Appendix A:

U.S. District Court, Middle District of Tennessee, Nashville Division:

Magistrate's Report & Recommendation To Dismiss Case

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

JOHN ANTHONY GENTRY, Plaintiff	)
v.	) No. 3:16-2617) Judge Trauger) /Brown) **Jury Demand**
THE HONORABLE JUDGE JOE H. THOMPSON, Defendant	)

TO: THE HONORABLE ALETA A. TRAUGER

REPORT AND RECOMMENDATION[1]

For the reasons stated below, the Magistrate Judge recommends that the Defendant's motion to dismiss (Docket Entry 11) be granted and this case be dismissed as the court lacks jurisdiction or dismissed with prejudice if the court has jurisdiction.

BACKGROUND

The Plaintiff filed his complaint against Circuit Court Judge Joe H. Thompson on October 3, 2016 and paid the requisite filing fee. Subsequently, he amended his complaint on October 19, 2016

[1] The Magistrate Judge has read the Plaintiff's response and would note as an initial matter the Plaintiff is correct that a magistrate judge may only make a report and recommendation to the district judge, who will then give such report a *de novo* review That is exactly what was ordered in this case. See Docket Entry 3.

(Docket Entry 6). The 38-page amended complaint is therefore the operative complaint in this matter. Counsel for Defendant filed a motion to dismiss for failure to state a claim on November 14, 2016 (Docket Entry 11) in lieu of an answer. The motion was supported by a memorandum of law (Docket Entry 12). The Plaintiff filed a response on November 28, 2016 (Docket Entry 17). There was no reply and the matter is ready for a report and recommendation.

The Plaintiff's amended complaint cites in considerable detail his view of the proceedings in his divorce case before the Defendant. He alleges that the Defendant violated Title 42 U.S.C. § 1983 by ruling against him without allowing him to be heard or to present evidence and by being biased. He alleges that Defendant's actions violated his right of due process and were outside the jurisdiction of the Defendant in his capacity as judge (Docket Entry 6, par. 13).

In his factual statement, the Plaintiff alleges a number of violations he contends that occurred in a September 15, 2015, hearing (page ID 55-66). On page ID 61 the Plaintiff refers to a July 1, 2016 hearing in two places. It appears that this is a typographical error and he is actually referring to the July 1, 2015, hearing.

The Plaintiff next alleges violations that occurred during what appears to be a final hearing in his divorce case on May 2 and 3, 2016 (page ID 66-68).

The Plaintiff then backtracks to a February 9, 2016, hearing (page ID 68-80). In these pleadings the Plaintiff again complains that the Defendant failed

to read his pleadings or to allow him to argue his motion. He further alleges that the court granted all of the motions by his wife without allowing him to be heard. He further alleges that although the Defendant stated that he read the Plaintiff's motions and responses, he clearly did not. He contends in that in this hearing the Defendant was biased against him and should have disqualified himself.

It appears that the actual final hearing in the matter occurred on May 3, 2016 (page ID 80-81). At this hearing he contends that the Defendant showed his bias and his efforts to protect the wife from criminal conduct by stating that if the Plaintiff thought his wife was attempting to subordinate perjury he should take it up with the district attorney. He contends that this violated his due process right to be heard.

The Plaintiff then again backtracks to alleged violations occurring at an October 27, 2015, hearing (page ID 81-84). The hearing on that date appears to involve the discussion of the Plaintiff's motion to compel health insurance and life insurance information from his wife and his motion for a Rule 9 interlocutory appeal. From the transcript pages cited by the Plaintiff it appears that he filed a notice of a hearing, which because of the court clerk's error, was not listed on the docket. Because of this the court did not hear the motion that day. The Plaintiff contends that this demonstrates the trial court's previous decision to disregard his statements and reinforces the Plaintiff's contentions that the trial court was biased and held animosity toward him by both

refusing to hear him and by denying him permission to take an interlocutory appeal.

LEGAL DISCUSSION

Standard of Review

The Sixth Circuit has recently held that motions to dismiss on the pleadings under Fed. R. Civ. P. 12(c) are reviewed *de novo Tucker v. Middleburg-Legacy Place*, 539 F.3d 545, 549 (6th Cir. 2008). The standard of review for a Rule 12(c) motion is the same as for a motion under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. *Ziegler v. IBP Hog Market, Inc.*, 249 F.3d 509, 511-12 (6th Cir. 2001) (citing *Mixon v. Ohio*, 193 F.3d 389, 399-400 (6th Cir. 1999)).

"For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment." *JP Morgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007). However, a legal conclusion couched as a factual allegation need not be accepted as true on a motion to dismiss, nor are recitations of the elements of a cause of action sufficient. *Hensley Mfg. v. ProPride, Inc.*, 579 F.3d 603, 609 (6th Cir. 2009).

The Rooker-Feldman Doctrine Bars this Court From Reviewing the Plaintiff's Claim for Relief

The Defendant's first argument is that this Court lacks jurisdiction under the Rooker-Feldman

Doctrine, which stands for the proposition that lower federal courts do not have jurisdiction to review a case litigated and decided in state court. Only the United States Supreme Court has jurisdiction to correct state court judgment. *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 415-16 (1923); *District of Columbia v. Feldman*, 460 U.S. 462, 476 (1983). As the Sixth Circuit has noted in looking to the Rooker-Feldman Doctrine a three-part inquiry may be used. First, the court determines whether the federal claim is "inextricably intertwined with the claim asserted in the prior state court proceedings;" second, whether the federal claim is a general challenge to the constitutionality of the state law applied in the state action; and thirdly, whether the complaint deals with a specific grievance that the law was invalidly, even unconstitutionally, applied to Plaintiff's particular case. *Hutchinson v. Lauderdale County*, 326 F.3d 747, 755-56 (6th Cir. 2013). In this case as the Defendant correctly points out, the actions the Plaintiff complains of all took place in a divorce case in state court and the Plaintiff's request for relief would challenge the correctness of the decisions in that case.

The Plaintiff in his prayer for relief (page ID 84, par. 3) specifically asks for all judgments issued and rendered by the defendant in the Circuit Court for Sumner County, Case No. 2:014-CV-393, with the exception of the single order declaring the parties' divorce be made null and void. There cannot be a clearer statement that the Plaintiff is attempting to invalidate the state court proceedings, with the one exception of the divorce itself. This court therefore lacks jurisdiction to review the Plaintiff's

constitutional claims under the Rooker-Feldman Doctrine. If the Plaintiff believed that his rights were violated during the divorce proceedings his remedy would be appeals through the state appellate court, and if necessary, a petition for certiorari to the United States Supreme Court.

The Magistrate Judge has considered the Plaintiff's argument that the Rooker-Feldman Doctrine does not apply and has read the case he cites--*Kircher v. City of Ypsilanti*, 458 F.Supp.2d 439 (D.C. E.D. (Mich.) 2006)[2]. However, for the reasons cited above, the Plaintiff is attacking the state court proceedings and the decision of a federal district court cannot supplant a ruling of either the Sixth Circuit or the Supreme Court. To hold otherwise would allow any party in a state court proceeding who loses on a motion to come to federal court to have the federal district court review the matter even though the state court proceeding is not final. Such a ruling would result in absolute chaos.

Judge Thompson is Entitled to Absolute Judicial Immunity

With all due respect to the Plaintiff's arguments in opposition, the Defendant has correctly stated the law on this issue. As the Supreme Court stated in *Mireles v. Waco*, 502 U.S. 9 (1991)[3] judicial immunity is an immunity from suit, not just from ultimate assessment of damages, and judicial

[2] This case while not applying Rooker-Feldman squarely holds the Judge was entitled to absolute immunity for his actions.

[3] The Defendant incorrectly cites this case at page ID 96 of his memorandum as 205 U.S.

immunity is not overcome by allegations of bad faith or malice, the existence which ordinarily would cannot be resolved without engaging in discovery and eventually trial. Immunity applies even when the judge is accused of acting maliciously or corruptly and allegations of malice are insufficient to overcome qualified immunity. *Mireles* at 10. In the *Mireles* case it was alleged that the judge had ordered police officers to bring an attorney into court and to use excessive force. The direction to use excessive force would not be a function normally performed by a judge, however, the Court noted if only the particular act in question were to be scrutinized, then any mistake of a judge in excess of his authority would become a nonjudicial act because an improper or erroneous act cannot be said to be normally performed by a judge. If judicial immunity means anything, it means that a judge will not be deprived of immunity because the action he took was in error or were in excess of his authority. The Court went on to note that the relevant inquiry is the nature and function of the act, not the act itself, and that the court would look to the particular act's relation to a general function normally performed by a judge--in this case, the function of directing police officers to bring counsel in a pending case before the court. Mireles at 11-12.

Applying this standard to the present case, it is clear that all of the rulings the Defendant made were in the performance of his duty in presiding over the Plaintiff's divorce action. To hold otherwise would make every alleged incorrect decision by a state trial judge a federal constitutional violation.

To the extent the Defendant committed any error, the Plaintiff's remedy was an appeal through the state court system and a petition for certiorari to the United States Supreme Court, not a 1983 action in federal district court. The Defendant is entitled to judicial immunity for all of the acts alleged as they were all taken in his judicial capacity, even if the Plaintiff honestly believes that the Defendant's rulings were in error. See also, Johnson v. Turner, 125 F.3d 324, 333 (6th Cir. 1997).

The Magistrate Judge considered the Plaintiff's arguments that a judge is not absolute immune, and again for the reasons stated above, the Magistrate Judge concludes that the Plaintiff's argument lacks merit. Everything the Defendant did was in a judicial capacity in presiding over the Plaintiff's divorce case. The fact that the Plaintiff believes that the Defendant should have heard more arguments and not ruled against him does not render a judge's actions outside his judicial authority.

Every judge will be thought at times by one side or the other to have committed errors in his rulings. Errors in rulings do happen as magistrate judges are at times overruled by district judges, district judges are overruled by the court of appeal, and the supreme court overrules circuit courts. The Supreme Court may at times overrule it's own decisions. The fact that a decision may be wrong does not constitute constitutional error.

The Allegations Against Judge Thompson are Barred by the Statute of Limitations to the Extent that the Alleged Conduct Occurred More than One

Year Before the Original Complaint was filed on October 3, 2016

The Defendant has again correctly cited the law. The statute of limitations for actions brought under Section 1983 are governed by the statute of limitations governing actions for personal injuries in Tennessee. See Berndt v. State of Tennessee, 796 F.2d 879, 883 (6th Cir. 1986).

Therefore, regardless of a decision on any of the other defendants' contentions, the actions complained of prior to one year before October 3, 2016, would be barred by the statute of limitations.

Although the Plaintiff alleges that he did not become aware of the statute of limitations issue until after May 3, 2016, his argument misses the point. He was aware that he disagreed with the Defendant's decisions at the time they were made. The fact that he only later concluded they were a constitutional violation, rather than the rules of conduct, does not extend the statute of limitations. Everything the Defendant did was in open court. The fact that the Plaintiff did not draw a conclusion that it was a constitutional violation for a lengthy period of time does not save his complaint from the statute of limitations. To hold otherwise would destroy the concept of statutes of limitations. There is nothing in the record to suggest a valid reason to toll the statute of limitations. Even if the Plaintiff did not hear clearly he had the ability to secure a transcript or ask for a recording of the hearing. The plaintiff had access to the facts and he did not act on them in a timely fashion.

The Eleventh Amendment Bars any Claim for Relief against Judge Thompson in his Official Capacity

The Magistrate Judge agrees with the Defendant's claim that the Eleventh Amendment bars suit against Judge Thompson in his official capacity. 42 U.S.C. § 1983 applies to persons who act under the color of law. State officials in their official capacities are not persons for the purpose of Section 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989).

The Plaintiff argues that Congress can abrogate the Eleventh Amendment without the state's consent. That is an accurate statement. Unfortunately for the Plaintiff's argument the Supreme Court has not held that Congress has abrogated the Eleventh Amendment with respect to official capacity claims under Section 1983 claims such as he has alleged. The case the Plaintiff cites (Hutto v. Finney, 437 U.S. 678 (1978)) dealt with the award of attorneys' fees to be paid out of the Department of Corrections funds. The case involved the Eighth Amendment ban on inflicting cruel and unusual punishments made applicable to the state by the Fourteenth Amendment. The court found that the defendants had violated prisoners' constitutional rights under the Eighth Amendment. The Supreme Court noted costs have traditionally been awarded without regard to the state's Eleventh Amendment immunity going back to 1849.

While in a concurring opinion one Justice questioned the limitations of the Eleventh Amendment, it is not the holding of the majority, and until the Supreme Court rules otherwise, claims

against the Defendant in his official capacity are barred by the Eleventh Amendment.

RECOMMENDATION

For the reasons stated above, the Magistrate Judge recommends that all claims be dismissed with prejudice for lack of jurisdiction. To the extent the court has jurisdiction the case should be dismissed with prejudice due to judicial immunity and the other reasons cite above.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has **14 days** from receipt of this Report and Recommendation in which to file any written objection to this report and recommendation with the District Court. Any party opposing said objections shall have **14 days** from receipt of any objections filed in this report and recommendation in which to file any responses to said objections. Failure to file specific objections within **14 days** of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Report and Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTER this 28th day of December, 2016.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge

Appendix B:

U.S. District Court, Middle
District of Tennessee,
Nashville Division

Memorandum & Order
Accepting Magistrate's
Report & Recommendation
and Dismissing Case

UNITED STATES DISTRICY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JOHN ANTHONY GENTRY, Plaintiff,	)
	) Case No.
v.	) 3:16- cv-2617
	) Judge Aleta A.
JUDGE JOE H. THOMPSON, Defendant.	) Trauger
	) Magistrate Judge
	) Joe B. Brown
	)

MEMORANDUM & ORDER

Pending before the court are: 1) an Objection to Magistrate Judge's Report and Recommendation and Motion to Strike, filed by the plaintiff (Docket No. 21), to which the defendant has filed a Response in opposition (Docket No. 23), and the plaintiff has filed a Reply (Docket No. 25); and 2) a Motion to Set Evidential or Other Appropriate Hearing, filed by the plaintiff (Docket No. 22), to which the defendant has filed a Response in opposition (Docket No. 24), and the plaintiff has filed a Reply (Docket No. 26). For the reasons discussed herein, the plaintiff's motions will be denied, the R&R will be accepted, and this action will be dismissed.

BACKGROUND AND PROCEDURAL HISTORY

On October 3, 2016, the *pro se* plaintiff, Mr. Gentry, filed this action against the defendant, Judge Thompson, pursuant to 42 U.S.C. § 1983 ("Section 1983"), alleging violations of the Fourteenth

Amendment to the United States Constitution and seeking injunctive and declaratory relief. (Docket No. 1.) On October 6, 2016, the court issued an Order referring the case to the Magistrate Judge for "decision on all pretrial, nondispositive motions and report and recommendation on all dispositive motions under 28 U.S.C. § 636(b)(1)(A) and (B) and to conduct any necessary proceedings under Rule 72(b), FED. R. CIV. P." (Docket No. 3.)

On October 19, 2016, Mr. Gentry filed an Amended Complaint, which is the current operative pleading, alleging that Judge Thompson, who presided over divorce proceedings between Mr. Gentry and his former wife in the Circuit Court for Sumner County, Tennessee, violated his constitutional rights during those proceedings. Specifically, the Complaint alleges that, in conducting hearings and rendering judgment on motions before the Circuit Court, Judge Thompson, among other things, exhibited bias against Mr. Gentry and in favor of Mr. Gentry's former wife, did not allowing Mr. Gentry to present argument or evidence in court, and made false statements on the record about the evidence, the filings, and the governing law. (Docket No. 6.)

On October 14, 2016, Judge Thompson filed a Motion to Dismiss, along with a Memorandum in Support. (Docket Nos. 11, 12.) Judge Thompson argued that the case should be dismissed for lack of jurisdiction under Rule 12(b)(1), on the grounds that, under the Rooker-Feldman doctrine, a federal court cannot review a constitutional claim that is inextricably intertwined with a state court decision in a judicial proceeding. Judge Thompson argued, in

the alternative, that he has absolute immunity in his individual capacity and cannot be sued in his official capacity under the Eleventh Amendment to the United States Constitution and pursuant to Section 1983. Finally, Judge Thompson argued that the action should be dismissed for failure to state a claim under Rule 12(b)(6), on the grounds that the statute of limitations had expired for at least part of the plaintiff's claims. On November 28, 2016, Mr. Gentry filed a Response in opposition, arguing against all of the grounds raised in the Motion to Dismiss. (Docket No. 17.)

On December 28, 2016, the Magistrate Judge issued a Report and Recommendation, recommending that Judge Thompson's Motion to Dismiss be granted and this case dismissed with prejudice, both for lack of jurisdiction under *Rooker-Feldman* and, alternatively, on the grounds that Judge Thompson has immunity for any claims against him as an individual, and the State has Eleventh Amendment immunity for any Section 1983 claims against Judge Thompson in his official capacity. (Docket No. 21 (the "R&R").)

On January 3, 2017, Mr. Gentry filed an Objection to the R&R and Motion to Strike the R&R, objecting to all of the Magistrate Judge's findings. (Docket 21.) Mr. Gentry simultaneously filed a Motion to Set Evidential or Other Appropriate Hearing. (Docket No. 22.) On January 13, 2017, Judge Thompson filed Responses in opposition to both motions (Docket Nos. 23, 24) and, on January 17, 2017, Mr. Gentry filed Replies (both titled "Response & Objection to Defendant's Response") (Docket Nos. 25, 26).

ANALYSIS

I. Motion to Strike

As an initial matter, Mr. Gentry has improperly moved to strike the R&R under Rule 12(f). This rule permits parties to move to strike only portions of the *pleadings* in an action, and there is no procedural mechanism for striking the Magistrate Judge's recommendations from the record. Accordingly, this motion will be denied. The only appropriate vehicle with which to challenge the Magistrate Judge's findings is through an Objection to the R&R under Rule 72(b)(2), which Mr. Gentry has properly filed. The court will now turn to that Objection.

II. Objection to R&R

When a magistrate judge issues a report and recommendation regarding a dispositive pretrial matter, the district court must review *de novo* any portion of the report and recommendation to which a specific objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C); *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001); *Massey v. City of Ferndale*, 7 F.3d 506, 510 (6th Cir. 1993). Mr. Gentry objects to all of the Magistrate Judge's findings, so the court has conducted a *de novo* review of the entire Motion to Dismiss. Pursuant to this review, and for the reasons discussed below, the court finds this action must be dismissed for lack of jurisdiction

under *Rooker-Feldman*, as recommended by the Magistrate Judge.[1]

In two seminal opinions for which the *Rooker-Feldman* doctrine is named, the Supreme Court has held that lower federal courts may not review the findings of state court judges, and the only appropriate vehicle for such review is through the state appellate courts or, if necessary, the United States Supreme Court. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *see also Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 286 n. 1 (holding that, under *Feldman*, "a district court could not entertain constitutional claims attacking a state-court judgment, even if the state court had not passed directly on those claims,

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[1] The court notes that, in addition to objecting to the substantive findings by the Magistrate Judge, Mr. Gentry also objects to the fact that the Magistrate Judge, according to Mr. Gentry, mischaracterized and unfairly ridiculed the allegations in the Complaint. There is no legal authority to suggest that these are proper bases for objecting to the R&R and, in any event, the court, finds, upon *de novo* review, that the Magistrate Judge's legal findings with respect to the applicability of the *Rooker-Feldman* doctrine are correct and the case should properly be dismissed. Accordingly, the court need not address these arguments.

Similarly, Mr. Gentry objects to the fact that the Magistrate Judge did not conduct an evidentiary hearing prior to issuing the R&R, citing language in Rule 72 requiring the Magistrate Judge to "hear" a dispositive motion. This language, however, does not require the Magistrate Judge to hold oral argument, nor to review factual evidence when the issues can be properly decided on the papers as a matter of law. Accordingly, this objection also provides no basis for rejecting the Magistrate Judge's recommendation.

when the constitutional attack was inextricably intertwined with the state court's judgment"). The Sixth Circuit has explained that this doctrine applies not only when a party attempts to expressly appeal a state court decision to a lower federal court, but also whenever the issues raised in the federal action implicate the validity of the state court proceedings. *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2007) ("The inquiry then is the source of the injury the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim.") (citing *Exxon*, 544 U.S. 280). The Sixth Circuit has further held that the *Rooker-Feldman* doctrine applies equally to claims for equitable relief. *See Lawrence v. Welch*, 531 F.3d 364, 71-72 (6th Cir. 2008) ("claims seeking injunctive relief are barred by *Rooker-Feldman* if they necessarily require the federal court to determine that a state court judgment was erroneously entered").

Here, while Mr. Gentry is not directly appealing Judge Thompson's rulings, he is certainly raising claims that implicate the validity of the proceedings before Judge Thompson; indeed, if the court were to find that Judge Thompson acted in error in the state court proceedings, this would necessarily call into question the rulings made in that case. Mr. Gentry argues that he is not challenging the actual rulings of the Circuit Court, but only the *process*, ignoring that these things are inextricably intertwined. Indeed, the source of the

injury to Mr. Gentry in this action is the alleged improper rulings in the divorce proceedings before Judge Thompson. Accordingly, the only proper mechanism for relief is an appellate challenge in state court, which Mr. Gentry has indicated in his briefings is currently ongoing.

Mr. Gentry attempts to rely on the fact that a state court appeal is ongoing to suggest that *Rooker-Feldman* should not apply here, because he is not challenging a *final* state court judgment. Mr. Gentry homes in on *Exxon's* holding that *Rooker-Feldman* "is confined to cases of the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced." *Exxon*, 544 U.S. at 281. *Exxon*, however, does not suggest that the scope of *Rooker-Feldman* is limited to challenges to *final* judgments only. The holding in *Exxon* merely distinguishes cases where *Rooker-Feldman* is invoked to challenge the federal court's concurrent jurisdiction over claims being simultaneously pursued in state court, but where the underlying challenge is not to the actions of the state court itself. *Id.* In those instances, *Exxon* holds that *Rooker-Feldman* does not apply, despite the fact that the exercise of federal jurisdiction might lead to a federal holding that undermines the validity of a future state court judgment. *Id.*

The court finds that the best reading of the *Rooker-Feldman* doctrine under *Exxon* is that it applies with equal force to federal claims that attempt to challenge nondispositive orders in the state court as to claims challenging final state court

judgments. In either case, an appeal within the state court system is the sole mechanism for the challenge. The court is not swayed by any findings to the contrary in the Eastern District of Michigan's holding in *Kircher v. Charter Twp. of Ypsilanti*, which is not binding on this court. No. 07-13091, 2007 WL 4570076 (E.D. Mich. Dec. 21, 2007). Nor does the court find any significance in use of the term "final judgment" in *Hutcherson v. Lauderdale Cnty, Tennessee*, 326 F.3d 747, (6th Cir. 2003), cited by the plaintiff. *Hutcherson* pre-dates *Exxon* and states only that *Rooker-Feldman* denies jurisdiction over challenges to final judgments (not that it permits review of other nondispositive or non-final state court rulings). 326 F.3d 747, 755 (6th Cir. 2003).

Finally, Mr. Gentry argues that applying *Rooker-Feldman* to this action would implicate all Section 1983 claims against judicial officers based on their behavior in presiding over state court proceedings. While there may be some instances where a judge's conduct violates a principal of due process or equal protection under the Fourteenth Amendment such that injunctive relief may be appropriate, no such claim is actually brought here. While Mr. Gentry has brought claims for violation of his constitutional rights, he has neither alleged that he is a member of a protected class denied equal protection of the law nor that he has been deprived of liberty or property in violation of the law, other than in the disposition of marital assets in his divorce proceeding, a decision that Judge Thompson had to make within the course of presiding over that domestic action – not an independent action taken against the plaintiff. Moreover, the Sixth Circuit has

held that even a "specific grievance that the law was invalidly – even unconstitutionally – applied in the plaintiff's particular case . . . would raise a *Rooker-Feldman* bar." *Hutcherson*, 326 F.3d at 756.

As a result, under *Rooker-Feldman*, the court does not have jurisdiction to hear this action and it must be dismissed. The court need not reach the question of judicial immunity.[2]

II. Motion for Evidentiary Hearing

Mr. Gentry has asked for an evidentiary hearing without specifying the evidence he wishes to present. Because this case must be dismissed as a matter of law, there is no need for the court to review any factual evidence, nor is there any additional evidence that would impact the court's determination. Moreover, it is within the court's broad discretion to deny a request for oral argument. See M.D. Tenn. R. (Local Rules) 72.03(b)(3). Accordingly, Mr. Gentry's Motion for an Evidentiary Hearing will be denied.

CONCLUSION

For the foregoing reasons, the plaintiff's motions are **DENIED**. The Magistrate Judge's Report and

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[2] The court notes, however, that the R&R discusses immunity for Section 1983 claims (both in the individual and official capacities) by citing cases that address immunity for claims seeking *damages*. Mr. Gentry, to the contrary, seeks only equitable relief, and it is, therefore, unclear whether these grounds for dismissal would be appropriate upon *de novo* review. Nevertheless, because the court is dismissing this action for lack of jurisdiction under *Rooker-Feldman*, it will not reach these issues.

Recommendation is **ACCEPTED**, the defendant's Motion to Dismiss is **GRANTED**, and this action is **DISMISSED WITH PREJUDICE**.

Entry of this Order shall constitute judgment in this case.

It is so **ORDERED**.

Enter this 26th day of January 2017.

s/
ALETA A. TRAUGER
United States District Judge

Appendix C:

U.S. Court of Appeals For The Sixth Circuit

Order Affirming Dismissal of Case

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-5204

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN ANTHONY GENTRY,	)
	) ON APPEAL
Plaintiff-Appellant,	) FROM THE
	) UNITED
	) STATES
v.	) DISTRICT
	) COURT FOR
THE HONORABLE JOE H.	) THE MIDDLE
THOMPSON, Circuit Court	) DISTRICT OF
Judge,	) TENNESSEE
	)
Defendant-Appellee.	)
	)

ORDER

Before: GUY, BATCHELDER, and COOK, Circuit Judges.

John Anthony Gentry, a pro se Tennessee plaintiff, appeals the district court's judgment dismissing his civil rights complaint under 42 U.S.C. § 1983 pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Gentry also moves the court to stay his state-court appellate proceedings pending resolution of his appeal. This case has been referred to a panel of the court that, upon examination,

unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Gentry filed an amended complaint under § 1983 that alleged that the Honorable Joe H. Thompson, the judge who presided over his divorce in state court, violated his right to due process in those proceedings by repeatedly denying him his right to be heard, and through other alleged misconduct during the case. Judge Thompson moved to dismiss the complaint under Rule 12(b)(1) on the ground that Gentry's claims are barred under the *Rooker-Feldman* doctrine, or under Rule 12(b)(6) on the ground that he is entitled to absolute judicial immunity. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923). To the extent that Gentry sued him in his official capacity, Judge Thompson argued that Eleventh Amendment sovereign immunity barred Gentry's claims.

A magistrate judge issued a report and recommendation that concluded that the district court lacked subject matter jurisdiction over the complaint under *Rooker-Feldman*, and that Judge Thompson is entitled to absolute judicial immunity from suit in his individual capacity and to Eleventh Amendment sovereign immunity from suit in his official capacity. The district court denied Gentry's motion to strike the report and recommendation and adopted the magistrate judge's conclusion that the court lacked subject matter jurisdiction pursuant to *Rooker-Feldman*. Because of that conclusion, the district court declined to reach the question of absolute judicial immunity. The district court therefore dismissed Gentry's complaint with

prejudice. The district court also denied Gentry's motion for an evidentiary hearing, his Rule 59(e) motion to alter or amend the judgment, and his Rule 15 motion to amend the complaint.

Gentry filed a timely notice of appeal. Gentry argues that the district court erred in dismissing his complaint pursuant to *Rooker-Feldman*, and in denying his motions to amend, to strike the report and recommendation, and for an evidentiary hearing. Gentry also claims that the district court erred by failing to provide notice of the magistrate judge's report and recommendation. Finally, Gentry argues that his claims are not barred by judicial immunity or Eleventh Amendment sovereign immunity. Gentry also filed a motion asking the court to enjoin the state court of appeals from ruling on his appeal of the judgment in his divorce case pending the disposition of this appeal because that court is allegedly subjecting him to due process violations as well.

We normally review de novo the district court's conclusion that the *Rooker-Feldman* doctrine precludes federal subject matter jurisdiction. *See McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006). We may, however, affirm the district court's judgment based on any ground supported by the record. *See Angel v. Kentucky*, 314 F.3d 262, 264 (6th Cir. 2002).

Accepting the amended complaint's factual allegations as true, and construing them in the light most favorable to Gentry, *see Bright v. Gallia Cty.*, 753 F.3d 639, 648 (6th Cir. 2014), all of the alleged due process violations resulted from actions taken by

Judge Thompson in his capacity as a judicial officer presiding over Gentry's divorce proceedings. None of the allegations shows that Judge Thompson acted in the complete absence of all jurisdiction. Judge Thompson therefore is entitled to absolute judicial immunity from suit under § 1983 in his individual capacity. *See Mireles v. Waco*, 502 U.S. 9, 11-13 (1991); *Barrett v. Harrington*, 130 F.3d 246, 254 (6th Cir. 1997). Eleventh Amendment sovereign immunity bars Gentry's claims to the extent that he sued Judge Thompson in his official capacity. *See Colvin v. Caruso*, 605 F.3d 282, 289 (6th Cir. 2010); *Hessmer v. Bad Gov't*, No. 3:12-cv-590, 2012 WL 3945315, at *11 (M.D. Tenn. Sept. 10, 2012) (holding that judges in Tennessee are state officials and that therefore Eleventh Amendment sovereign immunity bars official capacity suits against state judges) (collecting cases).

Gentry's remaining assignments of error are without merit. Accordingly, we **AFFIRM** the district court's judgment and **DENY** as moot Gentry's motion to stay the state-court appellate proceedings.

ENTERED BY ORDER OF THE COURT

s/_____
Deborah S. Hunt, Clerk

Appendix D:

U.S. Court of Appeals For The Sixth Circuit

Order Denying Petition For Rehearing En Banc

No. 17-5204

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN ANTHONY GENTRY,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ORDER
	)	
THE HONORABLE JOE H. THOMPSON, Circuit Court Judge,	)	
	)	
	)	
Defendant-Appellee.	)	

BEFORE: GUY, BATCHELDER, and COOK, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT
s/
Deborah S. Hunt, Clerk

Appendix E:

U.S. District Court, Middle District of Tennessee, Nashville Division:

ORDER DENYING Plaintiff's Motion To Alter January 26, 2017 Memorandum & Order And Request For Leave To Amend

Motion DENIED

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
CIVIL RIGHTS DIVISION

JOHN ANTHONY GENTRY, Plaintiff	)	
	)	CASE NO. 3:16 –
vs.	)	cv-02617
	)	Judge Trauger
	)	/Brown
THE HONORABLE JUDGE JOE H THOMPSON CIRCUIT COURT JUDGE Defendant	)	JURY DEMANDED (12)

PLAINTIFF'S MOTION TO ALTER JANUARY 26, 2017 MEMORANDUM & ORDER AND REQUEST FOR LEAVE TO AMEND

Pursuant to Fed. R. Civ. P. Rule 59 (e), Plaintiff hereby respectfully moves this Honorable Court to Alter or Amend the Order dated January 26, 2017 for good cause. Pursuant to Local Rule 7.01, Plaintiff's Motion is accompanied by a memorandum of law citing supporting authorities.

1. Pursuant to Fed. R. Civ. P. Rule 59 (e) as amended, "A motion to alter or amend a judgement must be filed no later than 28 days after the entry of judgement". This Court's Memorandum & Order was entered into the record on January 26, 2017.

Plaintiff's Motion to Alter or Amend and accompanying Memorandum of Law are properly filed on February 26, 2017, only eleven days after entry of the Court's Order. Therefore, Plaintiff's Motion to Alter or Amend and accompanying memorandum of law are filed timely.

Appendix F:

Petition For Rehearing En Banc

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17-5204

JOHN ANTHONY GENTRY,
Plaintiff - Appellant

v.

THE HONORABLE JOE H. THOMPSON,
Circuit Court Judge
Defendant - Appellee

Rule 3 Appeal as of Right from the Final Judgement of the United States District Court, Middle District of Tennessee Originating Case No. 3:16-cv-02617

PETITION FOR REHEARING EN BANC

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Pro Se

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RULE 35(b)(1) STATEMENT

The panel decision denying appellant's appeal of the district court's judgement dismissing his civil rights complaint conflicts with several decisions of the U.S. Supreme Court as well as decisions of the U.S. Court Of Appeals for the Sixth Circuit, and consideration by the full court is therefore necessary to secure and maintain uniformity of the Court's decisions.

The proceedings involve questions of exceptional importance including grossly unconstitutional state law, and in that the panel erred in determining that the Defendant/Appellee is immune from suit in an individual capacity, and was not absent jurisdiction, and that the Defendant/Appellee is immune from suit due to Amendment XI sovereignty. The following questions of exceptional importance are presented for en banc review:

1. Whether the panel erred in determining that state sovereignty provides immunity: when in fact, Tennessee waived sovereign immunity through ratification of the state's constitution in the year 1835 and unconstitutionally attempts to reassert selective and unconstitutional sovereignty as follows:

    a. Article I § 17 of The Constitution of the State of Tennessee states: "... **Suits may be brought against the state in such manner and in such courts as the Legislature may by law direct.**"

b. In an attempt to unconstitutionally reassert selective sovereignty against specific types of suits, the state enacted unconstitutional state law encoded in Tennessee's Government Tort and Liability Act as follows:

29-20-205. Removal of immunity for injury caused by negligent act or omission of employees -- Exceptions -- Immunity for year 2000 computer calculation errors.

Immunity from suit of all governmental entities is removed... ...**except** if the injury arises out of:
(1) The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;
(2) False imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, **infliction of mental anguish, invasion of right of privacy, or civil rights;**
(5) The institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

2. Whether the panel's determinations are contradictory of U.S. Supreme Court and U.S. Court of Appeals for the Sixth Circuit decisions.

3. Whether a state court judge acts outside his judicial function and jurisdiction through gross repeated and multiple violations of the Fourteenth Amendment.
4. Whether application of Rooker-Feldman Doctrine and Eleventh Amendment makes all Title 42 § 1983 claims arising from rights violations occurring during state court proceedings unenforceable when only equitable relief is sought.

BACKGROUND

Appellant/Plaintiff, hereinafter referred to as "Mr. Gentry," brought suit against Appellee/Defendant, for multiple repeated and gross violations of due process. The facts of the case proving Mr. Gentry's allegations are well evidenced in his complaint, and through certified court reporter transcripts, and are not disputed. *E.g.* D. Ct Dkt. No. 6 p. 9 – 37.

The district court magistrate judge to whom the case was assigned issued a report and recommendation (R&R) to dismiss the case: (1) for lack of jurisdiction under the Rooker-Feldman Doctrine, (2) Absolute Judicial Immunity, (3) Statute of Limitations, and (4) Eleventh Amendment immunity of Defendant in his official capacity. Mr. Gentry timely objected to the magistrate's R&R in its entirety with specific objections supported by US Supreme Court opinions. D. Ct Dkt. No. 21.

The District Court *partially* adopted the magistrate judge's R&R. The District Court *did not find* that Appellee/Defendant was protected by any Statute of Limitations or by Eleventh Amendment

Immunity, ruling only that the District Court lacked jurisdiction under the Rooker-Feldman Doctrine and that because Mr. Gentry sought only equitable relief, judicial immunity was "unclear." (D. Ct Dkt. No. 27 footnote 2). Mr. Gentry then timely appealed to this Honorable Court.

The panel for the Sixth Circuit Affirmed the District Court's judgement not by affirming proper dismissal for lack of jurisdiction under the Rooker-Feldman Doctrine, but under the determination that Appellee/Defendant was entitled to absolute judicial immunity in his personal capacity and Eleventh Amendment immunity in his official capacity. Pursuant to 6th Cir. R. 35(a) A copy of the opinion sought to be reviewed En Banc is attached as ATTACHMENT 1.

ARGUMENT

The Panel Decision Is In Error Due To The Fact That The State Of Tennessee Waived State Sovereign Immunity In The Constitution of the State of Tennessee And Recently Enacted Unconstitutional Law

Long ago, in 1835, the State of Tennessee waived state sovereignty, and expressly granted citizens of the state, the right to bring suit against the state. Article I § 17 of The Constitution of the State of Tennessee states:

> **Suits may be brought against the state in such manner and in such courts as the Legislature may by law direct.**

Clearly, the founding fathers of Tennessee saw fit to waive state sovereignty at the time of ratification of the state constitution. State sovereignty was waived because the wounds caused by tyranny of the Crown of England were still freshly remembered. Having forgotten the lessons of our past, the state unconstitutionally enacted the Government Tort and Liability act encoded in state statute Tennessee Code Annotated Chapter 20, in a poorly veiled attempt to re-establish selective state sovereignty as a means to protect the state's abrogation of constitutionally guaranteed rights in state court proceedings. As stated above, the Tennessee legislature recently enacted the Government Tort and Liability Act and encoded in state statute the following unconstitutional laws.

> **29-20-205. Removal of immunity for injury caused by negligent act or omission of employees -- Exceptions -- Immunity for year 2000 computer calculation errors.**
>
> > **Immunity from suit of all governmental entities is removed** for injury proximately caused by a negligent act or omission of any employee within the scope of his employment **except if the injury arises out of:**
> > **(1) The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;**
> > **(2) False imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander,**

> **deceit**, interference with contract rights, **infliction of mental anguish, invasion of right of privacy, or civil rights;**
> **(5) The institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;**

This Honorable Court must see that this law is plainly unconstitutional: of this fact, there can be no doubt. The State cannot "pick and choose" to be immune from certain kinds of suits, while permitting other suits against the state. Other sections of the Government Tort and Liability Act permit suits against the state for "slip and fall" and "negligent driver" cases. The State of Tennessee must either choose total sovereignty, or no sovereignty, and cannot designate itself selectively sovereign.

Most certainly the State cannot grant immunity to public officials and judges for conduct such as: **False imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit**, interference with contract rights, **infliction of mental anguish, invasion of right of privacy, or civil rights,** nor **prosecution of any judicial or administrative proceeding, even if malicious or without probable cause.** *Actus repugnans non potest in esse produci.*

The Government Tort and Liability Act is an attempt by the state to abrogate constitutionally guaranteed rights, and this state law cannot be allowed to stand. Plainly stated, this law indicates state court corruption, and Mr. Gentry urges this Honorable Court to perform its duty and strike down

this unconstitutional and evil law and render it void. Mr. Gentry would be honored to expand and present to this Court in separate brief, further discourse on why this law is unconstitutional. There are many nuances to this law, not readily apparent, that make it unconstitutional in addition to the obvious false immunities.

In another case, Mr. Gentry has brought suit against the state for violations of 42 USC §§ 1985, 1983, 18 USC §§ 1346, 1341, 1512, 1951, 1952, and 1962 (as provided in 18 USC 1964). That case is pending in U.S. District Court MD TN, Case No. 3:17-cv-0020. In that case, Mr. Gentry has raised the same issue pertaining to this unconstitutional state law, and the State's Office of Attorney General and Reporter have remained silent resulting in Mr. Gentry's contentions **remaining unchallenged** by the state. See D. Ct MD TN 3:17-cv-0020 Dkt. No. 106 Memorandum of Law. Moreover, Mr. Gentry has proven a **pattern of similar unconstitutional state laws** enacted to protect state court corruption, also unchallenged. See D. Ct MD TN 3:17-cv-0020 Dkt. No. 111. The State's Attorney General remains silent and does not challenge Mr. Gentry's assertions of unconstitutional state law, due to the fact that the State Attorney General knows that these laws are unconstitutional, and were enacted to protect state court corruption.

This matter before the Court is beyond a matter of exceptional importance. It is a matter that subverts the intent of our founding fathers. In Federalist No. 43, in consideration of Article I § 9, U.S. Constitution, James Madison asked: "But who can say what experiments may be produced by the

caprice of particular States, by the ambition of enterprising leaders...?" Mr. Gentry asserts that today, we have one answer to that question. The State of Tennessee has enacted laws that provide immunity for the infliction of abhorrent conduct, conduct which subverts and makes unenforceable constitutionally guaranteed rights.

In addition to the fact that these unconstitutional state laws provide immunity for those who would subvert rights, these laws provide special privilege to those protected, in violation of the emoluments clause. Indeed, the caprice of the states and ambition of enterprising leaders has effectively established a new aristocracy through enactment of various unconstitutional state laws.

Mr. Gentry calls upon this Honorable Court to perform its duty and stand guardian, and protect the people from unconstitutional action and unconstitutional state law. Aside from the fact that providing immunity for abrogation of constitutionality protected rights is unconstitutional, it is critical to the well-being of our great republic to preserve constitutionally protected rights. Our President recognizes that we must protect the dignity and rights of every person.

> And above all, we value the dignity of every human life, protect the rights of every person, and share the hope of every soul to live in freedom. That is who we are. Those are the priceless ties that bind us together as nations, as allies, and as a civilization.

> **...And if we fail to preserve it, it will never, ever exist again. So we cannot fail.** (*President Donald Trump, Warsaw Poland, July 6, 2017*)

Indeed, perhaps we have already failed, and the rights guaranteed in our constitution are now unenforceable. The simple fact that the appellate panel in this case affirmed dismissal in an obvious case of due process rights violations, strongly suggests our constitution has become a "dead document" and unenforceable. The result of this Petition For Rehearing En Banc will determine with ultimate finality whether or not our great experiment in democracy has failed or has hope survival. As the United States, Supreme Court stated in ex parte Young, 209 US 123 (1908

> "It is most true that this court will not take jurisdiction if it should not; but **it is equally true that it must take jurisdiction if it should.** The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. **We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously perform our duty.**" (at 143)

Mr. Gentry has presented to the D. Ct MD TN 3:17-cv-0020 Dkt. No. 109, a compelling argument that it is not only in the interest of THE PEOPLE to preserve constitutionally protected rights, but it is in the interest of those who subvert rights, as well as in the interest of the country as a whole. See . Ct MD TN 3:17-cv-0020 Dkt. No. 109, p. 13 "*For The Good Of The People And in Public Interest.*" Although that pleading is outside the record of the present case, it is a closely related matter and Mr. Gentry begs the Court's indulgence to consider his arguments in that pleading. It is likely that case will soon be before this Court for consideration.

Mr. Gentry also urges the Court to review Dkt. No 90 Exhibit 1 of the same case which is an auditor's compilation report provided to US Congress in a requested brief referred to Congress by the Eleventh Circuit in Case No. 16-14969 FF (a similar case). That report is a compilation of the Annual Reports of various judicial oversight agencies from eighteen states which proves that there is no oversight of state court judges.

Due to the fact that the district court did not dismiss Mr. Gentry's case under the Eleventh Amendment which Mr. Gentry successfully argued against, and due to the fact that the panel re-raised the issue in its order, Mr. Gentry should be permitted to argue and prove that the state long ago waived Eleventh Amendment Sovereignty. Mr. Gentry's case should not be dismissed on a new contention by the panel already decided inapplicable by the district court.

The Panel Decision Contradicts Supreme Court Opinions

Regardless of the fact that the State of Tennessee waived sovereign immunity in its constitution, the fact remains that the U.S. Supreme Court has repeatedly affirmed Amendment XI immunity does not supplant Amendment XIV guaranteed right of due process. Due to the fact that the district court did not dismiss the case under Amendment XI immunity, Mr. Gentry only made a cursory argument in his Appellant's Brief due to page limitations (Dkt. No. 6). In his Appellant's Brief, Mr. Gentry cited *Fitzpatrick v. Bitzer, 427 US 445 - Supreme Court 1976* that "*Congress has the power to authorize federal courts to enter such an award against the State as a means of enforcing the substantive guarantees of the Fourteenth Amendment.*" Mr. Gentry also cited Hutto v. Finney, 437 US 678 - Supreme Court 1978, and that *"§ 1983 – a statute enacted pursuant to § 5 of the Fourteenth Amendment did intend municipalities and other local government units to be included among those persons to whom § 1983 applies.*" Mr. Gentry further refers the Court to: Atascadero State Hospital v. Scanlon, 473 US 234 – Sup. Ct. (1985, Monell v. New York City Dept. of Social Servs., 436 US 658 – Sup.Ct. (1978).

The Panel Decision Contradicts Sixth Circuit Opinions

In its Order, the panel cited Colvin v. Caruso, 605 F.3d 282, 289 (6th Cir. 2010 as supporting authority for their determination that Amendment XI immunity bars Mr. Gentry's claims.

In Colvin, proper consideration of that opinion is found in the language: "*We therefore need consider only whether Colvin is entitled to monetary damages for any alleged violation of his constitutional rights under § 1983.*" and further "*...all of the officials are entitled to Eleventh Amendment immunity on Colvin's claims for damages against them in their official capacities.*"

Clearly the Sixth Circuit ruled Eleventh Amendment immunity only applies to claims for damages. **Mr. Gentry does not seek monetary redress**, but rather seeks only equitable relief, which fact was recognized by the district court judge who stated in her opinion: "*Mr. Gentry, to the contrary, seeks only equitable relief, and it is, therefore, unclear whether these grounds for dismissal would be appropriate upon de novo review.*" (D. Ct Dkt. No. 27 footnote 2).

The Panel also cites Hessmer v. Bad Gov't No. 3:12-cv-590, 212 WL 3945315 M.D. Tenn 2012 stating: "*holding that judges in Tennessee are state officials and that therefore Eleventh Amendment sovereign immunity bars official capacity suits against state judges.*" Mr. Gentry is rather surprised the Sixth Circuit turns to M.D. Tenn. for supporting authority, citing a magistrate judge's report and recommendation from the Hessmer case. The exact quote of the magistrate judge in the Hessmer case is as follows: "*To the extent the defendant judges are state officials, the official-capacity claims against them are subject to dismissal on sovereign-immunity grounds under the Eleventh Amendment. Will v. Mich. Dep't of State Police, 491 U.S. 58, 66 (1989; see Colvin v. Caruso, 605 F.3d 282, 289 (6th*

Cir. 2010)" Intending no disrespect, but referring to a magistrate's R&R that cites the Colvin case is circular and, as evidenced above, the Colvin case establishes immunity from monetary damages, not immunity from equitable relief.

The Hessmer R&R also referred to the 1989 Supreme Court Will v. Mich. case. As this Court must know, the primary matter before the Supreme Court in that case was whether or not a state official acting in official capacity is a "person" within the meaning § 1983. This was a crucial opinion determining that state officials are not "persons" when acting in official capacity. Nevertheless, further consideration of that opinion demonstrates immunity only from damages and not equitable relief as evidenced in the following:

> The Michigan Court of Appeals vacated the judgment against the Department of State Police, holding that a State is not a person under § 1983, but remanded the case **for determination of the possible immunity of the Director of State Police from liability for damages.** *Will v. Mich. Dep't of State Police, 491 U.S. 58, 66 (1989)* (at 61)

Application of Rooker-Feldman Doctrine And/Or Amendment XI Makes USC Title 42 § 1983 Unenforceable

Considering the above arguments, it must now be obvious to this Honorable Court that application of the Rooker-Feldman Doctrine and/or the Eleventh Amendment to a case with obvious, gross, and repeated rights violations, in which the person

harmed only seeks equitable relief, as is true in this case before the Court, makes Title 42 § 1983 unenforceable. For this Honorable Court to make such a determination, would be to circumvent the intent of congress, and as stated in ex Parte Young would be treason to the constitution. In the Supreme Court Case, Mitchum v. Foster, the Supreme Court stated:

> **The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law**, "whether that action be executive, legislative, or judicial." Mitchum v. Foster, 407 US 225 - Supreme Court 1972 (at 242)

The Panel Decision Is In Error And A Judge Always Acts Outside Their Jurisdiction When Repeatedly Abrogating Or Violating Constitutionally Guaranteed Rights

Finding that Appellee/Defendant was entitled to judicial immunity in his personal capacity, the panel cited Mireles v. Waco, 502 U.S. 9, 11 -13 (1991). Mr. Gentry has already provided the district court substantial discourse and analysis of the Mireles case proving that Appellee/Defendant vitiated his judicial immunity through repeated and gross rights violations inflicted upon Mr. Gentry. Mr. Gentry's full and complete argument is contained in his pleading at (D. Ct Dkt. 21 p. 18 - 21). Therefore, Mr. Gentry is not only entitled equitable relief but he is entitled damages as well. Nevertheless, as complained and as noted by the district court judge, Mr. Gentry only seeks equitable relief.

In Summary of that argument and through analysis of the Mireles opinion, Appellee/Defendant vitiated his immunity according to Supreme Court opinion as follows: Mireles v. Waco case shows that judges are in fact not absolutely immune. At 12 in the Mireles case, The U.S. Supreme Court stated;

> **Rather, our cases make clear that the immunity is overcome in only two sets of circumstances.** First, **a judge is not immune from liability for nonjudicial actions**, i. e., actions not taken in the judge's judicial capacity. Forrester v. White, 484 U. S., at 227-229; Stump v. Sparkman, 435 U. S., at 360. Second, **a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.** Id., at 356-357; Bradley v. Fisher, 13 Wall., at 351.

In the Mireles case, at 13, the Supreme Court goes on to say;

> **Of course, a judge's direction to police officers to carry out a judicial order with excessive force is not a "function normally performed by a judge."** Stump v. Sparkman, 435 U. S., at 362.

In dissent to Mireles ruling, Justice Stephens stated;

> **He ordered them to bring respondent into his courtroom, and he ordered them to commit a battery. The first order was an action taken in a judicial capacity; the second clearly was not.** Ordering a battery has no relation to a function normally performed by a judge. If an

> interval of a minute or two had separated the two orders, it would be undeniable that no immunity would attach to the latter order. **The fact that both are alleged to have occurred as part of the same communication does not enlarge the judge's immunity.**

In the present case before the Court, the Appellee/Defendant, repeatedly and grossly violated Mr. Gentry's rights. Throughout proceedings Mr. Gentry remained completely respectful and submissive even as great harm was inflicted upon him through: (1) obstruction of evidence, (2) refusal to permit testimony, (3) refusal to permit legal arguments, (3) refusal to permit cross-examination of adverse witness testimony, (4) deprivation of property, (5) reliance upon obvious perjurious testimony, and (6) refusal to enforce state statutes. In addition to the above listed repeated and gross due process violations, federal crimes were also perpetrated against Mr. Gentry including: (1) extortion under color of law, (2) subpoena evasion, (3) conspiracy to deprive rights to name a few. Mr. Gentry has brought suit against the State of Tennessee in U. S. District Curt, M.D. Tenn. Case No. 3:17-cv-0020 seeking reform and redress for the crimes inflicted upon him. Again, in the present matter for this court, Mr. Gentry only seeks equitable relief.

There is no doubt that Appellee/Defendant has vitiated all judicial immunity according to Supreme Court opinion. Appellee/Defendant is neither immune in his personal capacity nor in his official capacity. It is never within a judge's jurisdiction, nor is it a judicial function, to grossly and repeatedly

violate constitutional rights, just as it is not within their jurisdiction, nor judicial function to order battery.

CONCLUSION

The Petition for rehearing en banc should be granted.

DATED: September 18, 2017

Respectfully submitted,

s/

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Appendix G:

MEMORANDUM OF LAW SUPPORTING PLAINTIFF'S MOTION TO ALTER JANUARY 26, 2017 MEMORANDUM & ORDER AND REQUEST FOR LEAVE TO AMEND

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
CIVIL RIGHTS DIVISION

JOHN ANTHONY GENTRY,	)
Plaintiff	)
	) CASE NO.
	) 3:16 -cv-02617
vs.	) Judge Trauger
	) /Brown
THE HONORABLE JUDGE	)
JOE H THOMPSON	) JURY
CIRCUIT COURT JUDGE	) DEMANDED (12)
Defendant	)
	)

MEMORANDUM OF LAW SUPPORTING PLAINTIFF'S MOTION TO ALTER JANUARY 26, 2017 MEMORANDUM & ORDER AND REQUEST FOR LEAVE TO AMEND

Pursuant to Fed. R. Civ. P. Rule 59 (e), Plaintiff hereby respectfully moves this Honorable Court to Alter or Amend the Order dated January 26, 2017, for good cause. This memorandum of law is presented to the Court pursuant to Local Rule 7.01, and accompanies *Plaintiff's Motion To Alter January 26, 2017 Memorandum & Order and Request for Leave to Amend.*

Pursuant to Fed. R. Civ. P. Rule 59 (e) as amended, "A motion to alter or amend a judgement must be filed no later than 28 days after the entry of judgement". This Court's Memorandum & Order was entered into the record on January 26, 2017.

Plaintiff's Motion to Alter or Amend and accompanying Memorandum of Law are properly filed on February 6, 2017, only eleven days after entry of the Court's Order. Therefore, Plaintiff's Motion to Alter or Amend and accompanying memorandum of law are filed timely.

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TABLE OF AUTHORITIES

Cases

As this Honorable Court knows, a Rule 59 (e) motion to alter or amend must clearly establish either a manifest error of law or fact. Plaintiff respectfully asserts the Court errored in; (1) relying on the Rooker-Feldman Doctrine that precludes jurisdiction of this court, (2) asserting that denial of equal protection or deprivation of liberty or property in violation of the law are necessary elements to a 42 U.S.C. § 1983 cause of action and claim, (3) in assessing the facts of Plaintiff's Amended Complaint, and (4) in stating the "only appropriate vehicle" with which to challenge a R&R is under Fed. R. Civ. P. Rule 72(b)(2).

STANDARD OF REVIEW

Rule 59(e) permits a litigant to file a motion to alter or amend a judgment. Fed. R. Civ. P. 59(e). A motion under Rule 59(e) is not an opportunity to re-argue a case, Rule 59(e) motions are aimed at re consideration, not initial consideration. *Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F. 3d 367 – (6th Cir. 1998. citing, FDIC v. World Univ. Inc., 978 F.2d 10, 16 (1st Cir. 1992).* **Motions to alter or amend judgment may be granted if there is a clear error of law.** *GenCorp, Inc. v. American Intern. Underwriters, 178 F. 3d 804 – (6th Cir. 1998, citing Sault Ste. Marie Tribe, 146 F.3d at 374.* **Rule 59(e) may be utilized in timely attempts to vacate judgment.** *Huff v. Metropolitan Life Ins. Co., 675 F. 2d 119 – (6th Cir. 1982) citing Foman v. Davis, 371 U.S. 178, 181, 83 S.Ct. 227, 229, 9 L.Ed.2d 222 (1962).* **The grant or denial of a Rule 59(e) motion is within the informed discretion of the district court, reversible only for abuse.** *Huff v. Metropolitan (supra) citing United States Labor Party v. Oremus, 619 F.2d 683, 692 (7th Cir. 1980).*

REQUEST FOR LEAVE TO AMEND

In the case, *Kottmyer v. Maas, 436 F. 3d 684 - Court of Appeals, (6th Cir. 2006*, the 6th District Court of Appeals stated;

> Under Federal Rule of Civil Procedure 15(a), a district court should freely grant a plaintiff leave to amend a complaint "**when justice so requires.**" Fed. R. Civ. Pro. 15(a) (at 692).

Surely after de novo review of Plaintiff's Amended Complaint, this Court must recognize that Plaintiff's right of due process was grossly and repeatedly violated and certainly this Court desires to ensure that all Citizen's rights guaranteed by U.S. Constitution, are enforced. The facts in Plaintiff's Complaint are undeniable and irrefutable violations of Plaintiff's right of due process. Lack of enforcement of rights guaranteed in the U.S. Constitution invites corruption of the courts, and returns us to the same injustices suffered under the Courts of the Crown in Old England. Those injustices suffered under the Crown are what caused our founding fathers to define and protect our rights in our federal constitution. Surely this court does not desire to turn back the clock, and only dismissed this case based upon the appearance of lack of jurisdiction and failure to state a claim, both of which are easily reparable errors.

In the U.S. Supreme Court case, Mathews v. Eldridge, 424 US 319 - Supreme Court 1976, our Supreme Court stated;

> The "**right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.**" Joint Anti-Fascist Comm. v. McGrath, 341 U. S. 123, 168 (1951) (Frankfurter, J., concurring).The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U. S. 545, 552 (1965). (at 333)

Until one suffers a "grievous loss" as Plaintiff did while being denied his right to be heard, the pain of emotional turmoil, mental anguish and financial hardship cannot fully be understood or appreciated. Plaintiff is an Honorably Discharged Veteran and hearing impaired caused by his service to country and wholeheartedly believes in our system of justice. It is Plaintiff's belief in our system of justice, that gives him strength to pursue fairness until he exhausts every form of redress to which he is entitled.

As an elite Reconnaissance Marine, Plaintiff endured the most arduous of hardships in the most extreme environments of the globe. The hardships Plaintiff gladly endured in service to country, pale in comparison to the emotional distress Plaintiff has suffered as a result of not being heard in the courts of the country to which he gave service. Although Plaintiff has suffered great injustice as a result of not being fairly heard by the courts, Plaintiff ultimately still believes in our system of justice. Plaintiff begs this Honorable Court, that in light of the facts of the case, that **justice requires Plaintiff's request for leave to amend be granted.**

In the Supreme Court case, Foman v. Davis, 371 US 178 - Supreme Court 1962, the Supreme Court stated;

> **Rule 15 (a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded.** See generally, 3 Moore, Federal Practice (2d ed. 1948), ¶¶ 15.08, 15.10. **If the underlying facts or circumstances relied upon by a plaintiff may**

> **be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive** on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—**the leave sought should, as the rules require, be "freely given."** Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, **but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.** (at 182)

As argued below and with supporting authorities, there are three merits upon which to grant leave to amend and which are easily curable. First, Plaintiff respectfully asserts the Court erred in relying on Defendant's assertion that the Rooker-Feldman Doctrine bars jurisdiction in this matter. Second, any defects in Plaintiff's complaint are easily curable and the Court should grant leave to amend to ensure justice is served. Third, Plaintiff respectfully asserts the Court was mistaken in asserting that "*While Mr. Gentry has brought a claims* (claim *sic) for violation of his constitutional rights, he has neither alleged that he is a member of a protected class denied equal protection of the law nor that he has been deprived of liberty or property or in violation of the law...*". Plaintiff respectfully

asserts the court's assessment is in error that § 1983 requires that either a complainant be a member of a protected class, or that the complainant must be deprived of liberty. See Plaintiff's arguments below.

ROOKER FELDMAN DOCTRINE DOES NOT BAR JURISDICTION

Meaning no disrespect to this Honorable Court, Plaintiff respectfully asserts the Court is in error in its reliance on the Rooker-Feldman Doctrine as barring jurisdiction from Plaintiff's claim and causes of action. Plaintiff asserts the court is in error for several errors as follows;

As evidenced in the below opinion and analysis; (1) the **Supreme Court stated Rooker-Feldman is being misconstrued by lower District Courts**, (2) the **Supreme Court stated Rooker-Feldman does not augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings of state courts**, (3) the Supreme Court has further plainly stated Rooker-Feldman doctrine applies to "cases brought by state-court losers complaining of **injuries caused by state-court judgements rendered before the district court proceedings commenced...**" (4) **the language of § 1983, explicitly states judges are liable to suit**, (5) federal courts have the authority to enforce the guarantees of the fourteenth amendment, (6) **this case is not inextricably intertwined with state court proceedings**, (7) the **Eleventh amendment does not supersede the fourteenth amendment**, (8) according to simple logic, **if a constitutional amendment like the Eleventh Amendment cannot supersede the Fourteenth Amendment, then neither can a mere**

misconstrued doctrine and opinions from 1923 and 1983 supersede Fourteenth Amendment rights either. The legal argument and logic of this argument is irrefutable. Accordingly, Plaintiff respectfully asserts that this Court's Opinion and Order are in error in relinquishing federal jurisdiction under the Rooker-Feldman doctrine. Plaintiff establishes and proves these assertions as follows;

The Supreme Court stated in Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 US 280 - Supreme Court 2005

> Variously interpreted in the lower courts, **the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U. S. C. § 1738.** See, e. g., Moccio v. New York State Office of Court Admin., 95 F. 3d (at 195, 199-200). (at 283)

As evidenced above, The Supreme Court plainly recognizes that States and lower District Courts are construing Rooker-Feldman far beyond the intent of the underlying opinions in those cases. In the Exxon case, the court plainly stated **the Rooker-Feldman Doctrine does not otherwise** override, supplant, or **augment** <u>**the circumscribed doctrines that allow federal courts to stay or dismiss proceedings**</u> **in deference to state-court actions.** So plainly federal courts have jurisdiction to dismiss state court proceedings which is exactly one of the

claims for relief Plaintiff desires. The Supreme Court specifically stated in the Exxon case as follows;

> **The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name**: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. **Rooker-Feldman does not otherwise override or supplant** preclusion doctrine or **augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions**. (at 284)

The Supreme Court could not have been more clear; "***We hold today... Rooker-Feldman does not... ...augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions***". The Supreme Court of the United States plainly stated federal courts have jurisdiction to stay or dismiss proceedings of state-court actions.

In the case, Fitzpatrick v. Bitzer, 427 US 445 - Supreme Court 1976, the Supreme Court stated;

> The principal question presented by these cases is whether, as against the shield of sovereign immunity afforded the State by the Eleventh Amendment, Edelman v. Jordan, 415 U. S. 651 (1974), **Congress has the power to authorize federal courts to enter such an award against the State as a means of**

enforcing the substantive guarantees of the Fourteenth Amendment. The Court of Appeals for the Second Circuit held that the effect of our decision in Edelman was to foreclose Congress' power.

In the case, Atascadero State Hospital v. Scanlon, 473 US 234 - Supreme Court 1985 In this case, the Supreme Court stated;

> Moreover, the **Eleventh Amendment is "necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment,"** that is, by Congress' power "**to enforce**, by appropriate legislation, the **substantive provisions of the Fourteenth Amendment.**" Fitzpatrick v. Bitzer, 427 U. S. 445, 456 (1976). As a result, when acting pursuant to § 5 of the Fourteenth Amendment, **Congress can abrogate the Eleventh Amendment without the States' consent.**

By the same principles in the Fitzpatrick and Atascadero cases, the Rooker-Feldman Doctrine cannot supersede the provisions of the Fourteenth Amendment of the U.S. Constitution. Certainly, if the Eleventh Amendment, a ratified amendment to our federal constitution, cannot supersede the Fourteenth Amendment, then certainly a doctrine that is not part of our constitution cannot supersede the Fourteenth Amendment either. This logic is irrefutable and undeniable.

Moreover, although further argument should not be necessary, in the Exxon case, the Supreme Court referred to the 2nd Circuit Court of Appeals case,

Moccio v. New York State Office of Court Admin., 95 F. 3d (1996), No. No. 1024, Docket 95-7826, as support of its opinion that the lower District Courts have been misconstruing the Rooker-Feldman Doctrine. While this Court states, another District Court's Opinion is not binding on this Honorable Court, Plaintiff respectfully suggests that if the Moccio case, was respected enough by the Supreme Court to cite, then perhaps it is a case worthy of this Court's consideration also. In Moccio, the 2nd Circuit Court of Appeals stated;

> Since Feldman, the Supreme Court has provided us with **little guidance in determining which claims are "inextricably intertwined"** with a prior state court judgment and which are not. But see Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 24-26, 107 S.Ct. 1519, 1530, 95 L.Ed.2d 1 (1987) (Marshall, J., concurring) (applying Rooker-Feldman). **The result has been inconsistency in the lower federal courts faced with challenges based upon the Rooker-Feldman doctrine.** See Gary Thompson, Note, The Rooker-Feldman Doctrine & the Subject Matter Jurisdiction of Federal District Courts, 42 Rutgers L.Rev. 859, 880-84 (1990). If the precise 199*199 claims raised in a state court proceeding are raised in the subsequent federal proceeding, Rooker-Feldman plainly will bar the action. **On the other hand, we have held that where the claims were never presented in the state court proceedings and the plaintiff did not have an opportunity to present the claims in those proceedings, the claims are not**

"inextricably intertwined" and therefore not barred by Rooker-Feldman. Texaco, 784 F.2d at 1144-45. (at 199)

In the present matter before this Court, the facts show that Plaintiff was not allowed to present arguments and repeatedly not even allowed to speak. So of course, Plaintiff in this matter did not have an opportunity to present his claims of due process violations in state court proceedings and therefore his cause of action is not barred. In Moccio, the 2nd Circuit Court of Appeals went on to state;

> The specific question we must answer, therefore, **is whether Moccio, having failed to raise these constitutional claims in the state court proceeding where he was afforded the opportunity to do so, is barred by the *Rooker-Feldman* doctrine from raising the claims in the district court.** (at 199)

> Commentators have generally taken the view that the Rooker-Feldman doctrine is at least **coextensive with the principles of res judicata** ("claim preclusion") **and collateral estoppel** ("issue preclusion"). One set of commentators, for instance, has noted that the effect of the Rooker-Feldman doctrine has been to "transform[] res judicata [and collateral estoppel] doctrine[s] into [rules] that lower federal courts lack jurisdiction to review state courts." 18 Wright, Miller & Cooper, Federal Practice & Procedure § 4469, at 663-64 (1981) (at 199)

As this Court certainly knows, in order for res to apply, the claims must be for the same causes of action and collateral estoppel falls under the preclusion doctrine that litigants are not allowed to re-litigate the same issues. Plaintiff's cause of action in this case is for violations of Plaintiff's right of due process, entirely separate from a complaint for divorce and res does not apply. Pertaining to re-litigation and preclusion theory, neither does Plaintiff seek to re-litigate his divorce proceedings in federal court. Plaintiff seeks only the federal court's enforcement of Plaintiff's right of due process guaranteed by the fourteenth amendment.

In Moccio, the 2nd Circuit Court of Appeals further states;

> Moccio's second federal cause of action, which states that "[b]y failing to treat him like similarly-situated persons and by subjecting him to such harsh sanction ... [the OCA] violated the equal protection clause of the Fourteenth Amendment," fares no better under *Rooker-Feldman.* Complaint at 4. Moccio does not allege that the OCA's classification of him was along suspect lines, **nor does he allege that any of his fundamental rights have been impaired.** (at 201)

As stated below, intuitively, Plaintiff was denied equal protection and most certainly his fundamental rights were impaired and repeatedly so.

> **As long as there is any reasonably conceivable state of facts** that could provide the rational

basis for the OCA's decision, **it will not violate the Equal Protection Clause.** (at 201)

Again, as stated below, Plaintiff easily demonstrates his is a protected class and his right of Equal Protection was plainly violated. In Moccio, the 2nd Circuit Court of Appeals further states;

> **The second prong of the collateral estoppel test — whether Moccio had a full and fair opportunity to litigate in the Article 78 proceeding the issues he now raises** — is also met as to both of his federal causes of action. **The burden to show the absence of such a full and fair opportunity rests with Moccio.** (at 201)

The facts already stated in Plaintiff's Amended Complaint already show the absence of a full and fair opportunity to litigate not only the underlying litigation but also gross repeated violations of Plaintiff's right of due process. Still further in Moccio, the 2nd Circuit Court of Appeals further states;

> **Moccio was a full participant, was represented by counsel, and had the opportunity to present evidence in the Article 78 proceeding.** Moccio argues that he nonetheless was denied a full and fair opportunity to litigate these issues because there is a general rule of no discovery in a state agency disciplinary hearing and that, therefore, he was unable to produce documentary evidence to demonstrate that he

was treated differently than similarly-situated officers.

The facts already stated in Plaintiff's Amended Complaint show, as a result of violations of Plaintiff's right of due process, Plaintiff was forced to represent himself as involuntary pro se and he was repeatedly denied a full and fair opportunity to litigate.

Accordingly, no matter how you look at this case, the Rooker-Feldman Doctrine is not applicable to the present matter before this Court, and jurisdiction of this Honorable Court is not barred under this sometimes misconstrued doctrine. Plaintiff intends no disrespect to this

Honorable Court, but this Court's Order dismissing Plaintiff's Complaint is in error. Plaintiff begs this Court to reconsider and reverse its Order dismissing Plaintiff's Complaint.

ERROR IN ASSESSING ELEMENTS NECESSARY FOR U.S.C. 42 § 1983 COMPLAINT

U.S.C 42 §1983 states as follows;

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in

> equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

As noted in the language of U.S.C. 42 § 1983, it is not necessary that the offended be a member of a protected class nor deprived of liberty or property. § 1983 simply states every person who under color law, subjects or causes any Citizen to be deprived of any rights, privileges or immunities guaranteed by the Constitution and laws shall be liable to the injured party in an action at law. Meaning no disrespect, the District Court Judge further does not provide any supporting authority for the Court's assertion in this regard. To the contrary, in Parratt v. Taylor, 451 US 527 - Supreme Court (1981), the Supreme Court stated;

> Both Baker v. McCollan and Monroe v. Pape suggest that § 1983 affords a "civil remedy" for deprivations of federally protected rights caused by persons acting under color of state law without any express requirement of a particular state of mind. Accordingly, **in any § 1983 action the initial inquiry must focus on whether the two essential elements to a § 1983 action are present: (1) whether the conduct complained of was committed by a person**

> **acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.** (at 535)

As Plaintiff asserts, and as the Supreme Court agrees, only two elements are essential to a U.S.C. 42 §1983 complaint; acting under color of law, and deprivation of rights, privileges, or immunities secured in the Constitution or laws of the United States.

In a more recent case, Robertson v. Lucas, 753 F. 3d 606 - Court of Appeals, 6th Circuit (2014), the 6th District Court concurred and reaffirmed the Supreme Court's position and stated;

> Appellants asserted numerous claims under 42 U.S.C. § 1983 and Bivens, 403 U.S. at 392, 91 S.Ct. 1999. We review Bivens and § 1983 actions under the same legal principles, except for the requirement of federal action under Bivens and state action under § 1983. **A plaintiff must prove two elements to prevail on either type of claim**: (1) that he or she was **deprived of a right secured by the Constitution** or laws of the United States; and (2) that **the deprivation was caused by a person acting under color of law**. Bivens, 403 U.S. at 392, 91 S.Ct. 1999; Marcilis v. Twp. of Redford, 693 F.3d 589, 595 (6th Cir.2012); Redding v. St. Eward, 241 F.3d 530, 532 (6th Cir.2001). (at 614)

Based on the above clear precedence in the matter, and the fact that this Honorable Court did not cite any contrary precedence, the assertion that Plaintiff must be a member of a protected class, or must have been deprived of liberty or property appears to be an assertion in error. Regardless, if Plaintiff is properly granted leave to amend, Plaintiff can easily satisfy these two elements with very simple arguments.

Plaintiff most definitely is a member of a protected class. Plaintiff is a litigant. All litigants are a protected class in that they are protected by the U.S. Constitution which guarantees a right of due process which includes a right to be heard. Again, in the case, Armstrong v. Manzo, 380 US 545 - Supreme Court 1965, the United States Supreme Court stated;

> A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean, 234 U. S. 385, 394. **It is an opportunity which must be granted** at a meaningful time and **in a meaningful manner.**

Perhaps, since this argument is so intuitive, so simple, Plaintiff need not amend in this particular regard to show that he is a member of a protected class.

Plaintiff can easily further amend his complaint to show that he was denied liberty **and** property. The facts in Plaintiff's Amended Complaint already show this to be true. In Defendant denying Plaintiff's right to be heard, Plaintiff was denied his right and liberty to present

evidence, oral testimony and oral arguments. The facts show Plaintiff was wrongfully denied income from a business and patent pending product that Plaintiff made successful. In wrongfully being denied these things, Plaintiff was denied liberty and pursuit of happiness which are inalienable rights. Plaintiff can easily amend his complaint to prove these facts true if properly granted leave to amend.

MOTION TO STRIKE SHOULD BE ADDRESSED AND GRANTED

In a footnote this Honorable Court's Order, the Court stated "There is no legal authority to suggest that these are proper bases (basis sic) for objecting to the R&R". Plaintiff respectfully disagrees. Fed. R. Civ. P. Rule 12 (f) states;

> (f) MOTION TO STRIKE. **The court may strike** from a pleading an insufficient defense or any redundant, immaterial, **impertinent**, or scandalous matter. The court may act:
> (1) on its own; or
> (2) **on motion made by a party** either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

In the case, Federal Deposit Ins. Corp. v. Butcher, 660 F. Supp. 1274 - Dist. Court, ED Tennessee (1987) Civ. No. 3-84-762, the U.S. District Court E.D. stated;

> Although motions to strike are generally not favored and should be used sparingly, Brown & Williamson Tobacco Corp. v. United States,

> 201 F.2d 819 (6th Cir.1953), as Rule 12 iterates, **the motion should be granted where the defenses to be stricken are insufficient as a matter of law**, Anchor Hocking Corp. v. Jacksonville Electric Authority, 419 F.Supp. 992 (D.C.Fla.1976), immaterial in that they "have no essential or important relationship to the claim for relief or the defenses being pleaded," Fleischer v. A.A.P., Inc., 180 F.Supp. 717, 721 (D.C.N.Y.1959), **or are impertinent in that the "matter consists of statements that do not pertain, and are not necessary, to the issues in question.**" Commonwealth Edison Co. v. Allis-Chalmers Manufacturing Co., 245 F.Supp. 889 (D.C.Ill. 1965), rev'd in part, aff'd in part on other grounds, 323 F.2d 412 (7th Cir.1963), cert. denied, 379 U.S. 939, 84 S.Ct. 794, 11 L.Ed.2d 659. The granting of a motion to strike is in the discretion of the court. **If the court determines** the defenses to be insufficient as a matter of law, immaterial, **or impertinent the granting of a motion to strike is appropriate.**

As stated in Plaintiff's objection to the Magistrate's R&R, Plaintiff complained;

> The Magistrate's characterization of Plaintiff's complaint is a complete misrepresentation of, and effectively ignores the facts of Plaintiff's cause of action. Plaintiff's Amended Complaint (Docket Entry 6) is unnecessarily and unjustly belittled, and characterized with demeaning terms, suggesting that Plaintiff's Complaint (Docket Entry 6) and Memorandum Response (Docket

Entry 17) are not well-written legal documents which is untrue.

In his Amended Complaint (Docket Entry 6, p. 9 – 37), Plaintiff organized his Statement of Facts in order of severity of due process violations rather than chronological order. Plaintiff intentionally organized his pleadings in this manner so as to present his facts in a more meaningful manner. Statements such as "*The Plaintiff then backtracks*" and "*The Plaintiff then again backtracks*" appear to be demeaning characterizations of Plaintiff's Amended Complaint, and as such are unnecessary.

The magistrate judge's further characterizations; "*what appears to be a final hearing*", "*Defendant was biased and should have disqualified*", "*contends that the Defendant showed his bias*", and other similar statements are all mischaracterizations of Plaintiff's complaint. Plaintiff's complaint is not that the Defendant was biased (although this is most certainly true); Plaintiff's detailed statements of fact are clear and well stated, evidenced by certified court reporter prepared transcripts, and show a clear cause of action for repeated and multiple violations of Plaintiff's constitutionally guaranteed right of due process. The facts of this case, and supporting evidence are undeniable and irrefutable. (Docket Entry 21, p. 3 – 4).

Plaintiff asserts that this Honorable Court should have considered and ruled upon Plaintiff's Motion to Strike and his complaint that the

Magistrate's R&R was belittling and demeaning in nature. Considering that Plaintiff is pro se, such a characterization of Plaintiff's Amended Complaint was unnecessary, impertinent and beneath a federal magistrate judge. Moreover, Plaintiff asserts the Magistrate's characterization of Plaintiff's Amended Complaint was baseless and without any foundation whatsoever.

CONCLUSION

Based upon the above sound arguments of law and supporting authorities Plaintiff begs;

1. The Court's reconsider and reverse the Order dismissing Plaintiff's Amended Complaint as Rooker-Feldman Doctrine plainly does not bar jurisdiction in this matter.
2. Plaintiff should be granted leave to amend his Complaint so as to clarify, correct, and or, eliminate any defects.
3. The Court reconsiders, and based on the facts, addresses Plaintiff's Motion to Strike.
4. The Court reconsiders the facts that Plaintiff is a member of a protected class (litigants) and he was denied Equal Protection and Due Process.

Respectfully submitted,

s/_____

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Appendix H:

Constitutional & Statutory Provisions

United States Constitution: Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

United States Constitution: Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution: Amendment XIV, Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S. Code Section 1983 – Civil action for deprivation of rights

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