No. 05-16011-DD and 06-10776-DD

In The

United States Court of Appeals

for the Eleventh Circuit

FRANK J. LAWRENCE, JR.
Plaintiff – Appellant,
v.

R. TERRY RIGSBY, ET. AL.,
Defendants – Appellees.

On Appeal from the United States District Court
for the Northern District of Florida
Tallahassee Division
Hon. Robert L. Hinkle, D.C. No. 4:05cv14

REPLY BRIEF
OF APPELLANT FRANK J. LAWRENCE, JR.

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INTRODUCTION

The stated purpose of the abstention doctrines set forth in Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), and Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 102 S. Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982) is to promote the principles of equity, comity, and federalism. Abstention was never intended to authorize procedural gamesmanship between federal court litigants in which defendants resuscitate state proceedings in order to then seek abstention.

Appellees refuse to acknowledge that *the filing of this lawsuit* is what prompted the "ongoing state proceedings" upon which they now rely. Stated another way, had this lawsuit *not been filed*, Appellees would have refused to take any further action on Appellant's application, a pre-litigation position that they put in writing (Docket # 54, Exhibit 2, Letter from FBBE to Appellant). Further, Appellee Pariente states on page 17 of her brief:

> Appellant's allegation that the Board "rendered its character and fitness decision relating to the Plaintiff on November 24, 2004, before the Plaintiff filed this federal action on January 14, 2005" ignores the relevant Rules governing bar admission proceedings in Florida.

Apparently, Appellee Pariente overlooked the fact that the above quoted sentence is not "Appellant's allegation", but rather a verbatim party admission that Appellee Hunter made during the lower court proceedings. (Docket # 17, Motion for Judicial

Notice, p. 2). At the time this lawsuit was filed, every available indication demonstrated that Appellant's first, failed, three-year licensing process was over. This explains why Appellant's complaint seeks *prospective* relief pertaining to his licensing reapplication process. He has not requested a reversal of the Florida Board of Bar Examiners' ("FBBE") initial adverse decision on his application.

Appellees misleadingly responded to many of Appellant's arguments by alleging that those issues have been waived on appeal because they were not presented to the trial court. For example, Appellee Pariente claims that "the district court did not err by refusing to allow Appellant to amend the complaint because this issue was never presented to that court" (Appellee Pariente's brief, p. 31). This statement is patently false. Appellant made the request. (See, Docket # 54, pp. 5, 13, "Plaintiff requests that this Court grant relief from the judgment in this case, allow Plaintiff to seek an immediate remand from the Court of Appeals, <u>and permit Plaintiff to file an amended complaint within 30 days following the remand</u>" * * * "Plaintiff prays that this Court indicate its willingness to grant the relief requested in his motion <u>and upon remand, permit Plaintiff 30 days to amend his complaint</u>.") (emphasis added).

Additionally, Appellees Rigsby and Hunter complain that Appellant failed to "argue below, and has thus waived, any contention relating to whether the Plaintiff's Florida Bar admission proceeding was 'ongoing' at the time Plaintiff

filed his federal district court complaint." (See, Rigsby brief, p. 21). However, the date upon which Appellant was denied admission was a matter of fact that required no further argument. This issue was "fairly presented" to the lower court, Union Planters Bank, N.A. v. New York, 436 F.3d 1305, 1308 (11th Cir. 2006), and Appellant was not required to repeatedly belabor it. Once Appellees explained to the lower court, in their own words, "The FBBE thus rendered its character and fitness decision relating to the Plaintiff on November 24, 2004, before the Plaintiff filed this federal action on January 14, 2005", (Docket # 17, p. 2), the district court should have accepted it, and that should have been the end of the matter.

Also, Appellees argue that Appellant's "remedial v. coercive" argument was waived. However, Appellees were the beneficiaries of the district court's decision to label Appellant's application process an "*enforcement*" (emphasis in original) proceeding in order to pigeonhole this case into a Younger or Middlesex framework. Appellant cannot be said to have "waived" his ability to argue over a characterization that first appeared in the lower court's final judgment. Dean Witter Reynolds, Inc. v. Fernandez, 741 F.2d 355, 360-361 (11th Cir.1984). In fact, lower court's "*enforcement*" discussion most likely took Appellees by surprise, especially since they do not dispute that (1) a Bar applicant initiates any state proceedings; (2) the applicant has the ability to end the application process at any time, (Docket # 54, Exhibit 3, Rule 3-16); and (3) an applicant is not even

required to attend a FBBE formal hearing. Florida Board of Bar Examiners re G.W.L. 364 So. 2d 454, 456-457 (Fla., 1978). Even assuming *arguendo*, that Appellant was involuntarily in a state forum – even an "enforcement" process – that process was finished by virtue of the FBBE's adverse November, 2004, decision. A procedure by which an applicant appeals an adverse administrative licensing decision to the Florida Supreme Court simply should not be compared, for Middlesex purposes, to one in which the State *seeks to discipline or take the license away*.

Appellees ask this Court to rule that Appellant's statement that he was "presently" and "actively" seeking a license in Florida is proof that there were ongoing state proceedings, but the chronological sequence of events discussed above speaks for itself. Further, Appellant's announcement that he is "presently" and "actively" seeking a license to practice law supports his compliance with this Court's pronouncements in Stoddard v. Supreme Court of Florida (Case No 03-11662, (unpublished)), where it was held that Mr. Stoddard's constitutional claims were not ripe given his abandonment of the licensing process. Indeed, Appellant is presently and actively seeking licensure in Florida, as evidenced by this action for prospective relief regarding his future reapplication process.

In response to Appellant's appeal of the lower court's refusal to grant Fed.R.Civ.P 60(b) relief, Appellees allege that Appellant is suing for *retrospective*

relief, and thus the claims are barred by the Rooker-Feldman doctrine. Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). However, Appellees' assertion is impossible to reconcile with the "relief sought" portion of Appellant's complaint, which clearly seeks *prospective* relief. Although the body of Plaintiff's complaint outlines Appellees' past unconstitutional practices, proof for a claim necessitating *prospective* equitable relief can be based on historical facts, "and most often will be". Entergy Ark., Inc. v. Nebraska, 210 F.3d 887, 898 (8th Cir. 2000); Edelman v. Jordan, 415 U.S. 651, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974) (authorizing prospective relief based on the manner in which a state historically administered its federally funded benefits program). By denying Appellant's requested relief based upon the Rooker-Feldman doctrine, the lower court made an errant conclusion of law and an improper application of law to fact, which by definition, was an abuse of discretion. United States v. Baker, 432 F.3d 1189, 1202 (11th Cir. 2005).

Finally, Appellees pompously state that Florida's "important interest" in regulating its own Bar justifies the scrutiny of applicants who criticize the Florida attorney licensing system. What they fail to mention, however, is the "equally important" and strong **federal substantive interest** involved:

> We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise

> this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated -- free to think, speak, and act as members of an Independent Bar.

Konigsberg v. State Bar of California, 353 U.S. 252, 273; 77 S. Ct. 722; 1 L. Ed. 2d 810 (1957) (emphasis added)

Appellant was targeted for his political beliefs and this Court has a strong substantive interest in vindicating federally secured freedoms jeopardized by sanctimonious and overreaching state actors. Appellees Rigsby and Hunter inappropriately imply on page 36 of their brief that Appellant was denied admission because he made statements "known to be false or with reckless disregard as to its truth or falsity", yet a review of Appellees' concerns, stated in their own words, merely reveals an unqualified abhorrence of criticism. To state two examples, Appellant was denied a license for saying, *inter alia*:

> My second request surrounds my substantial concern that the Board's unbridled discretion over character assessment, in its present states, patently violates federal law.
>
> * * *
>
> My research of Florida's attorney licensing system indicates that it scrutinizes First Amendment activities without adequate procedural safeguards, as required by federal law.

(Docket #54, Exhibit 4, FBBE Answer Brief, p. 10-11, 23, and Docket # 54, Exhibit 5, Petition for Review, p. 4-5)

A state interest that exists to punish a person for stating *his opinion* about constitutional infirmities within state government is dangerously self-serving. The facts and circumstances of this case are so egregious that they would make any Justice of our nation's highest Court cry out in outrage.

"[T]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the peoples' federal rights." McDonald v. City of West Branch, 466 U.S. 284, 290, 104 S. Ct. 1799, 80 L. Ed. 2d 302 (1984). This Court should reverse the lower court's decision and remand this matter back for an adjudication of Appellant's constitutional claims.

ARGUMENT

I. WHEN APPELLANT'S LAWSUIT WAS FILED, THE YOUNGER ABSTENTION DOCTRINE WAS NOT APPLICABLE BECAUSE THE STATE ADMINISTRATIVE PROCEEDINGS HAD CONCLUDED, AND APPELLEES WERE BLOCKING APPELLANT FROM SEEKING ANY JUDICIAL REVIEW IN THE FLORIDA SUPREME COURT BY THEIR REFUSAL TO ISSUE AN OPINION.

A. The Issue Was Raised Before The District Court

Appellees claim that Appellant "waived" his ability to point out that there were no ongoing state proceedings. This argument is without merit. Appellees Hunter and Rigsby informed the lower court that they rendered their character and fitness decision months before the Plaintiff filed this federal action (Docket # 17, p.

2). The fact that the lower court failed to acknowledge known facts and law does not equate to a waiver. Union Planters Bank, supra, 436 F.3d at 1308.

Also, Appellant pleaded in his complaint the fact that licensing applications are stale after three years, requiring an applicant to refile his application. (Docket #6, Am. Complaint, ¶49 "Florida law license applicants with an open application on file for more than 3 years are required to begin the licensing process over again").[1] Finally, the January 13, 2004 letter that Appellees sent to Appellant, indicating that they would not make a recommendation to the Florida Supreme Court on account of Appellant's inability to pay the Board's fees, is part of the lower court record. (Docket # 54, Exhibit 2, January 13, 2005 Letter from FBBE to Appellant). As such, all of these issues were fairly presented to the lower court and they can all be found in the parties' lower court litigation papers.

B. Younger Abstention Is Not Applicable

The lower court failed to articulate what, exactly, the ongoing state proceedings were that it used as a basis to abstain. If the lower court used the Board's administrative proceedings as its basis, then it abused its discretion given that Appellees admitted that Appellant had already been denied. Notably,

[1] Appellees Rigsby and Hunter, on page 28 of their brief, unpersuasively compare the refilling requirement of Rule 2-29 to "to a plaintiff in a civil case being granted leave to file a supplemental complaint in a pending, ongoing, civil proceeding". They fail to address, however, the portion of Rule 2-29 requiring a $425.00 refiling fee. Here, the failure to refile the application or pay the refilling fee constitutes the conclusion of the proceedings.

Appellees and the lower court fail to explain how an adjudication of Appellant's claims would have interfered with any FBBE proceedings. Abstention is only appropriate when, at the moment the federal complaint is filed, relief would "interfere" or "enjoin" pending state proceedings. Wexler v. Lepore, 385 F.3d 1336, 1341, fn. 7 (11th Cir. 2004) ("if there is no interference, then abstention is not required."). Here, there was no such threat. When Appellant's complaint was filed, there was no indication that there would ever be any proceedings in the Florida Supreme Court, especially since the FBBE was refusing to release its written opinion on account of Appellant's indigence. Additionally, as a prerequisite to seeking Younger abstention, Appellees must show that the relief Appellant seeks would result in an "undue interference" with the state's court system, akin to a federal takeover. Wexler, 385 F.3d at 1339, 1341. Here they have failed to make any such showing.

On page 24 of Appellees Rigsby's and Hunter's brief, footnote 8, they state that "Plaintiff apparently concedes (as Plaintiff must) that the Plaintiff's Florida Bar admission proceeding is "judicial" in nature…". Elsewhere in their brief, on p. 2, they acknowledge Appellant's lower court argument that "the Bar Admission Proceeding was 'administrative' rather than 'judicial'". While the act of making a decision on an applicant's application for admission may very well be a "judicial" act by the Florida Supreme Court, Appellees' Rigsby's and Hunter's involvement

in conducting investigations and making “recommendations” is an administrative function. In fact, Appellees’ own Rule 1-12 states “The Florida Board of Bar Examiners is an administrative arm of the Supreme Court of Florida…”. Also, Appellees do not deny that some members of the FBBE are non-attorneys with no formal legal training. There is no way that these members could be performing “judicial functions”. Finally, Appellees’ reliance on Dale v. Moore, 121 F.3d 624 (11th Cir. 1997) is faulty, given that the holding in Dale was recently overruled by the Supreme Court of the United States in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280; 125 S. Ct. 1517; 161 L. Ed. 2d 454 (2005).

II. THE FLORIDA SUPREME COURT PROCEEDINGS WERE FILED 5 MONTHS AFTER THIS CASE WAS FILED. THE STATE PROCEEDINGS WERE REMEDIAL, NOT COERCIVE.

A. The “Remedial v. Coercive” Issue Was Not Raised By Either Party Because It First Appeared In The Lower Court’s Opinion. The Issue Was Not Waived.

In its opinion dismissing this case, the district court’s opinion compared Florida’s application process to an “*enforcement*” (emphasis in original) proceeding, when in fact, Appellees themselves never alleged that their licensing process is coercive in nature. For this reason, Appellant cannot be said to have “waived” an argument that the lower court first raised at the time it dismissed this action. Dean Witter Reynolds supra, 741 F.2d at 360-361.

Further, even assuming *arguendo* that Appellant had a duty to raise this issue in his lower court response to Appellees' motion to dismiss (and there was no such duty), this Court should nevertheless adjudicate the issue because it meets the criteria set forth in Dean Witter Reynolds supra, 741 F.2d at 360-361. First, the "remedial v. coercive" issue represents a pure question of law and this Court's refusal to consider the issue would result in a miscarriage of justice. Second, the lower court first raised this issue at the same time it dismissed this action and Appellant did not have the opportunity to address the lower court's "enforcement" argument before this case was dismissed. Third, substantial justice is at stake. Appellant was denied a license for engaging in federally secured freedoms and this Court has a strong substantive interest in vindicating the peoples' federal rights. Lastly, it is beyond any doubt that a process in which an applicant seeks a license (or appeals a denial) is not an "enforcement" proceeding at all.

B. Any Ongoing Proceedings During This Litigation Were Remedial In Nature.

As noted above, if the lower court relied upon the Board's administrative proceedings to abstain, it erred because relief in this case would not "interfere" or "enjoin" pending state proceedings. Wexler, 385 F.3d at 1341, fn. 7. Those proceedings were over. If the lower court relied upon the Florida Supreme Court proceedings to abstain, it similarly erred because Appellant's Petition for Review was filed 5 months after this lawsuit was commenced and that proceeding was

remedial in nature. Therefore, even assuming *arguendo*, that Appellant was involuntarily in a state forum – even an "enforcement" process – that process was over by virtue of the FBBE's adverse November, 2004, decision. Thus, an adjudication of this lawsuit would not have created an "undue interference". Wexler, 385 F.3d at 1339, 1341.

Appellees do little to address Appellant's "remedial v. coercive" argument. For example, Appellees Rigsby and Hunter devote two pages of their brief (pages 30 and 31) to reiterate how the lower court "correctly concluded" this analysis. They fail to mention, however, that nowhere in their lower court briefs did they make such an "enforcement" argument.

Courts should only abstain under Younger where the state proceedings are "coercive" and not merely "remedial." Smolow v. Hafer, 353 F. Supp. 2d 561, 571-572 (E. D. Penn. 2005) (and cases cited therein). In Smolow, it was stated:

> In this case plaintiff brought his state suit to remedy nearly the same "wrongs inflicted by the state" as are asserted in his federal action, i.e., the state's continued refusal to pay members of his putative class interest under the DAUPA. These state proceedings do not resemble those coercive proceedings in which the Supreme Court has upheld Younger abstention. To the contrary, plaintiff's state action falls squarely in the remedial category, and the Court will not abstain under Younger.

Smolow, 353 F. Supp. 2d at 572

Unlike the criminal proceedings in Younger, or the disciplinary proceedings in Middlesex, Appellant was solely responsible (1) for initiating the application process; and (2) the Florida Supreme Court proceedings. The Florida Supreme Court proceedings were initiated to contest Appellant's adverse administrative licensing decision. Therefore "the state proceedings are remedial, rather than coercive." Torres v. Carrion, 376 F. Supp. 2d 209, 213 (D.P.R. 2005).

III. IN THE ALTERNATIVE, PLAINTIFF'S COMPLAINT SETS FORTH SUFFICIENT FACTS TO INVOKE THE BAD FAITH EXCEPTION TO YOUNGER ABSTENTION

Appellees attempt to convince this Court that Appellant failed to set forth sufficient facts in his complaint to invoke Younger's bad faith exception. The simplest way of disproving their assertion is for this Court to review Appellant's 36-page, 74-paragraph, complaint. (Docket # 6). Even a cursory review will reveal that Appellant had pleaded more than sufficient facts to invoke the exception.

Whenever a person is targeted in a state proceeding for expressing his openly and honestly held beliefs, this by definition equates to bad faith, and squarely fits within the bad faith exception. Lewellen v. Raff, 843 F.2d 1103, 1109-1110 (8th Cir. 1988), cert. denied, 489 U.S. 1033; 103 L.Ed. 2d 229; 109 S.Ct. 1171 (1989). When Appellees moved the lower court to dismiss this action pursuant to Rule 12(b)(6), the lower court should have construed Appellant's complaint in a light most favorable to him and accepted the factual allegations

taken as true. <u>See</u> <u>SEC v. ESM Group, Inc.</u>, 835 F.2d 270, 272 (11th Cir. 1988). Here, the lower court did not.

The best that Appellees are able to do is argue that Appellant failed to claim that the specific Board members who sat on his Formal Hearing panel were actually biased. Appellees fail to mention that the Board itself stacked the deck against Appellant well in advance of the Formal Hearing. Specifically, Appellees refused to cooperate in discovery before the Formal Hearing and refused to produce Appellee Hunter to testify for the record (Docket #6, Am. Complaint, ¶¶ 37, 42). Because the Florida Supreme Court's review of FBBE decisions <u>is limited</u> to the Formal Hearing record (Admission Rules 3-23.7 and 3-40.1), Appellees hindered Appellant from establishing record evidence of their improprieties. Appellant was thus prohibited from creating a record of his constitutional claims. Also, Appellant was prevented from confronting and cross-examining "those whose word deprive[d] [him] of his livelihood," during his Formal Hearing. (Docket #6, Am. Complaint ¶¶ 45-46) <u>Willner v. Committee on Character & Fitness</u>, 373 U.S. 96, 103; 83 S. Ct. 1175; 10 L. Ed. 2d 224 (1963). Even more egregious is the fact that Appellees concealed exculpatory and highly meaningful information from the Appellant, in violation of the FBBE's own Rules. (Id., ¶¶ 30-38). Appellant was deprived of a full and fair forum in which to make a record of his constitutional claims.

Finally, although not known to Appellant when this case was filed, the manner in which the Florida Supreme Court would eventually handle his Petition for Review is alarming. In an attempt to avoid justifying the FBBE's administrative recommendation, the Florida Supreme Court failed to articulate any rulings on Plaintiff's claims. (Docket # 54, Exhibit 1, Florida Supreme Court Order). This method of issuing scant decisions in cases where Florida state officials desire to avoid subsequent federal scrutiny is rather transparent. For example, when the Florida Supreme Court similarly attempted to shield its decision from federal review in the famous Bush v. Gore litigation, the Supreme Court of the United States explained:

> After reviewing the opinion of the Florida Supreme Court, we find that there is a considerable uncertainty as to the precise grounds for the decision. This is sufficient reason for us to decline at this time to review the federal questions asserted to be present. (internal cites and quotes omitted)

Bush v Palm Beach County Canvassing Board, 531 U.S. 70, 78, 121 S.Ct. 471, 475, 148 L.Ed.2d 366, 372 (2000) citing Minnesota v National Tea Co, 309 U.S. 551, 555, 60 S.Ct. 676, 84 L.Ed. 920 (1940)

And the Florida Supreme Court had good reason to protect the FBBE's decision from any possibility of *certiorari* in this case. 35 years ago, the Supreme Court of the United States stated that under the First Amendment, views and beliefs are immune from Bar Association inquisitions designed to lay a foundation for barring an applicant from the practice of law. Baird v. State Bar of Arizona,

401 U.S. 1, 8; 91 S. Ct. 702; 27 L. Ed. 2d 639 (1971) (See also, separate opinions by Black, Douglas, Brennan, and Marshall, JJ.).

The facts and circumstances of this case squarely fit within the bad faith exception.

IV. APPELLEES FAIL TO ACKNOWLEDGE THAT APPELLANT DOES NOT SEEK RELIEF PERTAINING TO HIS FIRST, FAILED, LICENSING ATTEMPT. THIS IS A PROSPECTIVE RELIEF CASE AND THE ROOKER-FELDMAN DOCTRINE DOES NOT APPLY. THE DISTRICT COURT ABUSED ITS DISCRETION IN REFUSING FED.R.CIV.P. 60(B) RELIEF.

Appellees allege that the lower court correctly denied relief under Fed.R.Civ.P. 60(b) because the relief Appellant seeks is retrospective. Notably, Appellees decline to cite where, in Appellant's prayer for relief, he seeks reversal of the initial decision to deny him a license. In fact, the opening paragraph of Appellant's complaint states, "This action represents both a general challenge to Florida licensing rules and an as-applied prospective challenge concerning Plaintiff's circumstances." (emphasis added).

The type of prospective relief requested in this lawsuit is similar to that described in Dubuc v. Mich. Bd. of Law Examiners, 342 F.3d 610 (6th Cir. 2003). In Dubuc, the Sixth Circuit stated:

> In his complaint, filed pursuant to 42 U.S.C. § 1983, Dubuc does not challenge the denial of his 1998 application for admission to the Michigan Bar. Instead, Dubuc seeks an injunction ordering defendants to allow him to reapply

> immediately for admission to the Michigan Bar. In addition, he seeks declaratory and injunctive relief prohibiting defendants from using his alleged First Amendment activities (criticizing a judge) as a basis for denying his second application.
>
> * * *
>
> Dubuc does not seek a declaration that defendants violated his rights with regard to the denial of his 1998 Bar application, nor does he seek to have the denial of his 1998 application overturned or purged. Instead, the relief he seeks relates only to his rights with regard to reapplying for admission to the Bar. There has been no state court judgment with regard to his rights to reapply for admission to the Bar, and, therefore, Dubuc is not seeking a review of any state court judgment in contravention of the Rooker-Feldman doctrine.

Dubuc, 342 F.3d at 613, 619 (citation omitted). See also, Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989).

Because this lawsuit requests prospective relief, Appellant's reservation of federal claims pursuant to England v. La. State Bd. of Med. Examiners, 375 U.S. 411, 415; 84 S.Ct. 461, 464; 11 L. Ed. 2d 440 (1964) and Jennings v. Caddo, 531 F.2d 1331, 1332 (5th Cir. 1976) is not necessarily relevant to this appeal. Appellant has merely brought it to this Court's attention to demonstrate that Appellant has done everything within his power, to have his federal claims adjudicated in a federal forum. This Court should respect Appellant's choice.[2]

[2] Appellees Rigsby and Hunter misleadingly state that Appellant raised federal claims in the Florida Supreme Court. They fail to mention that Appellant specifically advised the Florida Supreme Court that he was only presenting his state claims for adjudication and that any mention of federal issues was merely to inform the Florida Supreme Court "of the nature of his federal claims so that state law can be construed in light of those claims." (Docket # 54, Exhibit 5, p. 15 "Reservation of Federal Claims").

Appellees recently served a notice of supplemental authority on this Court, which cited Nivens v. Gilchrist, 444 F.3d 237 (4th Cir. 2006) in support of their argument that a federal reservation cannot be used when Younger abstention is at issue. Appellees' citation of Nivens demonstrates their fundamental misunderstanding of *prospective* relief cases. The plaintiffs in Nivens initially brought their action "seeking to enjoin a pending state criminal drug prosecution against them". After the district court abstained pursuant to Younger, the plaintiffs returned to state court and lost. Thereafter, "Appellants then returned to federal court, asking the district court to declare the North Carolina drug tax a criminal penalty, enjoin their pending state criminal trial, and award damages for pain and suffering." Id. at 239. The Fourth Circuit found that the plaintiff's England reservation did not authorize them to return to federal court to seek retroactive relief. Here by contrast, in the matter sub judice, Appellant is not seeking any retroactive relief, but he is merely seeking "an injunction ordering defendants to allow him to reapply immediately for admission to the [Florida] Bar. In addition, he seeks declaratory and injunctive relief prohibiting defendants from using his alleged First Amendment activities (criticizing a judge) as a basis for denying his second application." Dubuc, 342 F.3d at 613, 619. This case is analogous to Dubuc, not Nivens. The Rooker-Feldman doctrine is inapplicable to this case.

CONCLUSION

WHEREFORE, Appellant prays that this Court reverse the judgment of the District Court, which abstained from Appellant's constitutional claims, and remand this case back to the lower Court. In the alternative, Appellant prays that this Court reverse the District Court's judgment denying relief under Fed.R.Civ.P. 60(b)(6), and remand this case back to the lower Court with instructions that Appellant may amend his Verified Complaint pursuant to Fed.R.Civ.P. 15(d).

Dated: May 30, 2006

Respectfully submitted:

__s/Benedict L. Go, M.D._____

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CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,353 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2000, in Times Roman, Font 14.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of May, 2006, pursuant to Fed. R. App. P. 25, I have caused one copy of Appellant's Reply Brief and this Certificate of Service to be served by U.S. Mail, postage prepaid, on the following:

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