

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROYCE EUGENE MITCHELL, JR., et.al,	§	
Plaintiffs	§	
	§	
v.	§	Civil Action H-02-2167
	§	
GWYN SHEA, et. al,	§	
Defendants	§	

Plaintiffs' Memorandum in Opposition to
Defendants' Motions to Dismiss

Plaintiffs ask the Court to deny the defendants' various motions to dismiss based upon claims of immunity and under Fed.R.Civ.P. 12(b)(6).

A. Introduction

1. On September 5, 2002, the Court held a scheduling conference at which plaintiffs and counsels for defendants were present. At that hearing, counsels for defendants were ordered to submit their motions for dismissal within one week. Plaintiffs were ordered to respond to defendants within 20 days from receipt of the defendants' motions to dismiss.

2. Plaintiffs hereby respond to the defendants' several motions to dismiss.

B. Argument—Immunity

3. Defendants have alleged various forms of immunity, including: sovereign, judicial, prosecutorial and qualified immunity. Plaintiffs have

brought suit against defendants in their individual capacities since all defendants have acted in complete lack of jurisdiction and in concert, 1) to cover up the illegal passage of the State Bar Act, and 2) to cover up illegal creation and enactment of amendments to the Constitution of the State of Texas.

4. All of these actions have prevented plaintiffs, and all other Citizens, from running for public office as is their right under the Constitutions of the United States and of the State of Texas. The actions of defendants served to cover up the unlawful passage of the State Bar Act and Constitutional Amendments in violation of the Act to Readmit Texas to Representation in Congress (1870) and in violation of the Texas Constitution, Art. II which states:

"The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.";

and in violation of Texas Constitution **Art. III, Sec. 22**, which states:

"A member who has a **personal** or **private interest** in any measure or bill, proposed, or pending before the Legislature, shall disclose the fact to the House, of which he is a member, and **shall not vote thereon.**";

And in violation of **Art. XVII, Sec. 1(a)**, which states:

"The Legislature, at any regular session, or at any special session when the matter is included within the purposes for which the session is convened, may propose amendments revising the Constitution, to be voted upon by the qualified voters for statewide offices and propositions, as defined in the Constitution and statutes of this State. The date of the elections shall be specified by the Legislature. The proposal for submission must be approved by a **vote** of **two-thirds** of all the members elected to each House, entered by yeas and nays on the journals."

C. Sovereign Immunity

5. Plaintiffs claim that defendants are not entitled to sovereign immunity.

6. The Eleventh Amendment to the Constitution of the United States provides: "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 or Subjects of any Foreign State."

7. Further, as long construed by the Supreme Court, federal judicial power does not extend to suits brought against a state or its agencies by its own citizens. See, e.g., Puerto Rico Aqueduct & Sewer Auth. V. Metcalf & Eddy, 506 U.S. 139 (1993); Edelman v. Jordan, 415 U.S. 651 (1974); Hans v. Louisiana, 134 U.S. 1 (1890).

8. The Eleventh Amendment also bars federal jurisdiction over suits against state officials acting in their official capacities when the state is

the real party in interest. See, e.g., *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984).

9. However, the Eleventh Amendment immunity from suit is not absolute. *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 670 (1999). Congress may authorize a private party to bring a federal court suit against unconsenting states in the exercise of its power to enforce the Fourteenth Amendment. *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 80 (2000); *College Savings*, 527 U.S. at 670 (citing *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976)).

10. A state may waive its sovereign immunity by consenting to suit. *College Savings*, 527 U.S. at 670 (citing *Clark v. Barnard*, 108 U.S. 436, 447-448 (1883)). In the present case, we find that the State of Texas waived Sovereign Immunity for the State Bar of Texas via statute, to wit: Government Code, Sec. 81.014, which states:

"§ 81.014 GOV'T. Suits

The state bar may sue and be sued in its own name.

Added by Acts 1987, 70th Leg., ch. 148, § 3.01, eff. Sept. 1, 1987."

11. Plaintiffs allege that the legislative intent of §81.014 of the Government Code was that since the State Bar of Texas is a corporation, then it may be sued as any other corporation in the State of Texas.

12. Additionally, the Supreme Court has for nearly a century allowed suits against state officials for prospective injunctive relief to end a

continuing violation of federal law under the doctrine of **Ex parte Young**, 209 U.S. 123 (1908).

13. In **Seminole Tribe v. Florida**, 517 U.S. 44, 72 (1996), the Supreme Court held that Congress cannot abrogate Eleventh Amendment immunity through the exercise of its Article I powers. "Even when the Constitution vests in Congress complete lawmaking authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting States." *Id.* at 72; see *College Savings*, 527 U.S. at 672.

14. State Waiver is found in the Texas Gov. Sect. 81.014 Suits, *supra*. The Supreme Court has "long recognized that a State's sovereign immunity is 'a personal privilege which it may waive at [its] pleasure.'" *College Savings*, 527 U.S. at 675 (quoting *Clark*, 108 U.S. at 447).

15. "The decision to waive that immunity, however, 'is altogether voluntary on the part of the sovereignty.'" *Id.* (quoting *Beers v. Arkansas*, 61 U.S. 527, 529 (1858)). Generally, the Court will find a waiver either if the state voluntarily invokes its jurisdiction, *Gunter v. Atlantic Coast Line R.R. Co.*, 200 U.S. 273, 284 (1906), or if the state makes a "clear declaration" that it intends to submit itself to the court's jurisdiction. *College Savings*, 527 U.S. at 675-76 (quoting *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 54 (1944)). The State of Texas made such a clear declaration when it passed into law in the State Bar Act the statute which stated that the State Bar of Texas may sue and be sued in its own name—as

opposed to being sued as an agency of the State of Texas, which is a suit against Texas itself, as has long been established.

16. Under the Ex parte Young doctrine, a private party may sue individual state officers in federal court to obtain prospective relief from an ongoing violation of federal law. See Ex parte Young, 209 U.S. 123 (1908); Idaho v. Coeur d'Alene Tribe, 521 U.S. 261, 294 (1997) (O'Connor, J., concurring); id. at 298-99 (Souter, J. dissenting); Ysleta Del Sur Pueblo v. Laney, 199 F.3d 281, 289 (5th Cir. 2000), cert. denied, 120 S.Ct. 2007 (2000); Earles v. State Bd. of Certified Public Accountants of Louisiana, 139 F.3d 1033, 1039 (5th Cir. 1998).

17. The purpose of the doctrine is to enable federal courts to "vindicate federal rights and hold state officials responsible to `the supreme authority of the United States.'" Pennhurst, 465 U.S. at 105 (quoting Ex parte Young, 209 U.S. at 160). There are clear federal protected Rights involved in this litigation. The federal Rights which require vindication in this case are as follows:

- 1) the Right to due process of law; and,
- 2) the Right to counsel of one's own choice; and,
- 3) the Right to notice of hearing; and,
- 4) the Right to redress of grievances; and,
- 5) the Right to run for public office; and
- 6) the Right to fair and impartial hearing; and,
- 7) the Right to a republic form of government; and,
- 8) the Right to a separation of powers; and,
- 9) the Right to work; and,

10) the Right to be free from a monopoly; and,
11) the Right to free speech; and,
12) the Right to equal protection under the law; and,
13) the Right to open courts; and,
14) the Right to examine witnesses; and,
15) the Right to freedom of religion; and,
16) the Right to be free from prosecution under unclear, ambiguous statutes.

18. In the present case, plaintiffs filed suit against the individual Supreme Court Justices in their official, as well as personal, capacities. Plaintiffs allege that the arbitral enactment and then application of the State Bar Act, and the enactment of Amendments to the Texas Constitution which take away a Citizen's right to run for, and hold, public office, and which includes, inter alia, attacks against plaintiffs by the Unauthorized Practice of Law Committee under direction from the Justices of the Supreme Court of Texas, violates the 1870 Act which readmitted Texas to representation in Congress, which itself is a federal law. Whereas, the Act binds past, present and future relations between the Citizens of the State of Texas and their agents, members of the three branches of government of the State of Texas; Therefore, the alleged violation of federal law is ongoing. Finally, any order preventing the Supreme Court Justices and their agents from enforcing provisions of the State Bar Act which fail to meet the requirements of the 1870 Act to readmit Texas to representation in Congress would be purely prospective, at best.

19. The Court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) held that suits against individual state officers in their official capacities for ongoing violations of federal law are not available when Congress has enacted a comprehensive remedial scheme intended to be the sole remedy for violations of federal law. *Id.* at 74. However, there is no comprehensive remedial scheme available to plaintiffs in this case. There is also no possible relief within the court system of the State of Texas because all members of that system must be members of the State Bar of Texas, Inc., or face the loss of position and employment for refusal to rule in the favor of the State Bar of Texas.

20. The Court recognized that "an action brought against a state official under *Ex parte Young* would expose that official to the full remedial powers of a federal court, including, presumably, contempt sanctions." *Id.* at 75.

21. The 1870 Act readmitting Texas to representation does not severely limit relief available to an aggrieved party. In fact, the State Bar Act itself, as shown, states that the State Bar of Texas may both sue and be sued in its own name, without regard to any expression of permission from the State of Texas, showing that the State of Texas contemplated such suits.

22. The 1870 Act readmitting Texas to representation does not limit jurisdiction of federal courts to entertain suits in law or equity for prospective relief from ongoing violations of federal law by state officials acting in their official capacities. It certainly does not limit the federal court's jurisdiction to entertain suits in law or equity against state

officials acting in their individual capacity or against those who are not state officials at all, who act merely under color of law.

23. It thus cannot be said that Congress intended, in the 1870 Act readmitting Texas to representation, to limit significantly the federal judicial remedies available to an aggrieved party authorized to bring suit in an appropriate federal court. In fact, the only possible purpose of the construction of the Act, which readmitted Texas to representation, was to enable the federal government to intervene when necessary.

24. Besides all of the above reasons to deny the coverage of sovereign immunity to defendants, there exists yet one more reason. The fact is that the defendants are not sovereign. The plaintiffs are sovereign. Plaintiffs have researched their genealogies, which are supported by evidence admissible under the Federal Rules of Evidence, Rule 803, hearsay exceptions. These genealogies show that plaintiffs are members of the Posterity spoken of in the Preamble to the Constitution for the united States of America (1787), and that their people wrote the Constitution (1787) and Bill of Rights (1791), all of which created and limited the government of the united States of America, and to which the Citizens agreed.

25. Likewise, plaintiffs' families created the Constitutions which created the governments of the States, including the State of Texas. The maxim of law is that the created can not be greater than the Creator. With the exception of within the narrow powers granted to the State of Texas, the State of Texas has no immunity from suit from the Sovereign. In this case, the sovereign would be plaintiffs. Plaintiffs have researched and created a

Memorandum of Law on Diversity of Citizenship which shows that, by law, plaintiffs are De Jure, not De Facto Citizens, and are the Sovereigns, not the State of Texas, or its agents, and certainly not those who are acting under color of law, and not agents of the State of Texas as defined by the Texas Constitution, Art. XVI.

26. Plaintiffs stated as fact their De Jure Citizen status in both the original complaint and the amended complaint. That statement of fact went unchallenged in the defendant's several responses and as such should be deemed admitted as res judicata for the purposes of this case.

D. No sovereign immunity for illegal acts under Texas Law

27. Texas Law also extends an exception to the Sovereign Immunity defense. One such exception is "performance of an illegal act." When a state official performs an illegal, unlawful or unauthorized act, the official or agency is no longer acting for the State, *Federal Sign v. Texas S. Univ.*, 951 S.W.2d 401, 404 (Tex 1997). The performance of an illegal, unlawful or unauthorized act waives both immunity from suit and immunity from liability. *Kubosh v. City of Houston*, 2 S.W.3d 463, 468-69 (Tex.App.-Houston [1st Dist.] 1999, pet. Denied) (because city was assessing an unauthorized fee, it was not shielded from immunity).

28. A private litigant does not need legislative permission to sue the State for a state official's violation of state law, *Federal Sign*, 951 S.W.2d at 404; *Director of Dept. of Agric. & Env't v. Printing Indus. Assn*, 600 S.W.2d 264, 265-66 (Tex.1980) (Legislative consent not required for suit for injunctive relief against state agency to halt unauthorized printing

equipment and printing activities); Texas Highway Comm'n v. Texas Ass'n of Steel Importers, Inc., 372 S.W.2d 525, 530-31 (Tex 1963) (legislative consent not necessary for declaratory judgment suit to determine parties' rights).

29. In the aforementioned suits, the proper defendant is the person who is head of the governmental unit or agency who is performing or threatening to perform the illegal act; it is not the governmental unit or agency itself, Dillard v. Austin ISD, 806 S.W.2d 589, 598 (Tex.App-Austin 1991, writ denied).

E. No immunity for nonnegligent nuisance under Texas Law

30. Another exception to the doctrine of sovereign immunity at the state level is found in the Texas Constitution, Art. 1, Sec. 17, which states:

"No person's property shall be taken, damaged or destroyed or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof."

31. See also City of Abilene v. Downs, 367 S.W.2d 153, 160 (Tex. 1963; Tarrant Cty. V. English, 989 S.W.2d 368, 374 (Tex.App-Fort Worth 1998, pet. denied). Nuisance is another ground of recovery under Art. 1, Sec. 17 of the Texas Constitution, English, 989 S.W.2d at 374.

32. A governmental unit is liable for the creation or maintenance of a nuisance in the course of the nonnegligent performance of a governmental function. Id.

33. Nuisance is that activity which arises from unreasonable, unwarranted, illegal or unlawful use by a person of his own property, working obstruction or injury to right of another, or to the public, and producing such material annoyance, inconvenience and discomfort that law will presume resulting damage, *State v. Cardon*, 530 P.2d 1115, 1118. 23 Ariz. App. 82 (Ariz.App.Div.2 01/22/1975).

34. The term "nuisance" is incapable of exhaustive definition which will fit all cases, as it is very comprehensive and includes everything that endangers life or health, gives offense to the senses, violates laws of decency, or obstructs reasonable and comfortable use of property, *U.S. v. County Board of Arlington County, D.C.Va.*, 487 F.Supp. 137, 143. *Black's Law Dictionary*, Sixth Edition, p. 1066, "nuisance."

35. To be a nuisance within the exception to governmental immunity, the condition must in some way constitute an unlawful invasion of the property or rights of others that is inherent in the thing or condition itself, beyond that arising from its negligent or improper use. Id.; *City of Uvalde v. Crow*, 713 S.W.2d 154, 156 (Tex.App-Texarkana 1986, writ ref'd n.r.e.).

36. Thus, if the governmental function cannot be performed nonnegligently without injuring a private Citizen's property, the governmental unit "must

stand the loss." Abbott V. City of Kaufman, 717 S.W.2d 927, 931 (Tex.App-Tyler 1986, writ dismiss'd).

37. For the exception to apply, the condition must constitute an unlawful invasion of the property or rights of others that is inherent in the thing or condition itself. English, 989 S.W.2d at 374, Supra.

38. For a defendant to be liable for nonnegligent nuisance, it must act in a grossly negligent or intentional manner. Id.

39. Plaintiffs have a property interest in the ability to work as counselors of law for money:

40. Our [Texas] legislature, in dealing with taxes, defines "property" to include real or personal property, corporeal or incorporeal, and any interest therein. Article 14.00A, TEX.TAX. - GEN.ANN., TEX.REV.CIV.STAT.ANN. Courts have variously defined the word "property" as signifying the physical corporeal thing, or denoting rights and interest. It may reasonably be construed to include obligations, rights and other intangibles, as well as physical things; and thus the word "property" means not only the thing possessed, that is, the physical corporeal thing, but also rights in the physical corporeal thing which are created and sanctioned by law. The word "property" embraces everything which is or may be the subject of ownership, whether a legal ownership, or whether beneficial, or a private ownership. 73 C.J.S., "Property," § 1, pp. 140-141.

41. Our Supreme Court in *Spann v. City of Dallas*, 111 Tex. 350, 235 S.W. 513 (1921), gave a very comprehensive definition of the term "property", and an analysis of the elements of such term, in the following manner:

"Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right. Therefore a law which forbids the use of a certain kind of property, strips it of an essential attribute and in actual result proscribes its ownership."" THOMAS D. DAVIS v. SANDRA ROSE DAVIS, 495 S.W.2d 607 (Tex.App.—Dallas 05/10/73).

42. Plaintiffs enjoyed the right to work as counselors of law prior to the illegal and unlawful enactment of the Texas State Bar Act of 1939. The Plaintiffs, further, have a property right and interest in the moneys generated from their ability to work as counselors of law. That right has been stripped away by the law which forbids the use of that property, i.e. the skills derived from an education in law without the acceptance/approval of the membership in the State Bar of Texas Association as decreed by the State Bar Act. Because of this, and the nuisance related to the various attacks engaged in by defendants against the plaintiffs, via a violation under the "Same Hands Doctrine" there is created an exception to the doctrine of Sovereign Immunity under Texas law, also.

43. Therefore, for the reasons stated above, none of the defendants are entitled to Sovereign Immunity.

F. Judicial Immunity

44. Judicial immunity is the absolute protection from civil liability arising out of discharge of judicial functions which every judge enjoys. Under doctrine of judicial immunity, a judge is not subject to liability for any act committed within the exercise of his judicial function; the immunity is absolute in that it is applicable even if the actions of the judicial official are taken in bad faith. *C. M. Clark Ins. Agency, Inc. v. Reed*, D.C.Tex., 390 F.Supp 1056, 1060. Black's Law Dictionary, Sixth Edition, P. 848, "Judicial immunity."

45. Texas grants its judges a similar immunity. The precise terminology differs slightly, but it is apparent that Texas judges are immune from damage claims arising out of "acts performed in the exercise of their judicial functions." See, e.g. *Taylor v. Goodrich*, 25 Tex.Civ.App. 109, 40 S.W. 515. (1897)

"Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 20 L. Ed. 646 (1872)." *McAlester v. Brown*, 469 F.2d 1280 (5th Cir. 12/05/1972).

46. The court held, in *McAlester v. Brown*, 469 F.2d 1280 (5th Cir. 12/05/1972) that in order to pierce the veil of judicial immunity the following test must be met:

"Nevertheless, we discern in this case four factors that, when taken together, compel the conclusion that Judge Brown was acting 'in his judicial jurisdiction'":

(1) the precise act complained of, use of the contempt power, is a normal judicial function;

(2) the events involved occurred in the judge's chambers;

(3) the controversy centered around a case then pending before the judge; and

(4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity."

47. The only judge in the list of defendants, before whom either plaintiff has appeared, is defendant Gamble, who has claimed judicial immunity. The complaint against Gamble is that he entered into a RICO operation at the urging of the Supreme Court of Texas, before whom he had a case pending, and who was a plaintiff in a case before Gamble. The case before Gamble is the unauthorized practice of law for the Supreme Court of Texas involving plaintiff William.

48. Gamble entered into the RICO operation in the following manner. Gamble and Clyne held a hearing on the temporary injunction motion filed by Clyne on February 1, 2002 and adjudicated plaintiff William on that same day of February 1, 2002. An order issuing a temporary injunction against plaintiff William was issued that same day (February 1, 2002). In the order, Gamble stated that William had appeared with counsel.

49. However, plaintiff William was not in court before Gamble and in fact was not even served for 9 days after the injunction was issued. Gamble held

an ex parte hearing and adjudicated William in the complete absence of any jurisdiction.

50. Gamble's actions would be a normal judicial function, and in that respect Gamble meets the test for judicial immunity. Gamble meets the second test in that the ex parte action taken was in fact held in judge's chambers. Plaintiffs are willing to stipulate to the fact that the action took place in judge's chambers.

51. Gamble fails the third test. The controversy took place in a case before Gamble, but the case was not properly before Gamble, and as such should be considered as not properly established within the jurisdiction of the court, since the case cannot be pending until jurisdiction is established. Plaintiff William was unable to challenge jurisdiction because he was not served until 9 days after the issuance of the temporary injunction.

52. Finally, Gamble fails to meet the final test, also. Plaintiff William was not before the judge in his official capacity at the time of the actions of Gamble.

53. Moreover, Gamble is sued in his personal capacity for violations of the RICO Act, for which Gamble has no immunity. Suit is brought due to the private actions violative of the RICO Act.

54. Specifically, Gamble and defendant Clyne met, after discussion with other defendants in this case (the nine Supreme Court Justices whom Clyne

represented as agent in the case against William before Gamble), to discuss as to how to best deal with plaintiff William. The "fix" was in due to the fact that Gamble had a case before the nine Supreme Court Justices related to whether or not Gamble would be on the ballot for the November 2002 election. A ruling against Gamble would mean that Gamble would be out of a job after the election. In short, there was a "quid pro quo" secretly established by the members of the corrupt Bar organization to ensure that William was dealt with, and that Gamble would be protected, since William would be forced to appeal any decision to the co-Defendants in the case before Gamble. This explains why Gamble and Clyne agreed to omit the February 1, 2002, Temporary Injunction Order in the Courts own Docket Sheet which show the first entry date of January 15, 2002, and the next entry of February 15, 2002, with no showing of any actions occurring on February 1, 2002, the date of the Temporary Injunction Order being issued.

55. No defendant had any authority or jurisdiction to enter into a collusive agreement, or create a RICO Act organization, for the purpose of overthrowing or subverting the Constitution of the State of Texas as has been done in this case.

56. Defendant Gamble had no authority to act when the plaintiff in the action before him was the appellate court above him. Defendant Gamble acted in complete lack of jurisdiction, and in conflict with his oath of office which required that he preserve, protect and defend the Constitutions of the United States of America and the State of Texas. Gamble further acted in concert with the other members of the corrupt organization, the state Bar

Association, Inc., to deprive William of rights, as shown in the original and amended complaint.

57. Therefore, defendant Gamble, the only defendant who might have had judicial immunity as a defense, should not be granted that defense for the aforementioned reasons: this action is brought for actions taken in complete lack of jurisdiction and in Gamble's personal capacity, and this action is brought under the RICO Act for the personal actions taken in concert with the other defendants who are also members of the same corrupt organization.

58. No other defendant can claim judicial immunity. However, to the extent that they may claim said immunity, the RICO Act violations which apply to defendant Gamble also apply to those defendants.

G. PROSECUTORIAL IMMUNITY

59. Prosecutors and other necessary participants in the judicial process enjoy "quasi-judicial" immunity as well. Prosecutors are absolutely immune from liability for initiating prosecutions and other acts "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984, 995, 47 L. Ed. 2d 128 (1976); *Morrison v. City of Baton Rouge*, 761 F.2d 242, 247-48 (5th Cir.1985) (per curiam).

60. This prosecutorial immunity extends to individuals serving prosecutorial functions at administrative hearings. See *Butz*, 98 S. Ct. at 2916. Cf. *Tower v. Glover*, 467 U.S. 914, 104 S. Ct. 2820, 2826, 81 L. Ed. 2d 758 (1984) (public defenders not immune).

61. At least one defendant is claiming prosecutorial immunity. That defendant is named Clyne.

62. A prosecutor, or prosecuting attorney, is one "who is appointed or elected in each judicial district, circuit, or county, to conduct criminal prosecutions on behalf of the State or people." Black's Law Dictionary, Sixth Edition, page 1221, "Prosecuting attorney."

63. A prosecutor is "one who prosecutes another for a crime in the name of the government. One who instigates the prosecution upon which an accused is arrested or who prefers an accusation against the party whom he suspects to be guilty, as does a district, county, or state's attorney on behalf of the state, or a United States Attorney for a federal district on behalf of the U.S. government." People v. Pohl, 47 Ill.App.2d 232, 197 N.E.2d 759, 764. (1964)

64. Defendant Brent Gamble is judge in the 270th Civil District Court. Gamble is not a criminal judge. Therefore, defendant Clyne is not entitled to prosecutorial immunity.

65. Moreover, to be a prosecutor within the meaning of the Constitution of the State of Texas, the prosecutor must take an oath of office as mandated in Art. XVI of the Texas Constitution. Plaintiffs have evidence showing that none of the defendants have such oaths of office on file with the Secretary of State for the State of Texas, and as such cannot be prosecutors within the meaning of the term in the Constitution of the State of Texas.

66. Moreover, there was no criminal action in which Clyne was a prosecutor related to the events made the basis of this suit. Clyne was the member of the State Bar of Texas, who acted as counsel representing the defendant State Bar of Texas members, who also preside as Justices on the Supreme Court of Texas, in a civil action.

67. No other defendant is entitled to prosecutorial immunity, but to the extent that they may claim such, they are not covered by said immunity for the aforementioned reasons. Neither plaintiff William nor Mitchell are before any judge criminally in any action made the basis of this suit. No defendant, therefore, is entitled to a grant of prosecutorial immunity.

H. QUALIFIED IMMUNITY

68. Under the doctrine of qualified immunity, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818. (1982)

69. The Supreme Court pointed out in Harlow that in most cases, the "of which a reasonable person would have known" language in the qualified-immunity standard does not add anything to the "clearly established law" requirement because "a reasonably competent public official should know the law governing his conduct." Id. at 818-19.

70. However, the Court recognized that there may be "extraordinary circumstances" in which a government official "can prove that he neither knew

nor should have known of the relevant legal standard" even though it was "clearly established." *Id.* at 819.

71. Not long after *Harlow*, the Court refined the qualified-immunity standard by defining "clearly established" in a way that encompasses this "objective reasonableness" inquiry: To be "clearly established" for purposes of qualified immunity, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

72. Thus, as the court has recognized, in light of the *Anderson* definition of "clearly established," the determination "whether a . . . right was clearly established at the time the defendant acted . . . requires an assessment of whether the official's conduct would have been objectively reasonable at the time of the incident." *Conroe Creosoting Co. v. Montgomery County*, 249 F.3d 337, 340 (5th Cir. 2001).

73. The Supreme Court also clarified in *Anderson* that its explication of the "clearly established" standard does not mean "that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful." 483 U.S. at 640. Rather, conduct violates clearly established law if "in the light of pre-existing law the unlawfulness [is] apparent." *Id.* The Court further elaborated on the "clearly established" standard in *Siegert v. Gilley*, 500 U.S. 226 (1991), holding that the determination whether a right was clearly established at the time of the alleged violation necessarily entails a predicate "determination of whether the plaintiff has asserted a violation of a . . . right at all." *Id.* at 232.

74. Under the collateral-order doctrine, a denial of summary judgment based on qualified immunity is immediately appealable as a "final decision" under 28 U.S.C. § 1291 (1994) "to the extent that [such a denial] turns on an issue of law." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

75. To deny a summary judgment motion based on qualified immunity, a district court must determine both (1) that certain conduct "violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known," *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), and (2) that a genuine issue of fact exists regarding whether the defendant engaged in such conduct. See *Colston v. Barnhart*, 146 F.3d 282, 284 (5th Cir. 1998) (on petition for rehearing en banc).

76. The latter conclusion is not immediately appealable, as "such conclusions are nothing more than a determination of the sufficiency of the evidence — a finding which, in turn, is not truly separable from the underlying claim and thus is not a 'final order' under the collateral order doctrine." *Lemoine v. New Horizons Ranch and Ctr., Inc.*, 174 F.3d 629, 634 (5th Cir. 1999); see also *Johnson v. Jones*, 515 U.S. 304, 313 (1995) (holding that "the District Court's determination that the summary judgment record in this case raised a genuine issue of fact concerning [whether the officials engaged in the conduct alleged by the plaintiff] was not a 'final decision within the meaning of [28 U.S.C. § 1291]").

77. Defendants, for the purpose of this suit, are not state actors but are members of a corporation acting under color of law but not authorized to act by any oath of office filed with the Secretary of State for the State of

Texas, as is mandated in the Constitution of the State of Texas, Art. XVI. And is a "shall" Statute which is nondiscretionary. They have no more right to qualified immunity than cashier in the Federal Courthouse cafeteria.

78. If the court should determine that any one of the defendants is a government official, then they certainly are not covered by the second prong of the Harlow test, that of not knowing that they were violating any right of the plaintiffs. Plaintiffs have carefully laid out a complete list of the constitutional rights or freedoms violated by the defendants, all of which rights are known to them, since for the most part, they all have Doctorates in Law and have taken and passed the Texas Bar Exam.

79. Defendants SBOT and UPL claim that §81.106 of the Texas Government Code (def. motion to dismiss, p16, par. 1) grants qualified immunity to the UPL. Plaintiffs have shown that the State Bar Act is not law at all and that no immunity applies in this case. Certainly no qualified immunity could apply since the SBOT RICO conspirators knew that the law was not legally enacted, and as such their actions do not meet the "objectively reasonable" standard which might allow them a grant of judicial immunity. However, as shown, SBOT is no Texas agency at all, and its members do not have the oath of office filed with the Secretary of State. Therefore, they have no immunity of any kind available to them.

80. Those rights and freedoms are "the basic freedoms guaranteed by the Constitution such as the First Amendment freedoms of religion, speech, press and assembly together with protection under due process clause of the 14th Amendment." Black's Law Dictionary, Sixth Edition, page 311, "Constitutional

freedom." "Basic" means "of, pertaining to, or forming a base; fundamental: a basic principle..." See Webster's Encyclopedic Unabridged Dictionary of the English Language, page 173, "basic."

81. Therefore, the rights secured by our several constitutions are the base upon which all law is built. The rights secured by those constitutions is so fundamental that any student of law should know, and certainly anyone claiming to be a Doctor of Law and holding a membership which required passing a test on the law should know. Defendants therefore cannot possibly pass the second prong of the Harlow test.

82. Defendant Flores has no right to immunity of any sort for his actions taken in concert with defendants Clyne, Greenberg and others, who violated plaintiffs' right to run for office, and other rights as defined above, as protected by the Constitutions of the State of Texas and of the United States of America.

I. Motions to dismiss under Rule 12(b)(6) should be denied

83. Defendants have included in their motions for dismissal a motion that relies on Fed.R.Civ.P. 12(b)(6). The counsel for the State of Texas defendants directly states that their motion for dismissal is based upon Rule 12(b)(6). Counsel for the State Bar of Texas and the Unauthorized Practice of Law Committee did not directly call a part of their motion to dismiss such, but from the allegations of lack of clarity, they appear to lean on Rule 12(b)(6) for dismissal.

84. A motion to dismiss under rule 12(b)(6) "is viewed with disfavor and is rarely granted." *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982); *Lowrey v. Texas A & M University System*, 117 F.3d 242 (5th Cir. 07/07/1997); *Manguno v. Prudential Property and Casualty Insurance Co.*, 276 F.3d 720 (5th Cir. 01/08/2002).

85. In considering whether or not to grant movant's motion, the court accepts "as true the well-pleaded factual allegations in the complaint and construe the complaint in the light most favorable to the plaintiff. *ABC Arbitrage Plaintiffs Group v. Tchuruk*, 291 F.3d 336, 357-58 & n. 104 (5th Cir. 2002); *Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1017 (5th Cir. 1996); *Cruz v. Beto*, 405 U.S. 319, 322 (1972).

86. The complaint must be construed favorably to the pleader, *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true. *Campbell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5th Cir. 1986); *Zephyr Aviation, L.L.C. v. Dailey*, 247 F.3d 565 (5th Cir. 04/04/2001); *Manguno v. Prudential Property and Casualty Insurance Co.*, 276 F.3d 720 (5th Cir. 01/08/2002).

87. Dismissal is appropriate only if "it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief." U.S. ex rel *Thompson v. Columbia HCA/Healthcare Corp.*, 125 F.3d 899, 901 (5th Cir. 1997). The district court may not dismiss a complaint under rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts

in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

88. This strict standard of review under rule 12(b)(6) has been summarized as follows: "The question therefore is whether in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 601 (1969).

89. Under Rule 12(b)(6), "a claim may not be dismissed unless it appears certain that plaintiff cannot prove any set of facts in support of her claim which would entitle her to relief." Benton v. United States, 962 F.2d 19, 21 (5th Cir. 1992); Hishon v. King and Spaulding, 467 U.S. 69, 73 (1984); Conley v. Givson, 355 U.S. 41, 45-46 (1957).

90. "In order to avoid dismissal for failure to state a claim, however, a plaintiff must plead specific facts, not mere conclusory allegations. We will thus not accept as true conclusory allegations or unwarranted deductions of fact." Tuchman v. DSC Communications Corp., 14 F.3d 1061, 1067 (5th Cir. 1994) (internal citations, quotation marks and ellipses omitted).

91. In considering a motion to dismiss for failure to state a claim, a district court must limit itself to the contents of the pleadings, including attachments thereto. Fed.R.Civ.P. 12(b)(6).

92. Plaintiffs object to the inclusion of attachments to the motion to dismiss submitted by counsel for defendants State Bar of Texas (SBOT) and the

Unauthorized Practice of Law Committee (UPL). As the court stated in its memorandum, in a motion for summary judgment, "the Court cannot properly make findings on disputed issues of fact." See "Court's Memorandum and Order Regarding Discovery Motions..." page 3, last paragraph. Counsel for defendants attempted to circumvent the court's memorandum and order and to insert evidence not a part of their pleadings.

93. In order to make certain that the court understands that plaintiff's have pleaded specific facts related to the complaint against defendants, plaintiffs will summarize the facts in this response.

94. Most of the defendants are attorneys. As attorneys, having graduated from a State Bar approved Law School, and having taken and passed the State Bar Exam, they knew:

1) that the Texas Constitution prohibits the violation of the Separation of Powers Doctrine; and,

2) that attorneys are required to recuse themselves when a vote in the Legislature comes up in which they have an interest; and,

3) that all officials of government are constitutionally required to take an oath of office and file the proper statement with the Secretary of State prior to taking any office; and,

4) that the State Bar Act of 1939 was illegally passed by attorneys having an interest in the legislation; and,

5) that the Amendment to the Texas Constitution which prohibited Citizens from running for public office was illegally passed by attorneys having an interest in the legislation and in fact never

signed by the presiding officer of each house, as required by the Texas Constitution; and,

6) that coordinating their efforts to obscure and hide from the public that said laws were not legally passed constituted a RICO Act violation; and,

7) that coordinating their efforts to prosecute any Citizen which might dare to challenge their actions constitutes a RICO Act violation; and,

8) that coordinating their efforts to violate the constitutionally-protected rights of any Citizen constitutes a RICO Act violation.

95. Certainly, if untrained-in-law plaintiffs could sift through the law and find the above violations of the Texas Constitution, the laws of the United States, and those guilty of perpetrating the actions necessary to continue the cover-up all of these years, then the defendants, had they been interested in preserving and protecting our state and national constitutions, could also have found the perpetrators. Instead, all of the State Bar members acted in concert, as a RICO Act organization, to overthrow the Texas Constitution, violate the laws of the United States of America, and trample upon the constitutionally protected rights of the Citizens of the State of Texas. Whether or not the attorneys committed all of the above violations of law is a fact issue to be determined by the fact finder in this case. "[I]t is not unfair to hold liable the official who knows or should know he is acting outside the law." Butz v. Economou, 438 U.S. 478, 506, 98 S. Ct. 2894, 2911 (1978).

96. There are four defendants who are not members of the State Bar of Texas, but who have acted in concert with the attorney defendants to further the cover-up and engage in attacks against plaintiffs in the attempt to silence plaintiffs from speaking out on these issues. Those defendants who are not attorneys, to plaintiffs' knowledge, are:

- 1) R. Lance Flores; and,
- 2) Don W. Brown; and,
- 3) Marshall Hill; and,
- 4) David Linkletter.

97. Defendant Flores is not a "licensed" attorney (license means "carries a State Bar of Texas Membership Card"), or any other kind of attorney, for that matter, but claims to be "an experienced litigator" in his web site biography located on the internet at the following address: "<http://www.lpdallas.org/america/LF%20bio.html>". On that webpage is found the following statement: "He [Lance Flores] is an experienced litigator having briefed the U.S. Supreme Court on Writ of Certiorari, U.S. 5th Circuit, various Writs in the Texas Supreme Court and Texas Courts of Appeals."

98. Flores, who willingly became a part of the RICO Act organization with the assistance of defendants Clyne and Lehmann, brought a separate legal action against plaintiff William seeking to end William's candidacy after he was duly and legally selected by the Libertarian Party. When one reads the petition for mandamus submitted by Flores to the Texas Supreme Court, Flores acted as attorney for the "Dallas Libertarian Post," a person within the meaning of the law. Flores practiced law without a license!

99. However, Flores unauthorized practice of law was ignored by the UPL. In fact, it was ignored because Flores was a part of the RICO Act organization working with Clyne and Lehmann to violate the rights of plaintiff William. The action of Flores was designed to bring greater legal burdens on plaintiff William in the face of the action already in place in defendant Gamble's court as brought by the defendant State Bar members who sit on the Supreme Court of Texas, and another action brought by other non-bar-member defendants at the insistence of State Bar member, defendant Greenberg. Apparently "equal protection of the law" only applies to friends and accomplices of the State Bar of Texas. Apparently prosecutions for the unauthorized practice of law only apply to those who are not approved by the "Club," the State Bar of Texas.

100. Defendants Hill, Linkletter and Brown are all members of the Texas Higher Education Coordinating Board, which is an agency of the State of Texas. However, these three defendants, in their personal capacities, elected to join with defendant Greenberg in the RICO Act organization by their personal involvement in attacking plaintiff William's congregation, First Century Christian Church, which sponsors a private school of law, First Century Christian Church College of Law, saying that William's actions as Pastor of the church "make God sad." While defendants are certainly allowed to think such a thing, they are not authorized by law to use the weight of government to attack a Citizen at the behest of the State Bar of Texas. When they voluntarily elected to attack plaintiff William for the practice of his religious beliefs, they violated a basic constitutional right secured to all Citizens, and well known to defendants. They infringed upon William's right to freedom of religion, a voluntary, willing act on the part of the

defendants; such infringement is a question of fact and one that is not protected by any form of immunity.

101. The aforementioned violations, are violations of law which certainly raise fact issues and clearly state a claim for which plaintiffs are entitled to relief.

J. ROOKER FELDMAN

102. All of the defendants claim that this suit falls within the parameters of the Rooker-Feldman Doctrine. Based upon this claim, defendants request dismissal from this honorable court.

103. "The Rooker-Feldman doctrine derives its name from two decisions of the Supreme Court, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 68 L.Ed. 362, 44 S.Ct. 149 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 75 L.Ed.2d 206, 103 S.Ct. 1303 (1983)." *Remer v. Burlington Area Sch. Dist.*, 205 F.3d 990, 996 (7th Cir. 2000).

104. Simply put, the Rooker-Feldman doctrine "precludes lower federal court jurisdiction over claims seeking review of state court judgments . . . [because] no matter how erroneous or unconstitutional the state court judgment may be, the Supreme Court of the United States is the only federal court that could have jurisdiction to review a state court judgment." Thus, if a claim is barred by the Rooker-Feldman doctrine, a federal court lacks subject matter jurisdiction over the case.

105. While "[i]n its most straight-forward presentment, the Rooker-Feldman doctrine bars federal jurisdiction when the federal plaintiff alleges that her injury was caused by a state court judgment," the exact parameters are less than clear because the doctrine "is not limited to just those claims alleging that the state court judgment itself caused the federal plaintiff's injury; the doctrine also precludes federal jurisdiction over claims inextricably intertwined with a state court determination." *Remer*, 205 F.3d at 996.

106. Discerning "which claims are and which claims are not 'inextricably intertwined' with a state judgment" is a difficult process. *Id.* As we have often explained, "[t]he pivotal inquiry in applying the doctrine is whether the federal plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an independent claim." *Id.* (internal quotations omitted).

107. It is often "difficult to distinguish' between situations in which the plaintiff is seeking to set aside a state court judgment and ones in which the claim is independent." *Edwards v. Illinois Bd. of Adm. to the Bar*, 261 F.3d 723, 728-29 (7th Cir. 2001) (quoting *Long*, 182 F.3d at 555).

108. Plaintiffs contend that the defendants conspired-prior to any judicial involvement-

A) to cause false unauthorized practice of law proceedings to be filed via their secret, behind closed door "Star Chamber" trials,

B) based upon the "social engineering" of the 1927 Minutes of the State Bar Associations meeting, stating in part, their plan to change the Texas Constitution to read that only their bar members could hold public office in our Judicial system,

C) which violated the "Same Hands Doctrine" and thus effectively removed from all Texans the Right to THEIR choice of candidates by illegally and unlawfully enacting the State Bar Act of 1939

D) which created the State Bar of Texas, and in turn,

E) created the Act of 1979, requiring one to be a member of the Bar for 10 years as a lawyer or Judge as a prerequisite to the office of Texas Supreme Court Justice. This same language can be found in the minutes of the State Bar Associations meeting wherein that portion is "Blacked Out" covering the Legislation section released to William via the Texas Open Records Act request for the minutes of their meeting in 1979, wherein the bar members dictated the Act in question to their brethren in the Legislature, just as their Bar Member brethren did in 1927, and 1939, who are also members of the Bar Association and have taken "Oaths to the Bar"; and,

F) which has been used to violate the rights of Citizens, including plaintiffs, and which, in effect, caused the creation of the RICO operation by the Bar Association to protect the State Bar of Texas and it's monopolistic, members ONLY, i.e., interest earned on client-funds deposited in demand accounts pursuant to the Texas Interest on Lawyers

Trust Accounts (IOLTA) program to the tune of approximately 5.3 million dollars a year. When one is looking for what is wrong, it is wise to follow the money trail. The Supreme Court having held in Phillips v. Washington Legal Foundation, 524 U.S. 156, 160, 172 (1998); in this case that, for purposes of the Takings Clause of the Fifth Amendment, interest earned on client-funds, (Clients meaning Texans in the present case) deposited in demand accounts pursuant to the Texas Interest on Lawyers Trust Accounts (IOLTA) program, created by the yours truly, the State Bar Association, is the "private property" of the client, i.e., all Texans; Phillips v. Washington Legal Foundation, 524 U.S. 156, 160, 172 (1998); Houston, we have a problem! Notice the same Defendants are named for violating the Fifth Amendment Rights of all Texans/Clients/Citizens of Texas; Thomas R. Phillips, Chief Justice, Bar Card "MEMBERSHIP" (not a license) number 0000001; Nathan L. Hecht, Justice; Craig Enoch, Justice; James A. Baker, Justice; Priscilla R. Owens, Justice; Greg Abbott, Justice; Deborah Hankinson, Justice; Harriet O'Neill, Justice, of the Supreme Court of Texas, who are all named Defendants, all members of the Bar, all have taken the same Oath to the Bar in addition to taking the Oath of Office, as required by Texas Constitution Art. 16, Section 1, (as Amended 1987), and,

G) instigating proceedings to cause plaintiff William to be removed as the Libertarian Party candidate for Chief Justice of the Supreme Court of Texas, resulting in a violation of his Fourth Amendment and Fourteenth Amendment substantive and procedural due process rights.

109. Moreover, plaintiff Mitchell contends that he resigned his candidacy for Justice of the Supreme Court of Texas, Position One, due to the RICO style threats of defendant Flores acting as agent for the State Bar Association, via. Defendants Clyne and Phillips, to bring legal action, as taken against plaintiff William, related to the statutes contained in the State Bar Act and in the amendments to the Constitution of the State of Texas.

110. Plaintiffs are seeking damages for the conspiracy, and RICO Act violations, not for the state court's decision in the Third Court of Appeals mandamus order. Thus, under these circumstances, plaintiffs maintain that they have an independent claim which is not barred by Rooker-Feldman.

111. In support of their position, plaintiffs cite *Nesses v. Shepard*, 68 F.3d 1003 (7th Cir. 1995). In that case, *Nesses* brought suit in federal court against the lawyers and some of the judges involved in a breach of contract case which he had filed in Indiana state court and lost. *Id.* at 1004. *Nesses* claimed that his opponents' lawyers used their political clout to turn the state judges against him. *Id.* The district court dismissed *Nesses'* suit for lack of jurisdiction based on the Rooker-Feldman doctrine. *Id.*

112. Plaintiffs' suit is not premised on a claim that the state court judgment denied him some constitutional right; rather, their federal claim is based on a right independent of the state court proceeding. As was explained in *Nesses*, any other conclusion would mean that "there would be no federal remedy for a violation of federal rights whenever the violator so far

succeeded in corrupting the state judicial process as to obtain a favorable judgment,. . . ." Id. at 1005. Moreover, the courts have reasoned that such a "result would be inconsistent with cases in which, for example, police officers are sued under 42 U.S.C. § 1983 for having fabricated evidence that resulted in the plaintiff's being convicted in a state court." Id.

113. Plaintiffs are not merely claiming that the decision of the state court was incorrect or that the decision violated their constitutional rights; rather, they are alleging that the people involved in the decision to enact and maintain the State Bar Act which created the organization of people who have participated in RICO Act violations, have violated the plaintiffs' constitutional rights, independently of the state court decision.

114. Other circuits have applied similar reasoning to arrive at this conclusion. See *Holloway v. Brush*, 220 F.3d 767 (6th Cir. 2000), and *Ernst v. Child and Youth Servs. of Chester County*, 108 F.3d 486 (3d Cir. 1997).

115. In *Holloway*, a mother brought a Section 1983 action against the county and the county social worker alleging that they had improperly interfered with her right to the custody of her children. *Holloway*, 220 F.3d at 772.

116. The Sixth Circuit held that the Rooker-Feldman doctrine did not bar the mother's federal claim because she was not seeking review of the custody decision, which was an entirely separate state matter. Id. at 778-79. Instead, as the court in *Holloway* explained, the mother's claim presented a distinct question as to "whether certain actions in the course of those

proceedings may have involved a violation of her federal constitutional rights for which the responsible party may be held liable for damages." *Id.* at 779.

117. Similarly, in *Ernst*, 108 F.3d 486, the Third Circuit held that *Rooker-Feldman* did not bar a claim based on alleged constitutional violations stemming from child custody proceedings. *Id.* at 491-92.

118. In *Ernst*, a grandmother, who had sole guardianship of her granddaughter, sued the child welfare department and case workers alleging substantive and procedural due process claims after the defendants removed and retained custody of her granddaughter for five years. *Id.* at 488-89.

119. The court held that "the *Rooker-Feldman* doctrine did not preclude the district court from deciding those claims because a ruling that the defendants violated *Ernst's* right to substantive due process by making recommendations to the state court out of malice or personal bias would not have required the court to find that the state court judgments made on the basis of those recommendations were erroneous." *Id.* at 491-92.

120. The court further reasoned that "it is clear that deciding the substantive due process claims did not involve federal court review of a state court decision because *Ernst's* substantive due process claims were never decided by the state court." *Id.* at 492.

121. Holloway and Ernst, like Nesses and Long, recognized that constitutional violations may arise independently from state court proceedings, and thus not be barred by Rooker-Feldman.

122. The defendants might further argue that plaintiffs are not presenting an independent legal claim because they would not have suffered any injury from the alleged RICO action absent the state court's order directing William's removal from the race for Chief Justice of the Texas Supreme Court. However, nothing could be farther from the truth.

123. True, while this case involves a federal suit against the lawyers and some of the judges involved in the plaintiff's unsuccessful mandamus case, it should be noted that a federal plaintiff "can without being blocked by the Rooker-Feldman doctrine, sue to vindicate [an independent] right and show as part of his claim for damages that the violation caused the decision to be adverse to him and thus did harm him." 68 F.3d at 1005.

124. This language indicates that, even if plaintiffs would not have suffered any damages absent the state order of removal, their claim is not barred by the Rooker-Feldman doctrine because their claim for damages is based on an alleged independent violation of their constitutional rights.

125. In *Long v. Shorebank Development Corp.*, 182 F.3d 548, the court addressed a similar situation concerning whether the Rooker-Feldman doctrine barred the plaintiff's federal claims. In that case, Sasha Long sued her landlords, Shorebank Development Corporation, South Shore Associates, and the attorneys representing the corporate landlords, alleging that the defendants

unlawfully caused her to be evicted from her home in violation of her rights under the Fair Debt Collection Practices Act ("FDCPA") and her due process rights. Id. at 551.

126. The district court dismissed the complaint concluding that the state court's order of eviction could not be challenged in federal court because of the Rooker-Feldman doctrine. Id. On appeal, the court first concluded that the plaintiff's FDCPA claims were not barred by the Rooker-Feldman doctrine because they were "independent of and complete prior to the entry of the eviction order." Id. at 556. See also id. (noting that "[i]t makes no difference that Long may also deny the correctness of the eviction order in pursuing these claims").

127. However, the Long's due process claim presented a more difficult question. Initially, the court noted that "it does not seem that Long's due process argument can be considered separate from the eviction order entered against her," because if the proceedings in the state court "resulted in her favor, . . . it seems unlikely that she would have been evicted or lost all of her possessions, custody of her daughter, and her job." Id. at 556.

128. The court further explained that "while Long complains that the defendants deprived her of her property without due process in initiating and pursuing the eviction action, the injuries she alleges were complete only when the Circuit Court entered the eviction order against her." Id. at 557. The court then reasoned that because "[a]bsent the eviction order, Long would not have suffered the injuries for which she now seeks to be compensated,"

her claims appeared to be barred under Rooker-Feldman. Id.

129. This reasoning seemingly supports the defendants' argument that plaintiffs' claims are barred by the Rooker-Feldman doctrine since their alleged injury was caused (at least in part) by the state court's ruling in the adjudication of the mandamus proceedings in the Third Court of Appeals sitting in Austin and the adjudication of the injunction proceedings in defendant Gamble's 270th State Civil District Court.

130. However, after discussing the general applicability of the Rooker-Feldman doctrine, as summarized above, Long further explained that "the Rooker-Feldman doctrine can apply only where the plaintiff had a reasonable opportunity to raise his federal claim in state proceedings." Long, 182 F.3d at 558 (quoting Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983)). [Emphasis by the plaintiffs].

131. Long concluded that because the plaintiff could not have presented her due process claims before the state court during the forcible entry and detainer proceedings, Long did not have a reasonable opportunity to raise her claims in state court. Id. at 558-59. Accordingly, Long held that the Rooker-Feldman doctrine did not apply to bar the plaintiff's due process claim. Id. at 561.

132. This exception to the Rooker-Feldman doctrine is significant, and therefore plaintiffs reiterate: While the Rooker-Feldman doctrine bars federal subject matter jurisdiction over issues raised in state court, and those inextricably intertwined with such issues, "an issue cannot be

inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings." Id. at 558.

133. In this case, the Rooker-Feldman doctrine does not bar plaintiffs' claims because they did not have a reasonable opportunity to raise their constitutional claims in the state court mandamus proceedings or in the proceeding held ex parte before defendant Gamble.

134. The mandamus proceeding was brought under the Texas Rules of Civil Procedure which, at the hearing stage, required the court to hold a hearing after proper notice delivered with proper time requirements for response. Texas Rules Civ. Procedure, Rule 21.

135. Because the Third Court of Appeals did not provide plaintiff William with the time and notice protections, mandated by law, to allow William to defend an attack against his right to be on the ballot as selected by the Libertarian Party, plaintiff William did not have a reasonable opportunity to present his claims for purposes of the Rooker-Feldman doctrine. See, e.g., Ernst, 108 F.3d at 492 (plaintiff's claims were not barred by Rooker-Feldman because child dependency adjudication involves a determination that a child is without proper parental care or control, and subsequent custody decisions are made on the basis of the best interests of the child, and therefore plaintiffs did not have a realistic opportunity to present substantive due process claims).

136. But see *Goodman*, 259 F.3d at 1334 (holding that plaintiffs had a reasonable opportunity to present their constitutional claims during state juvenile court proceedings). In fact, at the first court hearing on August 30, 2002, when plaintiff William was adjudicated as "unqualified to run for office" and the Libertarian Party State Chair, David DeLamar, ordered to issue an administrative notice of ineligibility, plaintiff wasn't even present and was not represented at that hearing by an attorney.

137. Plaintiff did file a hastily-constructed response to the application for writ of mandamus but is certain that the response was inadequate due to the facts that plaintiff William had only about 12 hours to research the application and law, create an answer and then have it served over 200 miles away in Austin, Texas.

138. Thus, even though technically plaintiff William was a party to the mandamus proceedings, he did not have a reasonable opportunity to raise his constitutional claims during that proceeding. Therefore, even assuming that plaintiff William's constitutional claims are not independent of the state court proceedings, because he lacked a reasonable opportunity to present them during the adjudication of wardship hearing, they are not barred by *Rooker-Feldman*.

139. The court's recent decision in *Jensen v. Foley*, 295 F.3d 745 (7th Cir. 2002), supports this conclusion. In *Jensen*, the parents of infant Kayla Jensen sued the Illinois Department of Children and Family Services, along with local law enforcement officers, after the defendants removed Kayla from her parents' custody without a pre-deprivation hearing. Based on *Brokaw v.*

Mercer County, 235 F.3d 1000 (7th Cir. 2000), the Jensens argued that the removal was unconstitutional because the defendants lacked probable cause or exigent circumstances. The district court dismissed the Jensens' claims, concluding that they were barred by the Rooker-Feldman doctrine.

140. On appeal, the court held that the Rooker-Feldman doctrine did not apply because that doctrine "bars a plaintiff from bringing a § 1983 suit to remedy an injury inflicted by the state court's decision," *id.* at 747 (emphasis in original), whereas "the injury that the plaintiffs here complain of was caused not by the state court's temporary custody order, but by the underlying taking of Kayla by the DCFS agents and local officers,. . . ." *Id.* at 748. Similarly, in this case, plaintiff William's injury was caused not by the state court's mandamus order, but by the defendants' unconstitutional conduct, and RICO Act violations.

141. The defendants in this case may argue that the doctrine of collateral estoppel (i.e., issue preclusion) bars plaintiffs' claim, submitting the court's recent decision in Jensen as supplemental authority supporting their argument. Because "the preclusive effect of a state court judgment in a federal case is a matter of state rather than of federal law," to consider the defendants' argument the court should turn to Texas law on collateral estoppel. See *CIGNA Health Care of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 856 (7th Cir. 2002).

142. However, there is no state court judgment which adjudicated facts that are to be litigated again in this suit. Plaintiffs allege that the defendants, and other unnamed State Bar of Texas members, conspired with

other actors to create and protect the State Bar of Texas, a defendant also in this RICO Act suit. Plaintiffs alleged that prior to the creation of the State Bar of Texas, members of the then-voluntary State Bar of Texas met secretly to set in motion legislation that incorporated the State Bar of Texas, and then included it in the creation of the State Bar Act, making the membership a requirement for the practice of law in the State of Texas. Plaintiffs allege that those actions violated the Constitutions of the United States and the State of Texas, as well as federal law, to wit: the Act to Admit Texas to Representation in Congress.

143. Continuing, the members of the RICO Act organization, AKA the State Bar of Texas, secretly met and mandated another change to the Constitution of the State of Texas. This change, which took the form of an amendment, required membership in the State Bar of Texas in order to hold nearly all judicial positions in the state, including the Supreme Court of Texas. Plaintiffs, De Jure Citizens and members of the Posterity who created said Constitution, were then denied the right to run for those offices, a right which they never willingly would have waived for any reason.

144. This legislation, which became a constitutional amendment, was voted upon by a large number of members of the State Bar of Texas who had an interest in the legislation, who, if they had dismissed themselves, as required by the Texas Constitution, would have caused insufficient numbers to constitute the quorum required for consideration of passage, or even to conduct any business--and certainly would not have allowed the $\frac{3}{4}$ majority-of-all-members affirming vote as required under the Texas Constitution, Art.

XVII, Sec. 1. None of these issues were brought up in the mandamus proceedings in the Third Court of Appeals in Texas.

145. What we have before the court is a question involving the difference between an improperly issued writ of mandamus and RICO Act violations, violations of the Act to Readmit Texas to Representation in Congress and violations of the Constitutions of the United States of America and the State of Texas. The former action may be barred by collateral estoppel (although plaintiffs believe that collateral estoppel does not bar any action due to the violations of the law and rules which the Third Court of Appeals committed), while the latter is not.

145. Plaintiffs' case also differs from *Donald v. Polk County*, 836 F.2d 376 (7th Cir. 1988). In *Donald*, the parents of a child removed from their home sued various state officials alleging a violation of their due process and familial relations rights. The court held that the Donalds' claims were precluded by the doctrine of collateral estoppel because a jury concluded by clear and convincing evidence that their daughter had been physically abused. *Id.* at 382.

146. However, in that case the Donalds did not claim they were not afforded full discovery rights, nor did they cite any "specific instances of a false statement or even an exaggerated statement in any of the defendants' reports, petitions, or testimony." *Id.* at 381. Plaintiff William was not afforded any discovery of any kind prior to the Third Court of Appeals issuing the Writ of Mandamus. In fact, there was no due process of law of any kind afforded plaintiff William.

147. Plaintiff William was not even aware of any action of any kind until called by the clerk of the Third Court of Appeals to find out if William intended to respond to the application for writ of mandamus. That event happened at approximately 3:45 P.M. the day before the "hearing." William was instructed that he had until 12:00 P.M. the next day to formulate an answer to the application for writ of mandate which William had not even seen.

148. The Donalds also did not propose any "reasonable motive why the defendants would be prejudiced against the Donalds." Id. Based on these circumstances, the court concluded the conclusory allegations of bad faith on the part of the defendants prevented the Donalds from relying on a claim of fraud in the underlying custodial hearing to overcome the doctrine of collateral estoppel.

149. In contrast, in this case plaintiffs have made specific and detailed allegations concerning not only the purported mandamus hearing, but the motive underlying the hearing, as well as a motive for state actors to have joined the organization which has engaged in the RICO Act violations. This radically distinguishes plaintiff William's case from Donald.

150. The court should note that not only did the state mandamus proceedings involving plaintiff William address different issues, but, based on plaintiff's allegations, there is serious concern about the fairness and integrity of those proceedings. As was explained in CIGNA Health, 294 F.3d 849, notwithstanding the doctrine of collateral estoppel, "[r]edetermination of issues is warranted if there is reason to doubt the quality,

extensiveness, or fairness of procedures followed in prior litigation." Id. at 855-856. (internal citations omitted).

151. And "Illinois law denies collateral estoppel effect to a finding not made on the basis of a fair and adequate hearing." Id. (citing *Fried v. Polk Bros., Inc.*, 190 Ill. App.3d 871, 138 Ill.Dec. 105, 546 N.E.2d 1160, 1164 (Ill.App. 1989); *Coronet Ins. Co. v. Booker*, 158 Ill. App.3d 466, 110 Ill.Dec. 616, 511 N.E.2d 793, 796-97 (Ill.App. 1987)). For this added reason, the defendants' reliance on collateral estoppel would fail, had they raised such a claim.

152. Finally, the court should note that this matter was already before this court before defendant Phillips sought and secured the Writ of Mandamus from the lower court, after being refused by the Justices of the Supreme Court of Texas, who had earlier refused the identical request from defendant Flores.

153. This cause was filed on June 7, 2002. Defendant Flores, with the assistance and direction of State Bar members, defendants Clyne and Lehmann, filed the application for writ of mandamus with the Supreme Court of Texas on or about July 24, 2002. Defendant Phillips filed the emergency petition for writ of mandamus with the Supreme Court of Texas on August 28, 2002, which was rejected, and after which defendant filed the petition in the Third Court of Appeals on August 29, 2002.

154. Plaintiff William heard about the petition on August 29, 2002, at 3:45 P.M. via telephone call from the Third Court of Appeals clerk. The

clerk, per instructions from the justices of the Third Court of Appeals, initiated the telephone conversation. The clerk informed plaintiff William that he had until 12:00 P.M. the next day to respond to the petition, which plaintiff William had not even received.

155. The actions of the defendants, and the decision to issue the writ of mandamus, all took place after this honorable court had jurisdiction of this case.

156. With the matter of the illegality of the amendments, which limited plaintiffs' right to run for and hold office being before this honorable court, there should have been no state court ruling in the first place. It is the plaintiffs' belief that defendant Phillips sought said mandamus for the purpose of creating a possible Rooker-Feldman situation and depriving this court of jurisdiction to hear this case.

157. Therefore, for the reasons cited above, defendant's motion to dismiss for violations of the Rooker-Feldman doctrine should be denied.

K. OTHER ISSUES RAISED BY DEFENDANTS

JURISDICTION ESTABLISHED

158. Defendants make two jurisdictional complaints that plaintiffs need to address. The first claim is that plaintiffs failed to bring the suit under 42 U.S.C. 1983 and that plaintiffs allege defendants interfered with elections in violation of 42 U.S.C. 1972.

159. Plaintiffs amended complaint has a typographical error in the "Jurisdiction" section, which is on page 5, at 27. The text states "This action arises under 42 U.S.C. § 1972..." As correctly noted in defendants' responses, that statute applies to election interference with an election by officers of the various branches of the military.

160. However, if one continues reading paragraph 27, one reads the following text: "Plaintiffs seek ... a preliminary injunction, and other appropriate relief to enjoin the deprivation under color of law of the State of Texas of the rights, privileges, and immunities of the plaintiffs and the class they represent, arising under the Constitution of the United States, more particularly, the Fourteenth and Fifteenth Amendments thereto."

161. This language indicates that plaintiffs intended to cite 42 U.S.C. 1983 as the statute that conveys jurisdiction on the court. That is in fact the truth; the use of "1972" instead of "1983" a clerical error.

L. CONTINUING CLERICAL ERROR

162. Defendants' motions to dismiss note that apparently plaintiffs were relying on 42 U.S.C. § 1972 for authority in Section G of plaintiffs' amended complaint. These also were typographical errors.

163. What plaintiffs believe is that during a search and replace function related to the document, that the number 1972 was incorrectly entered instead of 1983. In every case where 42 U.S.C. § 1972 was used, the correct authority should have been 42 U.S.C. § 1983. Plaintiffs are amenable to filing an

amended complaint for the purpose of correcting the clerical errors, if the court is willing and the defendants demand such.

M. 1869 CONSTITUTION IS NOT MOOT

164. Defendants contend that the 1869 Texas Constitution is moot when applied to statutes written, specifically the State Bar Act and the Amendment which deprived plaintiffs of the right to hold constitutional office, namely Supreme Court Justices.

165. Plaintiffs made it perfectly clear in their original and amended complaint that the changes to the 1869 Texas Constitution violated Federal Law, specifically the Act to Admit Texas to Representation in Congress. Because they violated Federal Law, those changes to the Texas Constitution are invalid and are no law at all. Because they are no law, where those changes are concerned, we must revert to the Texas Constitution of 1869, which was approved by Congress as a condition for Texas to be admitted to representation.

166. Counsel for the State Bar of Texas and the Unauthorized Practice of Law Committee makes the statement that the "power of the State to amend its constitution and make new laws was frozen in 1869..." This is a misstatement of plaintiffs claim. Moreover, SBOT's counsel states that "Plaintiffs contend that ALL acts of the Texas Legislature subsequent to its readmission to the Union must receive the approval of the United States Congress to be constitutional." [Emphasis is plaintiffs'] This is a gross and inflammatory misstatement of plaintiffs' position.

167. Plaintiffs cite the Act to Admit Texas to Representation in Congress that restrained and restrains Texas from enacting any change to the Constitution of 1869 that would remove voting rights or restrict other rights of Texans. The plaintiffs have not contended that Texas was not free to amend its constitution in ways that regulate commerce, which is what counsel for the State Bar contends in its example of the Texas Natural Resources Code. SBOT's counsel should easily recognize that oil, airplanes and automobiles do not have basic unalienable rights.

168. Moreover, SBOT's counsel mentions "Texas' child labor laws, pure food and drug laws, and the thousands of other laws passed since 1869 to protect the health, safety and welfare of the public." Again, counsel's point misses the mark. None of those legislative acts served to remove rights held by Citizens at the enactment of the 1869 Texas Constitution and as such would not have required an Act of Congress to be enacted into law in Texas.

169. However, the State Bar Act of 1939 served to restrict the practice of law to members of a privileged group, those who were members of the State Bar of Texas. The State Bar Act established that none could work in the practice of law without becoming a member of a corporation which they attempted to disguise through the State Bar Act as an agency of the State of Texas.

170. However, what that act did was to restrict the right to work of counselors of law who refused to become a member of that corporation but who, in every other respect, were qualified to practice law in the State of Texas prior to the enactment of the act. Those people, of whom plaintiffs are

members, have now had removed from them the right to work in their chosen profession. The right to work is a part of the right to happiness guaranteed to all Citizens under the Constitution for the united States of America (1787) and the Constitution of the State of Texas.

171. Therefore, since the State Bar Act of 1939 served to strip Citizens of rights that they held under the 1869 Texas Constitution, the enactment of the State Bar Act required the approval of Congress under the provisions contained in the Act to Admit Texas to Representation.

172. The same provisions apply to the constitutional amendment passed illegally and unsigned by the proper officials, which restricted the right for Citizens to vote for the candidates of their choice, as clearly was stated in the Act to Admit Texas to Representation to be requiring the approval of Congress.

173. SBOT's counsel claims that "candidacy has not been recognized as a 'fundamental right' as Plaintiffs would urge." P.11, Par. 1. Plaintiffs do not make the claim that candidacy is a right, as SBOT's counsel states. What plaintiffs claim is that they have the right to hold office in the Texas Supreme Court if elected by the people. Election by the people necessarily includes the fact that one must first BE a candidate for election, as plaintiffs were until the interference by the RICO Act organization, the members of the State Bar of Texas made parties to this action, as well as others.

174. SBOT's counsel quotes Bullock, 611 F.2d at 259, where it is claimed that the court intended hold that the state's held the right to "...prescribe qualifications for statewide political office...under the tenth amendment of the United States Constitution."

175. The Tenth Amendment of the Constitution of the United States states as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

176. The Texas Constitution, Bill of Rights, Art. 1, Sec. 2, states as follows:

"All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient."

177. Therefore, any right to restrict access to any public office would be decided by the Citizens of the State of Texas, not the state itself, since in Texas "[a]ll political power is inherent in the people...", not in the state.

178. The corporation disguised as a state agency, also known as the State Bar of Texas, is decidedly not the people. At best, they would be agents of the people. They have never been empowered to enact into law any statutes or

changes to the Constitution of Texas which change the original intent and strip the Citizen of rights. They certainly were not empowered to violate the Texas Constitution by placing all three branches of government into the "same hands." Certainly, no Citizen in their right mind would accept from the their servant/agent any change in their orders (the Texas Constitution) which would grant the servant/agent more authority than the Citizen himself had to give! It is a colossal insult to the intelligence of the Citizen for the SBOT's counsel to make such a claim.

179. The fact is that the members of the RICO Act organization organized themselves in 1927 to create an entity which could be used to put the three branches of Texas government into the "same hands." In 1939, they brought out the first fruits of that illegal organization in the creation of the State Bar Act. They, like the defendants today, knew that what they were doing violated the Texas Constitution.

180. Then, in 1979, another prong of the RICO Act organization's conspiracy was put into place, the enactment of the amendment which required that almost all judicial offices must be held by members of the corporation. Again, they knew what they were doing violated the constraints that we, the people, the Citizens, put on them—just as the defendants in this suit knew.

181. It is easy to see the wisdom in the Act of Congress that constrained the changes that have been made illegally to the Texas Constitution. It is also easy to see why the members of the RICO Act organization have hired their own counsel and are not represented by the Attorney General as are the true officials of the government of the State of Texas. The SBOT and UPL

Committee fear the loss of power. Indeed, causing them to give up their illegally gotten power will be just about as easy as converting an African lion into a vegetarian.

182. However, the defendants' point was that they don't have to ask Congress for changes which strip Citizens of rights under the oppressive weight of the Texas government. In fact, they don't even like the idea that they must remain shackled by the chains of the document by which we created them, our Texas Constitution. That much is clearly evident by their continuing violation of the many provisions of that great document.

183. The State of Texas is constrained by the Act to Admit Texas to Representation. That Act is for the purpose of giving the Federal Government a foothold into the State to correct any action that removes existing rights of Citizens. Texas, under the monarchy of the State Bar of Texas, has consistently ignored the restraint imposed upon them by the Constitution and the Act to Admit Texas. Plaintiffs are asking this honorable court to correct that evil and to return the government to the Citizens, and the government to its proper constitutional role of servant/agent.

N. Plaintiffs have stated a claim against the UPL

184. The basis of defendants' claim that plaintiffs did not state a claim against the UPL is found in Sec. D, Par. 1, of SBOT's motion to dismiss. In that paragraph defendants state: "Both predicate acts are specifically authorized by statute."

185. The fact is that the UPL has no authority under the Constitution to engage in any manner of prosecution for violations of law. The authority for filing suits is given to the Executive Branch of Government by our Constitution. By taking upon itself the authority to act as both judge and prosecutor, after having taken effective control of the Legislature, the SBOT has effectively created a star chamber in which Citizens accused of the unauthorized practice of law are guilty before they arrive in the courtroom.

186. In fact, plaintiff William's case clearly shows that a star chamber is exactly what has happened to justice in Texas. William was adjudicated in absentia by defendant Gamble, 9 days before receiving notice that an action had been filed against him. An order was issued and signed by both the prosecutor, defendant Clyne, and the judge, defendant Gamble, who were both effectively the same person, defendant SBOT/UPL.

187. A second example of the Star Chamber type proceeding also happened to plaintiff William. In the case before the Third Court of Appeals in Austin, where William was informed at 3:45 p.m. on a Thursday, via phone conversation with the court clerk, that William had until 12:00 P.M. the next day to respond to a petition for mandamus by defendant Phillips, William was expected to defend his position that he does meet constitutional judicial qualifications to run for office without having been served with the defendant's petition and get that document into the hands of the Third Court of Appeals by noon the following day! SBOT waived the rules as they applied to William, and caused William to be adjudicated as unqualified in absentia, and without service.

188. SBOT has continued to bring harassing litigation against plaintiff William in the face of this action. SBOT RICO Act member, plaintiff Greenberg, with the help of defendants Clyne, Lehmann, and Flores, brought suit in state district court against plaintiff William exercised his right to freedom of religion by participating in a church-sponsored school of law. How was UPL involved in this attack? Defendants Clyne and Lehmann are part of the UPL and plaintiffs have evidence which connects defendant Greenberg to UPL members Clyne and Greenberg.

189. Clearly, plaintiffs have shown that they have made a case against defendants SBOT and UPL. That case does state a claim for which plaintiffs can have relief under federal law.

SBOT/UPL defendants do control the election process

190. On page for of the defendant SBOT's motion to dismiss, sec. B, par. 1, defendants state that SBOT does not control the election process. In fact, this is the same arrogant disregard for the facts that plaintiffs have shown throughout this response.

191. SBOT is a RICO Act organization which controls the livelihoods of the states many thousands of attorneys. The Legislature has many such attorneys elected to office, who do the bidding of the SBOT organization in the form of enacting legislation which controls elections. SBOT has complete control of the judiciary, all the way up to the Supreme Court of Texas which prevents anyone in the State of Texas from taking any action to stop this abuse.

192. SBOT's counsel claims that the defendant Secretary of State, Gwyn Shea, is responsible for the control of elections. However, as defendants showed in the Texas Election Code, §31.003, the Sec. of State only performs the task of maintaining uniformity "in the application, operation and interpretation of this [election] code." SBOT's point isn't made at all since the writing and enforcement of the election code falls into the hands of the RICO Act organization, SBOT, under its Executive Branch and Judicial Branch agents, members of the State Bar of Texas.

PRAYER

Therefore, plaintiffs respectfully pray that the court would deny all defendants immunity in any form. Plaintiffs pray that the court would rule that the Rooker-Feldman Doctrine does not apply in this case, and order that discovery proceed immediately.

Respectfully submitted,

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