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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

Jeffrey D. Moffatt, Plaintiff v. State of Arizona, State Supreme Court of Arizona, State Bar of Arizona, and Scott Bales, Chief Justice in his Official Capacity, Defendants	**DOCKET NO**.: CV 17-06029-VBF (DFM) **MOTION FOR RELIEF FROM JUDGMENT AND CONTEMPORANEOUSLY ISSUED ORDER -60(b)** ORAL ARGUMENT REQUESTED **Date:** **Time:** **Courtroom:** Honorable Judge Valerie Baker Fairbank

WHEREFORE PLAINTIFF MOVES THE COURT WITH THIS MOTION FOR RELIEF FROM "CONTEMPORANEOUSLY ISSUED ORDER … FINAL JUDGMENT PURSUANT TO RULE 60(b)"

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I. INTRODUCTION

Moffatt was claimed to have committed a crime, via a charge of Arizona Ethical Rule 8.4(b), without ever being charged, indicted, having a jury, or having a conviction. This is compounded by Moffatt being exonerated of the

same situation from being a crime, as well as being devoid of any attorney client conduct nearly 2 years prior by the State of New Mexico, **See Index of Exhibits, Volume I, Exhibit A, pages 9-11,** attorney client conduct is the only basis that could gain Arizona Jurisdiction, and this was precluded 2 years prior.

This present case stems from the State Bar of Arizona, a private corporation manufacturing a crime, outside the statute of limitations, outside its jurisdiction, and despite exoneration by a state that actually had jurisdiction. The claiming of a crime when there was not one nor did jurisdiction exist to charge Moffatt, doing so was fraudulent. Fraud can be reviewed under FRCP 60(b)(4).

The disbarment and default judgement was a function of a sanction hearing was demanded a day after the order was received; Arizona Supreme Court rule 47(c) gives 5 days for mailing, and Arizona Supreme Court Rule 58(2)(d) gives 10 days' notice, these time requirements were violated for Moffatt as they were to other attorneys as a sanction for not attending a hearing held with a one-day notice. **See Index of Exhibits, Volume II, Exhibit M, page 384-386, Exhibit O, page 390-393.** The sanction by the corporation gave Moffatt a default revocation, thus removing his law license for life, when the entire idea of due process and notice were blatantly violated; this is

compounded when no jurisdiction existed in the first place, given the New Mexico exoneration. Exhibit A.

Judge Kozinski, of the 9th Circuit has repeatedly commented about prosecutorial misconduct coming out of Arizona. The basis for prosecutorial misconduct stems from the improper installation of William J. O'Neil as O'Neil being the sole decision maker regarding Attorney discipline. O'Neil has a business partner, Robert Brutinel, a member of the Arizona Supreme Court, as the only route to review O'Neil's administrative decisions. This business relationship is further constrained by Tammy O'Neil, William O'Neil's wife being the General Manager of Brutinel plumbing; Robert Brutinel denied Moffatt access into the Arizona State Supreme Court, and denied Motions that would have brought misconduct and corruption of O'Neil forward.

Moffatt was running for Congress and his wife running for State Senate in an area that is tied to the misconduct of O'Neil's business partners. In fact a past CIA employee, Dan Woods, who was working for the attorney General of Arizona as an investigator, tied corruption to land investors via a $100 Million land scam over Victorville; Star Moffatt, if elected, would have been the California State Senator over Victorville, the city that was victimized by this

land scam. Dan Woods was fired by the Arizona Attorney General for investigations into the land scam that connected individuals, whom have businesses relations, are friends and past legal clients of William O'Neil.

The State Supreme Court of Arizona is a political subdivision of the State and private corporation State Bar of Arizona has conspired collectively by intentionally committing fraud in the Moffatt matter. Scott Bales, of the Arizona Supreme Court, has failed in his administrative duties over Robert Brutinel, as well as oversight of O'Neil.

The FBI presently has documents showing that political favors have been used to impact Republican Candidates. These documents are still being released, and also go to actions inside Arizona, which impacts Moffatt. FRCP 60(b)(2) allows review of a final judgment when the documents were not readily available at the time the suit was brought.

What better way to impact Republican Congressional and State Senate elections, than by having political favors being granted to disbar Moffatt, based on a crime, when no crime exists? Moffatt had his entire brief removed and was given a default judgment by O'Neil, despite the proper notice rules being

violated by O'Neil. What better way to perpetuate the fraud then having Brutinel shut down Moffatt's review of O'Neil's disbarment of Moffatt. Fraud Committed on the Federal Courts by the State of Arizona, State Supreme Court of Arizona and State Bar of Arizona, their actions give Plaintiff Moffatt remedy within Federal Rules of Civil Procedure (FRCP) 60(b)(3) due to Fraud committed against Plaintiff Moffatt.

This case represents the best opportunity for the improper actions of the Arizona State Bar, the improper installation of O'Neil, the corruption of O'Neil and the improper relations of O'Neil and Brutinel to make the light of day past the confines of Arizona. Justice Kozinski has repeatedly been dissatisfied with judicial decisions coming out of Arizona, and this case actually represents an opportunity to not only address the fraud Moffatt was faced with, but also address separation of powers problems that have allowed the fraud to take place.

Allowing the case to progress will assist in addressing fraud against numerous other attorneys, by O'Neil including prosecutors that have attempted to point out judicial impropriety as well as land scams, amazingly connected again to William O'Neil that has resulted in those prosecutors being also

disbarred by O'Neil. The fraud against Moffatt and his wife, are just the tip of the spear, and Review is allowed under FRCP 60(b)(4).

II. OPENING STATEMENT

Fraud committed on this Court caused an error of the "Contemporaneous Order and Final Judgment," because the State of Arizona, State Supreme Court of Arizona and corporation named the State Bar of Arizona, committed fraud against Jeffrey D. Moffatt, which can be reviewed in this present FRCP 60(b) motion.

The fraud committed against Moffatt has a comparison to one of the FBI's famous cases "Operation Greylord," which was similarly related to Judicial Public Corruption. The sad truth is that the present Fraud and Judicial Public Corruption has also happened to many attorneys in Arizona; this case represents a rare opportunity for justice to be obtained and viewed outside of Arizona, without political protections attempting to shut down review of the corruption.

Honorable Justices, Plaintiff intends to prove this Motion for Relief from Judgment and Order pursuant to Federal Rules of Civil Procedure 60(b), is warranted in the interest of the Court, public and Plaintiff.

Plaintiff Moffatt is about to depict a complicated case, with twists and turns proving the high jacking of justice and stripping Plaintiff Moffatt of his constitutional rights similar to a level one would expect in a third world country abandoned of laws and protections for its people. To have it happened to an attorney and U.S. Congressional Candidate-husband of a State Senate Candidate boggles the mind. However, this is America and its founders based our system on providing equal justice for all, especially to those accused of committing crimes against our state and country.

In America it is prohibited to place an accused before a firing squad, without real due process, and a proper opportunity to be heard. The disbarment of Moffatt is tantamount to a firing squad when an exonerated individual can be charged with violation of a crime, without a properly installed judge, whom ignored the New Mexico exoneration, without jurisdiction, past the statute of limitations, outside the jurisdiction of Arizona, violated due process rules and has business relations to a Supreme Court Justice Brutinel, that has protected O'Neil violations from being overturned.

The United States created fundamental due process and equal protection to protect from single miscarriages of justice.

Here Moffatt has been faced with not just one, but dozens of violations of Constitutional rights, the violation of a single one would be grounds for reversing a fraudulent criminal conviction. Federal Rules of Civil Procedure (FRCP) Rule 60 provides the framework to address these vast violations, and allow this court to correct its own error when it dismissed Moffatt's twenty-two (22) claims.

Plaintiff Moffatt, suffering a miscarriage of justice due to Fraud and public corruption, that has injured his business, reputation within the community, national standing and placed Moffatt in false light beyond what one could ever image. Both the State of Arizona and the State Supreme Court of Arizona have conspired with Private Corporation named State Bar of Arizona, of portraying that Plaintiff Moffatt had convicted of committing a crime, prompted by being charged of a crime. This would probably be true if Plaintiff Moffatt had been charged in a third world lawless country.

Unfortunately the takedown of Moffatt was likely done to impact Moffatt's Congressional election and his wife's State Senate elections; keeping Star Moffatt from being the State Senator over Victorville, which is tied to a $100 Million dollar land scam tied to protection at the highest levels in Arizona,

and according to reliable sources O'Neil has past connections with business partners as well as legal clients. Political takedowns of Arizona attorneys is not new to O'Neil, the record will also show reports of how he has disbarred Government prosecutorial attorneys investigating land fraud of O'Neil's friends, business partners and past legal clients.

It is the manifest corruption and cesspool of violations that have been previously unreviewable outside the state of Arizona, that this case now presents itself to this court to unravel. Moffatt is not asking this court to solve all of Arizona's problems, but only to allow the blatant fraud and public corruption that has adversely caused irreparable harm to Moffatt and unconstitutional takedown of Moffatt to see the light of day. This thread of fraud-public corruption being pulled and exposed via the Moffatt matter, will allow the system to ultimately correct itself, and then restore justice to attorney regulation in Arizona.

III. BACKGROUND

FRCP 60(b)(1) motions are allowed which has extended the definition of "mistake" to include cases in which a change in the controlling law closely follows the lower court decision. This expansion in the coverage of the concept of "mistake" is reasonable because a trial court decision entered shortly before an appellate court changes the controlling law is thereby rendered mistaken. When an

appellate court changes controlling law it acknowledges that the law has been incorrectly interpreted in the past. Moreover, the immediacy of the change in law relative to the challenged judgment creates a sense that at the time of the trial court decision the appellate court knew that the precedent relied upon by the trial court was erroneous. Lairsey vs. Advance Abrasives, Co., 542 F.2d at 929

Despite the briefing that existed in Moffatt's 22 claims, breaking down the brand new rules for Corporations being unable to be market participants and regulators, under Assn of Railroads (Amtrak), infra, as well as the cutting edge cases for separation of powers and improper delegation of duties, the Magistrate made a massive mistake and took the position that all the defendants were entirely immune. This mistake can be properly addressed here in an FRCP 60(b)(1) motion since the magistrate was not versed on the present controlling law. Other recent controlling law also prescribes that injunctive relief, and declaratory relief is allowable, thus Eleventh Amendment immunity does not apply.

Additionally, the Magistrate might not have been aware that the State Bar of Arizona, unlike some other bars, is only a corporation, and subject to the Assn of Railroads analysis.

The Magistrate may not also have been aware that Moffatt had an exoneration from the base charges in New Mexico, and that the corporate entity, the State Bar of Arizona refused to follow its own rules and honor that exoneration. The Magistrate might also not be aware that Moffatt attempted a removal action, and a Federal Judge already ruled that the State Bar of Arizona is not a state court, and agency decisions are not bound by Rooker, immunity actions.

This brief covers not only FRCP 60(b)(1) arguments, but arguments on 1-7. The arguments are not only enough to reverse the erroneous Magistrate recommendation to Judge Fairbanks, but should also be enough to invite some serious federal investigation into the workings of the Defendants listed in this document.

IV. ALLOWABLE ACTIONS UNDER FRCP 60(b)

This motion under FRCP 60(b) allows a party to seek relief from a final judgment, order or proceeding directly from the district court judge in the following circumstances:

- Mistake, inadvertence, surprise, or excusable neglect (*FRCP 60(b)(1)*).

- Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under FRCP 59(b) (*FRCP 60(b)(2)*).
- Fraud (whether previously called intrinsic or extrinsic), misrepresentation or misconduct by an opposing party (*FRCP 60(b)(3)*).
- The judgment is void (*FRCP 60(b)(4)*).
- The judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable (*FRCP 60(b)(5)*).
- Any other reason that justifies relief (*FRCP 60(b)(6)*).

For starters, FRCP 60(b)(1) allows a district court to undo or alter a final judgment based on, among other things, a "mistake." **Ninth Circuit**: "The law in this circuit is that errors of law are cognizable under Rule 60(b)" (*Liberty Mut. Ins. Co. v. EEOC, 691 F.2d 438, 441 (9th Cir. 1982)*

Moffatt seeks the relief under FRCP 60(b)(1)-(6), based on the fact that State Bar of Arizona and its employee State Bar Counsel Nicole Kaseta filed a fraudulent Complaint with the State Supreme Court Presiding Disciplinary Judge, where it was rubber-stamped by Presiding Judge William J. O'Neil to give an appearance of having jurisdiction over Moffatt in a disciplinary proceeding.

Moffatt cites the State Bar of Arizona Complaint Number 2015-115, filed November 3, 2015, falsely alleging Moffatt violated State Bar of Arizona Ethical Rule 8.4(b)-policy, "commit a criminal act that reflects adversely on the lawyer's honestly, trustworthiness or fitness as a lawyer in other respects." Moffatt was never convicted of committing any criminal act; Moffatt was exonerated, no criminal act took place, there was no criminal process.

State Bar of Arizona Ethical Rule 8.4(b) was not adopted by the Arizona State Legislature, to then act as a criminal statute.

Without O'Neil rubber-stamping State Bar of Arizona Complaint Number 2015-115, there would be no jurisdiction; The State Bar of Arizona and its employee Nicole Kaseta, State Bar Counsel, committed fraud upon the court to gain a false appearance of jurisdiction and legitimacy, against Moffatt. Moffatt brought this forward in the Motion for Prosecutorial misconduct **See Index of Exhibits, Volume II, Exhibit J, pages 367-375**, which was denied by O'Neil. This court can review under FRCP 60(b)(4) for fraud, and (3) for misconduct. Claiming a crime exists when no crime exists, but an exoneration in favor of Moffatt, as the basis for disbarring Moffatt satisfied both 3 and 4. Prosecutorial misconduct in California is also criminal, thus Moffatt was the victim of a crime by the Defendants.

Charging Moffatt for a crime, without jurisdiction, despite an exoneration in the forum state, and for political reasons to protect O'Neil's business partners related to the Victorville California scam, via impacting the Moffatt elections also comes under FRCP 60 (b)(3)(4). The misuse of power to protect connected individuals was traced by Arizona Attorney general investigator Dan Woods (past CIA employee) and listed out in an article: Fraud Victim Pleads With Brnovich, Supreme Court For Justice, Arizona Daily Independent. 4/1/2016,

https://arizonadailyindependent.com/2016/04/01/fraud-victim-pleads-brnovich-supreme-court-for-justice/ Dan Woods, and other investigators of the land fraud were fired, and prosecutors that investigated land fraud and judicial corruption have been disbarred, as have attorneys that represented those disbarred attorneys. Saying that fraud is involved, is only scratching the surface, the amount of fraud discovered directly and indirectly deserve federal indictments, this court has the ability to make such a recommendation.

Allowing the Moffatt matter to proceed outside the confines of Arizona, might actually allow some of the fraud to be addressed and corrected. FRCP 60(b)(4) allows that.

Additionally, Moffatt seeks relief under FRCP 60(b)(1)-(6), where twenty-two (22) claims were dismissed based on the mistaken belief that Eleventh

Amendment and Rooker-Feldman (sometimes referred to as Rooker) bar Moffatt's claims. The Eleventh Amendment does not bar injunctive actions, which the Moffatt case is based around, thus the Eleventh Amendment is not applicable to block Federal Court jurisdiction. The State of Arizona has waived sovereign immunity by its receipt of Federal Money. Violations of Americans with Disabilities Act (hereinafter "ADA") Title II took place in the Moffatt matter, also act as waivers of claims of sovereign immunity. The Ninth Circuit Court of Appeals, has explicitly allowed financial awards for prospective relief, for violations of Section 504 of the Rehabilitation Act, as such they should also allow prospective relief for the sister of the act ADA Title II.

Moffatt has held Scott Bales, Chief Justice, (Hereinafter "Bales") is liable for his actions as an administrator, both over Richard Brutinel, a Supreme Court Justice, as well as the daily oversight of the corporate entity known as the State Bar of Arizona. Immunity does not hold for judges acting without jurisdiction, judges acting criminally, and judges acting administratively; all three are alleged here. For starters, Bales should have knowledge of the financial fraud that has been complained about regarding William J. O'Neil, State Supreme Court Presiding Disciplinary Judge (hereinafter "O'Neil), **See Index of Exhibits, Volume I, Exhibit B, pages 12-14, Exhibit C, page 15, Exhibit D, pages 16-188.**

Why O'Neil has not been indicted for the documented short sale documented by Mark Dixon, combined by the fraud uncovered by Dan Woods, of the Arizona Attorney General's office is amazing. Secondly, O'Neil has business relationships with Brutinel, such as Brutinel Plumbing & Electrical, Inc. (Hereinafter "Brutinel Plumbing") improperly receiving federally funded building materials from schools, by way of O'Neil's construction business. **See Index of Exhibits, Volume I, Exhibit B, pages 12-14.** Federally funded paid for materials being taken off the School job site by, O'Neil's Construction company, W.E. O'Neil Construction Co., and sent over to Brutinel Plumbing, seems to satisfy not only a conflict of interest, but also a federal crime. O'Neil is stated to have invested and financed in Brutinel Plumbing, and last but not least, O'Neil's wife, Tammy O'Neil is the Office Manager for Brutinel Plumbing, as shown by her linked in profile, **See Index of Exhibits, Volume I, Exhibit E, page 189.**

By Bales, Chief Justice, allowing known corruption, as well as business relationships to exist, and not administratively disallowing Robert M. Brutinel (Hereinafter "Brutinel") owner of Brutinel Plumbing to oversee State Bar of Arizona matters when a direct conflict exists with the financial controller of the discipline unit and Presiding Judicial officer William J. O'Neil **See Index of**

Exhibits, Volume III, Exhibit U, page 496, as Brutinel did in the Moffatt matter, allows Bales to be held personally responsible; Brutinel protected O'Neil 2 times from review in the Moffatt matter, **See Index of Exhibits, Volume III, Exhibit P, page 397-398, Exhibit T, pages 494-495, Exhibit U, page 496.**

Note Moffatt filed a removal action to Federal Court **See Index of Exhibits, Volume III, Exhibit Q, pages 399-453,** and United States District Court, District of Arizona, United State District Judge, Judge David Campbell (Hereinafter "Campbell") advised Moffatt had viable federal Constitutional claims, however the State Bar of Arizona proceeding was administrative, thus removal was not allowed.

It would be inconsistent to have a Federal Judge verify Moffatt had viable Constitutional causes of action, and disallowed removal based on administrative actions, now be denied direct action into Federal Court on Constitutional grounds, especially when administrative actions do not fall under Rooker, which is now being improperly used to block Federal Court review. "The law in this circuit is that errors of law are cognizable under Rule 60(b)" (*Liberty Mut. Ins. Co. v. EEOC, 691 F.2d 438, 441 (9th Cir. 1982)* Rule 60(b) allows covers the analysis of the magistrates mistake and inconsistency on how the Eleventh Amendment and Rooker do not provide absolute immunity thus Moffatt's case should be reinstated based on the error of law.

V. OVERVIEW

The State Bar of Arizona and the State of Arizona at issue in this case violated the separation of powers clause, and the wrongful transfer of power to a corporation that is also a market participant, in violation of (Amtrak), Dept. of Transportation vs. Assn. of Am Railroads (Amtrak) 135 S.Ct 1225, 1252-53, a recent Supreme court case.

This case involves an offer to trade an adult nude photo for a legal consultation. No representation took place, and Moffatt was exonerated of any legal liability or attorney liability nearly 2 years prior in New Mexico, **See Index of Exhibits, Volume I, Exhibit A, pages 9-11.** Moffatt's defense has been an argument for protected First Amendment Speech. One of the complainant's accomplices, Hershel Pat Spurlin, admitted to extorting Moffatt to New Mexico Police orally, and a tape was made of the admission, to extortion and bribery of Jeffrey Moffatt.

A ruling in Defendants' favor would make the Corporation, the State Bar of Arizona, able to disbar Moffatt and hundreds of others of Arizona attorneys without oversight by the Governor, guidance from the State Legislature, and/or Congress or review by the Courts. None of the Magistrate's recommendations to dismiss Moffatt's complaint provide valid bases for dismissing this suit without

investigation of the merits of Plaintiff's claims of numerous fundamental constitutional violations.

The Courts reliance on Rooker-Feldmand and the Eleventh Amendment—is misplaced because these provisions do not bar direct claims or derivative constitutional claims against Bales, or the State Bar of Arizona, a corporation. The State of Arizona can be brought forward for Injunctive relief, and not barred Rooker-Feldmand or the Eleventh Amendment. The Supreme Court and the 9th Circuit has allowed prospective damages for violations of ADA Title II, thus the claim that now financial award was possible in the Moffatt case was a legal error. In the context of Title II of the Americans with Disabilities Act, the Ninth Circuit rejected arguments that the Eleventh Amendment prohibits prospective relief, finding that the remedial scheme of the Americans with Disabilities Act was similar to that in *Verizon, infra.* *Miranda B. v. Kitzhaber*, 328 F.3d 1181, 1188 (9th Cir. 2003).

Additionally, Arizona waived immunity for judges; the State Bar of Arizona is a 501(c)(6) entity without quasi-governmental standing, IRC 170 (C)(1) and as well as Rev . Rul. 77-164, 1977-1 C.B. 20, as such is also not immune as a corporate entity. **See Index of Exhibits, Volume III, Exhibit V, page 497.** Plaintiff's constitutional claims are imbedded in both federal and state law. The

Separation of Powers Clause would be unconstitutional if it required the Moffatt and Arizona Barred attorneys to accept any and all rulings by the State Bar of Arizona when the corporation has violated the Constitution. Claim preclusion also does not bar this suit for multiple reasons: suits dismissed under Moffatt's appeal of the corporate decision were not decided "on the merits". Plaintiff's case also was presented to in front of a business partner of the Arizona Supreme Court improperly appointed via Supreme Court Rule 51 PDJ, William J. O'Neil, whom also controls budget matters and personnel matters of the State Bar of Arizona. This business partner was Robert Brutinel, and Plaintiff in this case seeks to advance a Claim that is different from those that have been brought in the past.

VI. ARGUMENT

(A) Legal standard

The Court may grant the Magistrate's motion to dismiss only if Plaintiff's complaint fails to provide "sufficient factual allegations that, if accepted as true, are sufficient to raise a right to relief above the speculative level." Here, Moffatt has met his burden, and not only proven the State Bar of Arizona is only a corporation, but that there is a blatant conflict between Brutinel and O'Neil, such that the administrator, Bales, Chief Justice, can be held responsible for violation of his administrative duties. Cruz v. Don Pancho Market, LLC, 167 F. Supp. 3d 902, 904 (W.D. Mich. 2016). Held for purposes of a motion to dismiss, the Court "must accept as true all factual allegations" in the Complaint. Here, if the factual

allegations are true, the case should both move forward, and there should be an investigation into some of the misconduct that has occurred to Moffatt, since prosecutorial misconduct is a felony.

Review allowed: We review dismissals for lack of subject matter jurisdiction *de novo.* Barbour v. Haley, 471 F.3d 1222, 1225 (11th Cir.2006). As such the dismissal with Prejudice can be reviewed de novo.

Denying Moffatt his constitutional rights without ability to amend was in error, which should allow de novo review in Moffatt's request for relief under FRCP Rule 60(b). "The Court must accept [a] Complaint's factual allegations as true." Molina Info. Sys., LLC v. Unisys Corp., C.A. No. 12-1022-RGA, 2014 WL 4365278, at *2 (D. Del. Sept. 2, 2014). These factual allegations had twenty-two claims, many of which impact serious constitutional questions.

The Magistrate erroneously stated that immunity and Rooker would satisfy dismissal of most of Moffatt's claims, yet dismissed them all. "Subject matter jurisdiction does not fail simply because the plaintiff might be unable to ultimately succeed on the merits." Litecubes, LLC v. Northern Light Products, Inc., 523 F.3d 1353, 1360 (9th Cir. 2008)., cited by **AMERICAN SHOOTING CENTER, INC. v. SECFOR INTERNATIONAL, Dist. Court, SD California 2016. Moffatt**

only needed a colorable claim to allow jurisdiction, which was violated by the entire dismissal. There are multiple hooks that jurisdiction is provided and that immunity and Rooker do not apply, as such the dismissal was in violation of Litecubes, infra. This mistake by the Magistrate satisfies FRCP Rule 60(b), allowing for review of the Magistrates mistake of law.

VII. TIMELINESS

This FRCP Rule 60(b) motion is being made before 30 days from the date of entry of the Fairbanks Dismissal order. As such, this motion is timely. It also protects Moffatt's ability to appeal the case to the 9th Circuit, should the United States District Court not be willing to correct the obvious mistake and misapplication of controlling law, especially given recent United States Supreme Court rulings that have immediate impact on the present matter.

The timeliness argument was fleshed out by the following citation. **"Why** should not the trial court have the power to correct its own judicial error under **60(b)(1)** within a reasonable time **-** which...should not exceed the time of appeal **-** and thus avoid the inconvenience and expense of an appeal **by** the party which the court is now convinced should prevail? **7 J.** MOORE, *supra* note **1, 60.22[3],** at **60-185** to **60-186.**

VIII. MOFFATT HAS PAID THE FILING FEE

As such Minetti is not binding. Additionally this Rule 60(b) motion will show that injunctive relief is available, and immunity to all parties does not exist. In fact Moffatt has shown exceptions to waiver, as well as Rooker allowing the case to go forward. In fact case law allows prospective financial awards, as well as injunctions and declaratory relief, all of which Moffatt requested**.** Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998); see also 28 U.S.C. § 1915(e)(2)(B) (providing that court shall dismiss in forma pauperis case at any time it determines that action "is frivolous or malicious," or "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief"). In the **Ninth Circuit**: "The law in this circuit is that errors of law are cognizable under Rule 60(b)" (*Liberty Mut. Ins. Co. v. EEOC, 691 F.2d 438, 441 (9th Cir. 1982)* since the Magistrate made a mistake in the fundamental application of law, thus allowing review under Rule 60(b).

IX. STRINGS ATTACHED: THE POWER OF THE FEDERAL PURSE WAIVES STATE SOVEREIGN IMMUNITY FOR THE REHABILITATION ACT

The Court has stated that Congress "craft[ed] an unambiguous waiver of the States' Eleventh Amendment immunity" in 42 U.S.C. § 2000d-7 *Lane v. Pena*, 518 U.S. 187, 200 (1996). Section 504 of the Rehabilitation Act of 1974

(discrimination based on disability). This waiver should also flow to the sister act, ADA Title II. Because Moffatt has alleged a violation of the ADA, this provides for an unambiguous waiver of the Eleventh Amendment, allowing Moffatt's claims to move forward. This fundamental misunderstanding by the Magistrate allows Rule 60(b) to provide relief and undo the improper dismissal of Moffatt's Complaint.

X. FINANCIAL AWARDS ARE AVAILABLE AGAINST STATES

Prospective relief is available, even if it requires the state to make large expenditures, Ex Parte Young, 667-68. Moffatt is making a claim for prospective damages, thus financial awards are possible and not barred in the present case.

In the context of Title II of the Americans with Disabilities Act, the Ninth Circuit Court of Appeals rejected arguments that the Eleventh Amendment prohibits prospective relief, finding that the remedial scheme of the Americans with Disabilities Act was similar to that in *Verizon*. *Miranda B. v. Kitzhaber*, 328 F.3d 1181, 1188 (9th Cir. 2003). As such the dismissal of Moffatt's matter based on an Eleventh Amendment claim is not only allowed in the Ninth Circuit Court of Appeals, but financial prospective damages are available, another fundamental error under **Ninth Circuit**: "The law in this circuit is that errors of law are

cognizable under Rule 60(b)" (*Liberty Mut. Ins. Co. v. EEOC, 691 F.2d 438, 441 (9th Cir. 1982)* (citation omitted)).

XI. INJUNCTIVE RELIEF

The violation of federal law must be ongoing to warrant injunctive or declaratory relief. The Court explained that "[r]emedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law. *Green v. Mansour,* 474 U.S. 64, 68, 73 (1985). Here, Moffatt has argued that the structure of the State Bar of Arizona is improper, and that is still continuing allowing injunctive relief. The delegation of duties to the State Bar is unconstitutional and continuing, thus warranting injunctive relief. The improper oversight by Bales, by allowing Justice Brutinel to review O'Neil decisions is a conflict of interest and continuing, thus allowing declaratory and injunctive relief.

XII. *FRCP 60(B)(3)* ALLOWS REVIEW UNDER FRAUD MISREPRESENTATION OR MISCONDUCT BY AN OPPOSING PARTY

Plaintiff's wife previously an employee of Security Pacific Bank and having position of Consumer Credit Officer, one of her job duty tasks was to identify

fraudulent loans. Step one in identifying fraudulent loans was to make observations of handwritten signatures affixed to loan documents.

Plaintiff's wife one day while reviewing the Final Judgment and Order of Disbarment of Moffatt Plaintiff, decided to recall the tools learned at Security Pacific Bank and proceeded to review the Supreme Court Presiding Disciplinary William J. O'Neil's signature.

In amazement Plaintiff's wife (Star) noticed, that there was not an actual genuine handwritten signature of State Supreme Court Presiding Disciplinary Judge William J. O'Neil's and only affixed to the Disbarment was a typed signature, not bearing O'Neil's genuine handwriting signature to substantiate the document as being authenticated by O'Neil.

Plaintiff's wife had retrieved five Orders issued against other Arizona Attorneys; Orders signed by O'Neil issued starting in years 2011 and 2013 that appeared to have genuine handwritten signatures of O'Neil.

Plaintiff's wife then retrieved another small quantitative sampling of ten Disbarment Orders issued by O'Neil, against other Arizona Attorneys bearing what appeared to be O'Neil's handwritten signature affixed to their Orders.

Plaintiff's wife then decided to hire a Handwriting Forensic Expert to compare a Forensic study of genuine handwritten signatures of O'Neil's compared to other Orders purported to be O'Neil's, against Arizona Attorneys, inclusive of Plaintiff. **See Index of Exhibits, Volume III, Exhibit X, page 506-547.**

Plaintiff's wife hired Matley Forensic Handwriting Expert stated within his report in pertinent part, **See Index of Exhibits, Volume III, Exhibit X, page 508,** Section C. The Pertinent Observations and Opinion "Exhibits D1 through Exhibit D10 do not bear handwritten signatures as Exhibits C1 through C5 do. Exhibits D1 through D8 and Exhibit D10 have His Honor's named typed in italics on the line where a handwritten signature customarily is inscribed. Exhibit D9 does not have the name typed in italics on the customary line for a handwritten signature, but it only has the customary typing of the name below the line or the customary handwritten signature.

The name so typed is in a sans serif font. Exhibit 7 has only His Honor's title of Presiding Disciplinary Judge typed below the signature line in sans serif font.

The only opinion I can offer is that, since His Honor's signature appears nowhere on Exhibits D1 through D10, I can offer no opinion as to authenticity as requested. Attached hereto is a true and correct copy of Matley's Forensic Handwriting Expert Report consisting of forty-two (42) pages and report dated September 21, 2017. **See Index of Exhibits, Volume III, Exhibit X, pages 508-547.**

But for, had it none been due to the purported State Supreme Court of Arizona Presiding Disciplinary Judge William J. O'Neil, using his purported influence and purported forged signature only in the resemblance of a "named typed in italics…in a sans serif font,"…Plaintiff would not be the recipient of a forged (fraud) Order. Therefore, Plaintiff Moffatt is able to substantiate pursuant to FRCP 60 (b)(3) that this Court Order is void, but for the fraud and forged Order against Plaintiff dated April 16, 2016.

But for, this Court issued a Final Judgment promulgated on a Final Judgment and Order of Disbarment against Plaintiff Moffatt, is void due to the Disbarment being (defective) fraud on its face and more importantly, not in

compliance with Federal Rules of Evidence Section 901, requiring documents to be authenticated with purported State Supreme Court Presiding Disciplinary Judge William J. O'Neil's handwritten signature. Federal Rules of Evidence Section 901, being duplicated in the Arizona Rules of Evidence, an actual signature was necessary, not the type written name, as exists presently.

For all the forgoing reasons stated above, Plaintiff requests this Court to rescind its Order pursuant to FRCP 60 (b)(3) due to fraud on the Court and forged signature affixed to Plaintiff's Final Judgment and Order of Disbarment dated April 16, 2016.

XIV. CONGRESSS MAY NOT DEPRIVE A PARTY A RIGHT TO ASSERT CONSTITUTIONAL RIGHTS

(A) Due Process is covered in this argument, and the right to proper notice and a hearing.

The Eleventh Amendment and Rooker claims in the Moffatt dismissal would prevent constitutionally deprived bar members from federally suing on constitutional claims Plaintiffs seek to advance. The Supreme Court has repeatedly strained to read statutes "to avoid the 'serious constitutional question' that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." Webster v. Doe, 486 U.S. 592, 603 (1988); see Joelson v. United States, 86 F.3d 1413, 1420 (6th Cir. 1996). Moffatt followed the normal

course of dealing with a bar allegation and had his reply brief removed **See Index of Exhibits, Volume II, Exhibit N, pages 387-389,** Moffatt was charged via default **See Index of Exhibits, Volume II, Exhibit O, page 390-393.** This is a violation of the 14th Amendment due process, and right to proper notice and a hearing. FRCP 60(b)(1), (3) and the fall back of (6) all allow review for this mistake of law, misuse of the law and the catch all provision.

The problem is that Moffatt was not timely noticed of a hearing, and had motions denied with **See Index of Exhibits, Volume II, Exhibit K, pages 376-380, Exhibit L, pages 381-383, Exhibit M, pages 384-386, Exhibit N, pages 387-389, Exhibit O, page 390-393,** and a sanction hearing was demanded a day after the order was made; Arizona Supreme Court rule 47(c) gives 5 days for mailing, and Arizona Supreme Court Rule 58(2)(d) gives 10 days' notice, these time requirements were violated for Moffatt as they were to other attorneys.

The notice and opportunity to be heard is a 14th Amendment violation. This default has never been litigated; the denial of federal jurisdiction based on Rooker and the Eleventh Amendment would allow an administrative action by the State Bar of Arizona, exclusive authority to dismiss claims without review. *FRCP 60(b)(3)* allows review under fraud, misrepresentation or misconduct by an opposing party. There is nothing more fraudulent than denying responsive briefs

and giving default judgments. This action, especially in light of denying fundamental rights of due process, was misconduct of Defendants' part. The claim that Defendants properly satisfied the notice requirement mandated is plainly seen by the back-dating of the notice document, but is proven fraudulent by the date stamp of the envelope, thus satisfying misconduct under FRCP 60(b)(3). The fact that magistrate did not see this, allows review under (b)(1), as well as the fall back of (b)(6).

XV. JURISDICTION NECESSARY TO SATISFY WEBSTER, INFRA

Moffatt even sought removal of the Administrative Bar action to Federal Court. Federal Judge Campbell stated in the denial of removal jurisdiction, that the State Bar of Arizona was an Agency**. See Index of Exhibits, Volume II, Exhibit I, page 364-366.** Denying Moffatt now Federal Jurisdiction, when he was denied removal from the original agency would be tantamount to eliminating any Federal judicial forum in which they could be heard, which is a violation of Webster. This was also stated in *Bartlett v. Bowen*, 816 F.2d 695, 705 (D.C. Cir. 1987). Congress may not use its power to regulate federal jurisdiction "to deprive a party of a right created by the Constitution." The dismissal of all claims, in light of the Federal ruling showing the bar was not a state court, and at best an agency allows Moffatt a current forum. Rooker does not bar Administrative actions nor

corporate actions from being heard in Federal Court. This mistake of law can be reviewed under FRCP 60(b)(1).

XVI. ASSUME THE TRUTH OF ALL MATERIAL ALLEGATIONS

In testing the sufficiency of a complaint, a reviewing court must assume the truth of all material allegations in the complaint (*Serrano* v. *Priest* (1971) 5 Cal.3d 584, 591 [96 Cal. Rptr. 601, 487 P.2d 1241]). In the operative complaint, Moffatt listed more than 22 claims which, along with the facts stated, are assumed to be the truth. Dismissal of the case, when fraud, denial of due process, first amendment violations, Keller Pure violations, violation of the ADA, improper taking under the 5th amendment and 14th Amendment violations, including due process violations, *FRCP 60(b)(1-6)* allows review under various elements, from simple mistake of the Magistrate to Fraud, misrepresentation or misconduct by an opposing party. Moffatt has experienced the gamut of violations under FRCP 60(b) and the Court should reverse the magistrate's dismissal and allow the case to proceed, under de novo review. We review dismissals for lack of subject matter jurisdiction *de novo.* *Barbour v. Haley,* 471 F.3d 1222, 1225 (11th Cir.2006).

XVII. PLAINTIFF'S CLAIMS OF SEPARATION OF POWERS

The federal policy underlying Plaintiff's claims are clear: "The declared purpose of separating and dividing the powers of government . . . was to 'diffus[e]

power the better to secure liberty.' " Bowsher v. Synar, 478 U.S. 714, 721 (1986)(quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952)(Jackson, J., concurring)). Because treating Plaintiff's claims immune from prosecution would badly undermine this important federal constitutional policy.

Accordingly, at least where there is no more directly injured party with the capacity to sue, an individual who has suffered "injury that is concrete, particular, and redressable" and/or "has a direct interest in objecting to laws that upset the constitutional balance" among the branches of the federal government and need not sue derivatively. Bond v. United States, 564 U.S. 211, 222 (2011).

It is well settled that a plaintiff's standing in a separation of powers case cannot be defeated by speculation about what decision the government might have reached had it followed the procedures the Constitution requires. *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 512 n.12 (2010); *Landry v. FDIC*, 204 F.3d 1125, 1131 (D.C. Cir. 2000); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992). The judicial dismissal says nothing about these precedents and cites no authority, other than Rooker and the Eleventh Amendment for its argument to the contrary.

The improper delegation of judicial actions to a private corporation is covered later, as is the improper delegation of regulatory power to a market participant. These violations as well as the separation of power violations invalidate the improper transfer of power, and any decisions including the Moffatt decision. **The mistake of law by the magistrate failing to see the precedents satisfies mistakes of law, allowing for review under FRCP 60(b)(1).**

XVIII. STATE BAR OF ARIZONA

The State Bar of Arizona is unconstitutionally insulated from oversight by the Governor of the State of Arizona, and thus decisions made by the State Bar of Arizona are void, allowing for review under FRCP 60(b)(4).

Most of the Magistrate's arguments regarding Rooker and the Eleventh Amendment are correctly rebutted in Judge Kavanaugh's opinion for the panel in *PHH v. CFPB*, 839 F.3d 1 (D.C. Cir. 2016), but two additional points deserve emphasis.

First, there is a floor beneath which the Governor's influence over an independent agency headed by a bipartisan, multi-member commission cannot fall; for such commissions, members of the Governor's party and the Governor's own

appointees are guaranteed to have a voice in the decision-making process. While this minimum degree of Governor's influence may not in all circumstances be constitutionally sufficient, *cf. Meyers v. United States*, 272 U.S. 52, 164 (1926), the Supreme Court ruled in *Humphrey's Executor v. United States* that it is enough for purposes of an independent agency like the FTC, 295 U.S. 602, 629 (1935).

State Bar of Arizona's novel structure presents a different question than the one the Supreme Court decided in *Humphrey's Executor* because it eliminates this floor and makes possible something that could never occur with an agency headed by a bipartisan, multi-member commission: someone opposed to the Governor's policies exercising exclusive and long-term control over a significant component of the Executive Branch.

The Governor of Arizona is today occupied by a Republican, but State Bar of Arizona is run by a Democratic appointee. Acting Director O'Neil, who allegedly signed the Moffatt disbarment, attained his position because of an improper single person appointment by a single Democratic Supreme Court of Arizona Justice.

"Effective January 1, 2011, the Supreme Court of the State of Arizona adopted changes to the attorney discipline system, including the establishment of the Office of the Presiding Disciplinary Judge, pursuant to Rule 51, Arizona Rules of the Supreme Court."

Since the Governor did not appoint William J. O'Neil, State Supreme Court Presiding Disciplinary Judge (PDJ), the Governor cannot remove O'Neil. The improper appointment of O'Neil by a single Supreme Court justice, transferring judicial function to purported PDJ also affiliated with State Bar of Arizona, i.e. O'Neil violates *Humphrey's Executor* since the Governor must at all times have at least as much influence over an independent agency as was guaranteed with the bipartisan multi-member commission at issue in.

The State Bar of Arizona structure reduces governmental influence beneath this constitutional minimum, thus making the decisions of the bar void, including the underlying Moffatt matter which allows review under FRCP 60(b)(4). O'Neil, is also responsible for the financial budget for prosecution by the State Bar of Arizona, as well as responsible for the employment decisions regarding prosecution; a fundamental conflict exists when this improperly appointed, via Arizona Supreme Court Rule 51, is given life time appointment, without oversight

by the governor, nor the state legislature, and whom also controls the State Bar of Arizona's financial budget and makes personnel decisions for the state bar.

This conflict allows for review under FRCP 60(b)(3). The recent case law that has set precedent, that the Magistrate was not familiar with allows review under FRCP 60(b)(1).

Second, the "most telling indication of the severe constitutional problem with [the State Bar of Arizona corporation], is the lack of historical precedent for this entity." *Free Enter. Fund*, 561 U.S. at 505. The Magistrate's argument of immunity via the Eleventh Amendment in the motion to dismiss, states this history does not matter, which runs counter to several Supreme Court separation of powers cases. *See PHH*, 839 F.3d at 21-25.

The Magistrate's immunity argument for dismissing the Moffatt matter, claiming immunity from reviewing problematic separation of powers case, but that presumption does not apply in separation of powers cases. *See NLRB v. New Vista Nursing & Rehab.*, 719 F.3d 203, 240-41 (3d Cir. 2013). This fundamental mistake of law by the Magistrate regarding immunity, especially in light of separation of powers cases, allows for review under FRCP 60(b)(1).

XIX. ROOKER EXCEPTION VIA THE MOFFATT PRIOR EXONERATION IN NEW MEXICO

Rooker was a limited case designed to prevent re-litigation of a state decision. Moffatt does not fit Rooker, since there is a state exoneration and an administrative conviction. Moffatt even attempted removal of the administrative action, **See Index of Exhibits, Volume III, Exhibit Q, pages 399-453,** and Federal Judge Campbell advised that since the bar was not a state court, **See Index of Exhibits, Volume II, Exhibit I, pages 364-366,** removal was not permitted. In the Moffatt case, Moffatt was given a New Mexico exoneration in 2013, **See Index of Exhibits, Volume I, Exhibit A, pages 9-11;** the New Mexico State Bar is a governmental entity, and thus a subdivision of the state.

The State Bar of Arizona, a private corporation, acted administratively when it removed Moffatt's reply brief as a sanction for not attending a hearing held with a one-day notice. **See Index of Exhibits, Volume II, Exhibit M, page 384-386, Exhibit O, page 390-393.** The sanction by the corporation gave Moffatt a default revocation, thus removing his law license for life. Rooker does not apply when there when there is exoneration in one state and a default corporate action in the second. Arizona's actions were based on due process violations; therefore, Rooker should not bar Moffatt's federal litigation. This fundamental mistake of law by the

Magistrate misapplying Rooker to an a corporation that has been federally deemed not to be a State Court, allows review under FRCP 60(b)(1).

XX. ROOKER DOES NOT APPLY WHEN CONSTITUTIONAL VIOLATIONS EXIST

Under *District of Columbia Court of Appeals* v. *Feldman,* 460 U. S. 462 the Supreme Court determined that the federal district court had jurisdiction to consider the general attack on the constitutionality of the D.C. bar rule requiring graduation from an accredited law school; that court maintained it lacked jurisdiction to hear the allegations "inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny the respondents' petitions." *Id.* at 486-87, 103 S.Ct. 1303. "Challenges to the constitutionality of state bar rules," the Court elaborated, "do not necessarily require a United States district court to review a final state-court judgment in a judicial proceeding." *Id.,* at 486.

Thus, the Court reasoned, 28 U. S. C. § 1257 did not bar District Court proceedings to address the validity of the accreditation Rule itself. *Feldman,* 460 U. S., at 486. Cited by Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 US 280 - Supreme Court 2005.

Here Moffatt is challenging the constitutionality of the State Bar of Arizona that goes outside Rooker, the mistake of law by the Magistrate can be reviewed under FRCP 60(b)(1). This challenge of the makeup of the bar, the delegation of powers, the improper appointment of O'Neil, the criminalization of protected words via the 1st amendment, Moffatt was criminally charged for a crime by an entity without prosecutorial powers and charged past state bounds as well as past the statute of limitations despite an exoneration in the forum state, a violation of the State Bar of Arizona, Arizona Ethical Rules of Professional Conduct, Jurisdiction, Current Rule 8.5(b)(2) requiring recognizing the New Mexico and the separation of powers, to name only a few allegations allow the District Court proceeding matter to continue in the Moffatt matter, following Exxon, infra and Feldman, infra.

(A) Rooker Does Not Apply When A Private Corporation Gives A Ruling.

The State Bar of Arizona, is a corporation, designated as a Business League Trade Association, by the United States Department of Treasury – Internal Revenue Service as a 501(c)(6), Tax Exempt Corporation. **See Volume III, Exhibit V, page 497.**

For a corporation to obtain quasi-governmental standing, requires satisfying IRC 170(C)(1). Additionally Rev. Rul. 77-164, 1977-1 C.B. 20 covers a similar

corporation that does not have the power to tax, the power of eminent domain, and thus was not a political subdivision, thus not a quasi-governmental unit.

The State Bar of Arizona Corporation lists in its tax return line items for the payment of a disciplinary Judge, for the regulation of attorneys. See IRS Schedule O of the Tax Return. **See Index of Exhibits, Volume II, Exhibit G, page 352.**

Tax Return shows several transfers of money to provide legal services via entities of which State Bar of Arizona directors are also members; thus, they are connected and satisfy the element of a market participant**. See Index of Exhibits, Volume II, Exhibit F, 2014 Federal tax return for the Arizona Foundation for Legal Services and Education, pages 193-322, Volume II, Exhibit G, 2014 Federal tax return for the State Bar of Arizona, pages 323-358 and Volume II, Exhibit I, Order signed by USDC District Court Judge David Campbell, pages 364-366.**

The entity is not a state actor, but a corporate actor, therefore not immune under the Eleventh Amendment, compounded by the denial of the removal action by Campbell, stating the bar was not a state court, **See Index of Exhibits, Volume II, Exhibit I, pages 364-366.** As such, Rook is not a bar to corporate actors, or to administrative actions. The corporate status and the market participant nature are satisfied by the **See Index of Exhibits, Volume II, Exhibit F, pages 193-322, and**

Exhibit G, pages 323-358, Volume III, Exhibit V, page 497. The mistake of law, applying immunity to a corporation, can be reviewed under FRCP 60(b)(1).

XXI. IMPROPER DELEGATION OF POWERS

Improper delegation makes the rulings of the corporation void, which can be reviewed presently under FRCP 60(b)(4). Under the private non delegation doctrine, Congress cannot delegate sovereign legislative or governmental power to a corporation. Cf. Pittston Co. v. United States, 199 F.3d 694, 705 (4th Cir. 1999 368 F 3^{d}. 385, (394-395), Dept. of Transportation vs. Assn. of Am Railroads (Amtrak) 135 S.Ct 1225, 1252-53, Thomas dissenting This brand new law, as of April 2016, is so new as to allow for review under FRCP 60(b)(1).

The doctrine does not permit a private entity to exercise powers that are "essentially governmental" Pittston 368 F 3^{d}. at 397. The delegation of attorney regulation given to the Arizona Supreme Court cannot be delegated to a corporation, the State Bar of Arizona, without crossing the line of violating the non-delegation doctrine.

Amtrak, supra, also holds that a corporate entity, that is a market participant, cannot be a regulator. Its rulings and regulations are compromised and constitutionally invalid, **See Index of Exhibits, Volume II, Exhibit F, pages 193-**

322, and Exhibit G, pages 323-358, Exhibit I, pages 364-366, satisfy the corporate nature, and market participant element. This is further compromised when any review of Administrative actions of the State Bar, are done by none other than Brutinel, a business partner of O'Neil, **See Index of Exhibits, Volume I, Exhibit B, pages 12-14, Exhibit C, page 15, Exhibit D, pages 16-188, Exhibit E, page 189**. Review for misconduct, and fraud of the parties comes under FRCP 60 (3).

In fact judicial complaints tie illegal transfer of excess supplies to build a school (likely with Federal Money) by a construction company run by O'Neil's family, W.E. O'Neil Construction Co., to Brutinel Plumbing compounded by O'Neil's wife working as the Office Manager for Brutinel Plumbing, see the Tammy O'Neil Linkedin Profile, title of Office Manger for Brutinel Plumbing. **See Index of Exhibits, Volume I, Exhibit E, page 189.** This connection between O'Neil and Brutinel allows review under FRCP 60(b)(2). Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to have included in the original Complaint is the extra connection between Brutinel and O'Neil.

The Supreme Court In Assn of Railroad, (Amtrak), infra, stated having regulatory decisions given by a corporation that are market participants, is unconstitutional based on the mere possibility of inside dealing. Bales, as an

administrator, should be on notice of the on file judicial complaints, and has allowed a massive conflict to continue. The Arizona Supreme Court stated that decisions made by corporations with regulatory power are void ab initio, State Bar of Arizona satisfies this regulatory nature and market participant thus all decisions by the State Bar of Arizona are void, and subject to review under FRCP 60(b)(4).

Moffatt had a New Mexico ruling that Arizona's corporate entity (bar) was required to follow, **See Index of Exhibits, Volume I, Exhibit A, pages 9-11**. Not only did the bar not follow the New Mexico exoneration, via the State Bar of Arizona, Arizona Ethical Rules of Professional Conduct, Jurisdiction, Current Rule 8.5(b)(2), the bar denied Moffatt due process and gave him a default judgment by removing his brief, **See Index of Exhibits, Volume II, Exhibit M, pages 384-386, Exhibit O, page 390-393**.

The due process violation under the 14th amendment become more apparent, when all of Moffatt's motions were stricken, **See Index of Exhibits, Volume II, Exhibit K, pages 376-380, Exhibit L, pages 381-383, Exhibit N, pages 387-389,** and Moffatt was mandated to appear for a hearing the three days when the notice was mailed according to its post mark. A copy of the postmark is listed in the **See Index of Exhibits, Volume II, Exhibit K, pages 376-380, Exhibit L, pages 381-383, Exhibit M, pages 384-386, Exhibit N, pages 387-389,** exhibits pointing out received date January 27, 2016 and postmarked January 25, 2016.

Pursuant to Arizona Supreme Court Rule 47(c) mandating the completion of service 5 days after mailing, the earliest possible Date of Service would have been January 27th if you go by the date of the document, but February 1, if you go by the date of the actual mailing. Arizona Supreme Court Rule 58(2)(d) outlines and requires a 10-day time frame to respond, as such based on the date of the document, the earliest Moffatt could have been commanded to attend would have been February 5, 2016. If you look at the date of mailing, the earliest Moffatt could have been commanded by the Bar to attend would have been February 6, 2016, thus giving Moffatt a Default loss for not appearing at a January 28th meeting was a notice and due process violation. Since the rules of the bar were violated for service, and default decision was provided to Moffatt for not attending the improperly mandated meeting, due process mandated under the Fourth Amendment was violated by the default judgment, **See Index of Exhibits, Volume II, Exhibit K, pages 376-380, Exhibit M, page 384-386**, via the sanction given, **See Index of Exhibits, Volume II, Exhibit O, page 390-393**. This misconduct of Defendants can be reviewed presently under FRCP 60(b)(3).

The improper transfer of power to corporation, under Amtrak removes the regulatory power, and this court has jurisdiction to review that removal. As such this Court can review the entire improper process; the fact that this conflict exists

makes the judgment of the Arizona State Bar void, and thus reviewable under FRCP 60(b)(4).

XXII. FRCP 60(b)(4) ALLOWS REVIEW FOR FRAUD ROOKER-FELDMAN DOES NOT APPLY TO FRAUD

Rooker-Feldman "does not bar subject matter jurisdiction when a federal plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004); *see also In re Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986). Moffatt has argued fraud and deception in the present matter in the brief. This fraud was made apparent, and brought to the Bar's attention in the Motion for prosecutorial misconduct, dismissed by O'Neil, **See Index of Exhibits, Volume II, Exhibit J, pages 367-375, Exhibit N, pages 387-390.** and a letter written to the Bar initially notifying them of prosecutorial misconduct and the prior exoneration. **See Index of Exhibits, Volume II, Exhibit H, page 359-362**. It is a crime in California to prosecute for something knowing an individual is innocent, that crime is compounded when the prosecutor has knowledge of the exoneration, statute of limitations have passed, and there was no jurisdiction to charge in first place. As such, Rooker-Feldman does not bar subject matter jurisdiction to Moffatt, a federal plaintiff, alleging extrinsic fraud

and seeking to set aside a state court judgment obtained by that fraud. FRCP 60(b)(4) allows review for fraud.

XXIII. ELEVENTH AMENDMENT IMMUNITY NOR ROOKER APPLIES WHEN THERE IS AN ADMINISTRATIVE ACTION THAT IS BEING CHALLENGED; SCOTT BALES CHIEF JUSTICE WAS ACTING AS AN ADMINISTRATOR OVER THE ARIZONA BAR

A Judge is not immune for tortious acts committed in a purely Administrative, non-judicial capacity. Forrester v. White, 484 U.S. at 227-229, 108 S.Ct. at 544-545; Stump v. Sparkman, 435 U.S. at 380, 98 S.Ct. at 1106. Mireles v. Waco, 112 S.Ct. 286 at 288 (1991). Moffatt has covered that Bales was acting as an administrator of the State Bar of Arizona, as well as over its head O'Neil. He was also acting as the administrator of Supreme Court Justice Brutinel, thus Bales is not immune from complaint, page 10.

"Defendant Scott Bales is Chief Justice of the Arizona Supreme Court and Chief Administrator charged with **administering Arizona Supreme Court Rule 51.**

Scott Bales is not immune for his administrative acts under the Eleventh Amendment. The statement regarding Bales in the dismissal order, being referenced only once, was incorrect. For convenience I have enclosed some of the cites of Bales in the brief over 9 times, from pages 44, 45, 46, 82 and 83 all

covering Administrative failures. Administrative-capacity torts by a judge do not involve the "performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights," and therefore do not have the judicial immunity of judicial acts. See: Forrester v. White, 484 U.S. 219, 98 L.Ed.2d 555, 108 S.Ct. 538 (1988); Atkinson-Baker & Assoc. v. Kolts, 7 F.3d 1452 at 1454, (9th Cir. 1993).

A Judge as a State Actor is not vested with the sovereign immunity granted to the State itself. See: Rolfe v. State of Arizona, 578 F.Supp. 987 (D.C. Ariz. 1983); Rutledge v. Arizona Bd. of Regents, 660 F.2d 1345, (9th Cir, 1981) cert. granted Kush v. Rutledge, 458 U.S. 1120, 102 S.Ct. 3508,73 L.Ed.2d 1382, affirmed 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d. 413, appeal after remand 859 F.2d 732, Ziegler v. Kirschner, 781 P.2d 54, 162 Ariz. 77 (Ariz. App., 1989).

If a judge, is a state actor, in this case Scott Bales, is not vested with sovereign immunity, under Rolfe, and Kush, then he is not immune from review. Arizona has waived immunity for judges. Additionally, Bales acted administratively, in his oversight of O'Neil under Arizona Supreme Court rule 51, oversight of the State Bar of Arizona, and Justice Brutinel, (the business partner of O'Neil). As such, immunity does not flow to Bales in the Moffatt case. Moffatt has asserted that he has been faced with an interesting relationship between

Brutinel and O'Neil, such that immunity has been waived; Arizona has explicitly waived immunity under **Garcia v. State, 768 P. 2d 649 - Ariz: Court of Appeals, 1st Div., Dept. D 1988.** The mistake of law regarding the Magistrates dismissal based on his fundamental misreading the law regarding immunity can be reviewed presently under FRCP 60(b)(1).

XXIV. ROOKER DOES NOT STOP A DISTRICT COURT FROM EXERCISING SUBJECT MATTER JURISDICTION WHEN A PARTY PRESENTS AN INDEPENDENT CLAIM

"Nor does § 1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party ..., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *GASH Assocs.* v. *Rosemont,* 995 F. 2d 726, 728 (CA7 1993); accord *Noel* v. *Hall,* 341 F. 3d 1148, 1163-1164 (CA9 2003)." Cited inside **Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 US 280 - Supreme Court 2005** 125 S.Ct. 1517.

Here, Moffatt has a State of New Mexico exoneration, **See Index of Exhibits, Volume I, Exhibit A, pages 9-11**, that should have bound the State Bar of Arizona corporation. The Magistrate improperly applied Rooker to block

challenging the administrative mistake of the Arizona State bar, rather than recognizing the incongruence of the actual State of New Mexico exoneration. Review is allowed under FRCP 60(b)(1) to review fundamental mistakes of law. The Supreme Court further noted that *Rooker-Feldman* does not prohibit a "district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court." *Id.* at 293, 125 S.Ct. 1517. Moffatt has over 20 independent claims that were erroneously dismissed. The dismissal Moffatt seeks to overturn was a violation of Exxon, infra. This fundamental misreading of the law for independent claims, can also be reviewed under FRCP 60(b)(1).

XXV. ROOKER DOES NOT APPLY WHEN CRIMINAL ACTIVITY OF STATE ACTORS EXISTS, SINCE THE IMMUNITY IS STRIPPED AWAY OF THE STATE ACTORS

Government immunity just disappeared for criminal actions by government employees Millbrook v. United States, 477 F. App'x 4 (3d Cir. 2012) rev'd, 133 S. Ct. 1441, 185 L. Ed. 2d 531 (2013), reversed and remanded. In the Moffatt matter, Millbrook stripping immunity away from Defendants exists where a corporation asserted jurisdiction, past the statute of limitations, beyond state boundaries, asserting a crime when the elements of a crime were lacking, denying due process

and failing to follow the New Mexico exoneration are the basis of criminal actions by the government employee. The Motion for Prosecutorial Misconduct filed by Moffatt, is listed at **See Index of Exhibits, Volume II, Exhibit J, page 367-375**. Bales allowed O'Neil to quash criminal conduct of his subordinates. Bales should have been aware of the relationship allegations O'Neil has with Justice Brutinel, via prior judicial complaints, and it is now Brutinel who blocks review of most of the State Bar of Arizona actions. A mere conflict of interest is problematic, but when it happens over and over again, that conflict can have criminal components that this court should allow to be explored. FRCP 60(b)(3) allows review based on fraud.

O'Neil has used his position to neutralize attorneys investigating his business partners and corrupt judges by disbarring them. Some of O'Neil's disbarments trace back to stopping Sheriff Arpaio's investigations by disbarring attorneys seeking criminal charges. The actions those attorneys faced is similar to Moffatt's situation relating to a judge using the State Bar corporation for disbarments, without jurisdiction, and in violation due process, see the Dixon declaration at **See Index of Exhibits, Index of Exhibits, Volume I, Exhibit B, pages 12-14, Exhibit D, pages 16-366.** Review for misconduct of a party is proper under FRCP 60(b)(3). Millbrook, 477 F. App'x 4: "Any actions that they take not defined by their office or illegal by their nature are considered to have

been done outside of their office. Therefore it was done in their private capacity and therefore they are fully liable in their private capacity without any protections of their office." Millbrook, 477 F. App'x 4, reversed and remanded.

In the Moffatt case, we have a subdivision of the State, the Arizona Supreme Court, committing illegal actions by the improper transfer of power to a corporation, also a market participant, offering O'Neil protection by Duty Justice Brutinel. The criminal actions are compounded by the denying Moffatt the Motion for prosecutorial misconduct of Kasetta, **See Index of Exhibits, Volume II, Exhibit N, page 387-389**. This scenario makes the administrator Bales responsible for criminal activity, and not immune. This also allows review under FRCP 60(b),(3) and (4).

XXVI. ELEVENTH AMENDMENT IMMUNITY OF THE STATE WAIVED

The Eleventh Amendment proscribes federal courts from hearing suits for damages or injunctive relief brought against a non-consenting state agency. Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). Note, Arizona waived immunity for judges, thus consenting to an illegal process. Looking at the non-consenting state, the Ninth Circuit examines the following five factors: (1) whether a money judgment would be satisfied out of state funds; (2) whether the entity performs central government functions; (3) whether the entity

may sue or be sued; (4) whether the entity has the power to take property in its own name or only the name of the state; and (5) the corporate status of the entity. Mitchell v. Los Angeles Community College Dist., 861 F.2d 198, 201 (9th Cir. 1988). The Magistrate in the dismissal of Moffatt's complaint did not do a 5-step analysis for immunity, required under the Ninth Circuit. This failure was a mistake of law, and allows review under FRCP 60(b)(1).

Here, the suing of the State Bar of Arizona is a corporate entity, without quasi jurisdictional powers; thus, is merely a corporation. This addresses the 5th prong. The 4th prong is that the entity should not have power to take property through improper delegation. The State Bar of Arizona does not have power to take property in the name of the State of Arizona. The first prong is that a money judgment to the State Bar could be satisfied out of IOATA money, as well as bar dues, thus the state would not pay for the State Bar. The second prong relates to an improper delegation of power, to a corporate actor, that is also a market participant. This improper delegation, deemed void under Amtrak, should not preclude holding the State Bar of Arizona accountable. As such review is provided presently under FRCP 60(b)(3) and (4).

XXVII. ELEVENTH AMENDMENT IMMUNITY IS NOT A BAR FOR PROSPECTIVE OR INJUNCTIVE RELIEF AS TO SCOTT BALES, 2016 AMERICAN SHOOTING CENTER INC. INFRA

The Eleventh Amendment does not bar suits for prospective declaratory or injunctive relief against state officials in their official capacity. **Ex Parte Young, 209 U.S. 123, 155-56 (1908); Rounds v. Oregon State Bd. Of Higher Educ., 166 F.3d 1032, 1036 (9th Cir. 1999).** AMERICAN SHOOTING CENTER, INC. v. SECFOR INTERNATIONAL, Dist. Court, SD California 201613cv1847 BTM(JMA). March 28, 2016. State officials may be sued in their official capacities for prospective injunctive relief from violations of federal law. This was exactly what was done in the Moffatt matter, and Moffatt has requested injunctive relief. This fundamental mistake of law, applied by the Magistrate in the Moffatt case, allows review under FRCP 60(b)(1).

XXVIII. STATE EMPLOYEE'S THAT VIOLATE FEDERAL LAW CAN BE SUED IN FEDERAL COURT

A state employee who violates federal law "is in that case stripped of his official or representative character and is subjected 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.

Illegal actions of O'Neil and Brutinel and the violation of federal law by Bales failing to prevent the violations by improperly allowing misuses of

supervision, Bales is responsible for his individual conduct, and state immunity does not follow, thus allowing Bales to be sued. Brown v. Montana 442 F. Supp. 2d 982 - Dist. Court, D. Montana 2006. The state can be liable for the actions of its employees, thus the Defendant State can be held responsible for damages, under Respondeat superior, while also the violations of Federal Law that took place against Moffatt are not protected by immunity. These mistakes of law that were applied against Moffatt, regarding the fundamental nature of immunity by the Magistrate can be reviewed under FRCP 60(b)(1).

XXIX. FOURTEENTH AMENDMENT TRUMPS STATE SOVEREIGN IMMUNITY

Fitzpatrick holds that the Fourteenth Amendment prevails in a clash with the Eleventh Amendment. After all, there is little reason to think that section 5 can perforate state sovereign immunity in a way that section 1 cannot. First, very little of *Fitzpatrick*'s reasoning depended on any special properties of section 5. Its analysis opens with discussion of the amendment in its entirety, noting that "[a]s ratified by the States after the Civil War, [the Fourteenth] Amendment quite clearly contemplates limitations on their authority." *Fitzpatrick v. Bitzer, 427 U.S. 445, 453 (1976).* And general references to "[t]he impact of the Fourteenth Amendment upon the relationship between the Federal Government and the States" are legion. *See also, e.g., id. at 454, 455" Harvard*

"Accordingly, as *Fitzpatrick* recognized implicitly, no part of the Fourteenth Amendment should be limited by state sovereign immunity" Harvard Law review. In the Moffatt case, due process under the Fourteenth Amendment is key, he was charged past the statute of limitations, for a crime regarding words in violation of the First Amendment, outside the jurisdiction of the state and had is brief removed and was given a default judgment, **See Index of Exhibits, Volume II, Exhibit M, page 384-386**, **Exhibit O, page 390-393**. There could be no clearer case of a Fourteenth Amendment denial of due process, thus the claim of immunity is not limited to Moffatt. FRCP 60(b)(3) allows review regarding the bad nature of the defendants, and FRCP 60(b)(1) allows review based on mistakes of law that were applied in the dismissal erroneously by the magistrate.

XXX. ARIZONA WAIVER OF IMMUNITY

Arizona has also stated that the Eleventh Amendment does not bar an action in the federal courts brought to enjoin a state official from enforcing a statute claiming to violate the United States Constitution. As such, Arizona has waived the Eleventh Amendment from state actors that are violators, such as took place against **Garcia v. State, 768 P. 2d 649 - Ariz: Court of Appeals, 1st Div., Dept. D 1988.** By the Magistrate not applying Garcia, infra, allowing state officials to be held responsible for Constitutional violations was a mistake of law, reviewable under **FRCP 60(b)(1).**

XXXI. COMMERCE CLAUSE POWER ALLOWS SUIT IN FEDERAL COURT

"*Pennsylvania v. Union Gas Co*.,*35. 491 U.S. 1 (1989)* where it held that Congress could abrogate state sovereign immunity pursuant to its United States Constitution, Article I, § 8, Clause 3, Power to Regulate Commerce Power. *36. See id. at 5; id. at 57 (White, J., concurring in the judgment in part and dissenting in part).* Led by Justice Brennan, a plurality "mark[ed] a trail unmistakably leading to the conclusion that Congress may permit suits against the States for money damages." Harvard Law Review **. Moffatt's request for money damages is allowed under Pennsylvania, infra. This fundamental misunderstanding of damages being available can be reviewed under FRCP 60(b)(1).

XXXII. SEMINOLE TRIBE

"Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 59 (1996). 56. at 65–66 (emphasis added). By ratifying the Fourteenth Amendment, the states "surrender[ed] a portion of the sovereignty that had been preserved to them by the original Constitution" including their right to sovereign immunity." Harvard. Under Seminole Tribe, the sovereign immunity that was used to dismiss Moffatt's claim was in error, since the States surrendered a portion of the sovereignty in the ratification of the Fourteenth Amendment.

XXXIII. FITZPATRICK APPLIED

"In Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), and its progeny, the Court explained that in some (increasingly narrow) situations, constitutional violations can give rise to a direct damages suit against federal officers in federal court even without statutory authorization. See generally RICHARD H. FALLON, JR. ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 762–77 (7th ed. 2015), Fallon & Meltzer, supra note 66, at 1779 & n.244. — are not affected by state sovereign immunity regardless of Fitzpatrick's logic.80. Both Bivens and habeas suits fall into the Ex parte Young exception to state sovereign immunity because they are suits against officials rather than the states themselves." Harvard Law Review

In the Moffatt situation, Bales was sued in his individual capacity, thus satisfied the Fitzpatrick, as applied suggestions, as provided for in Bivens, infra.

XXXIV. DUE PROCESS

National Ins. Co. v. *Tidewater Co.,* 337 U. S. 582, 646 (Frankfurter, J., dissenting). For that reason, the Court has fully and finally rejected the wooden distinction between "rights" and "privileges" that once seemed to govern the applicability of procedural due process rights.[9] The Court has also made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money. By the same token, the Court has required due process protection for deprivations of liberty beyond the sort of formal constraints imposed by the criminal process.

For the words "liberty" and "property" in the Due Process Clause of the Fourteenth Amendment must be given some meaning, Board of Regents of State Colleges v. Roth, 408 US 564 - Supreme Court 1972. Equally, Moffatt had a property interest impacted and due process denied, especially when the timing of notices, **See Index of Exhibits, Volume II, Exhibit K, pages 376-380, Exhibit L, pages 381-383, Exhibit M, page 384, Exhibit N, pages 387-389, Exhibit O, page 390-393,** were received after the date of a hearing that those documents mandated, in violation of Arizona Supreme Court Rule 47(c) mandating the completion of service 5 days after mailing, Rule 58 outlines and requires a 10-day to comply.

Review is allowed under FRCP 60(b)(1) for a fundamental mistake of law, as well as under FRCP 60(b)(3) misrepresentation of the Defendants.

XXXV. DUE PROCESS REQUIRES A REAL HEARING

In the Moffatt matter, his reply brief was removed and Moffatt was given a default judgment, despite no jurisdiction, no attorney-client relationship, no services, for protected First Amendment speech, outside the statute of limitations, and dissimilar to 10 cases that O'Neil had which were actual sex with client cases that received no disbarment. This sanction for not appearing at a prior hearing where the notice was given a day prior to the out of state hearing, and receipt was not received timely compounded by violations of Arizona Supreme Court Rule 47(c), and Arizona Supreme Court Rule 58. As such, due process and notice were violated and Moffatt was never actually given a real hearing.

For "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin* v. *Constantineau,* 400 U. S. 433, 437. *Wieman* v. *Updegraff,* 344 U. S. 183, 191; *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U. S. 123; *United States* v. *Lovett,* 328 U. S. 303, 316-317; *Peters* v. *Hobby,* 349 U. S. 331, 352 (DOUGLAS, J., concurring). See *Cafeteria Workers* v. *McElroy,* 367 U. S. 886, 898. In such a case, due process would accord an

opportunity to refute the charge. Fundamental due process guaranteed under the Fourteenth Amendment was denied, which entitles Moffatt the right to litigate in Federal Court, and the Eleventh amendment should not act as a bar to prevent those rights from being guaranteed. Review is allowed for this fundamental misunderstanding of the magistrate in the dismissal of the Fourteenth Amendment not being barred by the Eleventh Amendment or Rooker allows for review under FRCP 60(b)(1).

XXXVI. FINANCIAL REMEDIES

"Fallon & Meltzer, supra note 66, at 1779–80. But a damages remedy should be available in situations where other forms of relief are categorically inadequate. Such situations —**— require abrogation of state sovereign immunity pursuant to *Fitzpatrick*'s logic." Harvard. Moffatt should be allowed a financial remedy, since other forms of relief to restore Moffatt are categorically inadequate. This qualifies for review under FRCP 60(b)(6).

XXXVII. JUDICIAL IMMUNITY IS A FICTION

Moffatt covered in his brief a list of 13 examples of how judicial *i*mmunity is lost. "When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is

lost." For all the foregoing reasons stated above "Judicial Immunity" does not apply to Scott Bales, Chief Justice of the Arizona Supreme Court or the Arizona Supreme Court Presiding Disciplinary Judge William J. O'Neil. The fundamental misunderstanding of immunity in light of newly discovered evidence of the Brutinel and O'Neil family and business connections, allows review under FRCP 60(b)(2). The fundamental misunderstanding of the limitations of corporate actor and judicial immunity, can be reviewed under FRCP 60(b)(1). The criminal blocking by Brutinel of O'Neil decisions in the Arizona Supreme Court, can reviewed based under fraud and misconduct of defendants, allowing for review under FRCP 60(b)(4) and 60 (b)(3).

XXXVIII. ANALYSIS ON JUDICIAL IMMUNITY

In Rankin v. Howard, 633 F.2d 844 (1980) the Ninth Circuit Court of Appeals reversed an Arizona District Court dismissal based upon absolute judicial immunity, finding Judge Howard had been independently divested of absolute judicial immunity by his complete lack of jurisdiction. Here, Moffatt has also argued that judicial immunity, as well as Eleventh amendment immunity is equally well divested by the complete lack of jurisdiction in Moffatt's case.

In a jurisdictional vacuum, (that is, absence of all jurisdiction) the second prong necessary to absolute judicial immunity is missing. Stump v. Sparkman, id.,

435 U.S. 349. This theme that jurisdiction trumps discretion. "Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872)

A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938). When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. State use of Little v. U.S. Fidelity & Guaranty Co., 217 Miss. 576, 64 So. 2d 697. Even if Bales had a mistaken belief that he had jurisdiction, he did not, and can be held civilly liable. Here, Bales was acting as an administrator.

There is a general rule that a ministerial officer, who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign. Cooper v. O'Conner, 99 F.2d 133. This misunderstanding of immunity by the Magistrate can be reviewed under FRCP 60(b)(1).

XXXIX. JURISDITIONAL DEFECT WITH O'NEIL; O'NEIL WAS NOT PROPERLY CONSTITIONALLY SEATED INTO OFFICE AS PRESIDING DISCIPLINARY JUDGE

Effective January 1, 2011, the Supreme Court of the State of Arizona adopted changes to the attorney discipline system, including the establishment of the Office of the Presiding Disciplinary Judge, pursuant to Arizona Supreme Court Rule 51. This appointment was by a single Supreme Court justice, without approval of the Governor; nor State Legislature. This violates the separation of powers clause, as well as the delegation of powers clause.

Therefore, Presiding Disciplinary Judge William J. O'Neil was not properly constitutionally seated into office.

This improper delegation of powers, especially in light of the market participant nature, as shown in **See Index of Exhibits, Volume II, Exhibit F, 2014 Federal tax return for the Arizona Foundation for Legal Services and Education, pages 193-322, Volume II, Exhibit G, 2014 Federal tax return for the State Bar of Arizona, pages 323-358 and Volume II, Exhibit I, Order signed by USDC District Court Judge David Campbell, pages 364-366**, makes the decisions of the State Bar void, thus review is allowable under FRCP 60(b)(4).

XXXX. IMPROPER OATH OF OFFICE MAKES THE OFFICE HOLDER VOID

This Oath problem was further born out; in that Judicial officers have strict requirements for an oath of office, and registration of that **oath. This analysis covers** fundamental defects and issues with O'Neil's oath.

1. "Oath of Office", violates Ariz. Const. Art. VI, § 37;
2. "Oath of Office," is missing and statutorily required pursuant to Ariz. Const. Art. VI, § 26.

The portion of the document that is most relevant here, covered the improper Oath of office and defective since the oath must be subscribed with a signature and printed name (authenticated) by William J. O'Neil, pursuant to Ariz. Rev. Stat. Ann. § 38-231(E); a Notary Public conferred authenticity to Oath as a solemn promise to support the U.S. Constitution pursuant to Ariz. Rev. Stat. Ann. § 38-231(a)-(f). Here there is not commitment to follow the U.S. Constitution. More analysis is born out regarding the violation of the appointment of O'Neil, as well as the improper delegation of power to him without input of the Governor, or the Senate, by a Sole member of the Arizona Supreme Court in Moffatt's brief. Review is allowed under FRCP 60(b)(4) for a void judicial decision, since the office holder is not in compliance with the requirements for a judge via his oath of

office nor is O'Neil compliant via his appointment lacking by a governor, election, or consent of the state legislature.

XXXXI. CONCLUSION

For all the foregoing reasons, the Court should deny Magistrate's dismissal motion, and reinstate the case. Review exists under all FRCP 60(b) 1-6, Immunity does not exist to States that accept federal money, nor does immunity exist with violations of the Fourteenth Amendment, and ADA, both of which were claimed. Rooker does not operate when criminal violations have taken place, nor administrative actions, both of which have been alleged here. Judicial immunity does not hold when a judge acts without jurisdiction, is involved in criminal activity, or acts administratively; Moffatt has all three, thus judicial immunity is not a bar to move forward.

Declaratory and Injunctive relief are also allowed in suits against states in Federal Court, as such the Eleventh Amendment and Rooker are not bars to the doors of the federal court house for Moffatt.

Dated: October 19, 2017, Thursday

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By: Jeffrey D. Moffatt,
Jeffrey D. Moffatt, Federal Attorney /
Plaintiff Pro-Per