

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

LAURA FORD,

Plaintiff,

vs.

CASE NO. 4:06-cv-00244-RH-WCS

THE SUPREME COURT OF FLORIDA, et al.,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS THE FLORIDA SUPREME COURT AND CHIEF JUSTICE
PARIENTE’S RENEWED MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Defendants, the Florida Supreme Court and Chief Justice Barbara J. Pariente (“Chief Justice Pariente”) submit this Memorandum of Law in Support of Defendants’ Renewed Motion to Dismiss Plaintiff’s Complaint with Prejudice.¹

I. INTRODUCTION

Plaintiff Laura Ford seeks admission to the Florida Bar. Upon her failure to obtain a passing score on the Florida Bar Examination, Plaintiff requested and was denied relief from the Florida Supreme Court. Plaintiff then filed the instant action asserting claims related to her failure to obtain a passing score under the Americans with Disabilities Act, 42 U.S.C. § 12131 et

¹ Plaintiff also sues the Florida Board of Bar Examiners (the Board), Eleanor Hunter, the Board’s current Executive Director, Kathryn Ressel, the Board’s former Executive Director, and Jane Doe Proctor, an alleged agent of the Board (collectively, “Board Defendants”). Defendants the Florida Supreme Court and Chief Justice Pariente incorporate by reference all grounds and arguments for dismissal asserted by the Board Defendants.

seq. (“ADA”), the Rehabilitation Act, 29 U.S.C. § 794 et seq., 42 U.S.C. § 1983 and § 1985, and the Florida and federal constitutions. Plaintiff also brings state law claims against the Defendants. Plaintiff seeks over \$5,000,000 in damages, as well as declaratory and injunctive relief, costs, and attorneys’ fees.

A. The role of the Florida Supreme Court and Chief Justice Pariente

Article V, section 15 of the Florida Constitution provides that the Florida Supreme Court “shall have exclusive jurisdiction to regulate the admission of persons to the practice of law.” See also § 454.021(2), Fla. Stat. (2005) (“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 of law in said state.”).² In accordance with this function, the court has promulgated The Rules Of the Supreme Court Relating to Admissions to the Bar. These Rules provide, among other things, for the creation of the Florida Board of Bar Examiners as “an administrative arm of the Supreme Court of Florida . . . to handle matters relating to bar admission.” Fla. Bar Admiss. R. 1-12. The Board is charged with the responsibility of ensuring that each applicant for admission has met the requirements of the Bar Admission Rules, including rules related to education and technical competence. Fla. Bar Admiss. R. 1-14.2. Applicants for admission to the Florida Bar must successfully complete the Florida Bar Examination. Fla. Bar Admiss. R. 1-4-13. The “primary purpose of the bar examination is to ensure that all who are admitted to The Florida Bar have demonstrated minimum technical competence.” Fla. Bar Admiss. R. 1-15.1.

² As Chief Justice of the Florida Supreme Court, Justice Pariente is Florida’s highest ranking judicial officer, serving both as head of the court and chief officer of the entire Florida judicial branch. Art. V, §2(b), Fla. Const.; see also Anstead & Kogan, The Operation and Jurisdiction of the Supreme Court of Florida, 29 Nova L. Rev. 431, 465 (2005).

B. Factual Background

Plaintiff alleges the following related to her failure to obtain a passing score on the Florida Bar Examination. Plaintiff sat for the Florida Bar Examination in July 2001, February 2002, July 2002, and February 2003. (Complaint ¶¶ 28-60). In July 2001, Plaintiff failed Parts A and B of the General Bar Examination.³ (Complaint ¶28). Plaintiff then requested accommodations, including one day of rest between the two testing days, for the February 2002 Bar Examination.⁴ (Complaint ¶29). The Board did not grant Plaintiff's request for one day of rest between the two testing days. (Complaint ¶30). Thereafter, Plaintiff failed Parts A and B of the February 2002 General Bar Examination, but alleges she could have passed if she had been provided one day of rest between the two testing days. (Complaint ¶34-35).

Plaintiff again requested one day of rest between the two testing days for the July 2002 exam. (Complaint ¶36). The Board denied Plaintiff's requests for one day of rest between testing days, 10 minutes rest after each hour and 33% extra time on essay questions. (Complaint ¶36-42). Plaintiff passed Part A, but failed Part B, of the General Bar Examination in July 2002. (Complaint ¶43). Plaintiff again alleges that had she been granted one day of rest between testing days, she would have passed the examination. (Complaint ¶44).

In February 2003, Plaintiff opted to sit only for Part B of the examination because she had

³ The Florida Bar Examination consists of the General Bar Examination and the Multistate Professional Responsibility Examination (MPRE). See Fla. Bar. Admiss. R. 4-11. The General Bar Examination consists of Parts A and B, and is administered by the Board during the last Tuesday and Wednesday of February and July each year. See Fla. Bar. Admiss. R. 4-20; R 4-14.

⁴ Plaintiff alleges that in 1989 she was involved in an automobile accident in which she sustained "permanent and chronic physical injuries." (Complaint ¶21).

passed Part A in July 2002. (Complaint ¶46). Thus, Plaintiff was required to pass Part B under the “individual method.”⁵ Plaintiff indicated that the accommodations provided in July 2002 were adequate, and the Board agreed to provide these accommodations. (Complaint ¶¶45; 47). Plaintiff alleges, however, that she “lost nearly 9 minutes of exam time” during the February 2003 Bar Examination due to some “confusion” with Jane Doe Proctor. (Complaint ¶¶51-60). Plaintiff failed Part B of the February 2003 Bar Examination. (Complaint ¶61).

Plaintiff filed with the Board a “Petition for Review of April 14, 2003 administrative ruling or in the alternative Petition for Waiver of Bar Admission Regulation or Rule.” (Complaint ¶64). Plaintiff asked that certain Rules Relating to Admissions to the Bar be waived in her case and that the Board average her Part A score from the July 2002 Bar Examination with her Part B score from the February 2003 Bar Examination, so that she could receive a passing score on the General Bar Examination. (Complaint ¶64). Plaintiff also requested the Board grant a waiver so as to reinstate her MPRE score because more than 25 months had elapsed since she had passed that examination. (Complaint ¶64). The Board denied Plaintiff’s requests. (Complaint ¶¶65-66).

Plaintiff then filed an “Amended Petition for Review” with the Florida Supreme Court “as an appeal and petition for review as a result of continuous adverse rulings by the [Board].” (Complaint ¶67). Plaintiff sought review of all actions of the Board related to her application for admission, including “a denial of reasonable accommodations, a denial of certification of ‘minimum competence’ as a qualification for admission to the Florida Bar, and violations of

⁵ Rule 4-26.2 sets forth the passing score for Parts A and B of the General Bar Examination. An applicant may elect to submit to the General Bar Examination by either an “overall method” or an “individual method.” Fla. Bar Admiss. R. 4-25.

Plaintiff's Florida and U.S. Constitutional rights, the Americans Disabilities Act, as well as, violation of the Rules of the Florida Supreme Court Regulating Admissions to the Florida Bar.” (Complaint ¶67). On or about September 23, 2004, the Florida Supreme Court denied Plaintiff's petition. (Complaint ¶71). Plaintiff filed the instant civil action because the Florida Supreme Court denied her the relief she requested. (Complaint ¶72).

II. ARGUMENT

A. This Court lacks subject matter jurisdiction under the Rooker-Feldman abstention doctrine

The Rooker-Feldman doctrine places limits on the subject matter jurisdiction of federal district courts and federal courts of appeals relating to claims arising out of state judicial decision-making, including those relating to a state's bar admission proceedings. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).⁶ The Rooker-Feldman doctrine applies to decisions of committees or boards acting under the direct supervision and control of the state's highest court, in connection with applications for admission to the state bar. See Dale v. Moore, 121 F.3d 624, 627 (11th Cir. 1997) (affirming dismissal of bar applicant's ADA claim under Rooker-Feldman doctrine).

⁶ The Rooker-Feldman doctrine bars lower federal court jurisdiction where four criteria are met:

(1) the party in federal court is the same as the party in state court; (2) the prior state court ruling was a final or conclusive judgment on the merits; (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state court proceeding; and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment.

Storek v. City of Coral Springs, 354 F.3d 1307, 1310, n.1 (11th Cir. 2003) (quoting Amos v. Glynn County Bd. of Tax Assessors, 347 F.3d 1249, 1265 n.1 (11th Cir. 2003)).

It is well-established under Florida law that proceedings on bar applications before the Board are judicial in nature. As noted above, the Florida Constitution provides that the Florida Supreme Court “shall have exclusive jurisdiction to regulate the admission of persons to the practice of law” Art. V, § 15, Fla. Const. (emphasis added). The Florida Supreme Court created the Board as an agency of the Court for the express purpose of regulating the admission of applicants to the Florida Bar. Fla. Bar Admiss. R. 1-12; see also Florida Bd. of Bar Examiners v. Applicant, 443 So. 2d 71, 74 (Fla. 1983).

Acting under its exclusive, constitutional jurisdiction, the Florida Supreme Court has also promulgated a rule that clearly declares that the “admission of attorneys to the practice of the profession is law is a judicial function.” Fla. Bar Admiss. R. 1-11 (emphasis added); see also § 454.021(1), Fla. Stat. (2005) (“Admissions of attorneys and counselors to practice law in the state is hereby declared to be a judicial function.”). Thus, actions taken by the Board, and clearly actions by the Florida Supreme in ruling on a petition, in connection with an application for admission to the Florida Bar are judicial in nature. Accordingly, the Rooker-Feldman doctrine bars applicants for admission to the Florida Bar from filing suit in federal district courts to challenge actions taken on their applications for admission. See Dale, 121 F.3d at 627; Berman v. Florida Bd. of Bar Examiners, 794 F.2d 1529 (11th Cir. 1986) (affirming dismissal of bar applicant’s claim under 42 U.S.C. § 1983).

Plaintiff’s Complaint in this case arises directly out of her application for admission to the Florida Bar and decisions by the Board on that application. Moreover, Plaintiff expressly alleges that she presented all of these matters to the Florida Supreme Court and that the Florida Supreme Court made a final decision regarding her complaints that form the basis of this action.

(Complaint ¶¶67; 71-72). Thus, Plaintiff not only had a reasonable opportunity to raise her claims in the state court proceeding, but also has done so. Plaintiff is, in effect, seeking federal district court review of a final decision of the Florida Supreme Court on her application for admission to the Florida Bar, contrary to the Rooker-Feldman doctrine. This Court lacks subject matter jurisdiction over Plaintiff's claims and Plaintiff's Complaint should be dismissed.

Finally, to the extent that Plaintiff may seek to avoid Rooker-Feldman abstention on the ground that she is merely seeking to challenge the facial validity of a rule of general applicability promulgated in a nonjudicial proceeding, her claim must fail. See Feldman, 460 U.S. at 486. Plaintiff's action is clearly not merely a general rule challenge to one or more rules of the Florida Supreme Court relating to admission to the Bar without respect to the manner in which the rules have been applied to Plaintiff in her case. Rather, the relief Plaintiff seeks is inextricably intertwined with the determinations made in connection with the particular facts relating to Plaintiff's application for admission. See Dale, 121 F.3d at 626-27 (Rooker-Feldman doctrine barred applicant's federal claim because the "claim [was] inextricably intertwined with the state's judicial proceedings relating to his bar admission").

In sum, Plaintiff, unhappy with the status of her admission to Florida Bar, seeks to circumvent state judicial proceedings by filing suit in federal court. This is precisely the type of action the Rooker-Feldman doctrine has been held to protect against. See, e.g., Dale, 121 F.3d at 627. Plaintiff's action should be dismissed for lack of subject matter jurisdiction.

B. Plaintiff lacks standing and/or Plaintiff's claims are not ripe for review

It is unclear from Plaintiff's Complaint whether she has alleged that she has a pending application for admission to the Florida Bar. To the extent that she has alleged no pending

application, Plaintiff lacks standing and/or her claims are not ripe for review.

The allegations in the Complaint are inadequate to establish Plaintiff's standing to sue the Florida Supreme Court and Chief Justice Pariente. Article III of the United States Constitution limits the jurisdiction of the federal courts to actual cases and controversies. U.S. Const. art. 3 § 2. "A plaintiff must meet three requirements to have article III standing." Cone Corp. v. Florida Dept. of Transp., 921 F.2d 1190, 1203 (11th Cir. 1991). If the plaintiff is seeking declaratory and injunctive relief, first "he must demonstrate that he is likely to suffer future injury; second that he is likely to suffer such injury at the hands of the defendant; and third, that the relief the plaintiff seeks will likely prevent such injury from occurring." Id. at 1203-04. The most important concept in these requirements is the injury requirement. See id. at 1204.

Federal courts "should not speculate concerning the existence of standing or piece together support for the plaintiff." Stoddard v. Supreme Court et al., No. 03-11662 (11th Cir. Oct. 24, 2003). Plaintiff fails to plead any nonconclusory facts or allegations which establish that she is likely to suffer future injury at the hands of the Florida Supreme Court or Chief Justice Pariente. Plaintiff also fails to allege any pattern of practice with respect to the Florida Supreme Court which would suggest that Chief Justice Pariente is likely to ignore constitutional concerns. In the absence of any legally sufficient allegations of future harm, all claims against these Defendants should be dismissed.

Also, Plaintiff has not pled facts which establish the ripeness of any claims against these Defendants. The ripeness inquiry requires a determination of "(1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration." Digital Props., Inc. v. City of Plantation, 121 F.3d 586, 589 (11th Cir. 1997). The ripeness doctrine

“prevents courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” Stoddard, No. 03-11662 at p.12.

It does not appear from Plaintiff’s Complaint that there exists a case or controversy between Plaintiff and the Florida Supreme Court and Chief Justice Pariente. Accordingly, Plaintiff’s Complaint should be dismissed as to these Defendants because Plaintiff’s claims are not ripe.

C. To the extent Plaintiff has alleged she has a pending application for admission to the Florida Bar, the action is barred by the Younger abstention doctrine.

To the extent that Plaintiff alleges she has a pending application, this action is barred by the doctrine of abstention announced in Younger v. Harris, 401 U.S. 37 (1971).

Younger abstention is a doctrine essential to maintaining the balance in state-federal relations. Under Younger and its progeny, “federal district courts must refrain from enjoining pending state court proceedings except under special circumstances. Old Republic Union Ins. Co. v. Tillis Trucking Co., 124 F.3d 1258, 1261 (11th Cir. 1997) (citations omitted). Moreover, “the principles of Younger apply to declaratory judgments that would effectively enjoin state proceedings.” Id.

Younger has been extended to state bar disciplinary hearings. See Middlesex County Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423 (1982). “Younger and Middlesex . . . are based on the interest in avoiding federal interference with ongoing state judicial proceedings seeking to vindicate important state interests and the recognition that federal defenses can be fully and fairly adjudicated in state proceedings of this type.” Lawrence v. Schwiep, Case No. 4:05cv14-RH/WCS (N.D. Fla. Oct. 7, 2005) (dismissing bar applicant’s action against Chief

Justice Pariente and the Board based on Younger abstention). Whether a federal court should abstain in deference to the state court proceedings turns on three questions: (1) do the state bar disciplinary proceedings constitute an ongoing state judicial proceeding, (2) do the proceedings implicate important state interests, and (3) is there an adequate opportunity in the state proceedings to raise constitutional challenges. Middlesex, 457 U.S. at 432. The courts in Middlesex and Lawrence answered each of these questions in the affirmative.

Likewise, the answer to each of these questions in this case is yes, if it is alleged that Plaintiff has a pending application for admission. First, as set forth above, Florida bar admission proceedings are clearly judicial in nature. Second, the regulation of the admissions of persons to the practice of law implicates important state interests. See Ippolito v. Florida, 824 F.Supp. 1562 (M.D. Fla. 1993) (“The reason for judicial regulation, therefore, is to preserve the judiciary’s integrity, independence, and autonomy.”). The State of Florida also has a clear interest in the attorney admission process. See Florida Bd. of Bar Examiners re: Applicant, 443 So. 2d 71, 75 (Fla. 1983) (“[T]he state’s interest in ensuring that only those fit to practice law are admitted to the Bar is a compelling state interest.”). Third, there is an adequate opportunity in the state proceedings to raise constitutional challenges, and in fact, Plaintiff has already availed herself of that opportunity. (Complaint ¶¶67; 71-72). Accordingly, this Court should abstain from considering Plaintiff’s claims based on Younger abstention.

D. Eleventh Amendment immunity

Even if Plaintiff’s claims are properly before the Court, all of Plaintiff’s claims against the Florida Supreme Court and Chief Justice Pariente in her official capacity, whether for damages or injunctive relief, are barred by the Eleventh Amendment.

The Eleventh Amendment to the United States Constitution⁷ prohibits a federal court from exercising jurisdiction over a lawsuit against a state, except where the state has consented to be sued or has waived its immunity, see Dekalb County Sch. Dist. v. Schrenko, 109 F.3d 680, 688 (11th Cir. 1997), or where Congress has abrogated that immunity. See Ass'n for Disabled Americans, Inc. v. Florida Int'l Univ., 405 F.3d 954 (11th Cir. 2005); see also Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 98-100 (1984). Florida has neither consented to be sued nor waived its immunity to suit in federal court. See Gamble v. Florida Dept. of Health and Rehabilitative Servs., 779 F.2d 1509, 1511 (11th Cir. 1986) (“We agree with the district court that Florida has not waived its Eleventh Amendment immunity and that, therefore [the agency] is not subject to suit in federal court in this action for damages.”); see also § 768.28(18), Fla. Stat. (2004). Similarly, there has been no waiver of immunity by Congress which would authorize this Court to exercise jurisdiction in this matter. Quern v. Jordan, 440 U.S. 332, 342 (1979) (Congress did not override the states’ sovereign immunity in enacting 42 U.S.C. § 1983); Tennessee v. Lane, 541 U.S. 509 (2004) (finding valid abrogation of Eleventh Amendment immunity only in the narrow context of the fundamental right of access to courts in a Title II ADA case); Miller v. King, 384 F.3d 1248, 1275 (11th Cir. 2004) (“Title II of the ADA, as applied in this prison case, does not validly abrogate the States’ sovereign immunity . . .”).

The Florida Supreme Court, as an arm of the state, is entitled to Eleventh Amendment immunity from suit. See art. v, §§ 1 and 3, Fla. Const. Additionally, “state officials sued in their

⁷ The Eleventh Amendment to the United States Constitution provides: The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

official capacities are also protected by the amendment.” Harbert Int'l, Inc. v. James, 157 F.3d 1271 (11th Cir. 1998). Therefore, this action against Defendants the Florida Supreme Court and Chief Justice Pariente in her official capacity is barred by the Eleventh Amendment and should be dismissed.⁸

E. Chief Justice Pariente has absolute judicial immunity from any claim for damages

The law is firmly settled that judges are “absolutely immune from civil liability under section 1983 for acts performed in their judicial capacity, provided such acts are not done in the ‘clear absence of all jurisdiction.’” Roland v. E.W. Phillips, 19 F.3d 552 (11th Cir. 1994) (citation omitted); see also Office of the State Attorney, Fourth Judicial Circuit of Florida v. Parrotino, 628 So. 2d 1097 (Fla. 1993) (“[A] strict guarantee of judicial immunity is necessary to preserve the effectiveness and impartiality of judicial and quasi-judicial offices.”).

The process of admitting attorneys to the practice of law in Florida is a judicial function. See Art V, § 15, Fla. Const. (the Florida Supreme Court “shall have exclusive jurisdiction to regulate the admission of persons to the practice of law”); Fla. Bar Admiss. R. 1-11 (“admission of attorneys to the practice of the profession of law is a judicial function”). Chief Justice Pariente, as the chief officer of the Florida Supreme Court, is thus entitled to absolute judicial immunity from any actions taken during this process. Cf. Diaz v. Moore, 861 F.Supp. 1041 (N.D. Fla. 1994) (holding the Florida Board of Bar Examiners, its Executive Director, and the Chairman of the Board were entitled to absolute judicial immunity in connection with

⁸ For the reasons outlined above, Plaintiff’s state law claims (Counts VII, IX, and X) must also be dismissed as against the Florida Supreme Court and Chief Justice Pariente because of Eleventh Amendment immunity.

performance of their duties in the attorney admission process).

All of Plaintiff's allegations as they relate to Chief Justice Pariente occurred in the course of judicial proceedings on Plaintiff's application for admission to the Florida Bar. Accordingly, Chief Justice Pariente is entitled to absolute judicial immunity in this case and Plaintiff's Complaint should be dismissed.⁹

F. Plaintiff has failed to state a claim upon which relief may be granted

Counts I and II—ADA and Rehabilitation Act Claims. Chief Justice Pariente is entitled to dismissal of Plaintiff's ADA and Rehabilitation Act claims because there is no individual liability regarding these claims. See Shotz, 344 F.3d 1161, 1171-72; n.17 (11th Cir. 2003).

Counts III, IV, V, VIII and X—Constitutional Claims. Plaintiff's Complaint fails to state a cause of action demonstrating a violation of 42 U.S.C. § 1983. (Count III). "In order to prevail on a civil rights action under 1983, a plaintiff must show that he or she was deprived of a federal right by a person acting under color of state law." Griffin v. City of Opa-Locka, 261 F.3d 1295, 1303 (11th Cir. 2001). As to the Florida Supreme Court and Chief Justice Pariente, Plaintiff has failed to allege that the deprivation was committed by a "person" acting under color of state law. Neither the Florida Supreme Court nor Chief Justice Pariente is a "person" for purposes of a § 1983 action. See Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989) ("We hold that neither a State nor its officials acting in their official capacities are "persons" under § 1983.").

Plaintiff's Complaint also fails to state a § 1985 claim (Count VIII) because the plaintiff must allege "invidious discriminatory intent" on the part of the defendants. Trawinski v. United Techs., 313 F.3d 1295, 1299 (11th Cir. 2002). Accordingly, Plaintiff's Complaint fails to state a

⁹ All of Plaintiff's claims for damages are likewise barred by qualified immunity.

cause of action upon which relief may be granted.

Moreover, Plaintiff fails to allege facts that rise to the level of a constitutional violation, and thus fails to state a cause of action in counts III, IV, V, VIII, and X. See Kirkpatrick v. Shaw, 70 F.3d 100, 102-04 (11th Cir. 1995) (noting that the “right to practice law is not a fundamental right and therefore rational basis review is the appropriate standard for classifications affecting applicants for admission to the bar”).

Counts VI and VII–Negligence claims. Plaintiff fails to state a claim for relief based on negligence. See 768.28(9)(a), Fla. Stat. (2005); Monroe v. Sarasota County Sch. Bd., 746 So. 2d 530 (Fla. 2d DCA 1999).

III. CONCLUSION

For the foregoing reasons, Defendants the Florida Supreme Court and Chief Justice Pariente respectfully request that this Honorable Court enter an order dismissing Plaintiff’s Complaint with prejudice.

Respectfully Submitted,

CHARLES J. CRIST, JR.
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s/ Leah L. Marino

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by United States Mail, to Laura Ford, pro se, 3020 Port Royal Drive, Orlando, Florida 32827, and by Notice of Electronic Filing to James J. Dean, Messer Caparello & Self, P.A., 215 S. Monroe Street, Suite 701, P.O. Box 1876, Tallahassee, Florida 32302-1876, this 30th day of May 2006.

s/ Leah L. Marino
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Assistant Attorney General