitles them to judicial immunity from this lawsuit. Plaintiff’s attempts to argue that judicial immunity should not apply because the judges were fully advised of their applicability of federal law and were “well aware that their judicial actions were in clear absence of all jurisdiction over the subject matter.” [Doc. 1, p. 36]. Plaintiff essentially takes issue with the decision to apply state law to the divorce proceeding and not to apply the FSPA. However, Plaintiff is misguided as this does not overcome judicial immunity and entitle Plaintiff to sue the Judges.

Plaintiff’s claims against the Judges pertain to rulings or decisions made by the Judges during Plaintiff’s dissolution of marriage proceeding, including taking issue with the Judge’s denial of motions, which is fully protected by judicial immunity. At all times relevant, Judges Nazaretian, Sheehan, and Lee were acting within

the scope of their judicial functions and duties and there is nothing alleged by Plaintiff to suggest otherwise. Plaintiff has not alleged any supporting facts to indicate that Judges Nazaretian, Sheehan, and Lee acted outside the scope of their judicial authority at any time. Because the doctrine of judicial immunity protects the exercise of judicial functions, Judges Nazaretian Sheehan, and Lee are entitled to absolute judicial immunity. As such, Plaintiff's Complaint should be dismissed with prejudice.

ii. Qualified Immunity

To the extent that Plaintiff attempts to sue Judges Nazaretian, Sheehan, and Lee in their individual capacities, Plaintiff's claims are barred by doctrine of qualified immunity. Qualified immunity protects government employees from suits for damages brought against them in their individual capacities. It shields government officials performing discretionary functions from civil liability as long as their conduct violates no "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 102 S. Ct. 2727, 73 L.Ed.2d 396 (1982). Quality immunity "is an immunity from suit rather than a mere defense to liability." *Pearson v. Callahan*, 555 U.S. 223, 237 (2009). Qualified immunity protects government officials from suits in their individual capacities in a section 1983 claim of civil rights violations. See *Cottone v. Jenne*, 326 F.3d 1352, 1357 (11th. Cir. 2003). In order to be entitled to qualified immunity, an official must demonstrate that he or she was acting within the scope of their discretionary authority. *Storck v. City of Coral Springs*, 354 F.3d 1307, 1314 (11th. Cir. 2003). In order to overcome qualified immunity, the Plaintiff must demonstrate that a reasonable official would understand that the action taken would violate a recognized right." *Pearson*, 555 S. Ct. at 229.

Application of the doctrine of qualified immunity involves a two-part test. *Zeigler v. Jackson*, 716 F.2d 847, 849 (11th. Cir. 1983). First, in order to show that his or her actions were within the scope of discretionary authority, the government official must demonstrate "objective circumstances which would compel the conclusion that his actions were undertaken pursuant to the performance of his duties and within the scope of his authority." *Rich v. Dollar*, 841 F.2d 1558, 1564 (11th. Cir.1988)(citing *Barker v. Norman*, 651 F.2d 1107, 1121 (5th. Cir. 1981); *Douthit v. Jones*, 619 F.2d 527 (5th. Cir. 1980)). Once the governmental official has satisfied his or her burden, the burden shifts to the plaintiff to show lack of good faith on part of the government official by demonstrating that the official's actions clearly violated constitutional law. *Zeigler v. Jackson*, 715 F.2d at 849.

It is clear from Plaintiff's allegations that at all times relevant, Judges Nazaretian, Sheehan, and Lee were acting within the scope of their employment and discretionary authority as judicial officers for the Thirteen Judicial Circuit. Plaintiff's chief complaint is that the Judges failed to apply the FSPA to his divorce proceedings and Plaintiff takes issue with Judge Sheehan, Lee, and Nazaretian's rulings on his motions. This is insufficient to overcome qualified immunity. Plaintiff also argues Judge Lee should not have ruled on his Motion due to the conflict of interest but can demonstrate no improper actions taken by Judge Lee in violation of any constitutional right. Plaintiff acknowledges that Judge Lee recused herself from his case.

Plaintiff makes conclusory claims of due process violations which are unsupported by sufficient allegations of fact. Plaintiff complains that Judge Sheehan denied his request for a hearing and that Judge Nazaretian

denied him due process during his final hearing. This is also insufficient to overcome qualified immunity. Plaintiff's description of events indicates that he received ample notice and opportunities to be heard throughout his divorce proceedings, that he was allowed to read his written narratives into the court record during the final hearing, and that his arguments and exhibits were ultimately admitted into evidence thereby preserving the issues for appellate review. The alleged conduct does not violate clearly established statutory or constitutional right.

Plaintiff's allegations are insufficient to permit suit against Judges Nazaretian, Sheehan, and Lee in their individual capacities, and therefore, dismissal of Plaintiff's Complaint is proper based upon qualified immunity.

iii. Eleventh Amendment Immunity

To the extent that Plaintiff attempts to seek damages against Judges Nazaretian, Sheehan, and Lee for actions committed in their official capacities as judicial officers, Plaintiff's claims are barred by Eleventh Amendment immunity.

Under the Eleventh Amendment of the U.S. Constitution, a state is protected from being sued in federal court without the state's consent. *Manders v. Lee*, 338 F.3d 1304, 1308 (11th. Cir. 2003); *Williams v. Dist. Bd. of Trustees of Edison Comm. College*, 421 F.3d 1190, 1192 (11th. Cir. 2005); *Fla. Ass'n of Rehab. Facilities, Inc. v. State of Fla. Dept. of Health & Rehab. Servs.*, 225 F.3d 1208, 1219 (11th. Cir. 2000). The Eleventh Amendment states as follows:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity,

commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of any Foreign State. U.S. Const. amend. XI.

Absent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated the state's Eleventh Amendment immunity.

DeKald County School District v. Schrenko, 109 F.3d 680, 688 (11th. Cir. 1997)(citing *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 99, 104 s. Ct. 900, 900, 79 L.Ed.2d 67 (1984)).

Eleventh Amendment immunity extends to lawsuits against state officials acting in their official capacities. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114, 1124, 134 L.Ed.2d 252 (1996); *Miccosukee Tribe of Indians of Florida v. U. S.*; 980 F. Supp. 448, 459 (S. D. Fla. 1997). Federal courts lack jurisdiction over claims that are barred by the Eleventh Amendment. *McClendon v. Georgia Dept. of Comm. Health*, 261 F.3d 1252, 1256 (11th. Cir. 2001). Suits brought against a state in federal court without an explicit abrogation of Eleventh Amendment immunity should be dismissed. *Gamble v. Fla. Dept. of Health & Rehab. Servs.*, 779 F.2d 1509, 1513-15 (11th. Cir. 1986).

Plaintiff cannot demonstrate any waiver of the State's Eleventh Amendment immunity. Although Plaintiff attempts to sue the Judges in their individual capacities, the allegations set forth in Plaintiff's Complaint demonstrate that at all times relevant, Judges Nazaretian, Sheehan, and Lee were acting in their official capacities as state court judges. Accordingly, Plaintiff's claims against the Judges are barred by Eleventh Amendment immunity.

B. Plaintiff's Complaint is Barred by the Rooker-Feldman Doctrine and/or Younger Doctrine

Plaintiff's claims against Judge Nazaretian, Sheehan, and Lee should be dismissed because they are barred by the *Rooker-Feldman* doctrine. Under the *Rooker-Feldman* doctrine, federal courts are prevented from exercising jurisdiction over cases brought by "state-court losers" complaining of injuries from "state-court judgments."

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 281, 125 S. Ct. 1517, 1612 L.ED.2d 454 (2005\).

The doctrine prevents federal courts from exercising jurisdiction to review state court decisions where (1) the party in federal court is the same party as in state court; (2) the state court ruling was a final or conclusive judgment; (3) the party seeking relief had a reasonable opportunity to raise the claims in state court; and (4) the issues raised in federal court were adjudicated by the state court or intertwined with the state court's judgment. *Amos v. Glynn Co. Bd. of Tax Assessors*, 347 F.3d 1249, 1266 n. 11 (11th. Cir. 2003).

The *Rooker-Feldman* doctrine operates as a bar to Plaintiff's Complaint. Plaintiff complains of decisions and rulings made in his state court dissolution of marriage proceeding. Federal district courts shall not act as appellate courts over state court proceedings. *Staley v. Ledbetter*, 837, F.2d 1016, 118 (11th. Cir. 1988)(stating "[t]he federal courts are not a forum for appealing state court decisions"). See also *Robins v. Nortega*, 2010 WL 234894, *3 (S. D. Fla. 2010)(noting that *Rooker-Feldman* doctrine prevents the Court from reviewing claims which should have been raised in state court appellate proceedings).

Plaintiff has had sufficient opportunity to challenge the judicial rulings in the state trial and appellate courts. Filing a lawsuit in federal court for monetary damages against the Judges is not the proper remedy to challenge rulings rendered in the state court divorce proceeding.

This lawsuit is essentially a repeat of his prior unsuccessful attempt to sue state court judges from his divorce proceeding. See U.S. District Court Case No.8:124-cv-00115. As such, Plaintiff's claims against Judges Nazaretian, Sheehan, and Lee are barred by the *Rooker-Feldman* doctrine.

Dismissal of Plaintiff's Complaint is also warranted pursuant to the *Younger* abstention doctrine. Based upon the opinion of the U.S. Supreme Court in *Younger v. Harris*, 401 U.S. 37, 43-44, 91 S. Ct. 746, 27 L.Ed.2d 669 (1971), a federal court must refrain from interfering with pending state proceedings "when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." The *Younger* doctrine reflects federal policy against state court intervention except "where necessary to prevent irreparable injury." *Samuels v. Mackell*, 401 U.S. 66, 69, 91 S. Ct. 764, L.Ed.2d 688 (1971).

Although *Younger* involved a criminal proceeding, the doctrine has been expanded to include civilian matters. *31 Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003). It requires federal court abstention where (1) there is an ongoing state judicial proceeding, (2) the proceeding implicates important state interests, and (3) the parties have an adequate opportunity to raise constitutional claims in the state court proceeding. *Middlesex Co. Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 432, 102 S. Ct. 2515, 73 L.Ed.2d 116 (1982).

Plaintiff's Complaint pertains to matters involving his state court divorce proceedings, and the state courts have an interest in resolving family and domestic proceedings. The proceedings appears to be pending, according to the Hillsborough County Clerk of Court docket for *Blough v. Blough*, Case No. 15-DR-005140. Plaintiff cannot demonstrate that he has no remedy in the state trial or

appeals courts. Accordingly, this Court should abstain from exercising jurisdiction and the Complaint should be dismissed.

C. Plaintiff's Complaint Fails to State a Claim for Relief

Judges Nazaretian, Sheehan, and Lee also move this Honorable Court for an order dismissing Plaintiff's Complaint with prejudice for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

Pro se filings are to be liberally construed by the courts. *Powell v. Lennon*, 914 F.2d 1459, 1463 (11th. Cir. 1990). However, *pro se* litigants must meet pleading requirements and are "subject to the relevant law and rules of Court, including the Federal Rules of Civil Procedure." The fact that a litigant is *pro se* will not excuse his or her mistakes regarding the procedural rules. *Thompson v. U. S. Marine Corp.*, 2010 WL 3860578, *3 (11TH. Cir. 2010)(citing *McNeil v. United States*, 508 U. S. 106, 113, 113 S. Ct. 1980, 124 L.Ed.2d 21 (1993)). Complaints that fail to articulate the plaintiff's claims with clarity and prevent the defendant from framing a response constitute a "shotgun pleading", which are prohibited under the Federal Rules. *Byrne v. Nezhat*, 261 F.3d 1075, 1128-1129 (11th. Cir. 2001).

Federal Rules of Civil Procedure 8 and 10 set forth the general and organizational requirements governing complaints. In order to state a claim of relief, a complaint must include a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8 (a)(2). A complaint is also required to contain "numbered paragraphs, each limited as far as practicable to a single set of circumstances" and "...each claim founded upon a separate transaction or occurrence .. must be stated in a separate count ..". Fed. R. Civ. P. 10(b). To avoid dismissal, "the complaint's allegations must

plausibly suggest that the plaintiff has a right to relief, raising that possibility above a 'speculative level'; if they do not, the plaintiff's complaint should be dismissed."

James River Ins. Co. v. Ground Down Engineering Inc., 540 F.3d 1270, 1274 (11th. Cir. 2008))(citing *Bell Atl. Corp. v. Twombly*, 550 U. S. 544, 127 S. Ct. 1955, 1965, 167 L.Ed.2d 929 (2007)).

Plaintiff alleges violations of his due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. However, Plaintiff's Complaint does not identify any specific counts or causes of action against the Judges and fails to comply with the pleading requirements set forth in the procedural rules. To the extent that Plaintiff is attempting to allege a civil cause of action for deprivation of rights under 42 U.S.C. section 1983, the Complaint fails to do so. In order to establish liability under section 1983, the plaintiff must allege (1) that the defendant deprived them of a right secured under the Constitution or federal law and (2) that such deprivation occurred under color of state law. *Arrington v. Cobb Co.*, 139 F.3d 865, 872 (11th. Cir. 1998).

Dismissal of Plaintiff's Complaint is warranted because Plaintiff fails to allege sufficient facts to demonstrate that the Judges violated Plaintiff's due process rights and fails to state any cognizable legal cause of action or claim of relief against Judges Nazaretian, Sheehan, and Lee. The crux of Plaintiff's complaint is that the Judges failed to apply the FSPA to Plaintiff's divorce proceedings and Plaintiff takes issue with the Judges' rulings on various motions. Plaintiff makes conclusory claims of "judicial abuse" and violation of his procedural and substantive due process rights. However, Plaintiff's claims are unsupported by sufficient facts to sustain any valid cause of action against the Judges. As such, Plaintiff fails to state a claim of relief and hisd claims should be dismissed.

IV. Conclusion

Based upon the foregoing arguments, Plaintiff's Complaint against Judges Nazaretian, Sheehan, and Lee should be dismissed with prejudice. Plaintiff's claims are barred by judicial immunity, qualified immunity, and Eleventh Amendment immunity. Plaintiff's claims are also barred by the *Rooker-Feldman* and *Younger* doctrines. Plaintiff also fails to state any valid claim of relief against the Judges and Plaintiff's Complaint does not comply with the applicable procedural rules. As such, Judges Nazaretian, Sheehan, and Lee respectfully request this Honorable Court enter an order dismissing the Complaint with prejudice.

Respectfully submitted,
PMELA JO BONDI
ATTORNEY GENERAL

/s/ Shelley Cridlin
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 3, 2016, I electronically filed the foregoing with the Clerk of the

Court using the CM/ECF system which will send a notice of electronic filing to those persons capable of receiving such notice of filing. I further certify that I mailed the foregoing document and the notice of electronic filing by first class mail to the following non-CM/ECF participants: Melvin E. Blough, 803 Tomahawk Trail, Brandon, FL 33511.

/s/ Shelly Cridlin
Shelly Cridlin
Assistant Attorney General

IN THE UNITED STATES DISTRICT
COURT MIDDLE DISTRICT OF
FLORIDA TAMPA DIVISION

MELVIN E. BLOUGH

Plaintiff,

v.

Case No: 8:16-cv-2587-T-35-MAP

NICK NAZARETIAN, Individually, NICK
NAZARETIAN, in his official capacity
as a Justice within the Thirteenth
Judicial Circuit in and for Hillsborough
County, State of Florida, TRACY
SHEEHAN, Individually, TRACY
SHEEHAN, in her official capacity as a
Justice within the Thirteenth Judicial
Circuit in and for Hillsborough County,
State of Florida, LAUREL M. LEE,
Individually, LAUREL M. LEE, in her
official capacity as a Justice within the
Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,
MARY ELIZABETH KUENZEL,
Individually, MARY ELIZABETH
KUENZEL, in her official capacity as
Clerk of the Court in the District Court
of Appeal of the State of Florida
Second District, JOHN A. TOMASINO,
Individually, JOHN A. TOMASINO, in
his official capacity as Clerk of the
Court in the Supreme Court of the
State of Florida, JAMES S. MOODY,
JR., Individually, JAMES S. MOODY,

JR., in his official capacity as a Justice
within the United States District Court
for the Middle District of Florida
Tampa Division,

Defendants.

PLAINTIFF'S MOTION TO RECONSIDER THE ORDER OF DISMISSAL

COMES NOW, Plaintiff Melvin E. Blough, appearing pro se, requesting that the Court reconsider the Order of Dismissal dated October 12, 2016 based upon the following considerations:

All arguments for dismissal in Defendant's Motion are without merit and this Court failed to give Plaintiff the 14 days allowed to respond to Defendants' Motion to Dismiss.

III. Defendant's Grounds for Dismissal

A. The Claimed Immunities Do Not Bar Plaintiff's Complaint.

i. Judicial Immunity and Qualified Immunity.

Defendants are unable to respond to Plaintiffs claim that Defendants did act in complete absence of judicial authority without admitting to said claim. Defendant's Motion addresses only the judicial actions requirement; and is silent on the judicial authority requirement, which is required for immunity under *Bradley v. Fisher*, 13 Wall 335, 347 (1872) and *Stump v. Sparkman*, 435 U.S, 349, 355 (1978). The Motion to Dismiss does intentionally avoid addressing Plaintiffs claim that Defendants acted in the complete absence of judicial authority; a claim which is prominent throughout the Complaint, to avoid admitting that Defendants did in fact act in the complete absence of judicial authority. Defendants were well aware that their actions did violate Plaintiff's Constitutional rights. Defendants did unlawfully enforce state statutes which had been preempted (voided) by federal statutes in exercising judicial authority which had been withheld from them by the United States Congress and the United States Supreme Court. The Defendants

are without judicial and qualified immunity in failing to provide a legal exception to Plaintiff's claim that Defendants were acting in the complete absence of judicial authority.

iii. Eleventh Amendment Immunity

It has been well settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he has deprived another of a federal right under color of state law. Defendants did deny Plaintiff's Fourteenth Amendment right to due process and violate the Supremacy Clause of the United States Constitution in refusing to enforce those federal statutes to which Plaintiff did claim and establish entitlement. The State of Florida has no power to impart Defendants any immunity from responsibility to the supreme authority of the United States Constitution. Suit is not brought against the State of Florida as Defendants Nazaretian, Sheehan, and Lee are sued in their respective capacity as an officer of the State of Florida. The unconstitutional actions by Defendants were without the authority of, and did not affect, the State of Florida in its sovereign or governmental capacity. *Ex parte Young*, 209 U.S. 123 (1908).

B. Plaintiff's Complaint is not Barred by the *Rooker-Feldman* Doctrine and/or Younger Doctrine.

The issues presented in the pending Florida Second District Court of Appeals are restricted of property distribution and the award of alimony. These are the customary issues contested in a state sanctioned dissolution of marriage proceeding. The issue presented in this Court is restricted to a suit for compensation based upon the violation of Plaintiff's Fifth and Fourteen Amendment procedural and substantive due process rights to the claimed federal statutes which have been

denied through the systemic abuse of judicial authority which exists within federal and state judiciaries as the named Defendants did knowingly and consistently usurped their judicial authority in blatant violation of the United States Constitution and the denial of Plaintiff's federal statutory and Constitutional rights. The issues of property and alimony are being addressed in state court and the violation of Plaintiff's Constitutional rights are directed to this federal court. The issues are completely separate. As stated in the Complaint; this suit is not barred by *Rooker-Feldman*.

C. Plaintiff's Complaint Does State a Claim for Relief.

This federal lawsuit is based upon the refusal of fifteen state court judges to enforce two federal statutes which preempt (void) state statutes and the refusal of two district court judges to compel the state court judges to enforce said statutes. The Defendants did violate Plaintiff's Fifth and Fourteenth Amendment due process rights to the statutory protections of two federal statutes and did violate Article VI Clause to of the United States Constitution in the process.

CONCLUSION

It is grossly unfair for this Court to summarily deny a combat-veteran with loss-of-both feet, loss-of-use of both hands, and nine other service connected injuries the opportunity to respond to Defendant's Motion to Dismiss in a claim of systemic judicial abuse by the Courts. Plaintiff will be forced to sell the Specially Adapted Home which was constructed entirely by funding from the Department of Veterans' Affairs; and would have otherwise been excluded from equitable distribution by the state courts under authority of the Uniformed Services Former Spouses' Protection Act (one of the two federal statutes denied by the Defendants), as a direct

result of the judicial abuse which this Court has condoned.

The United State Supreme Court did state in *Bradley v. v. Fisher*, supra. and *Stump v. Sparkman*, supra., that judicial immunity does not include adjudicating in the complete absence of jurisdiction. Please do not assume that it is impossible to present sufficient facts and laws which void the doctrine of judicial immunity as this case does meet the statutory requirement for loss of immunity. Plaintiff's Complaint does provide proof; and Defendant's response does fail to deny, that Defendants did act in the complete absence of judicial authority by enforcing state statutes which had been voided by federal statutes and refusing to enforce the preempting federal statutes as required by Article VI Clause 2 of the United States Constitution.

This Court cannot begin to imagine the anguish experienced by Plaintiff; and the difficulty in preparing this Motion, after fifteen judges and two clerks of the court have issued eighteen Orders and Judgments over the prior four years with the sole purpose of directly; or indirectly, denying a combat veteran the benefit of two federal statutes which the United States Congress and the United States Supreme Court directed to the benefit of America's 117,000 combat-disabled veterans.

It is requested that this Court reconsider the Order of Dismissal and afford Plaintiff an opportunity to be heard as a *pro se*.

October 13, 2016

/s/ Melvin E. Blough
Melvin E. Blough
Pro Se Plaintiff
803 Tomahawk Trail
Brandon, FL 33511

Telephone: (813) 651-3158
Email: melvin.blough@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this; Plaintiff's Motion to Reconsider the Order of Dismissal, has been mailed via priority mail (with internet confirmation of receipt) to Shelley Cridlin as Assistant Attorney General, Office of the Florida Attorney General, Suite 1100, 501 East Kennedy Blvd., Tampa, FL. 33602 on this the 13th day of October, 2016.

IN THE UNITED STATES DISTRICT
COURT MIDDLE DISTRICT OF
FLORIDA TAMPA DIVISION

MELVIN E. BLOUGH

Plaintiff,

v.

Case No: 8:16-cv-2587-T-35-MAP

NICK NAZARETIAN, Individually, NICK
NAZARETIAN, in his official capacity
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SHEEHAN, in her official capacity as a
Justice within the Thirteenth Judicial
Circuit in and for Hillsborough County,
State of Florida, LAUREL M. LEE,
Individually, LAUREL M. LEE, in her
official capacity as a Justice within the
Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,
MARY ELIZABETH KUENZEL,
Individually, MARY ELIZABETH
KUENZEL, in her official capacity as
Clerk of the Court in the District Court
of Appeal of the State of Florida
Second District, JOHN A. TOMASINO,
Individually, JOHN A. TOMASINO, in
his official capacity as Clerk of the
Court in the Supreme Court of the
State of Florida, JAMES S. MOODY,
JR., Individually, JAMES S. MOODY,
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within the United States District Court
for the Middle District of Florida
Tampa Division,

Defendants.

**PLAINTIFF'S (APPELLANT'S) TRANSCRIPT AND
STATEMENT OF EVIDENCE IN SUPPORT OF
RECORD ON APPEAL**

COMES NOW Plaintiff (Appellant) Melvin E. Blough; appearing pro se, supplementing the record on appeal as required by Rule 10(b)(2) and (c) of the Federal Rules of Appellate Procedure. The following transcript of evidence and statement of evidence are relevant to the findings and conclusions of the United States District Court Middle District of Florida in the Order of Dismissal With Prejudice dated October 12, 2016 and the Order dated October 24, 2016:

1. Verified Complaint for Declaratory Judgment.
2. Amended Verified Complaint for Declaratory Judgment.
3. Order dated May 5, 2014 by Judge James S. Moody, Jr..
4. Order dated March 5, 2015 by United States Court of Appeal Eleventh Circuit.
5. Petitioner's Motion That Court Take Judicial Notice as filed with the court April 28, 2015.
6. Petitioner's Motion for Referral to General Magistrate for Hearing on Petitioner's Motion That Court Take Judicial Notice and unexecuted Order (stamped Denied June 29, 2015 Tracy Sheehan Circuit Judge) .
7. Petitioner's Motion to Disqualify Circuit Court Judge Tracy Sheehan.
8. Order Granting Motion to Disqualify Circuit Court Judge Tracy Sheehan.

9. Petitioner's Motion for Reconsideration of Judge Sheehan's denial of Petitioner's Motion for Referral to General Magistrate for Hearing on Petitioner's Motion That Court Take Judicial Notice and unexecuted Order as filed July 28, 2015 (stamped DENIED by Judge Laurel Lee August 12, 2015). Copy of Notice attached to Petitioner's Motion for Reconsideration).

10. Order of Disqualification signed by Judge Lee on August 21, 2015.

11. Petitioner's Emergency Motion for Reconsideration of Petitioner's Motion for Reconsideration of Judge Sheehan's and Judge Lee's denial of Petitioner's Motion for Referral to General Magistrate for Hearing on Petitioner's Motion That Court Take Judicial Notice and unexecuted Order (copy of Notice attached to Petitioner's Emergency Motion for Reconsideration).

12. Emergency Motion Handling Order denying Petitioner's Motion for Reconsideration of Judge Sheehan's and Judge Lee's denials of Petitioner's Motion for Referral to General Magistrate for Hearing on Petitioner's Motion That Court Take Judicial Notice and unexecuted Order.

13. Petition for Writ of Mandamus as filed September 11, 2015 with three volume appendix (documentation within index did include Notice and all documentation will be presented at trial).

14. Reply to Respondent's Response to the Petition for Writ of Mandamus.

15. Order of the Court denying Petitioner's Petition for Writ of Mandamus.

16. Petitioner's Motion for Clarification.

17. Petitioner's Emergency Motion for Relief.
18. Order of the Court treating Petitioner's Motion for Clarification and Petitioner's Emergency Motion for Relief as a motion for rehearing and denying said motion.
19. Appellant's Suggestion of Certification to the Florida Supreme Court in the current appeal.
20. Order of the Court denying Appellant's suggestion of certification to the Florida Supreme Court.
21. Petition for Writ of Mandamus with three volume appendix (documentation within appendix did include Notice and all documentation will be presented at trial).
22. Cover letter dated January 21, 2016 to Thomas Tomasino as Clerk of the Florida Supreme Court.
23. Court Order Dismissing the Petition for Writ of Mandamus.
24. Husband's Petition for Dissolution of Marriage as filed with the Court April 6, 2015.
25. Petitioner's Motion That Court Take Judicial Notice as filed with the Court April 28, 2015.
26. Petitioner Opening Statement at the Final Hearing held on April 26, 2016.
27. Petitioners Notice of Potential Due Process Violations.
28. Petitioner's Statement of Case.
29. Petitioner's Rebuttal top Respondent's Closing Arguments.

30. Respondent/Wife's Proposed Final Judgment of Dissolution of Marriage.
31. Final Judgment of Dissolution of Marriage as issued by Judge Nazaretian.
32. Petitioner's Motion to Challenge the Final Judgment.
33. Order on Petitioner's Motion to Challenge the Final Judgment.
34. Appellant's Listing of the Trial Court Record in Support of the Appeal.
35. Appellant's Motion to Compel the Clerk of the Court to Present a Complete Record of Evidence In Support of Appellant's Appeal.
36. E-mail notification to Judge Nazaretian's Judicial Assistant regarding the missing trial court evidence.
37. Order Setting Case Management Conference for August 2, 2016 before Judge Nazaretian.
38. Petitioner's Motion That the Trial Court File With the Clerk of the Court All Documentation Which Was Admitted Into Evidence at the Final Hearing.
39. Copies of those four narratives; consisting of fifty-two (52) pages, and a four (4) page listing of Petitioner/Plaintiff's evidence as admitted into evidence at the final hearing on April 27, 2016.
40. Order on Petitioner's Request to Supplement the Record.
41. Legal precedents

42. There were no proceedings and therefore no transcripts are available to order.

Under penalty of perjury; I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief. I also declare; under penalty of perjury, that this Plaintiff's (Appellant's) Transcript and Statement of Evidence in Support of Record on Appeal is executed on this the 29th day of November, 2016, at Brandon, Hillsborough County, Florida.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO or affirmed and signed before me on this the 29th day of November, 2016; by MELVIN E. BLOUGH, who is personally known to me or who produced identification.

/s/ Allison G. Packlick
ALLISON G. PACKLICK
NOTARY PUBLIC
STATE OF FLORIDA AT LARGE

ID Produced: Fl. Drivers License

/s/ Melvin E. Blough
Melvin E. Blough
Pro Se Plaintiff/Appellant
803 Tomahawk Trail
Brandon, FL 33511
Telephone: (813) 651-3158
Email: melvin.blough@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this; Plaintiff's (Appellant's) Transcript and Statement of Evidence in Support of Record on Appeal has been sent via priority mail (with internet confirmation of receipt) to Sheryl Loesch as Clerk of the United States District Court Middle District of Florida Tampa Division, 801 North Florida Ave., Tampa, FL. 33602 and Shelley Cridlin as Assistant Attorney General, Office of the Florida Attorney General, Suite 1100, 501 East Kennedy Blvd., Tampa, FL. 33602 on this the 29th day of November, 2016.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17256-GG

MELVIN E. BLOUGH

Appellant,

v.

NICK NAZARETIAN, Individually,
NICK NAZARETIAN, in his official
capacity as a Justice within the
Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,
TRACY SHEEHAN, Individually,
TRACY SHEEHAN, in her official
capacity as a Justice within the
Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,
LAUREL M. LEE, Individually,
LAUREL M. LEE, in her official
capacity as a Justice within the
Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,
JAMES S. MOODY, JR., Individually,
JAMES S. MOODY, JR., in his official
capacity as a Justice within the United
States District Court for the Middle
District of Florida Tampa Division,

APPEAL

Appellee(s).

APPELLANT'S PRINCIPAL BRIEF

Appellant, Melvin E. Blough, Plaintiff in Civil Action Number 8:16-cv-02587-MSS-MAP in the United States District Court for the Middle District of Florida Tampa Division, hereby appeals; pursuant to the provisions of USC Title 28, Part IV, Chapter 83, section 1291; and Title II Rule 3(a)(1) of the Federal Rules of Appellate Procedure, the District Court's Order of Dismissal dated October 12, 2016 as supplemented by an Order dated October 24, 2016.

CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT

This action does not involve any corporation or corporate interests under Rule 26.1(a) of the Federal Rules of Appellate Procedure. In compliance with 11th Cir. R. 26.1-1, the undersigned hereby certifies that the following persons and entities have an interest in the outcome of this case:

1. Cridlin, Shelley B.
2. Lee, Laurel M.
3. Moody, James S.
4. Nazaretian, Nick
5. Scriven, Mary S.
6. Sheehan, Tracy

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not requested.

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STATEMENT OF JURISDICTION

Federal subject matter jurisdiction over the legal claims stated in the Complaint were brought to the District Court pursuant to Article III, Section 2, Clause 1 of the Constitution which extends to all cases, in Law and Equity, arising under the laws of the United States.

The willful and continuous pattern of violations to Appellant's Constitutional and federal statutory rights by Appellees individually; and in their official capacities, clearly documents a rigorous standard of culpability and causation, and thereby a cause of action against Appellees. The extensive factual documentation presented provides proof to the alleged violations well beyond the "plausibility" standard set by the Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and documents the legal existence of Appellants capacity to bring suit against Appellees; and Appellees capacity to be sued, with the specificity required under Rule 9 (a) of the Federal Rules of Civil Procedure in pleading special matters.

The district court did have personal jurisdiction over the Appellees who are not entitled to the court-born doctrine of judicial immunity due to the fact that Appellees did act in the "clear absence of all jurisdiction over the subject matter" and did violate Appellants clearly established federal statutory and Constitutional rights.

Jurisdiction of this court is invoked under USC Title 28, Part IV, Chapter 83, section 1291 as to the Order of Dismissal by the United States District Court for the Middle District of Florida Tampa Division dated October 12, 2016 which was supplemented by the Order dated October 24, 2016 (exhibits D and F). Appellant did timely file a Notice of Appeal on November 21, 2016.

STATEMENT OF THE ISSUE

The issue presented in this case will ultimately require that the United States Supreme Court address a court-born Constitutional violation which undermines the Constitutional authority of the Federal Government over state court judges and is of greater importance than relieving a judge's fear of being sued for making the wrong decision in a case over which the respective judge exercises jurisdiction. The issue presented is the denial of judicial immunity to those front-line judges who knowingly refuse to enforce federal statutes which preempt (void) state statutes and then enforce those voided state statutes which were preempted by the respective federal statutes.

STATEMENT OF THE CASE

The issue presented in this case is unique as the facts and laws present a classic conflict between the federal statutory rights of disabled veterans and the judicial immunity of those judges who refuse to enforce said federal statutory rights; causing said judges to be in violation of the authority of the United States Congress to enact legislation which "shall be the supreme Law of the Land and the **Judges** in every State shall be bound thereby" under Article VI Clause 2 of the United States Constitution and the judicial mandate by the United States Supreme Court in *Mansell v. Mansell*, 490 U.S. 581 (1989).

It is the legal position of Plaintiff/Appellant (hereafter "Blough") that the judicial immunity of Defendants/Appellee's (hereafter "Judges") has been lost due to their violation of the United States Constitution (hereafter "Constitution") which no employee of the Federal Government; or person who has taken an oath to the Constitution, can violate and continue to claim judicial immunity.

A. Course of the proceedings and disposition in the court below:

Fifteen federal and state court judges have; during the prior four years, refused to enforce federal statutes under USC Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4)(B); titled the Uniformed Services Former Spouses' Protection Act (hereafter "FSPA"), and USC Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B) which preempt (void) State of Florida divorce statutes on the equitable distribution of property and the award of alimony in those State of Florida divorce court proceedings in which Blough's Fifth and Fourteenth Amendment right to due process have been consistently denied by the Judges. The Judges did in turn enforce the preempted (voided) state statutes in violation of Blough's Constitutional right to the protection of the claimed federal statutes, the Constitutional authority of the United States Congress (hereafter "Congress") to enact federal statutes which are superior to the preempted (voided) state statutes under Article VI Clause 2 of the Constitution, and the mandate to enforce the FSPA as directed to front-line Judges by the United States Supreme Court in *Mansell*, supra. (hereafter "Supreme Court").

The Orders by the district court (exh. 31 and 33) do not challenge the facts presented, but rather states that "dismissal is warranted if there is a dispositive legal issue that precludes relief" (exh. 31 at page 7) and then goes on to claim that dismissal is warranted based upon Judicial Immunity, Eleventh Amendment Immunity, and the Rooker-Feldman Doctrine. Each of the defenses claimed in the District Court's Order of Dismissal (exh. 31) and the District Court's Order on Plaintiff's Motion to Reconsider Defendant's Order of Dismissal (exh. 33) are restated and rebutted below at pages 9–19.

The Order by the District Court (exh. 31) describes Blough's Complaint as follows: "it appears that Plaintiff's argument is that the state courts are refusing to enforce federal statutes which he believes replace state statutes

in the divorce proceeding". The Order by the District Court does fail to respond to the legal arguments; and the following legal precedents and statutory provisions, which were presented in conjunction with the documented facts within the Complaint (exh. 1 pages 33-51): *Bradley v. Fisher*, 13 Wall 335, 347 (1872); *Stump v. Sparkman*, 435 U.S. 349, 355 (1978); *In Edgar v. MITE Corp*, 457 U.S. 624 (1982); *Gibbons v. Ogden*, 9 Wheat (1824); *United States v. Locke*, 529 U.S. 89 (2000); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Hines v. Davidowitz*, 312 U.S. 52 (1941), *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000); Article VI Clause 2 of the United States Constitution; *Cooper v. Aaron*, 358 U.S.1 (1958); USC Title 10, Subtitle A, Part II, Chapter 61, section 1201(b)(3)(B)(ii); USC Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4); USC Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B); *Ex parte Young*, 209 U.S. 123 (1908); and *Mansell v. Mansell*, 490 U.S. 581 (1989).

The failure of the District Court to address the legal precedents, facts, and legal arguments presented in the Complaint reflects upon the conflict of interest and the summary superficial defenses judges routinely present to justify the court-born doctrine of judicial immunity. Blough can only hope that the members of this Court will have the judicial integrity to acknowledge that they have an inherent conflict of interest relative to the issue presented and do not believe that judges are immune from liability for their actions which violate the supreme authority of the Constitution.

B. Statement of the facts: The Orders by the District Court (exh. 31 and 33) do not challenge Blough's statements of the issues, jurisdiction, factual allegations, and facts in support of the allegations presented in pages 3 through 33 of the Complaint (exh. 1) and will be repeated only to the extend necessary to respond to said Orders.

The denial of Blough's Complaint is based upon "boiler-plate" language in support of the claim to judicial immunity; with additional "boiler-plate" language in support of claims of Eleventh Amendment Immunity and preclusion under the Rooker-Feldman Doctrine, all of which are thoroughly rebutted below at pages 9-19.

C. Standard of review by the appellate court: "When the responsibilities of lawmaker, prosecutor, judge, jury and disciplinarian are thrust upon a judge he is obviously incapable of holding the scales of justice perfectly fair and true." *Fisher v. Pace*, 336 U.S. 155 at 167 (1949).

This axiom could not be more apparent than the inherent conflict of interest which is created in judges' ruling upon the issue of judicial immunity and is evident in the *sua sponte* Order of Dismissal by United States District Court Judge Mary S. Scriven.

The Supreme Court; as the creator of the doctrine of judicial immunity, is the only court authorized to address the limits of judicial immunity when that immunity affects the balance of power between the Federal Government and state court judges. The review by this Court should be limited to a determination that a Constitutional violation is presented and that certification of the issue to the Supreme Court is warranted.

SUMMARY OF THE ARGUMENT

If front-line judges including state court judges, do have the absolute judicial immunity as claimed in the District Court Order to Dismiss; the Constitutional balance of power between the Federal Government and state court judges has been compromised by the ability of state court judges to choose those federal statutes they will enforce and those federal statutes they will not enforce. This grab of Constitutional power by state court judges; as documented in this case, is not entitled to judicial immunity as envisioned by the Supreme Court which is

meant to protect judges from fear of being sued for their judicial acts. Those state court judges who violate the Constitution should fear being held accountable for their judicial acts.

Mansell, supra. is the seventh; and most recent, in a series of cases in which the Supreme Court established the “clear and substantial federal interest test” with the previous cases being *McCarty v. McCarty*, 453 U.S. 210 (1981); *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979); *Yiatos v. Yiatos*, 376 U.S. 306 (1964); *Free v. Bland*, 369 U.S. 663 (1962); *Wissner v. Wissner*, 338 U.S. 655 (1950); *McCune v. Essig*, 199 U.S. 382 (1905). The “clear and substantial federal interest” addressed by Congress in the FSPA is directed to the National debt to the disabled veteran spouse and is granted in proportion to the extent of injuries incurred by the respective disabled veteran spouse. The Supreme Court did anticipate resistance to the preemptive effects of the FSPA by state court judges and did provide the following mandate in *Mansell*, supra.:

“Thus, the legislative history (of the Former Spouses Protection Act), read as a whole, indicates that Congress intended both to create new benefits for former spouses and **to place limits on state courts designed to protect military retirees**. Our task is to interpret the statute as best we can, not to second-guess the wisdom of the congressional policy choice. See, e.g. *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam) (‘deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice’). We realize that reading the statute literally may inflict economic harm on many former spouses. But we decline to misread the statute in order to reach a sympathetic result when such a reading requires us to do violence to the plain language of the statute and to ignore much of the legislative history.” Complaint (exh. 1 page 48), original Complaint (exh. SE-1), and the Request That the Court Take Judicial Notice (exh. SE-5) which was provided to each of the fifteen judges.

ARGUMENT AND CITATIONS OF AUTHORITY

The *sua sponte* Order of Dismissal United States District Court has taken the legal position that those actions taken by the respective Judges were taken in their judicial "capacities" and were therefore actions protected from liability under the court-born doctrine of judicial immunity.

"Absolute immunity" is a misnomer as every person acting under authority of the Constitution is subject to being held accountable for their official actions which violate the authority vested in them under the Constitution. This is true of the President of the United States, members of the United States Congress, members of the Federal Judiciary, and those who pledge allegiance to the Constitution (including, but not limited to federal employees, members of the United States Military, and state court judges). "Absolute immunity" vests doctoral and kingly authority which is prohibited under the separation of powers vested in the Constitution and the ultimate authority of "we the people".

This claim to denial of judicial immunity is not brought on the grounds that the Judges did intentionally deny Blough's Constitutional and statutory rights, act malicious and corruptly, and act in excess of their judicial authority; all of which Judges did, however is based upon the fact that the Judges did knowingly refuse to enforce federal statutes which preempted (voided) state statutes and then enforced those voided state statutes which were preempted by the respective federal statutes.

The question of whether the state divorce court Judges are subject to suit for the allegations presented revolves around the limited; but well settled, question of judicial immunity which has been defined in the common law decisions of the Supreme Court in *Bradley v. Fisher*, 13 Wall 335, 347 (1872) and *Stump v. Sparkman*, 435 U.S. 349, 355 (1978).

Bradley, supra. provides for judicial immunity if the act itself is not expressly prohibited by existing law. The preempted state statutes were void of judicial authority under *In Edgar v. MITE Corp*, 457 U.S. 624 (1982) and the litany of cases referenced at page 34 of the Complaint. The state divorce court Judges did act in the complete absence of judicial authority by enforcing preempted (voided) state statutes under authority to which had been specifically prohibited by the federal authority of the FSPA and the Supreme Court decision in *Mansell*, supra. The only judicial actions which could have been lawfully taken by the state divorce court Judges were limited to enforcing the claimed federal statutes which did preempt (void) the State of Florida equitable distribution and alimony statutes. The judicial authority to not to enforce the preempting (voiding) federal statutes had been specifically withheld from the Judges by Article VI Clause 2 of the Constitution pursuant to the 1982 enactment of the preempting federal statute (FSPA) as mandated by the Court in *Mansell*, supra. The judicial authority to enforce the preempted (voided) Florida statutes on equitable distribution and alimony had been specifically withheld from the Judges by Article VI Clause 2 of the Constitution pursuant to the 1982 enactment of the preempting Federal Statute (FSPA) as mandated by the Court in *Mansell*, supra.

The "judicial act" in *Stump*, supra. was approval of the petition in question. In the case at point the "judicial act" was the enforcement of preempted (voided) state statutes under authority to which had been specifically denied and knowingly refusing to enforce the claimed federal statutes which did preempt (void) State of Florida equitable distribution and alimony statutes under authority which had been specifically granted to the state divorce court Judges under the FSPA, *Mansell*, and Article VI Clause 2 of the Constitution. State divorce court Judges did act in violation of the "Supreme Law of the Land" by exercising

judicial authority which had been specifically withheld from the state divorce court Judges and concurrently refusing to exercise judicial authority which had been granted.

All seven of those Supreme Court cases cited above were found to be serving a “clear and substantial federal interest” which did preempt/void/nullify a specific state statute. The Supreme Court’s decision in *Manseil* did preempt/void/nullify the State of Florida’s equitable distribution statute to serve a “clear and substantial federal interest” by protecting the peoples’ compensation awarded to those disabled veterans who were injured in service to ‘we the people’ and who have waived their military disability retirement pay to receive “USC Title 5 and USC Title 38 compensation” under USC Title 10, section 1408(a)(4)(B) of the FSPA.

ORDER OF DISMISSAL WITH PREJUDICE

I. BACKGROUND

Removal and remand of Plaintiff’s State Marriage Action

“On March 7, 2014, Ms. Blough filed a Motion to Remand The Second Federal Action which Judge Whittemore granted on March 26, 2014, noting that ‘Mr. Blough’s state court complaint seeking dissolution of a marriage does not arise under federal law’.” (exh. 30 page 4).

Blough’s Response: The divorce matter remained in the state court at all times; however was subject to the enforcement of two federal statutes. The Notice of Removal and the Emergency Motion to Stay in response to Judge Whitmore’s Order to Remand did provide the following statements which reflect the fact that Blough did request that Judge Whittemore exercise lawful federal jurisdiction to enforce those federal

statutes which were being denied enforcement by state court judges in the divorce case:

“Because domestic relations are preeminently matters of state law, we have consistently recognized that Congress, when it passes general legislation, rarely intends to displace state authority in this area.... The instant case, however, [the FSPA] presents one of those rare instances where Congress has directly and specifically legislated in the area of domestic relations.” Mansell, *supra*.

At page 4 of the Motion to Stay which was denied by Judge Whittemore, the current Complaint (exh. 1 pg. 10), the initial Complaint (exh. SE-1), and the Motion That the Court Take Judicial Notice (exh. SE-5) which was provided to all fifteen Judges.

“State jurisdiction does not apply to the property and alimony issues in this case; as the compelling state interest in the domestic affairs of its residents (i.e. divorce), has been replaced by a lawful act of the Congress of the United States (USFSPA) as affirmed by the United States Supreme Court in *Mansell*, *supra*.; a well documented assertion of a protected Federal interest; and the statutory exceptions/exclusions to alimony under U.S.C. Title 42, sections 659(h)(1)(B)(III) and 659(h)(2)(B).” At page 9 of the Notice of Removal.

The comment by Judge Whittemore; referenced in the District Court’s Order of Dismissal, was an intentional misrepresentation of the matter before the district court by Judge Whittemore for the purpose of avoiding his judicial responsibility to direct Defendant State Court Judges Barber and Foster to enforce those federal statutes which did preempt state statutes. Complaint (exh. 1 at page 18). The misrepresentation by Judge Whittemore were an example of the systemic judicial abuse discussed below.

The Motion to Remand, Emergency Motion to Stay, and Notice of Removal were not included in the appendix to this Appeal in that Judge Whittemore is not a named Defendant for the reasons stated in the Complaint (exh. 1 page 18).

II. LEGAL STANDARD

“In evaluating the sufficiency of a complaint in light of a motion to dismiss, the well pleaded facts must be accepted as true and construed in the light most favorable to the plaintiff. However, the court should not assume that the plaintiff can prove facts that were not alleged. Thus, dismissal is warranted if, assuming the truth of the factual allegations of the plaintiff’s complaint, there is a dispositive legal issue that precludes relief.” Order (exh. 31 page 7).

Blough’s Response: For the specific reasons stated below; the claimed “dispositive legal issues” do not provide relief in this suit for damages.

III. DISCUSSION

“The Court finds that Plaintiff’s Complaint lacks merit and orders that it be dismissed on several grounds.”

Judicial Immunity

“Plaintiff’s claims against the Judges are barred by judicial immunity. ‘Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction’.” Order (exh. 31 page 8).

“It is clear that all of Plaintiff’s allegations regarding all of the Defendant Judges stem from their actions taken while acting in their judicial capacity. Specifically, all the claims concern actions allegedly taken by them while presiding

over Plaintiff's marriage dissolution proceedings or challenges thereto. Plaintiff contends that the Defendant Judges are not entitled to immunity because they acted in clear absence of all jurisdiction. This contention is without merit. It is clear that the Defendant Judges had jurisdiction over the matters before them concerning Plaintiff's marriage dissolution proceedings. Further, the allegations in Plaintiff's Complaint make it clear that Plaintiff's challenge is to the Defendant State Judges that state divorce law applied to Plaintiff's divorce proceeding. The allegations also make it clear that Plaintiff's challenge regarding Defendant Moody concerns Defendant Moody's determination that the circuit court state judges were immune from Plaintiff's previous suit and refusal to issue a declaration concerning the Federal Statutes. Accordingly, Plaintiff's action is due to be dismissed on judicial immunity grounds." Order (exh. 31 page 8).

Blough's Response: The exceptions to judicial immunity were fully pleaded in the Complaint (exh. 1 pages 33-51) and Blough's Motion to Reconsider Defendant's Order of Dismissal (exh. 32 pg. 2). It has been determined that the state divorce court Judges are not protected by judicial immunity because the Judges did not have the authority to not to enforce the preempting federal statutes nor the authority to enforce the preempted state statutes, as the authority was expressly withheld from the Judges by federal statutes, the Supreme Court's decision in *Mansell*, and Article VI Cl 2 of the Constitution. The state divorce court Judges did act in violation of the "Supreme Law of the Land" by exercising judicial authority which had been expressly prohibited by existing law. The Judges are without judicial immunity for the reasons presented in the Complaint, Blough's Motion to Reconsider, and the legal analysis stated on pages 5-9 above.

Absolute Immunity Afforded to Court Clerks

“Court clerks ‘have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge’s direction, and only qualified immunity from all other actions for damages”.

Hyland, 267 Fed. Appx. at 842 quoting *Tarter v. Hury*, 646 F.2d 1010 (5th. Cir. 1981). Order (exh. 31 page 9).

Blough’s Response: Appellant Bough acknowledges that the legal arguments presented within the District Court’s Order of Dismissal (exh. 31 pg. 9) provide sufficient basis for denial of Blough’s claim of liability by the named court clerks. Mary Elizabeth Kuenzel, individually, and in her official capacity as Clerk of the Florida Second district Court of Appeals; and John A. Tomasino, individually, and in his official capacity as Clerk of the Florida Supreme Court, are hereby deleted as Defendants to Blough’s Complaint (exh. 1). The concurrence by three (3) judges on the Florida Second District Court of Appeals pursuant to Section 3.3 of the Second District Court of Appeals Internal Operating Procedures and five (5) judges on the Florida Supreme Court pursuant to Section II B1(a)(1) of the Supreme Court of Florida Manual of Internal Operating Procedures did transfer liability to the respective judges who; although not named as parties to Blough’s original Complaint, are included within the total of fifteen (15) federal and state court judges who have denied Blough’s claim for enforcement of the specified federal statutes since this litigation was initiated in 2012. An Amended Certificate of Interested Persons and Corporate Disclosure Statement has been filed with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit.

Eleventh Amendment Immunity

“In addition, Plaintiff’s claims against the Defendant State Judges and the Defendant Clerks are barred by Eleventh Amendment Immunity to the extent the claims seek to impose liability against the state via the actions of the

Defendants undertaken in their official capacities as state officials.

Thus, Eleventh Amendment immunity extends to lawsuits against state officials acting in their official capacities. Accordingly, Plaintiff's claims are due to be dismissed based upon Eleventh Amendment immunity." Order (exh. 31 pages 10-11).

Blough's Response: This peripheral issue was initially raised by Blough in the Complaint (exh. 1 pages 9, 37, 44) and a full response was provided in Blough's Motion to Reconsider the Defendant's Order of Dismissal (exh. 32 pg. 3).

"Our Constitution establishes a system of dual sovereignty between the States and the Federal Government. This Court also has recognized this fundamental principle. In *Taffin v. Levitt*, 493 U.S. 455 (1990), '[w]e began with the axiom that, under our federal system, the States possess sovereignty concurrently with that of the Federal Government, **subject only to limitations imposed by the Supremacy Clause.** ... Perhaps the principal benefit of the federalist system is a check on abuses of government power. 'The constitutionally mandated balance of power between the States and the Federal Government was adopted by the Framers to ensure the protection of our fundamental liberties'. *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985). Complaint (exhibit 1 at page 9).

"It has been well settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. *Ex parte Young* teaches that, when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that

Constitution, and he is, in that case, stripped of his official or representative character, and is subject in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.” *Ex parte Young*, 209 U.S. 123 (1908). Complaint (exh. 1 page 44).

“In refusing to enforce the federal statutes which had preempted the state statutes the Defendants did violate Article VI Clause 2 of the United States Constitution which requires that “the Laws of the United States shall be the supreme Law of the Land and the **Judges** in every State shall be bound thereby”. Complaint (exh. 1 page 37).

“Suit is not brought against the State of Florida as Defendants Nazaretian, Sheehan, and Lee are sued in their respective capacity as an officer of the State of Florida. The unconstitutional actions by Defendants were without the authority of; and did not affect, the State of Florida in its sovereign or governmental capacity.” Motion to Reconsider (exh. 32 page 3).

Rooker-Feldman Doctrine

“Moreover, Plaintiff’s claims against the Defendant State Judges and the Defendant Clerks are barred by the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine provides that federal courts are prevented from exercising jurisdiction over cases brought by state-court losers complaining of injuries from state court judgments. The doctrine prevents federal courts from exercising jurisdiction to review state court decisions where (1) the party in federal court is the same party as in the state court; (2) the state court ruling was a final or conclusive judgment; (3) the party seeking relief had a reasonable opportunity to raise the claims in state court; and (4) the

issues raised in federal court were adjudicated by the state court or intertwined with the state court's judgment. As such, 'federal courts are not a forum for appealing state court decisions'.... the *Rooker-Feldman* doctrine prevents the court from reviewing claims which should have been raised in state court appellate proceedings.

Plaintiff's Complaint lists grievances stemming from the Defendant State Judges' decisions made and the Defendant Clerks' actions taken in connection with Plaintiff's marriage dissolution proceeding, particularly with the application of state law rather than the Federal Statutes to his marriage dissolution proceeding. Plaintiff had sufficient opportunities to challenge the judicial rulings and actions in the state trial and appellate courts and avail himself of those options. Plaintiff, displeased with the results of those state rulings, now seeks to file those claims concerning the Federal Statutes and their applicability to his marriage dissolution proceedings in federal court. The Plaintiff cannot do because Plaintiff's claims against the Defendants are barred by the *Rooker-Feldman* doctrine." Order (exh. 31 pages 11-12).

Blough's Response: This peripheral issue was initially raised by Blough in the Complaint (exh. 1 pages 16-17) and a full response was provided in Blough's Motion to Reconsider the Defendant's Order of Dismissal (exh. 32 pg. 3-4).

Rooker-Feldman does not apply as the issues presented and the remedies sought have no dependent relationship. The Federal court action was initiated to hold those individuals responsible for denying Blough's Constitutional right to two federal statutes which did preempt (void) State of Florida divorce statutes on equitable distribution and alimony. The remedy is an award of two million dollars (\$2,000,000) in damages. The state court action is directed to forcing state court judges to enforce two federal statutes which preempt (void) state statutes on equitable distribution

and alimony. The end result of the state court action; is the exclusion from equitable distribution of Blough's property which is protected by the FSPA, and the exclusion from the payment as alimony of Blough's property which is protected by the federal alimony statutes. Blough did in 2014, file a complaint with the district court requesting that the district court; in the form of a request for declaratory judgment instructing state divorce court judges that they were required by Article VI Clause 2 of the United States Constitution to enforce those specific federal statutes claimed by Blough (exh. SE-1). The district court did dismiss the complaint as moot because the district court found the judges were protected for their actions by judicial immunity. Because the district court refused to meet its Constitutional responsibility in 2014; Blough has been forced to pursue two independent causes of action.

Blough was denied his Fourteenth Amendment right to substantive and procedural due process to raise his claims of entitlement to two federal statutes; and the state courts refused to adjudicate entitlement and enforcement of the claimed federal statutes during the entire four years of litigation in the State of Florida divorce courts. These facts are presented and documented in the discussion of Systemic Judicial Abuse which is presented below. The Rooker-Feldman Doctrine of preclusion does not apply to the Complaint or this Appeal.

"Accordingly, it is hereby **ORDERED** that Plaintiff's Complaint is **DISMISSED with prejudice** as the claims therein are barred by Judicial Immunity, Absolute Immunity afforded to Court Clerks, Eleventh Circuit Immunity, and/or the *Rooker-Feldman* doctrine." Order (exh. D page 12).

Blough's Response: Judicial immunity is denied and Eleventh Amendment Immunity/Rooker-Feldman Doctrine preclusion does not apply for the reasons stated. The Defendant Clerks

of the Court are not subject to suit for the reasons listed.

DISTRICT COURT'S ORDER ON PLAINTIFF'S MOTION TO RECONSIDER DEFENDANT'S ORDER OF DISMISSAL

“Plaintiff also appears to assert that he was not afforded fourteen (14) days to respond to a Motion to Dismiss filed by Defendants Nazaretian, Sheehan, and Lee (Dkt 29). The Court first notes that the Court entered its Order dismissing Plaintiff's Complaint *sua sponte*; therefore, it did not rule on the Motion to Dismiss but rather denied the Motion to Dismiss as moot. As such, there was no need to await for a response to the motion. The Court further notes that even if it had considered the Motion to Dismiss and afforded Plaintiff the opportunity to file a response in opposition it would have had no impact on the Court's determination that Plaintiff's claims were barred.” Footnote at page 2.

“It is well-settled that a motion for reconsideration cannot be used to ‘relitigate old matters, raise arguments or present evidence that could have been raised prior to the entry of judgment.’”

Blough's Response: The District Court did play a “shell game” by issuing a *sua sponte* Order which did contain the same boiler plate claims of judicial immunity, Eleventh Amendment immunity, and Rooker-Feldman preclusion which were addressed by Blough in the Complaint and had been claimed in Defendant's Motion to Dismiss.

When responding to Defendant's Motion to Dismiss Plaintiff's Complaint as filed on October 3, 2016 (exh. 29); with Blough's Motion to Reconsider the Order of Dismissal as filed on October 13, 2016 (exh. 32), Blough was not aware that the District Court had issued the *sua sponte* Order of Dismissal on October 12, 2016 (exh. 31). PACER did not reflect that a *sua*

sponte Order had been issued by the Court and a copy of the Order was not yet available on Pacer.

When Blough filed the Motion for Reconsideration in person with the Clerk of the Court on the morning of October 13, 2016 he had no reason to believe that he was responding to other than Defendant's Motion to Dismiss as filed October 3, 2016.

The actions of the District Court are a disgrace to the judicial process and did violate Blough's Fifth Amendment right to an impartial ruling. The District Court did; in the *sua sponte* Order of Dismissal, contemporaneously commandeer the litigative right of the Defendants and inflict a personal judgment motivated by a conflict of interest into the proceedings.

SYSTEMIC JUDICIAL ABUSE

The Complaint does present a claim of systemic judicial abuse of the FSPA in federal and state courts (exh. 1 at page 4 item 10). It is impossible; with the page limitations to this Appeal, to fully describe the systemic judicial abuse of Blough's Fifth and Fourteenth Amendment substantive and procedural due process rights by fifteen federal and state court judges since the initial Petition for Dissolution of Marriage was filed October 12, 2012. Although the Constitutional violations did involve fifteen Judges as described in the Complaint; this suit is limited to those four judges who provided the greatest injury to Blough's Constitutional and federal statutory rights.

Since this litigation began in 2012; it has not been Blough versus the Respondent, Defendant, or Appellee, but rather Blough versus the fifteen judges who have issued eighteen (18) Orders and Judgments for the sole purpose of denying Blough the protections of the claimed federal statutes which the Congress enacted to the benefit of disabled veterans.

Florida Circuit Court Judges Barber, Foster, Sheehan, Lee, Nazaretian; Florida Second District Court of Appeals Judges Crenshaw, Morris, Lucas; Florida Supreme Court Judges Pariente, Lewis, Canady, Polston, Perry; were all required to take judicial notice of the FSPA under Title VII, Chapter 90, section 90.201(1) of the Florida Statutes upon their own initiative. All Judges refused to take said judicial notice of FSPA even after Blough Motioned each of the respective Judges to Take Judicial Notice of Blough's entitlement to the protections of the FSPA (exh. SE-5). Including self-authenticating documentation under Title VII, Chapter 90, section 90.902 of the Florida Statutes which was attached to the Motion.

The judicial abuse by State of Florida Circuit Judges Barber and Foster; and District Court Judges Moody and Whittemore, are described at pages 8-18 of the Complaint and Appendix (exh. 1-4 of the Appendix, exh. SE.1-4); and in Blough's Petition For Writ of Mandamus (Case Number 14-12149) and Blough's Appeal (Case Number 14-13566) which were filed in this the United States Court of Appeals For The Eleventh Circuit. The Writ of Mandamus was denied because the Court did not find that the case warranted expedite treatment and the Appeal declared moot upon Respondent's withdrawal of the initial Petition for Dissolution of Marriage on June 11, 2014.

The judicial abuse by State of Florida Circuit Court Judges Sheehan, Lee, Nazaretian; Florida Second District Court of Appeals Judges Crenshaw, Morris, Lucas; Florida Supreme Court Judges Pariente, Lewis, Canady, Polston, and Perry; are described at pages 8-33 of the Complaint and Appendix (exh. 5-40 of the Appendix, exh. SE. 5-40).

The following narrative of events which occurred during the course of the initial litigation illustrates the judicial abuse which Blough has experienced at the hands of the fifteen Judges during the four years of litigation.

Upon the filing of the initial divorce action by Wife on October 12, 2012 (case number 12-DR-014683); Blough did retain the services of a divorce attorney employed at one of Tampa's largest firms. Blough did request the services of the newest attorney to join the firm on the theory that said attorney would be highly motivated and able to "think outside of the box". Shortly after the case was assigned to an attorney; Blough did reference the attorney to the protections afforded to Blough under USC Title 10 section 1408 and USC Title 42 section 659(h)(2)(B). Two days later; said attorney stated that she had researched the statutes referenced by Blough and was in complete agreement that said statutes provided full protection to Blough from loss of property and being subject to awarding alimony. During the mediation conference on February 8, 2013; Blough's attorney failed to even mention the federal statutes to which she had previously agreed would protect Blough's interests in the divorce proceeding. Without explanation; said attorney argued Blough's interests under State of Florida equitable distribution and alimony standards to the Mediator. In the absence of any explanation for abandoning the Federal statutory protections to which Blough was entitled; Blough dismissed the attorney and has proceeded *pro se* to this date.

Judge Thomas Barber was the initial judge in the initial divorce action. Blough did file a Request that the Court Take Judicial Notice of Blough's protections under the FSPA; a federal statute enacted by Congress in 1982 and directed to enforcement by state divorce courts by the Supreme Court in *Mansell*, supra. and Article VI Cl 2 of the Constitution. Blough did repeatedly request; however Judge Barber took no actions on Blough's Request That the Court Take Judicial Notice. Judge Barber did continuously express strong disapproval of Blough's reliance upon his federal statutory protections under the FSPA. During the course of a June 10, 2013

transcribed “evidentiary hearing” on the FSPA; Judge Barber did not give Blough an opportunity to present evidence of his protections under the FSPA and limited the hearing to his explanation of Florida’s equitable distribution statutes. The hearing did end upon the following exchange: Blough: “This is not about divorce law, this is about a federal statute (FSPA)”; Judge Barber: “Well, it’s a divorce case, so therefore it is about divorce law, and you’re going to have to live with that even if you don’t like it” (transcript pages 24-25). Judge Barber’s terse response was openly defiant in his contempt for Article VI Clause 2 Constitution, the FSPA, and a mandate of the Supreme Court in *Mansell*, supra..

Blough did request that Judge Barber recluse himself on July 15, 2013 and Judge Barber did so on August 9, 2013. Judge Barber’s denials of Blough’s federal statutory right to the protections of the FSPA were constant throughout the period he served as the trial judge and also explains the actions of Blough’s discharged attorney. Because state divorce courts are courts of equity; the relationship between litigating attorneys and the trial judge is such that the attorney is mindful of the discretionary authority of the judge and will not alienate the judge. To do so would result in an unfavorable result in other cases before said judge (i.e.”blackball”) and damage to the standing of the attorney. Blough believes that his attorney was advised; by her mentors at the firm where she worked, that Judge Barber was not receptive to interference with his authority by the FSPA. Blough’s attorney placed her private interests before her client’s interests in choosing not to litigate enforcement of the FSPA before Judge Barber. Blough believes this is common practice throughout state divorce courts and the primary reason there has been no substantive litigation of the FSPA in state divorce courts. State court judges are opposed to Federal Governmental interference with their judicial equitable authority and are not knowledgeable in

the FSPA. Blough believes there have been many divorce cases in which disabled veterans were denied their Federal substantive due process rights at the trial level because practicing attorneys did not wish to alienate the trial court judge. Hear no evil – speak no evil; as no evidence of a client’s statutory entitlement under the FSPA appears in the record and the military retirement pay is treated as longevity retirement pay under Title 10 sections 1401-1421 and allocated under the State of Florida rules of equitable distribution.

None of the five (5) state circuit court judges to whom Blough’s case was assigned, or the three (3) attorneys representing Respondent, had even a basic knowledge of the FSPA or the federal exclusion from alimony under USC Title 42, section 659(h)(2)(B). State of Florida divorce court statutes are not complex and deal primarily with redundant cases involving the distribution of property, award of alimony and attorney fees, and child custody if children are at issue. State divorce court judges do not want to allow complicated federal statutes in state divorce court proceedings and; having made trial court attorney’s aware of their preferences, the trial court attorney’s not to raise the FSPA. Due to the large volume of cases; state divorce courts have adopted an assembly line production mentality in state divorce courts and do not wish to be burdened with complicated federal laws.

On December 6, 2016 the Supreme Court did accept a Petition for Writ of Certiorari for only the second case involving the FSPA to be accepted for review by any federal court since the FSPA was enacted in 1982. The question presented to the Court in *Howell v. Howell* (Case Number 15-1031), addresses what affect; if any, an indemnification provision may have upon FSPA compensation and has no relevance to the issues presented in this liability case. The first; and only prior published federal court case, was *Manseil* in 1989 and both cases came to the Supreme Court via the State Supreme Courts of California and Arizona.

Upon review of the archived opinions by the Florida Second District Court of Appeals; only two cases involving the FSPA; Padot v. Padot (Case No. 2D03-3843 Fla. 2DCA 2004) and Naples v. Naples (Case No. 2D06-3421 Fla, 2DCA 2007)) have been appealed to and adjudicated by the Florida Second District Court of Appeals since June 2001.

There have been no federal court rulings interpreting the technical provisions within the FSPA for 34 years (except *Mansell* 1989). Blough has reviewed; over the prior four years, thousands of state court cases where the FSPA was a factor and in all cases; including Mansell and Howell, the issue did involve the effect of an indemnification provision on USC Title 38 compensation in settled cases. The reported state court cases provide no discussions of the technical provisions within the FSPA.

This litigation began with the initial state divorce court judge refusing to take judicial notice of the FSPA and stating in open court that he would not permit the FSPA to be pleaded in his courtroom. The three subsequent state divorce court judges, three state appellate court judges, and five state supreme court judges did also refuse to take judicial notice of the FSPA and denied Blough procedural due process in the enforcement of the claimed federal statutes which preempted state divorce statutes on equitable distribution and alimony. The final state divorce court judge; Judge Nazaretian, did refuse to allow Blough to verbally present his case at the final hearing, issued a final judgment totally void of any reference to the claimed federal statutes which preempted state divorce statutes on equitable distribution and alimony, and then destroyed evidence accepted by Judge Nazaretian during the final hearing such that no record of Blough's claims would be forwarded to the appellate court. Blough does believe that such judicial abuse is common and systemic to claims under the FSPA.

The FSPA is a "ghost statute" which federal court Judges have refused to address in any form and state court Judges will

continue to prevent enforcement of by abusing the Fourteenth Amendment due process rights of disabled veterans who claim entitlement. State trial court attorney's will not raise the claim to entitlement to the FSPA in state divorce court proceedings for fear of alienating the trial court judge. State court Judges address the FSPA only when forced to address pursuant to a post-judgment motion filed by the non-military spouse to enforce an indemnity provision after the military spouse has waived military retirement pay to receive USC Title 38 compensation under USC Title 10, section 1408(a)(4)(B) of the FSPA.

RELIEF REQUESTED

The doctrine of judicial immunity was born into common law by the Supreme Court and the decisions by all of the lower courts; including this Court, have relied exclusively upon those common law principles. The federal common law principles of judicial immunity must be in compliance with the Constitution. As the origin of judicial immunity; and the inherent conflict of interest by members of this Court, it is appropriate that the Supreme Court make the finding relative to judicial immunity based upon the facts, laws, and issue presented in this case. It is therefore respectfully requested that the issue of judicial immunity for the Constitutional violation be certified to the United States Supreme Court for resolution.

CONCLUSION

The United States Supreme Court is the proper destination for Blough's federal court claim of liability against those Judges who have been granted judicial immunity in refusing to enforce Blough's state court claim of entitlement to specific federal statutes.

The peripheral issues of Eleventh Amendment immunity and Rooker-Feldman exclusion are without merit and are easily resolved for the reasons stated above.

Blough did state in the Complaint (exh. 1 pg. 57) that it is Blough's intention to appeal this Court's decision to the Supreme Court as the facts and laws present a challenge to the judicial authority of the Supreme Court, a violation of the separation of powers clause under the Constitution, and the supreme authority of the Constitution as the "law of the land" under Article VI Clause 2.

This case does fully document the targeted judicial abuse which Blough has been subjected to over a four year period and is believed to be systemic to the lower courts based upon the absence of fully developed judicial precedents by the state courts and the total absence of judicial precedents in the federal courts since the FSPA was enacted thirty-four years ago; with the lone exception being the Supreme Court decision in *Mansell*, supra.. How is it possible for any federal statute to be "on the books" for thirty-four years and not a single published opinion exists with the exception of *Mansell*, supra.?

Blough does not challenge the doctrine of judicial immunity other than to the extent the doctrine allows immunity for violating Article VI Clause 2 of the Constitution by state court Judges. In violating Article VI Clause 2 of the Constitution said state court Judges have lost their judicial immunity under the common law standards established by the Supreme Court in *Bradley v. Fisher*, 13 Wall 335 (1872) and *Stump v. Sparkman*, 435 U. S. 349 (1978). This case tests the limits of judicial immunity authorized by the Supreme Court and is of the opinion that the Supreme Court will not grant judicial immunity to those state court Judges who pick and choose those federal statutes they will enforce and those federal statutes they will not enforce in open defiance with the mandate of the Supreme Court in *Mansell*, supra..

Respectfully submitted this the 31st day of December, 2016.

/s/ Melvin E. Blough
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CERTIFICATE OF COMPLIANCE

Appellant's brief complies with the type-volume limitations of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure with a content of less than 7,000 words.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY; under penalty of perjury, that a correct and complete copy of this; Appellant's Principal Brief, has been provided to Shelley Cridlin as Assistant Attorney General, Office of the Florida Attorney General, Suite 1100, 501 East Kennedy Blvd., Tampa, FL. 33602 and James S. Moody, Jr., District Court Judge, United States District Court for the Middle District of Florida Tampa Division, 801 North Florida Avenue, Tampa, Florida, 33602 via priority mail (with internet confirmation of receipt) on this the 31st day of December, 2016.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17256-GG

MELVIN E. BLOUGH

Appellant,

v.

NICK NAZARETIAN, Individually,
NICK NAZARETIAN, in his official
capacity as a Justice within the
Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,
TRACY SHEEHAN, Individually,
TRACY SHEEHAN, in her official
capacity as a Justice within the
Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,
LAUREL M. LEE, Individually,
LAUREL M. LEE, in her official
capacity as a Justice within the
Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,
JAMES S. MOODY, JR., Individually,
JAMES S. MOODY, JR., in his official
capacity as a Justice within the United
States District Court for the Middle
District of Florida Tampa Division,

APPEAL

Appellee(s).

APPENDIX TO APPELLANT'S PRINCIPAL BRIEF

Please note the attached copy of the civil docket sheet for case number 8:16-cv-02587-MSS-MAP with docket entry numbers corresponding with the following exhibit numbers within appellant's principal brief. Exhibits are limited to those parts of the record listed in 11th Cir. R. 30-1(A).

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<u>Exhibit/Docket Number</u>	<u>Description of Document</u>
DR	Docket report District Court case Number 8:16-cv-02587-MSS-MAP.
1.	Complaint as filed September 7, 2016.
29.	Defendant's Motion to Dismiss Complaint ad filed October 3, 2016.
31.	District Court's Order of Dismissal dated October 12, 2016.
32.	Plaintiff's Motion to Reconsider the Order of Dismissal as filed with the Clerk of the Court on October 13, 2016.
33.	District Court's Order dated October 24, 2016.
SE	Statement of Evidence in Support of Record on Appeal.

Appellant does argue on appeal that the conclusions by the District Court are contrary to the evidence and legal case law presented. Appellant did therefore file; with the District Court prior to the transmittal of the initial appeal package, a Statement of Evidence in Support of the Record as required by Rule 10(b)(2) and (c) of the Federal Rules of Civil Procedure. The exhibits are too voluminous to include within this Appendix and are referenced as ex. SE-# within this Appeal. The Clerk of the District Court is required to transfer the documents constituting the 11(b)(2) of the Federal Rules of Appellate Procedure.

Respectfully submitted on the 31st day of December, 2016.

/s/ Melvin E. Blough

Melvin E. Blough

Pro se Appellant

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Brandon, FL 33511

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY; under penalty of perjury, that a correct and complete copy of this Appendix to Appellant's Principal Brief has been provided to Shelley Cridlin as Assistant Attorney General, Office of the Florida Attorney General, Suite 1100, 501 East Kennedy Blvd., Tampa, FL. 33602 and James S. Moody, Jr., District Court Judge, United States District Court for the Middle District of Florida Tampa Division, 801 North Florida Avenue, Tampa, Florida, 33602 via priority mail (with internet confirmation of receipt)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AMENDED CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Appeal No. 16-17256-GG

MELVIN E. BLOUGH vs.
NICK NAZARETIAN et al.

This amended CIP is filed as required by 11th Circuit Rule 26.1-4 on this the 31st day of December, 2016. The following trial judges(s) and attorneys have an interest in the outcome of this appeal.

Cridlin, Shelley B.

Kuenzel, Mary Elizabeth (Deleted)

Lee, Laurel M.

Moody, James S.

Nazaretian, Nick

Scriven, Mary S.

Sheehan, Tracy

Tomasino, John A. (Deleted)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DOCKET NO. 16-17256
L.T. No. 8:16-CV-02587-MSS-MAP

MELVIN BLOUGH
Plaintiff/Appellant

v.

NICK NAZARETIAN, et al.
Defendant/Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

INITIAL BRIEF OF DEFENDANTS/APPELLEE'S NICK
NAZARETIAN, LAUREL M. LEE, AND
TRACY SHEEHAN

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Melvin Blough v., Nick Nazaretian, et al., Docket No.: 16-17256

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE

Appellees, Honorable Nick Nazaretian, Honorable Laurel M. Lee, and Honorable Tracy Sheehan, by and through undersigned counsel, and pursuant to Federal Rules of Procedure 26.1, and to 11th. Circuit Rule 26.1-1, hereby certifies that the following persons or entities have an interest in the outcome of this case in addition to those listed by the Appellant:

Barber, Thomas. Thirteenth Judicial Circuit Judge

Blough, Melvin, Plaintiff

Blough, Marie B.

Davis, Scott Paul, Esq.

Davis Mockler Law, P.A.

Foster, Jr., Robert A., Thirteenth Judicial Circuit Judge

Kuenzel, Mary Elizabeth, Clerk of the Court, Second District Court of Appeal

Lee, Laurel M., Thirteenth Judicial Circuit Judge

Lins, Donald Michael, Esq.

Lins Law Group, P.A.

McGinn, Michael C. Esq.

McGinn Law, P.A.

Mockler, III, Richard James, Esq.

Moody, Jr., U. S. District Judge

Nazaretian, Nick, Thirteenth Judicial Circuit Judge

Pizzo, Mark A., U. S. Magistrate Judge

Scriven, Mary S., U. S. District Judge

Sheehan, Tracy, Thirteenth Judicial Circuit Judge

Tomasino, John A., Clerk of the Court, Florida Supreme Court

Scriven, Mary Stenson, U.S. District Judge

Vance, Kim Hernandez, Thirteenth Judicial Circuit Judge

Welt, Chase, Esq.

Whittemore, James. D., U.S. District Judge

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STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully submits that oral argument is not necessary in this matter as the facts and legal arguments will be or have been adequately presented in the briefs and the record, and the decisional process would not be significantly aided by oral argument.

JURISDICTIONAL STATEMENT

This is a direct appeal of a final judgment from the Middle District of Florida, Tampa Division. The Court has jurisdiction pursuant to 28 U.S.C. section 1291.

STATEMENT OF THE ISSUES

- I. APPELLANT IS LEGALLY BARRED FROM
SUING APPELLEES.
 - A. Appellees are entitled to Eleventh Amendment Immunity.
 - B. Appellees are entitled to Judicial Immunity.
 - C. Appellees are entitled to Qualified Immunity.
 - D. Appellant is barred by the *Rooker-Feldman* Doctrine

STATEMENT OF THE CASE

Appellant was a party to a marital dissolution proceeding in the Thirteenth Judicial Circuit Court of Hillsborough County, Florida. Appellant did not believe that the outcome of this proceeding was dispensed correctly by Appellees and filed suit against the Appellees in Federal Court, in their individual capacities and in

their official capacities as Circuit Court Judges in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida.

Appellant's complaint argued that the Appellees, as Judges in Hillsborough County, refused to recognize and apply the Uniformed Services Former Spouses' Protection Act, 10 U.S.C.A. 1408 ("FSPA") in his marital dissolution proceedings (Doc. 1). Therefore, Appellant asserted that the failure to enforce the federal statute amounted to "judicial abuse" by the Appellants, whose actions were taken in the "clear absence of all jurisdiction over the subject matter" (Doc. 1, page 4). Additionally, Appellant alleged that he suffered a violation of his due process rights afforded by the Fifth and Fourteenth Amendments to the U.S. Constitution (Doc. 1).

Appellant argues that Appellees have violated the U.S. Constitution, Congress, and the U.S. Supreme Court by refusing to enforce federal statutes which he argues preempt State law (Doc. 1, pages 6-7). Many of Appellant's allegations relate to the various orders and rulings issued by Appellees, which included the refusal to adhere to the Uniformed Services Former Spouses' Protection Act. Appellees were appointed to preside over Appellant's marital dissolution proceedings at separate intervals as the case continued to be litigated.

Upon the denial of an "Emergency Motion for Reconsideration of Judge Sheehan's and Judge Lee's denials of Plaintiff's Motion for Hearing on Plaintiff's Notice," Appellant filed a petition for writ of mandamus with Florida's Second District Court of Appeals. The appellate denied the petition for writ of mandamus on November 17, 2005 (Doc. 1, page 24). Appellant sought review of the appellate court decision to the Florida Supreme Court, which dismissed the petition for writ of mandamus (Doc. 1 pages 24-25). Appellant received a

final judgment in his marital dissolution proceedings and filed suit in federal court against Appellees.

Appellees filed a Motion to Dismiss Appellant's suit for Failure to State a Claim, Eleventh Amendment Immunity, Judicial Immunity, Qualified Immunity, the *Younger* Doctrine, and the *Rooker-Feldman* Doctrine. (Doc. 29). On October 12, 2016, the District Court *sua sponte* entered an Order dismissing Appellant's Complaint with prejudice for "Judicial Immunity, Absolute Immunity afforded to Court Clerks, Eleventh Amendment Immunity, and/or the *Rooker-Feldman* doctrine." (Doc. 31). On November 21, 2016, Appellant filed a Notice of Appeal of the Order issued by the District Court (Doc. 34).

STATEMENT OF FACTS

The relevant facts have been set forth above.

STANDARD OF REVIEW

The standard of review for dismissal for failure to state a claim is *de novo*. See *Kissimmee River Valley Sportsman Association v. City of Lakeland*, 250 F.3d 1324, 1325 (11TH. Cir. 2001), *cert denied*, 122 S. Ct. 613, 151 L.Ed.2d 537 (2001); see also *Ironworkers Local Union 68 v. AstraZeneca Pharm., LP*, 634 f.3d 1352, 1359 (11TH. Cir. 2011) ("We review *de novo* the district court's grant of a motion to dismiss under Rule 12(b)(6) for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff").

The standard of review concerning dismissal for lack of subject matter jurisdiction is *de novo*. See *Dale v. Moore*, 121 F.3d 624, 626 (11th. Cir. 1997). Further review in determining entitlement to qualified immunity

is *de novo*. See *Pickens v. Hollowell*, 59 F.3d 1203, 1205 (11th. Cir. 1995).

SUMMARY OF THE ARGUMENT

The District Court was correct in granting a Motion to Dismiss in favor of Appellee's. Appellant failed to state a claim that can be remedied in Federal Court. Further, immunities bar Appellant from suing Appellees.

ARGUMENT

ISSUE 1

APPELLANT IS LEGALLY BARRED FROM SUING APPELLES

ELEVENTH AMENDMENT IMMUNITY

The District Court's dismissal of Appellant's suit was proper because Appellees are vested with immunity against suit in Federal Court, pursuant to the Eleventh Amendment to the United States Constitution. Appellant's claims against Appellees, must fail because public officials sued in their official capacities are entitled to Eleventh Amendment immunity. See *Rozek v. Topolnicki*, 865 F.2d 1154, 1158 (10th. Cir. 1989). Absent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated the state's Eleventh Amendment immunity. *DeKald County School District v. Schrenko*, 109 F.3d 680, 688 (11th. Cir. 1997)(citing *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 99, 104 s. Ct. 900, 900, 79 L.Ed.2d 67 (1984)). Absent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated the state's Eleventh Amendment immunity by exercising its power with respect to rights

protected by the Fourteenth Amendment. *See DeKald County School District v. Schrenko*, 109 F.3d 680, 688 (11th. Cir. 1997)(citing *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 99, 104 s. Ct. 900, 900, 79 L.Ed.2d 67 (1984)).

Under the Eleventh Amendment of the U.S. Constitution, a State is protected from being sued in federal court without the State's consent. *See Manders v. Lee*, 338 F.3d 1304, 1308 (11th. Cir. 2003); *see also Williams v. Dist. Bd. of Trustees of Edison Comm. College*, 421 F.3d 1190, 1192 (11th. Cir. 2005); *see also Fla. Ass'n of Rehab. Facilities, Inc. v. State of Fla. Dept. of Health & Rehab. Servs.*, 225 F.3d 1208, 1219 (11th. Cir. 2000). The Eleventh Amendment states as follows:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of any Foreign State.

U.S. Const. amend. XI.

"[A] suit against a state official in his official capacity is not against the official but rather is a suit against the official's office.' See *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 109 S. Ct. 2304, 2312, 105 L.Ed.2d 45 (1989). "As such, it is not different from a suit against the State itself." *Id.* Official capacity suits against state officials are the equivalent of suits against the State. As the Supreme Court has declared:

[A] suit against a state official in his or her official capacity is not a suit against the official but rather against the official's office. As such, it is no different from a suit against the State itself. We see no reason to adopt a different rule in the present context, particularly when

such a rule would allow petitioner to circumvent congressional intent by a mere pleading device.

Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989) (citations and footnotes omitted).

The Eleventh Amendment bar against suing a State does not depend on the type of relief sought. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 58, are being sued pursuant to a claim of a civil rights violation under the Constitution pursuant to 42 U.S.C. section 1983. *See Gamble v. Florida Department of Health and Rehabilitative Services*, 779 F.2d 1509 (11th Cir. 1986); *see also Hill v. Department of Corrections*, 513 So.2d 129 (Fla. 1987).

42 U.S.C. section 1983 provides:

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

Congress has not abrogated Eleventh Amendment immunity in 42 U.S.C. section 1983 cases against any state. *See Carr v. City of Florence, Ala.*, 916 F.2D 1521, 1525 (11th Cir. 1990). It is noted that the language of 42 U.S.C. section 1983 is not "so" 'unmistakably clear in the

language of the statute” that Congress intended to abrogate the States’ immunity from suit. See *Will v. Michigan Department of State Police*, 491 U.S. 56, 65 109 s. Ct. 2304, 2308 (1989) (citing *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242, 105 S. Ct. 3142 (1985)). The United States Supreme Court found that the intent behind the passage of 42 U.S.C. section 1983 was to create a Federal remedial statute to provide a Federal forum for civil rights deprivations. . See *Will v. Michigan Department of State Police*, 491 U.S. 56, 65 109 s. Ct. 2304, 2308 (1989). As Congress knew that the “doctrine of sovereign immunity was a familiar doctrine at common law” at the time of the passage of section 1983, the Court did not see how section 1983 was intended to disregard the well-established immunity of a State from being sued without its consent.” . See *Will v. Michigan Department of State Police*, 491 U.S. 56, 65 109 s. Ct. 2304, 2308 (1989). The U.S. Supreme Court stated that “the intent of Congress to provide a remedy for unconstitutional state action does not include the sovereign States among those persons against whom a section 1983 action would lie.” . See *Will v. Michigan Department of State Police*, 491 U.S. 56, 65 109 s. Ct. 2304, 2308 (1989)

Appellant’s Complaint is inadequate for failure to allege causation. For a 42 U.S.C. section 1983 cause of action to arise where Appellees are officials charged with failure to exercise an affirmative duty, two requirements must be satisfied: (1) the defendant’s failure act must have been a factor leading to the violation of a constitutionally protected right (a liberty or property interest); and (2) the official having the responsibility to act must display deliberate indifference. See *Taylor v. Ledbetter*, 818 F.2d 791, 794 (11th. Cir. 1987).

There must be a causal link between the named defendants and their alleged deliberate acts. See *Dolihite v. Maughon by and through Videon*, 74 F.3d 1027, 1052

(11th. Cir. 1996); *see also* *Rizzo v. Goode*, 423 U.S. 361, 96 S. Ct. 598 (1976).

In *Williams v. Bennett*, 689 F.2d 1370, 1381 (11th. Cir. 1982), the Eleventh Circuit applied *Rizzo*:

The Supreme Court expounded on the nature of the causal link which must be established. .. It is clear that the inquiry into causation must be a direct one, focusing on the duties and responsibilities of each of the individual defendants whose acts or omissions are alleged to have resulted in a constitutional deprivation.

Appellant has failed to allege a causal link between Appellees and their alleged deliberate actions. In an official capacity action, to prevail on a 42 U.S.C. section 1983 claim against a government entity, an Appellant must prove first, that his constitutional rights were violated and, second, that the custom or policy of the government was responsible for the constitutional violation. *See Collins v. City of Parker Heights, Texas*, 503 U.S. 115, 112 S. Ct. 1061, 1066 (1992); *see also Monell v. Department of Social Services, City of New York*, 436 U.S. 658, 691, 98 S. Ct. 2018, 2037 (1978).

To establish a policy or custom, the Appellant must show a widespread, consistent pattern of unconstitutional conduct by the government entity and employees. Moreover, actual or constructive knowledge of such custom must be attributed to a government entity. "Normally, random acts or isolated incidents are insufficient to establish a policy or custom." *See Depew v. City of St. Mary's Georgia*, 787 F.2d 1496, 1499 (11th. Cir. 1988), accord, *Prieto v. Metropolitan Dade County*, 718 F. Supp. 934, 938 (S. D. Fla. 1989). Therefore, governing bodies can only be held liable for official policies or customs that are "so permanent and well-settled" as to

have “the force of law”. See *Monell v. Department of Social Services, City of New York*, 436 U.S. 658, 691, 98 S. Ct. 2018, 2036 (1978); see also *Brown v. City of Clewiston*, 848 F.2d 1534, 1538 (11th. Cir. 1988); see also *Gilmere v. City of Atlanta*, 774 F.2d 1495, 1504 (11th. Cir. 1984), *cert. denied*. 476 U.S. 1115, 1124, 106 S. Ct. 1970, 1993 (1986). Furthermore, to support liability under a 42 U.S.C. section 1983 action, the custom or policy must be the moving force of the alleged constitutional violation at issue. See *Samples v. City of Atlanta*, 846 F.2d 1328, 1333 (11th. Cir. 1989); see also *Prieto v. Metropolitan Dade County*, 718 F. Supp. 934, 938 (S.D. Fla. 1989).

A statement of the elements of an official capacity 42 U.S.C. section 1983 action is stated in *Jan Doe A By and Through Jane Doe B v. Special School District of St. Louis County*, 901 F.2d 642, 645 (8th. Cir. 1990):

For the District to be held liable on the basis of custom, there must have been a pattern of “persistent and widespread” unconstitutional practices which become so “permanent and settled” as to have the effect and force of law. See *Monell*, 436 U.S. at 691, 98 S. Ct. at 2036. We have held that to establish the existence of a government custom or failure to receive, investigate or act on complaints of violations of constitutional rights, a plaintiff must prove:

1. The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the government entity’s employees;
2. Deliberate indifference to or tacit authorization of such conduct by the governmental entity’s policy making officials after notice of the officials of that misconduct; and
3. That plaintiff was injured by acts pursuant to the

governmental entity's custom, i.e., that the custom was the moving force behind the constitutional violation.

Abrogation of the Eleventh Amendment must be clear and unequivocal. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 55, 116 S. Ct. 1114 (1996) ("Congress' intent to abrogate the States' immunity from suite must be obvious from a clear legislative statement.") There is no "clear" legislative statement for abrogation in this case as required by *Seminole Tribe of Florida v. Florida*; see also *Dekalb County School District v. Schrenko*, 109 F.3d 680, 688 (11TH. Cir. 1997) ("absent its consent, a state may not be sued in federal court unless Congress has clearlyt and unequivocally abrogated the state's Eleventh Amendment immunity by exercising its power with respect to rights protected by the Fourteenth Amendment").

It is clear that Florida has not consented to this type of suit or generally waived its Eleventh Amendment immunity. Florida Statute 768.28(17) states that 'No provision of this section, or of any other section of the Florida Statutes .. shall be construed to waive the immunity of the state or any of its agencies from suit in federal court, as such immunity is guaranteed by the Eleventh Amendment ... unless such waiver is explicitly and definitely stated." *See also Schopler v. Bliss*, 903 F.2d 1373, 1379 (11th. Cir. 1990) (holding that Florida Statute 768.28(16) declares that the legislative intent of Florida statutes are not to be construed to implicitly waive Eleventh Amendment immunity). Accordingly, a plaintiff pursuing a suit against an unconsenting State or its state officials, acting in their official capacities, is required to resort to the State's courts. *See Manders v. Lee*, 338 F.3d 1304, 1308 (11th. Cir. 2003). Because the Eleventh Amendment bars unconsented suits against a State regardless of the relief sought, and Florida has not

waived its Eleventh Amendment immunity, this suit cannot proceed against Appellees, absent proper abrogation of the Amendment.

JUDICIAL IMMUNITY

Dismissal was properly granted as to all claims against Appellees. Appellant's suit is barred by the doctrine of judicial immunity. "This particular type of immunity embraces persons who exercise a judicial or quasi judicial function; and the immunity rests on the sound public policy that a strict guarantee of immunity is necessary to preserve the effectiveness and impartiality of judicial and quasi judicial offices." *See Office of the State Attorney, Fourth Judicial Circuit v. Parrotino*, 628 So.2d 1097 (Fla. 1993). The rationale for judicial immunity includes the important public policies of protecting the finality of judgments, discouraging inappropriate collateral attacks, and preserving judicial independence by insulating judges from lawsuits by unsatisfied litigants. *See Forrester v. White*, 484 U.S. 219, 225, 108 s. Ct. 538 (1988).

Judicial immunity is not overcome by allegations of bad faith or malice, because a determination of these and similar assertions would require discovery and trial. *See Pierson v. Ray*, 386 U.S. 547, 554, 87 S. Ct. 1213 (1967); see also *Hyland v. Kolhage*, 267 Fed. Appx. 836, 839-40 (11th Cir. 2008); see also *Mireles v. Waco*, 502 U.S. 9, 11 (1991) ("judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial.") Therefore, judicial "immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and

without fear of consequences.” See *Pierson v. Ray*, 386 U.S. 547, 554, 87 S. Ct. 1213 (1967).

“Judges are entitled to absolute judicial immunity from damages for those acts taken while acting in their judicial capacity unless they acted in the ‘clear absence of all jurisdiction.’” See *Bolin v. Story*, 225 F.3d 1234, 1239 (11th. Cir. 2000) (“This immunity applies even when the judge’s acts are in error, malicious, or were in excess of his or her jurisdiction.”). Whether a judge’s actions were made while acting in his judicial capacity depends on whether (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge’s chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity. See *Scott v. Hayes*, 719 F.2d 1562, 1565 (11th. Cir. 1983), see also *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th. Cir. 2005) (per curiam).

“A long line of this Court’s precedents acknowledges that, generally, a judge is immune from suit for money damages.” See *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286 (1991). “Although unfairness and injustice to a litigant may result on occasion, ‘it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.’” .” See *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286 (1991) (quoting *Bradley*, 13 Wall. 335, 347, 20 L.ED. 646 (1872)).

Judicial immunity is overcome only when a judicial officer is not acting within his or her capacity, or when the judicial officer acts completely without any jurisdiction. See *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286 (1991) (citations omitted); see also *Scott v. Hayes*, 719 F.2d 1562, 1565 (11th. Cir. 1983). “Such immunity applies

‘however erroneous the act may have been and however injurious in its consequences it may have proved to the plaintiff.’” See *Cleavinger v. Saxner*, 474 U.S. 193, 199-200, 106 S. Ct. 496 (1985). “Judges are entitled to absolute immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction.” See *Bolin v. Story*, 225 F.3d 1234, 1239 (11th. Cir. 2000).

Determination of whether an act is “judicial,” depends on “the nature of the act itself. i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in his judicial capacity.” See *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286 (1991) (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978); and citing *Forrester v. White*, 484 U.S. 219, 227-29 (1988)). Appellant’s allegations result from the judicial actions of Appellee’s in their judicial capacity while presiding over Appellant’s marriage dissolution proceedings. Accordingly, the Complaint was properly dismissed by the District Court.

QUALIFIED IMMUNITY

Qualified immunity shields government officials performing discretionary functions from civil trial and the other burdens of litigation, including discovery. This immunity shields these officials from liability if their conduct violates no “clearly established statutory or constitutional rights of which a reasonable person would have known.” See *Harlow v. Fitzgerald*, 457 U.S. 800, 818. 102 S. Ct. 2727 (1982); see also *Siegert v. Gilley*, 500 U.S. 226, 231, 111 S. Ct. 1789 (1991) (“we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage of litigation”), see also *Flores v. Satz*, 137 F.3d 1275, 1277 (11th. Cir. 1998); see also *Holmes v. Kucynda*, 321 F.3d 1069, 1077 (11th. Cir. 2003); see also *Sharp v. Fisher*, 532 F.3d 1180, 1183 (11th. Cir.

2008). The qualified immunity doctrine means that government agents are not always required to err on the side of caution. See *Davis v. Scherer*, 468 U.S. 183, 196 (1984).

Lassiter v. Alabama A & M University, 28 F.3D 1146, 1149-51 (11th. Cir. 1994), clarifies the qualified immunity defense as follows:

\ (1) “That qualified immunity protects government actors is the usual rule; only in exceptional cases will government actors have no shield against claims made against them in their individual capacities;” (emphasis supplied)

(2) “Unless a government {employee’s} act is so obviously wrong, in ...light of preexisting law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing, the government actor has immunity from suit”

(3) “For the law to be clearly established to the point that qualified immunity does not apply, the law must have earlier been developed in such concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant’s place, that [what they did] violates federal law”

(4) “Qualified immunity is a doctrine that focuses on the actual, on the specific, on the details of concrete cases ... General propositions have little to do with the concept of qualified immunity (citation omitted). If case law, in factual terms, has not staked out a bright line, qualified almost always protects the defendant... the line is not to be found in abstractions – to act reasonably, to act with probable cause and so forth – but in studying how these abstractions have been applied in concrete circumstances”

(5) "For qualified immunity to be surrendered, preexisting law must dictate, that is, truly compel the conclusion for every like-situated reasonable government agent that what the defendant is doing violates federal law in the circumstances"

(6) "Because qualified immunity is a doctrine of practical application to real-life situations, courts judge the acts of defendant government officials against the law and the facts at the time defendant acted, not by hindsight, based on later events."

(7) "[T]he subjective intent of government actor defendant plays no part in qualified immunity analysis ... A decision on qualified immunity is separate and distinct from the merits of the case."

(8) "...[I]t is unfair and, as a matter of public policy unwise – to impose personal liability on government officers unless the officers had advanced notice that what they were doing was unlawful, Preexisting law must supply this notice; the unlawfulness must be obvious, considering the circumstances confronting the officers."

Qualified immunity protects government actors and only in exceptional cases will government actors have no shield against claims made against them in their individual capacities. See *Harlow v. Fitzgerald*, 457 U.S. 800, 818. 102 S. Ct. 2727 (1982); (officials generally are shielded from liability for civil damages"); see also *Barts v. Joyner*, 865 F.2d 1187, 1190 (11TH. Cir.) cert denied, 493 U.S. 831 (1989); see also *Dartland v. Metropolitan Dade County*, 866 F.2d 1321,1323 (11th. Cir. 1989).

Unless a government agent's act is so obviously wrong, in the light of pre-existing law, that only a plainly incompetent officer or one who was knowingly violating

the law would have done such a thing, the government actor has immunity from suit. See *Mally v. Briggs*, 475 U.S. 335, 341 (1986). This doctrine “balances society’s interests in providing a remedy for injured victims and discouraging unlawful conduct with that of enabling public officials to act independently and without fear of consequences.” See *Hardin v. Hayes*, 957 F.2D 845, 848 N. 7 (11th. Cir. 1992).

In *Zeigler v. Jackson*, 716 F.2D 847, 849 (11th. Cir. 1983), the Eleventh Circuit Court of Appeals established a twostep analysis to be used in applying the Harlow qualified immunity test. First, “the Defendant must prove that ‘he was within the scope of his discretionary authority when the allegedly wrongful acts occurred.’” Second, “the burden shifts to the plaintiff to show lack of good faith on the Defendant’s part. This burden is met by proof demonstrating that the defendant public official’s actions ‘violated clearly established constitutional law.’” *Id.*; see also *McCoy v. Webster*, 47 F.3d 404, 407 (11th. Cir. 1995); see also *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 21251 (2001).

In *Jordan v. Doe*, 38 F.3d 1559, 1556 (11th. Cir. 1994), the Eleventh Circuit Court of Appeals interpreted the term “discretionary authority” to include actions that do not necessarily involve an element of choice. In order to show that it acted within the scope of discretionary authority, Appellees “must demonstrate objective circumstances which would compel the conclusion that his actions were undertaken pursuant to the performance of his duties and within the scope of his authority.” See *Barker v. Norman*, 651 F.2D 1107, 1121 (5th. Cir. 1981); accord *Jordan*, 38 F.3d at 1566; see also *Rich v. Dollar*, 841 F.2d 1558, 1564 (11th. Cir. 1988). In the instant case, it is undisputed that Appellees were acting within the scope of their employment as state official and that all

actions or omissions obviously stemmed from actions within the scope of their authority.

Upon Appellees establishing that they were acting within the scope of their discretionary authority, the burden then shifts to the Appellant to demonstrate that a reasonable official would have known that his or her conduct violated a clearly established constitutional right. See *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151 (2001); see also *Ziegler v. Jackson*, 716 F.2d 847, 849 (11th. Cir. 1983). For the law to be clearly established to the point that qualified immunity does not apply, the law must have been developed in such a concrete and factually defined context to make it obvious to all government actors, in Appellee's position, that their actions violated the law; See *Lassiter v. Alabama A & M University*, 28 F.3d 1146, 1149-51 (11th. Cir. 1994), see also *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S. Ct. 3034 (1987). "If case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant." See *Post v. City of Fort Lauderdale*, 7 F.3d 1552, 1557 (11th. Cir. 1993), modified 14 F.3d 583 (11th. Cir. 1994); accord *Kelly v. Curtis*, 21 F.3d 1544, (11th. Cir. 1994). A plaintiff may not rely on "general, conclusory allegations of some constitutional violation, [n]or [may he rely on] broad legal truisms." See *Barts v. Joyner*, 865 F.2d 1187, 1190 (11th. Cir. 1989).

In the instant case, Appellant has failed in his burden to demonstrate that Appellees, intentionally participated in violating Appellant's constitutional rights. See *Lamarca v. Turner*, 995 F.2d 1526, 1538 (11th. Cir. 1993) cert denied, 510 U.S. 1164 (1994); see also *Hope v. Pelzer*, 536 U.S. 730, 739 122 S. Ct. 2508 (2002). It is undisputed in this case that the Appellees were acting within their discretionary authority as Circuit Court Judges and are therefore, entitled to qualified immunity.

ROOKER-FELDMAN DOCTRINE

The District Court properly ruled that Appellant has not presented any legally cognizable claim to create Federal Jurisdiction in this matter. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149 (1923). The United States Supreme Court held that federal district courts have no jurisdiction to “entertain a proceeding to reverse or modify” a state court judgment. In defining the scope of this doctrine the Supreme Court explained that a District Court does not have “jurisdiction ...over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court’s action was unconstitutional.” See *District of Columbia Court of appeals v. Feldman*, 460 U.S. 462, 486, 103 S. Ct. 1303 (1983). The Supreme Court has instructed that “a party losing in state court is barred from seeking what in substance would be appellate review in a United States District Court based on the losing party’s claim that the state judgment itself violates the loser’s federal right.” See *Johnson v. DeGrandy*, 512 U.S. 997, 1005, 114 S. Ct. 2647 (1994).

The *Rooker-Feldman* doctrine prevents federal courts from exercising its jurisdiction in order to review a state court decision when: (1) the party in federal court is the same party as in state court; (2) the state court ruling was a final judgment; (3) the party seeking relief had a reasonable opportunity to raise the claims in state court; and (4) the issues raised in federal court were adjudicated by the state court or intertwined with the state court’s judgment. See *Amos v. Glynn Co. Bd. of Tax Assessors*, 347 F.3D 1249, 1266 n. 11 (11th Cir. 2003).

Accordingly, Appellant cannot ask the District Court to act as an appellate court and review the State court proceedings in this matter. See *Green v. Jefferson County*

Comm'n, 563 F.3D 1243, 1249 (11TH. Cir. 2009). Further, the Supreme Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1521 (2005) found that the *Rooker-Feldman* Doctrine applies in “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” The Eleventh Circuit has recognized that the *Rooker-Feldman* “doctrine applies not only to claims actually raised in state court, but also to claims that were not raised in the state court but are “inextricably intertwined” with the state court’s judgment.” See *Powell v. Powell*, 80 F.3d 464, 467 (11th. Cir. 1996). Where the federal claimant does have a reasonable opportunity to make the claim in state court, the claim is considered to be inextricably intertwined with the state determination and subject to *Rooker-Feldman* dismissal. Federal issues are “inextricably intertwined” with the state court decision if “the relief requested in the federal action requires determining that the state court decision is wrong or would void the state court’s ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit.” See *Charchenko v. City of Stillwater*, 47 F.3d 981, 983 (8th. Cir. 1995).

“[F]ederal courts are not a forum for appealing state court decisions.” See *Staley v. Ledbetter*, 837 F.2d 1016, 1018 (11th. Cir. 1988); see also *Rubins v. Noriega*, 2010 WL 234894, *3 (s.d. Fla. 2010). Appellant was granted the opportunity to challenge the judicial orders and rulings of his marital dissolution Federal Court and immunities bar Appellant from suing Appellees.

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CERTIFICATE OF COMPLIANCE WITH RULE
32(a)(7)(B)

I certify that this brief complies with the type-volume limitations set forth in Federal Rules of Appellate Procedure 32 (a)(7)(B). This brief contains 5,595 words, excluding the parts of the brief exempted by Federal Rules of Appellate Procedure 32(a)(7)(iii).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 1, 2017, I electronically filed the foregoing with the Clerk of the Court. I further certify that I mailed the foregoing document to the following: Melvin E. Blough, 803 Tomahawk Trail, Brandon, FL 33511.

/s/ Caroline Johnson Levine
Caroline Johnson Levine
Assistant Attorney General

NO. 16-17256-GG

**In the
United States Court of Appeals
For the Eleventh Circuit**

MELVIN BLOUGH,

Plaintiff-Appellant

v.

NICK NAZARETIAN ET AL.,

Defendants-Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF FLORIDA
No. 8:16-cv-2587-T-35MAP**

BRIEF OF JUDGE JAMES S. MOODY JR.

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February 14, 2017

Blough v. Nazaretian, et al.

No.: 16-17256-GG

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE

In addition to the persons identified in the certificate of interested persons and corporate disclosure statement in Melvin Blough's principal brief, the following persons have an interest in the outcome of this case:

1. Barber, Thomas. Thirteenth Judicial Circuit Judge
2. Bentley, A. Lee, III, United States Attorney;
3. Blough, Marie B;
4. Carter, Ronnie, Assistant United States Attorney,
5. Davis, Scott Paul, Esq.
6. Foster, Hon. Robert A., Thirteenth Judicial Circuit Judge;
7. Linda, Donald Michael, Esq.;
8. McGinn, Michael C. Esq.
9. McNamara, Linda Julin, Assistant United States Attorney, Deputy Chief, Appellate Division,;
10. Mockler, III, Richard James, Esq.
11. Pizzo, Hon. Mark A., United States Magistrate Judge;
12. Rhodes, David P. Assistant United States Attorney;

13. Vance, Hon. Kim Hernandez, Thirteenth Judicial
Circuit Judge;

14. Welt, Chase, Esq.

15. Whittemore, Hon. James. D., United States. District
Judge.

No publicly traded company or corporation has an interest
in the outcome of this appeal.

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Statement of Jurisdiction

This is an appeal from a final decision of the United States District Court for the Middle District of Florida in a civil case asserting alleged constitutional violations. That court had jurisdiction. See 28 U.S.C. section 1331 (federal-question jurisdiction). The court entered its order dismissing Blough's complaint with prejudice on October 12, 2016. Doc. 31. Blough timely moved for reconsideration the next day, Doc. 32, and the district court denied that motion on October 24, 2016, Doc. 33. Blough timely filed a notice of appeal on November 21, 2016, Doc. 34, See Fed. R. App. P. 4(a)(1). This court has jurisdiction over this appeal. See 28 U.S.C. section 1291.

Statement of the Issue

Has Blough challenged on appeal the dismissal of his claim against Judge Moody, and if so, did the district court err in dismissing that claim, which was based on Judge Moody's failure to rule in Blough's favor in Blough's earlier lawsuit?

Statement of the Case

Melvin Blough sued several Florida state judges and court clerks, and a United States district judge, James S. Moody Jr. In that lawsuit, Blough complains that the state judges and clerks had failed to apply two federal statutes in his state dissolution-of-marriage proceeding. He also complains that, when he later sued those state judges in federal court, Judge Moody refused to apply those federal statutes and instead erroneously ruled that the judges were entitled to dismissal on judicial-immunity grounds. The district court dismissed the complaint on

several grounds. Now Blough asks this court to reverse the dismissal.

Course of Proceedings

Melvin Blough filed a lawsuit against several Florida state judges and court clerks, and a United States district judge, James S. Moody Jr. Doc. 1. He alleged that, in his Florida dissolution-of-marriage proceeding, the state judges and clerks had failed to apply two federal statutes that, he claims, preempt Florida's divorce statutes governing alimony and equitable distribution.¹ According to him, their failure to apply those federal statutes "did thereby unlawfully take [his] Fifth Amendment property interests without due process of law." Doc. 1 at 7. He alleged further that he had sued only those relatively few judges and clerks, even though he had suffered "three years of continuous judicial abuse by fifteen judges and two clerks of the court". Doc. 1 at 7-8.

As for District Judge Moody, Blough alleged that Judge Moody had harmed him when he ruled against Blough in a federal declaratory relief action that Blough had brought against some of those state judges. Blough alleged that he had filed that action to prompt the district court to recognize his entitlement to the protections of those two federal statutes and to require the state judges to enforce those statutes, which he claimed preempted the otherwise-applicable state statutes governing his dissolution proceedings. Doc. 1 at 8-9. Blough alleged that he had documented in that action how those statutes would have shielded 97 percent of his income and assets, but Judge Moody had nonetheless rejected his claim and dismissed his complaint with prejudice. Doc. 1 at 11-13. As a result, Blough sued Judge Moody. Doc. 1. He alleged

¹ Those statutes are 10 U.S.C. section 1408 and 42 U.S.C. section 659. that “Judge Moody did violate Plaintiff’s Fifth Amendment due process right; and sanction the violation of Plaintiff’s Fourteenth Amendment due process rights by State court judges Barber and Foster, in declaring Plaintiff’s request for Declaratory Judgment to be moot”; that “Judge Moody was at the time of the initial Complaint of Declaratory Judgment required to enforce Plaintiff’s proven entitlement to the protections of the same federal statutes”; that “Judge Moody did intentionally usurp the authority of the Constitution, the United States Congress, and the United States Supreme Court in failing to require that state courts Judges Barber and Foster enforce the claimed federal statutes pursuant to Plaintiff’s requested Declaratory Judgment as mandated by Article VI Clause 2 of the United States Constitution, the United States Supreme Court VI Clause 2 of the United States Constitution, the United States Supreme Court in [Mansell v. Mansell, 490 U.S. 581 (1989)], and the Oath of Office taken by Judge Moody”; and that “Judge Moody did violate Plaintiff’s Constitutional rights by refusing; under the guise of judicial and qualified immunity, to enforce the claimed federal statutes to which entitlement had been proven.” Doc. 12 at 13-15.

Blough lodged similar allegations against the state-court actors, based on their refusal to enforce the federal statutes in his various divorce-related proceedings. Doc. 1 at 18-33. The complaint also includes many pages of legal argument. Doc. 1 at 33-51.

The state judges moved to dismiss the complaint against them, arguing that the action “is barred by Judicial Immunity, Qualified Immunity, and Eleventh Amendment Immunity [,] is barred by the Rooker-Feldman Doctrine and/or Younger Doctrine [,and] fails to state a claim of relief.” Doc. 29.

The district court dismissed Blough's complaint with prejudice as to all of the defendants. Doc. 31. The court ruled that Blough's claims against all of the judges –state and federal– are barred by judicial immunity. Doc. 31 at 8. The court explained: "It is clear that all of Plaintiff's allegations regarding all of the judges stem from their actions taken while acting in their judicial capacity. Specifically, all the claims concern actions allegedly taken by them while presiding over Plaintiff's marriage dissolution proceedings or challenges thereto. Doc. 1 at 9. The court ruled that the court clerks are entitled to absolute immunity for actions taken at the direction of the judges. Doc. 3 at 9-10. The court further ruled that the claims against the state-court actors are barred by Eleventh Amendment immunity. Doc. 31 at 10-11. And the court ruled that the claims against the state-court actors are also barred by the Rooker-Feldman doctrine, which bars federal-court actions brought to upend the result of state-court litigation. Doc. 31 at 11-12.

Blough moved for reconsideration, Doc. 32, which the district court denied, Doc. 33. This appeal followed. Doc. 34.

Statement of the Facts

No additional facts are necessary for the resolution of this appeal.

Standard of Review

This Court reviews de novo the dismissal of a complaint based on judicial immunity. *Smith v. Smith*, 237 F.3d 1322, 1325 (11th. Cir. 2001). But if an appellant –even a pro se one – declines to brief an issue, this Court ordinarily will not address it. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th. Cir. 2008) ("While we read briefs

filed by pro se litigant liberally, issues not briefed on appeal by a pro se litigant are deemed abandoned.”)

Summary of the Argument

Blough has waived or abandoned any challenge to the dismissal of his claim against Judge Moody. On appeal, Blough seeks relief from the judicial-immunity ruling only as to the state judges, and his brief makes only one passing mention of Judge Moody.

In any event, the district court did not err in dismissing Blough’s action against Judge Moody based on absolute judicial immunity. Blough’s complaint alleges that Judge Moody violated his constitutional rights when he dismissed, on immunity grounds, the lawsuit that Blough had filed against the state-court actors. Judge Moody’s actions were judicial in nature and were not performed in the complete absence of jurisdiction. Indeed, they were simply the acts of a judge ruling on the propriety of a complaint that Blough himself had filed. This Court should affirm the dismissal of Blough’s claim against Judge Moody.

Argument and Citations of Authority

Blough has waived or abandoned any challenge to the dismissal of his claim against Judge Moody, but, regardless, the district court did not err in dismissing that claim, which was based on Judge Moody’s failure to rule in Blough’s favor in Blough’s earlier lawsuit.

As an initial matter, Blough has waived or at least abandoned any challenge to the district court’s dismissal of his claim against District Judge Moody. On appeal, Blough explicitly seeks relief from the judicial-immunity ruling only as to the state-judge defendants. “Blough does not challenge the doctrine of judicial immunity other than

to the extent the doctrine allows immunity for violating Article VI Clause 2 of the Constitution by state court Judges.” Blough’s brief at 28. He therefore has affirmatively waived any challenge to the judicial-immunity as to Judge Moody.

Blough then explains his theory of how “*said state court Judges* have lost their judicial immunity” and why “the Supreme Court will not grant judicial immunity *to those state court Judges* who pick and choose those federal statutes they will enforce and those federal statutes they will not enforce.” *Id.* (emphases added). Indeed, Blough makes only one mention of Judge Moody in his entire brief, in a recounting of the litigation. Blough’s brief at 20. And his argument on judicial immunity refers only and repeatedly –to the “state divorce court Judges.” Blough’s brief at 6-9, 11-12. (Similarly, the cover of his brief identifies only the three state judges.) Therefore, this Court should affirm the dismissal as to Judge Moody without further consideration. *See Lenz v. Winburn*, 51 F.3D 1540, 1547 N. 5 (11TH. Cir. 1995) (declining to reach issue that party expressly waived in her brief); *Timson v. Sampson*, 518 F.3d 870, 874 (11th. Cir. 2008) (“While we read briefs filed by pro se litigants liberally, issues not briefed on appeal by a pro se litigant are deemed abandoned.”)

In any event, the district court correctly ruled that Judge Moody is absolutely immune from Blough’s lawsuit. Blough sued Judge Moody because Blough’s declaratory-judgment lawsuit against some state judges involved in Blough’s divorce proceedings. This lawsuit, in other words, challenges the action that Judge Moody took in his judicial capacity and within his jurisdiction. That judicial action is immune from suit. *See Mireles v. Waco*, 502 U.S. 9 (1991); see also *Forrester v. White*, 484 U.S. 219, 227-29 (1988); *Dykes v. Hosemann*, 776 F.2d 942 (11th. Cir. 1995)(en banc).

Indeed, “[f]ew doctrines were more solidly established at common law than the immunity of judges for damages for acts committed with their judicial jurisdiction.” *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967) (citing *Bradley v. Fisher*, 80 U.S. (13 Wall) 335 (1872)). The Supreme Court has explained further: “This immunity applies even when the judge is accused of acting maliciously and corruptly, and is not for the protection of benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.” *Id.* at 554 (internal quotation marks omitted); accord *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978).

Judicial immunity “is an immunity from suit, not just from ultimate assessment of damages.” *Mireles*, 502 U.S. at 11. And a “judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction.” *Stump*, 435 U.S. at 356-57 (internal quotation marks omitted).

The inquiry as to whether the challenged action is judicial in nature “relates to the nature of the act itself, i.e. whether it is a function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in his judicial capacity.” *Mireles*, 502 U.S. at 12 (alteration omitted). In determining whether the judge’s conduct was a judicial act, this Court has considered whether the act is a “normal judicial function,” whether the events “occurred in the judge’s chambers,” whether the “controversy centered around a case then pending before the judge,” and whether “the confrontation arose directly and immediately out of a visit to the judge in his official

capacity.” *Harris v. Deveau*, 780 F.2d 911, 914 (11th. Cir. 1986).

Blough sued Judge Moody because he had ruled against Blough in Blough’s earlier lawsuit. As discussed above, Blough alleged that Judge Moody had rejected his claim against those judges and had dismissed his declaratory-judgment complaint with prejudice, even though he had documented in that complaint how those state judges had erroneously failed to apply the two federal statutes. Doc. 1 at 8-13. Blough alleged that Judge Moody had violated Blough’s constitutional rights by “declaring Plaintiff’s request for Declaratory Judgment to be moot,” that Judge Moody had been wrong because he had been “required to enforce Plaintiff’s proven entitlement to the protections of the same federal statutes,” that Judge Moody had violated the constitution “in failing to require that state court Judges Barber and Foster enforce the claimed federal statutes pursuant to Plaintiffs requested Declaratory Judgment,” and that Judge Moody had violated Blough’s constitutional rights “by refusing; under the guise of judicial and qualified immunity, to enforce the claimed federal statutes to which entitlement had been proven.” Doc. 1 at 13-15. Judge Moody’s ruling – dismissing the complaint on immunity grounds – is a “paradigmatic judicial act [] involved in resolving disputes between parties who have invoked the jurisdiction of a court.” *Forrester*, 484 U.S. at 227. Indeed, Blough’s central allegation that Judge Moody erroneously ignored two federal statutes when he dismissed that complaint confirms this.

Furthermore, Judge Moody did not act in the clear absence of all jurisdiction when he ruled on the validity of a complaint that Blough himself had filed in federal court. Although not necessary to resolve the issue here, “the scope of the judge’s jurisdiction must be construed broadly”. *Stump*, 435 U.S. at 356; *see also Rolleston v.*

Eldridge, 848 F.2d 163, 165 (11th. Cir. 1988) (“the applicability of judicial immunity does not depend on the determination of nice questions of jurisdiction.”) (internal quotation marks omitted). The district court correctly dismissed Blough’s claim against Judge Moody.

Conclusion

For these reasons, this Court should affirm the judgment of the district court as to Judge Moody.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17256-GG

MELVIN E. BLOUGH,

Appellant,

v.

NICK NAZARETIAN ET AL.,

Appellees.

On Appeal From the United States
District Court for the Middle District
of Florida Tampa Division
Case No. 8:16-cv-2587-T-MSS-MAP

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Appeal Number 16-17256-GG

Melvin E. Blough v.
Nick Nazaretian, et al.

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

This action does not involve any corporation or corporate interests under Rule 26.1(a) of the Federal Rules of Appellate Procedure. In compliance with 11th Cir. R. 26.1-1, the undersigned hereby certifies the following updated listing of persons and entities who have an interest in the outcome of this case:

1. Bentley, A. Lee, III, United States Attorney Tampa.
2. Blough, Melvin E., Appellant.
3. Carter, Ronnie, Asst. United States Attorney Tampa.
4. Chrenshaw, Marva, Appellate Court Judge Florida Second District.
5. Cridlin, Shelley B., Asst. Attorney General State of Florida.
6. Lee, Laurel M., Circuit Court Judge Thirteenth Judicial Circuit.
7. Levine, Caroline Johnson, Asst. Attorney General State of Florida.
8. McNamara, Linda Julin, Asst. United States Attorney Tampa.
9. Moody, Jr., James S., United States District Court Judge.
10. Nazaretian, Nick, Circuit Court Judge Thirteenth Judicial Circuit.
11. Rhodes, David P., Asst. United States Attorney Tampa.

12. Scriven, Mary S., United States District Court Judge

13. Sheehan, Tracy, Circuit Court Judge Thirteenth
Judicial Circuit.

14. Silberman, Morris, Appellate Court Judge Florida
Second District.

15. Sleet, Daniel H., Appellate Court Judge Florida
Second District.

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(hereafter "FSPA")

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ARGUMENTS AND CITATIONS OF AUTHORITY

Defendants/Appellees (hereafter "Judges"); and United States District Court Judge Scriven, have taken the legal position that suit cannot be brought against Judges under the doctrine of judicial immunity because the allegations "stem from their actions taken while acting in their judicial capacity" and Judges "had jurisdiction over the matters before them".

The briefs submitted on behalf of the Judges; and the Order of Dismissal by District Court Judge Scriven, intentionally avoid the legal principle that judicial capacity does not include performing acts which are prohibited by current law causing the Judges to be without judicial authority (jurisdiction). The briefs and the Order of Dismissal by Judge Scriven also fail to address the facts that the Judges did violate the Supremacy Clause of the United States Constitution (hereafter "Constitution"), did deny those federal statutory protections claimed by Plaintiff/Appellant (hereafter "Blough") as a severely disabled veteran, did refuse to recognize the legislative authority of the United States Congress (hereafter "Congress"), and did challenge the judicial authority of the United States Supreme Court as mandated in *Mansell v. Mansell*, 490 U.S. 581 (1989).

The genesis for Blough's Complaint lies in the unlawful actions by seventeen federal and state court judges; including Judges, who have over the prior four years issued nineteen orders, judgments, and opinions denying Blough's entitlement to the protections of two federal statutes as a combat-disabled veteran with loss of both feet, loss-of-use of both hands, and nine other combat related injuries. The federal statutes claimed by Blough; and to which entitlement has been proven to each of the seventeen judges, serve a clear and substantial federal interest under the provisions USC Title 10, Subtitle A,

Part II, Chapter 71, section 1408(a)(4) of the federal armed forces statutes and USC Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B) of the federal alimony statutes. The federal statutes claimed are mandated to enforcement by federal and state court judges under Article VI Cl. 2 of the Constitution. The armed forces statute; which is formally titled the Uniformed Services Former Spouses' Protection Act (hereafter "FSPA"), was found to preempt state divorce statutes on the equitable distribution of property and was mandated to enforcement by state court judges in the decision by the United States Supreme Court in *Mansell v. Mansell*, supra. (hereafter "Supreme Court").

The claimed federal statutes did preempt (void) State of Florida divorce statutes on the equitable distribution of property and the award of alimony as said state divorce statutes are void of judicial authority pursuant to the decisions by the Supreme Court *In Edgar v. MITE Corp*, 457 U.S. 624 (1982), *Gibbons v. Ogden*, 9 Wheat (1824), *United States v. Locke*, 529 U.S. 89 (2000), *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) and *Hines v. Davidowitz*, 312 U.S. 52 (1941), and *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

The seventeen federal and state court judges (including Judges) have unlawfully refused to enforce the preempting (voiding) federal statutes under judicial authority which had been specifically granted of them by Congress, the Supreme Court, and Article VI Clause 2 of the Constitution. The seventeen federal and state court judges (including Judges) have also unlawfully enforced the voided (preempted) state divorce statutes; which were voided of judicial authority by the preempting federal statutes, under judicial authority which had been specifically withheld from them by Congress, the Supreme Court, and Article VI Cl. 2 of the Constitution.

The subject of this federal Complaint is the judicial immunity of the Judges in denying Blough's Fifth and Fourteenth Amendment substantive and procedural due process rights causing an unconstitutional taking of Blough's Fifth Amendment property by Judges. The four Defendant Judges identified on the face of the Appeal are the subject of this suit in causing the greatest injury to Blough's Constitutional rights at the state trial court level.

The claim to loss of judicial immunity by Judges in denying Blough's Fifth and Fourteenth Amendment substantive and procedural due process rights in the federal statutes claimed was brought by Blough in the Complaint (exh. 1). The Order of Dismissal by United States District Court Judge Scriven (exh. 31) did bar Blough's claim to loss of judicial immunity and raised the additional jurisdictional barriers of Eleventh Amendment Immunity and preclusion under the *Rooker-Feldman* doctrine. The Initial Brief of Defendants/Appellees Nazaretian, Lee, and Sheehan and the Brief of Judge James S. Moody Jr. present the same legal arguments against Blough's suit as were presented in the Order of Dismissal by the District Court (exh. 31); with the exception of an additional claim within Judge Moody's Brief that "Blough has waived or abandoned any challenge to the dismissal of his claim against Judge Moody".

District Court Judge Mary Scriven did advocate for Judges in the *sua sponte* Order of Dismissal (exh. 31) due to an inherent conflict of interest. Judge Scriven did so by failing to address the facts and misrepresenting the legal precedents to hold that Judges are not subject to suit for their actions under the doctrine of judicial immunity because Judges actions were taken in their "judicial capacity" and Judges "had jurisdiction over the

matters before them concerning Plaintiff's (Blough's) marriage dissolution proceedings".

Blough's Motion to Reconsider the Order of Dismissal (exh. 32) and Appeal provide a thorough and accurate rebuttal to all arguments presented by United States District Court Judge Scriven within the *sua sponte* Order of Dismissal (exh. 31). It would serve no purpose to restate Blough's rebuttal arguments and is referenced only to bring the Court's attention to the fact that the Order of Dismissal by the District Court; as is the case the two additional Briefs discussed below, fail to address Blough's argument that the doctrine of judicial immunity does not protect the Judges who did knowingly violate the Supremacy Clause of the Constitution by 1) refusing to enforce those lawful federal statutes claimed by Blough which did preempt (void) State of Florida divorce statutes and 2) enforcing the respective voided (preempted) state statutes which were without judicial authority pursuant to Article VI Cl. 2 of the Constitution, the preemptive language of the lawful federal statutes, the preempting and enforcement mandate by the Supreme Court in *Mansell v. Mansell*, supra., and the Supreme Court decisions in *In Edgar v. M.I.T.E. Corp.* supra. and the litany of cases cited at page 3 of the Appeal and the Complaint (exh. 1 page 34).

**Blough's Response to the Initial Brief of Defendants/
Appellees Nazaretian, Lee, and Sheehan**

The following statements within Defendants/Appellee's Initial Brief are false statements and should be disregarded by the Court:

1. "In the instant case, it is undisputed that Appellees were acting within the scope of their employment as state officials and that all actions or omissions obviously stemmed from actions within the scope of their authority."

2. "It is undisputed in this case that the Appellee's were acting within their discretionary authority as Circuit Court Judges and are therefore, entitled to qualified immunity."

The Initial Brief of Defendants/Appellees Nazaretian, Lee, Sheehan fails to provide a legitimate challenge to Blough's legal positions as stated in the Complaint (exh. 1), Motion for Reconsideration (exh. 32), or Appeal. Blough will respond to Defendant's/Appellee's (Judges) Initial Brief with a brief restatement in opposition to the arguments presented:

Judicial Immunity: The exceptions to judicial immunity were fully pleaded in Blough's Complaint (exh. 1 pages 33-51), Motion to Reconsider Defendant's Order of Dismissal (exh. 32 pg. 2), and Blough's Appeal (pages 5-9, 12).

The allegations presented in the Complaint revolve around the limited; but well settled question of judicial immunity, which has been defined in the common law decisions by the Supreme Court in *Bradley v. Fisher*, 13 Wall 335, 347 (1872) and *Stump v. Sparkman*, 435 U.S, 349, 355 (1978). The standard for loss of judicial immunity presented in *Bradley v. Fisher* and *Stump v. Sparkman*, supra. requires that there be a "clear absence of all jurisdiction over the subject matter" where an official could be expected to know that certain conduct would violate statutory or constitutional rights.

In *Bradley v. Fisher*, supra. a "Judicial act" is defined as "the lawful exercise and performance of his authority and duty as the presiding judge" and provides for judicial immunity if the judicial act itself is not expressly prohibited by existing law. In *Stump v. Sparkman*, supra., a "Judicial act" was defined as "an act normally performed by a judge" and the "judge possessed 'general

jurisdiction' (the ability to decide any matter not specifically withheld from him)".

The facts as stated in the Complaint and Appeal clearly reflect that Judges were fully advised of their absence of judicial authority to enforce the preempted state statutes and the consequences to them of their unconstitutional actions. The judicial actions taken by the Judges were not in excess of their authority, but were rather taken without authority. Judges did act in the complete absence of judicial authority by enforcing preempted (voided) state statutes on the equitable distribution of Blough's property and the award of Blough's income as alimony under state authority which had been voided by the Supreme Court's decisions in *In Edgar v. MITE Corp. and Mansell v. Mansell*, supra. The only judicial authority which Judges did initially possess was the federal authority (jurisdiction) to enforce the claimed federal statutes to which Blough had establish proof of entitlement. Judges did act in the complete absence of judicial authority by refusing to enforce the preempting federal statutes under USC Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4) and USC Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B) of the federal alimony statutes which voided the respective state statutes under federal authority which had been required of the state court Judges by the Supreme Court's decisions in *In Edgar v. MITE Corp. and Mansell v. Mansell*, supra. In refusing to enforce the federal statutes which had preempted state statutes; Judges did also violate Article VI Cl. 2 of the Constitution which requires that "the Laws of the United States shall be the supreme Law of the Land and the **Judges** in every State shall be bound thereby".

Qualified immunity is not available to Judges in that the Judges did knowingly perform judicial acts which were contrary to clearly established law at the time and

could have been expected to have known that their conduct would violate Blough's federal statutory and Constitutional rights.

The Complaint provides for the loss of judicial immunity by the Judges in abusing their judicial authority by unlawfully enforcing state statutes which were void of legal authority and refusing to enforce lawful federal statutes as required by Article VI Clause 2 of the Constitution. Judges did thereby unlawfully take Blough's Fifth Amendment property interests without due process of law in denying Blough's Fifth and Fourteenth Amendment procedural and substantive due process rights to the protections of two federal statutes which preempted Florida divorce statutes.

The *Rooker-Feldman* Doctrine: Blough did provide a response to this peripheral issue in Blough's Motion to Reconsider the Defendant's Order of Dismissal (exh. 32 pg. 3-4) and within the Appeal (pages 16-17).

The *Rooker-Feldman* preclusion doctrine does not limit this Court's review of the judicial actions by Judges; causing loss of Judges judicial immunity for violations of Blough's federal statutory and federal Constitutional rights, in that the federal claims presented in this Complaint are not "inextricably intertwined" with the state court claims. The Complaint and Appeal fully document the fact that Blough was totally, intentionally, and maliciously denied the opportunity to raise his federal preemption claims throughout the state court proceedings and Judges did violate Blough's federal statutory rights and Constitutional rights in refusing to adjudicate Blough's federal preemption claims. *Wood v. Orange County*, 715 F.2D 1543, 1547 (11TH Cir. 1983). See Complaint (exh. 1 pages 8-33) and Appeal pages 19-26.

"Because the issue did not figure, and could not

reasonably have figured, in the state court's decision, the district court has "original" jurisdiction over the issue as required by USC Title 28, section 1331.

Finally, interpreting *Rooker* to preclude a federal court from considering an issue that the plaintiff had no reasonable opportunity to raise in state court might pose due process problems. Such a harsh rule might deprive the plaintiff of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, a result arguably contrary to the requirements of due process". *Wood v. Orange County*, supra.

The subject of this federal Complaint is the judicial abuse by Judges in denying Blough's Fifth and Fourteenth Amendment substantive and procedural due process rights in the federal statutes claimed which did cause an unconstitutional taking of Blough's Fifth Amendment property by Judges. Blough could not have brought the liability suit in state court because the state court judges did totally, intentionally, and maliciously deny Blough the opportunity to raise his federal preemption claims throughout the state court proceedings and the Judges did violate Blough's federal statutory rights and Constitutional rights in refusing to adjudicate Blough's federal preemption claims. It would be a denial of due process to block this liability suit under the *Rooker-Feldman* doctrine based upon the principles stated in *Wood v. Orange County*, supra.

Blough's Complaint does not appeal the final ruling of the state trial court. The Complaint and this Appeal are directed to the loss of judicial immunity by the four Defendant Judges who caused the greatest injury to Blough's Fifth and Fourteenth Amendment property and due process rights/entitlements/protections during the state court proceedings. The Final Judgment of the state trial court; which was appealed to the Florida Second

District Court of Appeals, address(s) the federal statutory requirement to enforce the claimed federal statutes which preempt (void) State of Florida divorce statutes on equitable distribution and alimony.

The *Rooker-Feldman* preclusion doctrine does not apply as the issues presented and the remedies sought in the federal and state courts have no dependent relationship. This federal suit was initiated to hold those individuals responsible for denying Blough's Constitutional right to those federal statutes which preempted (voided) State of Florida divorce statutes on equitable distribution of property and alimony. The remedy sought is an award of two million dollars (\$2,000,000) in damages. The state court action is directed to requiring enforcement of the federal statutes which preempt (void) state statutes on equitable distribution and alimony. The end result of the state court action is the exception from equitable distribution of Blough's property which is protected by the FSPA and Blough's exclusion from the payment as alimony under the federal alimony statutes.

Eleventh Amendment Immunity: This peripheral issue was initially raised by Blough in the Complaint (exh. 1 page 44) and a full response was provided in Blough's Motion to Reconsider the Defendant's Order of Dismissal (exh. 32 pg. 3) and in the Appeal (pages 14-15).

The Complaint was not brought against the State of Florida and is therefore not barred by Eleventh Amendment Immunity. The respective state court Judges are sued in their respective capacities as officers of the State of Florida and the Eleventh Amendment provides no shield of immunity for a state official confronted by a claim that he or she has deprived another of a federal right under color of state law (i.e. Florida equitable distribution and alimony statutes). The respective state

court Judges have been “stripped” of their state authority which they abused in violation of Blough’s rights under the Constitution. Blough is unaware of a written or unwritten policy by the State of Florida instructing state court judges to refuse to enforce federal statutes which preempt state statutes. The unconstitutional actions by the respective state court Judges were without authority of; and did not affect, the State of Florida in its sovereign or governmental capacity. This conclusion is supported by the following decisions by the Supreme Court:

“Our Constitution establishes a system of dual sovereignty between the States and the Federal Government. This Court also has recognized this fundamental principle. In *Taffin v. Levitt*, 493 U.S. 455 (1990), [w]e began with the axiom that, under our federal system, the States possess sovereignty concurrently with that of the Federal Government, **subject only to limitations imposed by the Supremacy Clause**. ... Perhaps the principal benefit of the federalist system is a check on abuses of government power. “The constitutionally mandated balance of power between the States and the Federal Government was adopted by the Framers to ensure the protection of our fundamental liberties”. *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985).

“It has been well settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right (*the two federal statutes claimed by Blough*) under the color of state law (*State of Florida divorce statutes on the equitable distribution of property and the award of alimony*). *Ex parte Young* teaches that, when a state officer acts under a state law in a manner violative of the Federal Constitution (*the Supremacy Clause under Article VI Clause 2*), he comes into conflict with the superior authority of that Constitution, and he is, in

that case, stripped of his official or representative character, and is subject in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.” *Ex parte Young*, 209 U.S. 123 (1908).
Emphasis added by Blough.

Blough’s Response to the Brief of Judge James S. Moody Jr.

The Complaint does list District Court Judge James S. Moody, Jr. as one of the six named Defendants who are collectively referenced as “Defendants” throughout the Complaint. The Order of Dismissal by the district court (exh. 31) does reference “Defendant State Judge and Defendant Moody collectively as ‘Defendant Judges’”. Blough’s Appeal in the instant case does list District Court Judge James S. Moody, Jr. as one of the four named Defendants who are collectively referenced as “Judges” throughout the Appeal.

Blough did in 2014, file a Complaint (exh. SE 1) with the district court requesting that the district court; in the form of a request for declaratory judgment, instruct state divorce court judges that they were required by Article VI Clause 2 of the United States Constitution to enforce those specific federal statutes claimed by Blough. District Court Judge Moody did not formally acknowledge the absence of judicial authority by the state court judges; however did dismiss the complaint as moot because Judge Moody found that the state court judges were protected from their actions by judicial immunity. Because District Court Judge Moody refused to meet his Constitutional responsibility in 2014; Blough has been subject to continuing judicial abuse of his federal statutory claims by an additional thirteen state court judges. The Complaint (exh. 1 pages 8-18) present the facts, documentary evidence, and arguments specific to the actions of Defendant Judge Moody.

Judge Moody is without judicial immunity in that his actions were in the absence of all judicial authority by permitting state court judges to do that which Judge Moody could not do himself (i. e. refuse to enforce federal statutes). The actions of Judge Moody did provide for the enforcement of voided state statutes by state court judges (an act without judicial authority) and did prevent the enforcement of the claimed federal statutes which preempted the voided state statutes. The judicial actions by Judge Moody in response to Blough's 2014 Request for Declaratory Judgment (exh. SE1) were a contributing factor of the continuing judicially abusive actions inflicted upon Blough by state court judges throughout this litigation and Blough did at no point in this litigation waive or abandon the dismissal of his claim of unlawful actions against Judge Moody.

This case meets the statutory requirement for loss of Judges judicial immunity in that the Judges did knowingly commit judicial acts which were expressly prohibited by existing law. The Complaint and Appeal provide proof of; and the Order of Dismissal by the District Court and Defendant's/Appellee's Briefs fail to address, Bloughs claim that Judges did not have jurisdiction (authority) over the matters before them because Judges did act in the complete absence of judicial authority (jurisdiction) by 1) enforcing state divorce statutes which had been voided of authority by federal preempting statutes and 2) by refusing to enforce the preempting federal statutes as required by the Supremacy Clause of the Constitution.

The Order of Dismissal by the District Court and Defendant's/Appellee's Briefs seek solace in the phrase "judicial capacity" as the saving phrase providing the protections of judicial immunity to the judicially abusive and unlawful actions by Judges. "Judicial capacity" provides no immunity protections to those judges who

violate the Supremacy Clause of the Constitution by knowingly 1) refusing to enforce lawful federal statutes which preempt (void) state statutes and 2) enforcing the respective voided (preempted) state statutes which are without judicial authority pursuant to Article VI Cl. 2 of the Constitution, the preemption and enforcement mandate by the Supreme Court in *Mansell v. Mansell* supra., the preemptive language of the respective lawful federal statutes under the FSPA and federal alimony statutes, and the loss of judicial authority by the preempted state statutes under the Supreme Court decision In *Edgar v. M.I.T.E. Corp.* supra.

Respectfully submitted this the 23rd day of February, 2017.

/s/ Melvin E. Blough
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CERTIFICATE OF COMPLIANCE

Appellant's reply brief complies with the 15 page limitation of Rule 32(a)(7)(A) of the Federal Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY; under penalty of perjury, that a correct and complete copy of this; Appellant's Reply Brief, has been provided to Shelley Cridlin, Assistant Attorney General, Office of the Florida Attorney General, Suite 1100, 501 East Kennedy Blvd., Tampa, FL. 33602; Caroline Johnson Levine, Assistant Attorney General, Office of the Florida Attorney General, Suite 1100, 501 East Kennedy Blvd., Tampa, FL. 33602; and David P. Rhodes, AUSA, Chief Appellate Division, United States Attorney's Office, Suite 3200, 400 North Tampa Street, Tampa, Florida, 33602 via priority mail (with internet confirmation of receipt) on this the 23rd day of February, 2017.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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September 22, 2017

Elizabeth Warren
U.S. District Court
801 N. FLORIDA AVE
Tampa, FL 33602-3849

Appeal Number: 16-17256-GG
Case Style: Melvin Blough v.
Nick Nazaretian, et al
District Court Docket No: 8:16
-cv-02587-MSS-MAP

A copy of this letter, and the judgment from if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

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DAVID J. SMITH, Clerk of Court

Reply to: James O'Donnell Delaney
Phone #: 404-335-6113

Enclosure(s)

MTD-1 Letter Issuing Mandate