

MEMORANDUM OF LAW

I STANDING, RIPENESS, ABSTENTION DO NOT BAR THIS CASE

1. The Plaintiff has standing to sue for damages and injunctive relief. Cf. Roe v. Ogden No. 2 v. Ogden, 253 F.3d 1225 (10th Cir. 2001) (a person who is qualifying or preparing to qualify and apply for admission to the Bar may challenge the Bar's rules). Dr. Hason has already been damaged, but seeks to avoid further damage on re-Application and seeks to protect other disabled applicants.
2. The issues are ripe, as no further facts will develop in the defunct application proceeding. The FBBE and Dr. Hason have not proceeded past the specifications point, two years ago. There is no credible evidence that either side will proceed further.
3. The claims are not subject to abstention doctrines. In particular, *Younger v. Harris* does not apply to the damage claims and there is no pending criminal or quasi-criminal, or any proceeding pending that implicates important state interests. Cf. Wexler v. Lepore, 385 F.3d 1336, 1341, fn. 7 (11th Cir. 2004) (*Younger* applies only when federal court relief would "interfere" with or "enjoin" a pending state proceeding) In addition, when there is no such interference proceedings theoretically may be ongoing in state and federal courts, as when damages are sought in the second action in federal court based on facts related to the first state forum case. It is also reasonable that certain civil rights statutes like the ADA must trump abstention, because comity and federalism must take a back seat in federal lawsuits based on such comprehensive civil rights statutes which carry sweeping mandates and which are designed to regulate state government based discrimination, herein in relation to government based services and activities, licensing

here, (i.e. Title II of the ADA is material to our inquiry). With the abstention approach of the Defendants, one could have the unwieldy result that the Supreme Court of Florida might be requested to award damages under the ADA against itself or the FBBE. The facts of the within case also suggest that the now defunct proceedings were “remedial,” rather than “coercive,” e.g., perhaps Dr. Hason was being encouraged by the FBBE to resolve the debt questions by settling or otherwise. Cf. Smolow v. Hafer, 353 F. Supp.2d 561, 571-572 (E.D. Penn. 2005) (and cases cited therein). So, on one more basis *Younger* abstention would be wrong in the within case..

4. The *Rooker-Feldman* doctrine applies to a state court’s final judgment and there is none, in the facts of this case, to deprive this Court of jurisdiction. Cf. Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005)

ADA, TITLE II-the 11th AMENDMENT DOES NOT BAR THIS CLAIM.

5. The 11th Amendment does not shield state agencies from liability for Americans with Disabilities, Title II, violations when the remedy was congruent and proportional to the 14th Amendment discrimination to be avoided. Cf. Tennessee v. Lane, 541 U.S. 509 (2004). The 11th Circuit has extended the Supreme Court’s approval of the ADA, Title II, in a non-fundamental right context in Association for Disabled Americans, Inc., et al v. Florida International University, No. 02-10360 (11th Cir. April 16, 2005). The other recent case cited by Defendants from the 11th Circuit can be distinguished from the facts of the within case, because there the 11th Circuit refused to re-write the 8th Amendment in the guise of enforcing the ADA. Furthermore, the proper court to hear Dr. Hason’s federal case is this one, not the Supreme Court of Florida which would have to wrestle

with awarding damages against itself or the FBBE. Defendants reliance on Dale v. Moore, 121 F.3d 624 (11th Cir. 1997) is not to the contrary, since the Bar applicant had already received a final decision from the Supreme Court of Florida on his application and thus *Rooker-Feldman* barred further litigation in the federal District Court.

Defendants also cited McReady v. Michigan State Bar Standing Committee on Character and Fitness, 926 F. Supp. 618 (W.D. Mich. 1995), aff'd 100 F.3d 957 (6th Cir. 1996), but those Courts, in fact, explicitly did not abstain from hearing the ADA claim therein, but heard the claim and dismissed on the particular facts that did not fit qualify for coverage under the ADA.

6. With respect to the “congruence and proportionality” requirement Congress had tons of evidence before it of state court involvement in discrimination against the disabled and substantial evidence before it of discrimination in the professional licensing arena and so did the Supreme Court in Tennessee v. Lane, *Ibid*. The briefs filed by the Justice Dept. in *Tennessee* and the “history brief” filed by the Paralyzed Veterans of America group are replete with this type of evidence relied upon by the Supreme Court. These briefs are online at www.Bazelon.org. Due to the intractability of the problem Congress faced, Congress decided that a comprehensive mandate was necessary to uproot discrimination against the disabled. Congress, under such circumstances, has 14th Amendment power to prohibit constitutional violations and even prohibit a wider swath of conduct necessary to accomplish its purpose. The remedy has to be comprehensive to work even somewhat effectively. The disabled are still repeatedly discriminated against in the professional licensing arena and subject to bizarre treatment by otherwise reasonable state officials.

7. The ADA covers all state instrumentalities including the judicial branch.
8. The Dept. of Justice was empowered to write regulations to guide enforcement of the ADA and has included a separate paragraph on licensing agencies. The regulations of the DOJ are entitled to substantial deference by this Court when they are reasonable.
9. The right to licensure is a very important right; it is a supra-right to work and, thus, should be considered fundamental or quasi-fundamental. The right to work, or limitations thereon, is perhaps the greatest means of executing discrimination and blocking the upward forces of an individual's life or that of his kind. With work comes money, confidence, success, time for thought and influence.

INDIVIDUAL DEFENDANTS HEREIN DO NOT HAVE ABSOLUTE
IMMUNITY

10. The Supreme Court of Florida and/or its delegate the Florida Board of Bar Examiners essentially sits as an administrative agency in the bar qualification process, pursuant to a delegation of legislative power from the Florida legislature (which may at least, presumably, withdraw the rulemaking delegation). Cf. Exhibit A, Ch. 55-2976, Laws of Florida.. The Supreme Court of Florida only exercises its constitutional power after the FBBE makes an administrative recommendation. Cf. Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719 (1980), where the Supreme Court of Virginia was held to be acting in a legislative capacity when it passed bar qualification rules. The Bar Board members and staff are not judges and are not acting as judges (except, perhaps, when they sit as decision-makers in a formal hearing, where they have quasi-judicial immunity). Cf. Forrester v. White, 484 U.S. 219 (1988). They have

only made administrative decisions with respect to Dr. Hason, primarily investigative; there has been no formal hearing and they have not interfaced with the Supreme Court concerning Dr. Hason. Their role may be somewhat analogous to judges when judges act *administratively* to hire court staff and if sued, e.g., for an equal protection violation, have qualified immunity and not absolute immunity. The FBBE members and staff are entitled to qualified immunity, at best, in this case and not absolute judicial immunity. Qualified immunity is vitiated by bad faith, as alleged by Dr. Hason. Ms Hunter's acts complained about were administrative in nature. They do not rise to the level of judicial acts at all. Absolute immunity is only available when absolutely necessary to protect the essential parts of the judicial process, i.e. decisions made by judges acting in their judicial capacities. Cf. McMillan v. Svetanoff, 793 F.2d 149 (7th Cir. 1986), cert. den. 479 U.S. 985, appeal after remand 878 F.2d 186. In addition to damages, injunctive relief can be directed against Ms. Hunter under the ADA and *Ex Parte Young*.

DELEGATION AND DUE PROCESS IS INADEQUATE AND INSUFFICIENT

11. The Complaint, additionally, alleges facts that reflect capricious acts delaying Dr. Hason's licensure as an attorney in Florida, taken under a much too imprecise delegation of authority and the ensuing Court and/or FBBE rulemaking or ad hoc making of subjective "rules" for each case, thus, are capable of a variety of manipulations, as well as the much too free exercise of subjective biases and improper motives; all of which did happen in the FBBE's consideration of Dr. Hason's application making this case a perfect vehicle for remediation of those flaws. This delegation and its application in Dr. Hason's case violate the 14th Amendment affecting liberty and property interests, including fees.

Punishment, such as a denial of licensure and the ramifications likely to occur thereafter in other jurisdictions, must imposed according to standards of substantive law and, because of the penalties to be imposed, including sanctions in other jurisdictions, the substantive law and procedure must adhere the highest and strictest demands of due process.

12. The delegation and application of the rules by the FBBE generally speaking and, particularly, in Dr. Hason's case, also operates in the nature of a bill of attainder, violating the U.S. Constitution, Art. I, Sec. 10, or "special legislation, prohibited by Florida's Constitution, punishing Dr. Hason for constitutionally permitted conduct, punishing conduct that was not punishable at the time it occurred, according to a reasonable man standard and, in addition, doing so and planning to do so, without adequate safeguards of due process.

13. In addition to potentially addressing these important deficiencies substantive and procedural issues hampering the Bar qualification process, Dr. Hason prays that this Court consider either directing or suggesting to the FBBE that, in order to increase fairness, formal hearings should be conducted by independent, neutral and objective administrative law judges, not members of the FBBE, (who may not be sufficiently qualified judicially, or sufficiently independent).

IN CONCLUSION, the motion of the Defendants should be denied and Dr. Hason should be allowed proceed to trial on his claims.

Dated: June 1, 2006


MICHAEL J. HASON, M.D., J.D.

CHAPTER 29796
SENATE BILL NO. 527

AN ACT declaring that admissions and regulating admissions of attorneys and counselors to practice law in the State of Florida as a judicial function and declaring the Supreme Court of Florida to be the proper agency to govern and regulate admissions of attorneys and counselors to practice law in said state; repealing certain statutes and other laws in conflict herewith; and providing this Act shall not affect the right of the Legislature to at any time change the provisions hereof and reserving such right to the Legislature.

WHEREAS, the powers of government of the State of Florida are divided into three departments,—Legislative, Executive and

Judicial, and the Constitution of said State provides that no person properly belonging to one of the departments shall exercise any powers appertaining to either of the others, except in cases expressly provided in said Constitution; and

WHEREAS, the admission and regulating admission of attorneys and counselors to practice law in the State of Florida naturally and logically belong to the Judicial Department of government and are judicial functions; THEREFORE

Be It Enacted by the Legislature of the State of Florida:

Section 1. That admissions of attorneys and counselors to practice law in the State of Florida is hereby declared to be a judicial function.

Section 2. The Supreme Court of Florida, being the highest Court of said State, is the proper Court to govern and regulate admissions of attorneys and counselors to practice law in said State.

Section 3. To effectuate the provisions of Section 1 hereof, Sections 454.02, 454.03, 454.031, 454.04, 454.05, 454.06, 454.07, 454.08, 454.09, 454.10, 454.12, 454.13, 454.14, 454.15, 454.16, 454.21, 454.22, 454.35, 454.36, Florida Statutes, 1953, and any other laws in conflict herewith, be, and they are hereby severally repealed.

Section 4. The State Board of Law Examiners shall deliver to the Supreme Court of Florida all records, equipment and funds on hand on the effective date of this Act.

Section 5. All monies held by any State Officer for the credit or account of the State Board of Law Examiners on the effective date of this act, shall be paid over by said Officer or Board to the Supreme Court.

Section 6. This Act shall take effect Nov. 1, 1955.

Section 7. This Act shall not affect the right of the Legislature at any time to change the provisions hereof and the Legislature hereby expressly reserves that right.

Approved by the Governor June 6, 1955.

Filed in Office Secretary of the State June 7, 1955.

Exhibit A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail
to:

Philip J. Stoddard, Intervenor
248 Shores Boulevard
St. Augustine, FL 32086

James J. Dean, Esq.
Messer Caparello & Self, P.A.
P.O. Box 1876
Tallahassee, FL 32302-1876

on this 1st day of June, 2006.



Michael J. Hason