16-17564-F

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AUSTIN BURDICK Plaintiff-Appellant, v. JUSTICE ANTHONY M. KENNEDY, JUSTICE STEPHEN G. BREYER, JUSTICE RUTH BADER GINSBURG, JUSTICE SONIA SOTOMAYOR, JUSTICE ELENA KAGAN, Defendant-Appellees.	)	Case No.: 16-17564-F

Appeal from the Judgment of the United States District Court
The Honorable Madeline Hughes Haikala, Judge

BRIEF OF APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AUSTIN BURDICK	)	
	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Case No.: 16-17564-F
	)	
JUSTICE ANTHONY M. KENNEDY,	)	
JUSTICE STEPHEN G. BREYER,	)	
JUSTICE RUTH BADER GINSBURG,	)	
JUSTICE SONIA SOTOMAYOR,	)	
JUSTICE ELENA KAGAN,	)	
	)	
	)	
Defendant-Appellees..	)	
_____	)	

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURES

Pursuant to Eleventh Circuit Rule 26.1 Appellant certifies that no interested party is a publicly traded corporation, and that the following are all known interested persons:

1. Judge Madeline Hughes Haikala, Trial Court Judge.
2. Austin Burdick, Appellant.
3. Joyce Vance, U.S. Attorney representing all named defendants at trial court.
4. Appellee, Anthony Kennedy.

Austin Burdick
v.
Anthony Kennedy, et al.,
Case No.:16-17564-F

5. Appellee, Stephen Breyer

6. Appellee, Ruth Bader Ginsburg.

7. Appellee, Sonia Sotomayor.

8. Appellee, Elena Kagan.

9. Don B. Long, III, U.S. Attorney representing all named defendants at trial court.

10. Michael B. Billingsley, U.S. Attorney representing all named defendants at this court.

11. Jenny L. Smith, U.S. Attorney representing all named defendants at this court.

s/Austin Burdick
Austin Burdick

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AUSTIN BURDICK Plaintiff-Appellant, v. JUSTICE ANTHONY M. KENNEDY, JUSTICE STEPHEN G. BREYER, JUSTICE RUTH BADER GINSBURG, JUSTICE SONIA SOTOMAYOR, JUSTICE ELENA KAGAN, Defendant-Appellees..	)	Case No.: 16-17564-F

BRIEF OF APPELLANT

INTRODUCTION

This is an appeal from an Order of the District Court dismissing Appellant's case primarily on the basis of absolute judicial immunity. Absolute judicial immunity violates the constitution and threatens our republican form of government.

STATEMENT REGARDING ORAL ARGUMENT

Oral Argument is requested. The issue of judicial immunity has not received due attention and oral argument may help the Court better explore and consider this doctrine.

STATEMENT OF JURISDICTION

This is an appeal from a final order/judgment dismissing the case with prejudice. This court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED

1. Did the District Court err in finding that the Plaintiff lacked standing for want of a "concrete injury"?

2. Did the District Court err in applying absolute judicial immunity to actions taken by the Defendants?

3. Do the Defendants have fiduciary and contract obligations as set forth in the complaint?

4. Are there other viable remedies other than civil action?

STATEMENT OF THE CASE

Appellant adopts and incorporates by reference all facts and arguments set forth in District Court Documents 1 and 17 pursuant to Rule 10(c). On February

24, 2016, Appellant filed a complaint with the District Court asserting that Appellee/Defendants ("Defendants") violated infringed upon his property interests in violation of his due process rights. (Doc. 1). Appellant requested declaratory relief and brought suit for Violation of the 5th Amendment, Breach of Contract and Breach of Fiduciary Duty. (Doc. 1). The Complaint contains a detailed recitation of the facts. (Doc. 1). On May 5, 2016, Defendants filed a Motion to dismiss claiming judicial immunity and failure to state a claim for relief. (Doc. 12). Defendants never objected to the facts as recited in the Complaint. (Doc. 12). Defendants also never objected to the historical sketch provided to the court for reference in District Court Document 17.

On June 27, 2016, a Response was filed to the Motion to Dismiss. (Doc. 17). On October 26, 2016, Oral argument was heard on the matter; and on October 27, 2016, the final order was entered. (Doc. 19). On December 15, 2016, a Notice of Appeal was timely filed. (Doc. 20).

STATEMENT OF UNDISPUTED FACTS

The following facts are set forth in the Complaint (Doc.1) :

Plaintiff is an attorney practicing law primarily in the Northern District of Alabama. Defendants are United States Supreme Court Justices who have issued opinions in violation of their oath of office and to the detriment of Plaintiff.

Plaintiff's practice of law is primarily focused on the protection of basic constitutional rights of United States citizens. Plaintiff, on behalf of his clients argues that the people of the United States are a free people and that the Constitution functions to protect them from government interference in those rights.

On or about June 26, 2015, the Defendants issued an opinion that renders the Constitution a nullity. For centuries the Constitution has been the instrument of protection for the rights of citizens against government intrusion. And specifically, since the ratification of the 14th Amendment in 1868, the Courts have interpreted the plain language of the Constitution and that amendment to be a guarantee of freedom from government interference in individual liberty.

The opinion rendered June 26, 2015, styled *Obergefell v. Hodges*, 135 S. Ct. 2071, 576 U.S. ___ (2015) abandoned the long standing tradition of interpreting

the 14th Amendment in a manner which gave words their plain meaning. The phrase: "No state shall make or enforce any law which shall abridge the privileges and 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 any person within its jurisdiction the equal protection of the laws" has been rewritten by the Defendants. The opinion now reads the 14th Amendment as an expansion of government authority not a guarantee of liberty. This "interpretation" is no interpretation at all. It is a tyrannical usurpation of authority to rewrite the Constitution.

There is great room for interpretation in the face of ambiguity, but to interpret "yes" to mean "no" or "up" to mean "down" is neither clever nor ingenious, but rather simply dishonest.

The opinion in fact rewrites the 14th Amendment to read: "***Every*** state ***must*** make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; ***further, each state shall*** deprive any person of life, liberty, or property, without due process of law ***under the guise of extending tax benefits or some other license***; ***and*** any person within its jurisdiction ***may be deprived of*** the equal protection of the laws ***when it is fashionable to do so***."

This is not a simple matter of a difference of opinion or perspective. The disagreement is not over what the Constitution means; the disagreement is over whether the Constitution should have any meaning at all. The recent decision of the Defendants goes beyond a manipulation, twist, strain, or unique perspective on the text and crosses over in to an abandonment of the Constitution.

The actions of Defendants not only exceed the authority of their office, but conflict with their oath of office; a sacred promise that they voluntarily entered into. Defendants promised:

> "I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

5 U. S. C. § 3331.

Interpreting "no" to mean "yes", or restraints on the power of the government to be a grant of power to the government does not "bear true faith and allegiance" to the Constitution.

Defendants were not satisfied with merely trampling the Constitution. They casually redefined marriage to satisfy a perceived growing popularity. The redefinition of marriage was a mere trifle in comparison to the Defendants' brazen

attack on the very principles of "freedom" and "liberty". They have assumed to themselves the authority to redefine freedom and liberty as government issued benefits or licenses. However, freedom never was, nor ever can be, something that you stand in line to receive from a government office.

Because the Defendants actions have rendered the Constitution a nullity, plaintiff has been deprived of a property right interest in his law license. Plaintiff cannot fulfill his obligation and oath to defend the Constitution (the same oath taken by all members of the bar) if the Constitution is discarded. Plaintiff's livelihood is dependent on his ability to protect his clients' constitutional rights. If the Constitution is no longer a charter of liberty that guarantees the rights of U.S. citizens then Plaintiff has lost all income that he would have received had the Constitution not been destroyed. Without the Constitution Plaintiff's law license is greatly diminished in value if not ruined entirely.

This nation is a nation of laws and not of men. No one is above the law. The only authority that the Defendants enjoy is that which has been granted them by the Constitution. Their authority is inferior to that of the Constitution. They have no authority to alter the Constitution. The power to alter the Constitution is restricted to the amendment process set forth therein.

Defendants cannot shield themselves from liability by claiming immunity. Absolute judicial immunity is unconstitutional. Because no one is above the law Defendants must be accountable for their own actions.

Historical Sketch

A historical survey is necessary to provide context for a discussion of the issues presented on appeal. A review of the following historical events will aid the Court in its analysis and reveal the Defendants' position to be contrary to the entire system of American law and government. The following was provided to the trial court (Doc. 17) for its review of this matter:

It is well established that American law finds its roots in the English common law, therefore our survey begins there in the development of the common law. A division in the common law occurred where two competing ideas arose, namely the "Divine Right of Kings" and the "Social Contract". The Divine Right of Kings held that the king was chosen by God and that he was only answerable to God. The Social Contract argument held that the government and its officials had a contractual duty to the people to protect natural and inalienable rights of the people. The later formed the basis of the American system of law and government.

In 1215 King John signed the Magna Carta and acknowledged the rights of at least some of the citizens of England. This document would later be referred to over the following centuries for the proposition that the government was bound by a contractual obligation to the people. Four hundred years later Sir. Edward Coke continued to cite to the Magna Carta to support the social contract underpinnings of English common law.

There is overwhelming evidence that the American colonists embraced the social contract and its protections of freedom and rights. The Puritans and Presbyterians that made up the initial waves of pilgrims to this country were driven here for the protection of liberty and natural rights. These first pilgrims accepted the social contract as a part of their political and religious philosophy. The principle was set forth in the literature of their religion in 1579 in the *Vindiciae Contra Tyrannos* [The Legal Claim Against Tyrants] which stated:

> There is ever and in all places, a mutual and reciprocal obligation between the people and the prince … If the prince fail in his promise, the people are exempt from obedience, the contract is made void, the rights of obligation of no force.

Vindiciae Contra Tyrannos, Harold Laski, ed. (Gouchester, Mass.: Peter Smith, 1963 [1579]).

Not only did the pilgrims plainly manifest their adoption of the social contract by formalizing it in the written Mayflower Compact in 1620, but founders such as John Adams cited to the *Vindiciae* as significant to the birth of America.[1]

The contest between the Social Contract and Divine Right of Kings directly led to the creation of this nation. In 1603 King James I was crowned king of England. James I and his successor Charles I (Crowned 1625) embraced the Divine Right of Kings and inflamed the conflict of ideas between the Social Contract and the Divine Right of Kings. The crown commissioned John Maxwell to publish an argument in support of the Divine Rights theory. In quick response the arguments of Mawwell were refuted by Samuel Rutherford's *Lex Rex* [The Law is King] in 1644. *Lex Rex* contained the concept of natural rights to property, liberty and equality.[2]

During his reign, Charles I became increasingly more authoritarian and antagonistic toward the social contract until he was finally tried and convicted of

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[1] John Adams, *Defense of the Constitutions of Government of the United States of America* (London: Dilly, 1787), in Charles Francis Adams ed., *The Works of John Adams, Second President of the United States:With a Life of the Author,* 10 vols. (Freeport, N.Y.: Books for Libraries Press 1969), VI:1-4.

[2] *Lex Rex: or the Law and the Prince* (London: John Field, 7 October 1644; reprinted Harrisonberg, Va.: Sprinkle Publications, 1982).

treason for abusing the rights of the people and parliament. At his trial he maintained that he possessed a divine right to rule over the people and that he was only answerable to God, not the people. At his trial he maintained:

> Remember I am your king, your lawful king, and what sins you bring upon your heads, and the judgment of God upon this land. Think well upon it … I have a trust committed to me by God, by old and lawful descent. I will not betray it to answer to a new unlawful authority.

The Trial and Execution of King Charles I: Facsimilies of the Contemporary Official Accounts (Missoula, Mont.: Scholar's Press, 1966) 6.

However, Parliament rejected his position finding that Charles I did in fact have a contractual obligation with the people that he had entered into by oath and that the violation of said contract and oath deprived him of his sovereignty. The court held in pertinent part:

> This we learn, the end [purpose] of kings or any other governors, is for the enjoyment of justice … for there is a *contract* and bargain made between the king and his people, and your *oath* is taken, and certainly sir the bond is reciprocal … Sir if this bond be broken, farewell sovereignty.

Id. at 33, 39.

Following the execution of Charles I the Social Contract continued to bloom as the Divine Right of Kings withered.

In 1689 John Locke published his Second Treatise of Government where he argued natural rights to life, liberty and property protected by the Social Contract. Locke went on to put these principles in practice as he contributed to the preparation of a constitution for the Carolina Colony. The American colonies in unbroken succession adhered to the Social Contract, from the Mayflower Compact to the colony constitutions, state constitutions, Declaration of Independence, Articles of Confederation, and the U.S. Constitution. The Social Contract was universally acknowledged from the earliest moments of the colonial era. The founder of Connecticut, Thomas Hooker recognized that the legitimacy of government rested on contractual obligations between the state and the people. Hooker quoted by Perry Miller and Thomas H. Johnson, *The Puritans* (New York: Harper & Row, 1963) 188("there must of necessity be a mutual engagement, each of the other, by their free consent").

The acceptance of the Social Contract was not casual as it was put down into writing with each colony/state constitution, nor was it merely the stuff of philosophy but became the practical underpinning of the common law adopted in American jurisprudence. The two acclaimed commentators on the English common law, Sir Edward Coke and William Blackstone relied on and restated at

length the Social Contract doctrine. Coke's recognition of the Social contract brought him into conflict[3] with Charles I and Blackstone identified rights as natural, absolute, or inalienable coming from God not the crown.[4] Blackstone's Commentaries on the English common law was often quoted and cited as reliable authority by Thomas Jefferson and other of the founders of the nation.[5]

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[3] Coke as a member of Parliament presented Charles I with the argument that the king too was under the law. This conflict escalated as Charles demanded absolute authority as a Divine Right. The heat of the conflict led to Charles I suspending Parliament for twelve (12) years, the igniting of a civil war in England and the eventual trial and execution of Charles I. Charles I's absolutist policies also caused 20,000 Puritans to emigrate to America.

[4] Sir William Blackstone, *Commentaries on the Laws of England ,* 4 vols. (Oxford: Clarendon Press 1765).
"Those rights, then, which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be invoidable. On the contrary, no human legislature has the power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture. (1:54).
Rights are … first those which concern and are annexed to the persons of men, and are then called *jus personarum* or the rights of persons … Natural persons are such as the God of nature formed us. (1:118).
By the absolute rights of individuals we mean those which are so in the primary and strictest sense, such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy whether out of society or in it. (1:119).
Natural liberty … [is] a right inherent in us by birth, and one of the gifts of God to man at his creation. (1:121).

[5] Thomas Jefferson to Robert Skipwith, August 3, 1771; in the *Papers of Thomas Jefferson* (Princeton: Princeton University Press), 1:374-81.

Truly all of the founders held to the social contract and believed that government and its officers were obligated to protect the natural god-given inalienable right of the people.[6] If it were not so there would be no basis for any of the grievances found in the Declaration of Independence; in fact there would be no America. In the Declaration of Independence, Jefferson concisely states the purpose of government in Social Contract terms:

> We hold these truths to be self evident that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

[6] *e.g.* Samuel Adams declared "It is lawful to resist the Supreme Magistrate, if the Commonwealth cannot otherwise be preserved." *See* William Wells, *The Life and Public Service of Samuel Adams* (Boston: Little, Brown and Co., 1865); "the right to freedom being the gift of God Almighty, it is not in the power of man to alienate this gift…" John Adams, *The Rights of the Colonists* (1772); *See also* Chester James Antieau, *Natural Rights and the Founding Fathers – The Virginians,* Washington and Lee Law Review, Vo. 17 Issue 1 Art. 4 p. 43 (1960)("The philosophy of natural rights was championed by such Founding Fathers as Richard Bland, Patrick Henry, Thomas Jefferson, Richard Henry Lee, James Madison, George Mason, Robert Carter Nicholas, Payton Randolph, George Washington, and George Wythe. Indeed it would be amazing if any Revolutionary leader of the Commonwealth could be found who did not subscribe to the doctrines of natural law and right.").

Jefferson then goes on to remind King George III that the colonies were formed by those who emigrated to secure their natural rights.[7] And finally, at the closing Jefferson clearly stated that the people of the colonies were declaring their freedom as protected by the Social Contract. ("… in the name, and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states…") Declaration of Independence, U.S.C. Organic Laws.

It is not merely apparent from the text of the Declaration of Independence that Jefferson was giving voice to the peoples' acceptance of the Social Contract and understanding of their rights protected thereby, but we have his own word for it. In reference to the Declaration of Independence Jefferson later wrote that the goal of writing it was "not to find out new principles, or new arguments, never before thought of … all its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc." Thomas Jefferson, *Life and Select Writings of Thomas Jefferson* (New York: Modern Library, 1944) 719.

[7] "We have reminded them of the circumstances of our emigration and settlement here."

It was the intent of the founders to honor the Social Contract and to put that contract into writing, as a written covenant. Our federal Constitution is the tangible manifestation of the Social Contract. Every word of the federal Constitution declares the creation and acceptance of the Social Contract or covenant. Even the word "federal" itself means "covenant" deriving from the Latin *fœdus.*

The existence of a Social Contract that protects the natural rights of individuals is beyond dispute. Further, the duty to honor and protect this contract has inspired an American system of values that places the premium on natural rights. The American value system places all other interests secondary to the preservation of liberty. Patrick Henry summarized the system of American values thusly:

> Is life so dear or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others might take; but as for me, give me liberty, or give me death!

Patrick Henry before the House of Burgesses, Richmond Virginia, March 23, 1775.[8]

[8] Consider also the words of Joseph Warren, a patriot who was killed at Bunker Hill, who wrote: "to the persecution and tyranny of [King George's] cruel Ministry we will not tamely submit – appealing to Heaven for the justice of our cause, we determine to die or be free'. Joseph Warren, April 26, 1775, in Mortimer Adler, ed. *The Annals of America* (Chicago: Encyclopedia Britannica, 1968) II:326; *and* Thomas Jefferson, *Letter to William Green Mumford,* June 18, 1799 ("To preserve the freedom of the human mind … every spirit should be ready to devote itself to

The duty accepted and owed by Defendants pursuant to the Social Contract and their oath to protect its written form is strict. Other jurists appreciating their duty have said. "We cannot, if we were so disposed, ignore the solemn duty placed upon this court by our organic law. The Constitution is the supreme law of this jurisdiction, and we are enjoined to enforce and to uphold its provisions. No higher obligation could be placed upon us. Fidelity to our oaths demands that we give effect to the constitutional guaranty". *Ex parte State of Alabama,* 199 So. 3d 139, 162 (Ala. 2014).[9]

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martyrdom"); Samuel Adams, article in the *Boston Gazette,* October 14, 1771("The liberties of our country, the freedom of our civil constitution, are worth defending at all hazards; and it is our duty to defend them against all attacks. We have received them as a fair inheritance from our worthy ancestors: they purchased them for us with toil and danger and expense of treasure and blood, and transmitted them to us with care and diligence. It will bring an everlasting mark of infamy on the present generation, enlightened as it is, if we should suffer them to be wrested from us by violence without a struggle, or be cheated out of them by the artifices of false and designing men.").

[9] "The Constitution's control is absolute wherever and to whatever its provisions apply; and every officer, executive, legislative, and judicial, is bound by oath (section 279) to support the Constitution, to vindicate and uphold its mandates, and to observe and enforce its inhibitions without regard to extrinsic circumstances. It commits to nobody, officer, or agent any authority or power whatever to change or modify or suspend the effect or operation of its mandates or its prohibitions." *Martin v. State*, 22 Ala. App. 154, 158, 113 So. 602, 606 (1926).

SUMMARY OF ARGUMENT

I. The trial court erred in its finding that the Plaintiff suffered no "concrete injury" and therefore, lacked standing to bring suit. The lower court suggested that the Plaintiff's law license and ability to file suit and make arguments in support of the constitutional rights of clients has not been damaged by Defendants because suits may may still be filed (but not won) and arguments may be made (but not given credence). The trial court court thereby asserts that while my license may be able to function in form it has lost all substantive value. Such a declaration by the court discredits the entire system of law and due process. It is the civil law equivalent of a court notifying a criminal defendant that "you will be given your day in court then I will find you guilty." The trial court's argument that "[n]o attorney or client has a legally protected interest in winning every argument that he presents to a court", belittles the Plaintiff's loss and derides the Constitution. The trial court's position loses all merit when the facts are reviewed and it is shown that Defendants did not interpret the constitution and thereby cut off an argument. Their actions renounced the Constitution. Their actions were unlawful. A law license gives the bearer a property interest in the privilege of protecting the Constitution. With the removal of the Constitution there is a removal of the plaintiff's privilege.

Not only has the Plaintiff been robbed of the substantive value of his law license, he has also been robbed of the enjoyment of his property. As discussed at the hearing of this matter, the Plaintiff derives enjoyment from his license just as a motorist or a hunter enjoys the use of a license. A law license has previously been recognized by the court to be a protectable property right. Licensees have a protectable interest not just in use and possession of their property but also a protectable right in the enjoyment of their property. As discussed at the hearing of this matter, the Plaintiff derives enjoyment and great satisfaction from utilizing his law license for its intended use, protecting the constitutional rights of clients. The actions of Defendants have deprived Plaintiff of the enjoyment of his property. The courts have long recognized that (1) property rights are protected by the 5th Amendment and (2) that injuries to enjoyment of property are injuries in fact.

Further, it cannot be argued that injury to the Plaintiff is not "certainly impending." The lower court emphatically argued the necessity and propriety of lower court's following the rulings of the court above. (Doc. 19 n.2). If the ruling of Defendants is followed then the injury complained of is certain. It is no solace to hear the court in affirm the right to file a suit to protect constitutional rights while also guaranteeing such suits will fail.

II. Absolute judicial immunity is unconstitutional and has no place in our system of laws. Judicial immunity is not found in the constitution and as a legal concept, derives its geneology from the Divine Right of Kings. The founding of this nation and its Constitution represent a strict departure from the Divine Right of Kings and an embrace of the sovereignty of the people. In America no man is above the law. Judicial immunity runs afoul of this simple pronouncement without adequate justification.

III. The Defendants have both a contractual and fiduciary obligation to the Appellant which they have breached. Defendants swore an oath to protect the constitution and that oath was a binding promise entered into for the benefit of Appellant. The oath was either a promise to God, the people and/or specifically those others (such as Appellant) who have likewise covenanted.

IV. The district court attempted to justify judicial immunity by alleging that other viable remedies exist to correct the offenses of the Appellees. However, the three suggested remedies, overturning case law, legislative action, and amendment, are not viable solutions in this case. Even if these remedies were viable, they would not redress the wrong suffered by Appellant. Further, these arguments ignore the historical acceptance of civil redress for violations of the Constitution.

ARGUMENT

I.

STANDING

The trial court erred in its finding that the Plaintiff suffered no "concrete injury" and therefore, lacked standing to bring suit. (Doc 19). The lower court suggested that the Plaintiff's law license and ability to file suit and make arguments in support of the constitutional rights of clients has not been damaged by Defendants because suits may still be filed (but not won) and arguments may be made (but not given credence). The trial court thereby asserts that while Appellant's license may be able to function in form it has lost all substantive value. Such a declaration by the court reveals the actual injury suffered by Appellant while discrediting our entire system of law and due process. Such flippant pronouncements are the civil law equivalent of a court notifying a criminal defendant that "you will be given your day in court then I will find you guilty." The trial court's argument that "[n]o attorney or client has a legally protected interest in winning every argument that he presents to a court", (Doc. 19) belittles the Plaintiff's loss and mocks the Constitution. The trial court's position loses all merit when the facts are reviewed and it is shown that Defendants did not interpret the Constitution and thereby cut off an argument. Their actions renounced the

Constitution. Their actions were unlawful. *See Martin v. State*, 22 Ala. App. 154, 158, 113 So. 602, 606 (1926)("The Constitution's control is absolute wherever and to whatever its provisions apply; and every officer, executive, legislative, and judicial, is bound by oath (section 279) to support the Constitution, to vindicate and uphold its mandates, and to observe and enforce its inhibitions without regard to extrinsic circumstances. It commits to nobody, officer, or agent any authority or power whatever to change or modify or suspend the effect or operation of its mandates or its prohibitions."). A law license gives the bearer a property interest in the privilege of protecting the Constitution. *Goldberg v. Kelly*, 397 U.S. 254, 262 n.8 (1970) With the removal of the Constitution there is a removal of the plaintiff's privilege.

Not only has the Plaintiff been robbed of the substantive value of his law license, he has also been robbed of the enjoyment of his property. As discussed at the hearing of this matter, the Plaintiff derives enjoyment from his license just as a motorist or a hunter enjoys the use of a license. A law license has previously been recognized by the court to be a protectable property right. *Id.* Licensees have a protectable interest not just in use and possession of their property but also a protectable right in the enjoyment of their property. As discussed at the hearing of this matter, the Plaintiff derives enjoyment and great satisfaction from utilizing his

law license for its intended use, protecting the constitutional rights of clients. The actions of Defendants have deprived Plaintiff of the enjoyment of his property. *Buchanan v. Warley,* 245 U.S. 60 (1917)(property "consists of the free use, enjoyment and disposal of a person's acquisitions without control or diminution."); *Scheidler v. Nat'l Org. of Women, Inc.,* 537 U.S. 393 (2003).The courts have long recognized that (1) property rights are protected by the 5th Amendment (*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971); *Davis v. Passman,* 442 U.S. 228 (1979)) and (2) that non-economic injuries and injuries to enjoyment of property are injuries in fact. *Sierra Club v. Morton,* 405 U.S. 727 (1973); *United States v. Students Challenging Regulatory Agency Procedures,* 412 U.S. 669 (1973).

Further, it cannot be argued that injury to the Plaintiff is not "certainly impending." *Clapper v. Amnesty International USA,* 133 S. Ct. 1138 (2003). The lower court emphatically argued the necessity and propriety of lower court's following the rulings of the court above. (Doc. 19 n.2). If the ruling of Defendants is followed then the injury complained of is certain. It is no solace to hear the court affirm the right to file a suit to protect constitutional rights while also guaranteeing such suits will fail.

Because Appellant has properly alleged an injury in fact, he has standing to

bring this action.

ARGUMENT

II.

JUDICIAL IMMUNITY

The doctrine of the Divine Right of Kings has been rejected in this country in its entirety. If it were not so there would have been no Revolution, Declaration of Independence, Constitution, or United States of America. However, the doctrine of absolute judicial immunity directly descends from that same line of reasoning in the English common law that supported the Divine Right of Kings. Initially, royal sovereign immunity shielded judges from suit as the judge was the servant acting in the name of the king, and the king could not be sued. The same Divine Right of Kings language was used to justify judicial immunity as was used to justify the unassailablity of divinely chosen infallible kings. Robert J. Reinstein & Harvey A. Silverglate, *Legislative Privilege and the Separation of Powers*, 86 HARV. L. REV. 1113, 1122–23 (1973) ("The judicial privilege was a corollary of sovereign immunity: the personal delegates of the King were answerable only to him for their official conduct."); H. Laski, *Foundations of Sovereignty* 103 (1931)(a judge is "incapable of doing wrong … even thinking wrong … in him is no folly or weakness.").

Under the English common law the king and his judges were above the law, but American law and values dictate that no one is above the law. *Butz v. Economou*, 438 U.S. 478, 506 (1978); *citing United States v. Lee*, 106 U.S. 196 (1882)("No man in this country is so high that he is above the law"). The concept that the sovereign is above the law was left on a distant shore and left alien to American law and thought. *Seminole Tribe v. Florida,* 517 U.S. 44 f/n 2 (1996)("it is clear that the idea of the sovereign, or any part of it, being above the law in this sense has not survived in American law."). Absolute judicial immunity is anathema to our entire system of laws and unconstitutional. Because no one is above the law Defendants must be accountable for their own actions.

The doctrine of absolute judicial immunity is directly in conflict with the Constitution's plain language. The doctrine of judicial immunity is not a creature of statute or the Constitution. The Constitution speaks to immunity for the legislature but not for judges or justices. U.S. Const. art. I § 6. As the concept of immunity was clearly understood by the drafters of the Constitution it must be assumed that the failure to include judicial immunity within the text of Article III was no oversight. *US ex rel. Williams v. NEC Corp.,* 931 F. 2d 1493 (11th Cir. 1991)("where a statute explicitly enumerates certain exceptions to a general grant of power, courts should be reluctant to imply additional exceptions in the absence

of a clear legislative intent to the contrary."). Further, the doctrine of absolute immunity for judges is in conflict with language which was included in the Constitution. *Id.* at 1502 ("any interpretation which renders parts or words in a statute inoperative or superfluous is to be avoided."). Absolute judicial immunity has become so broad that a noble class of judges has been created. Absolute judicial immunity is so broad that judges are thereby immune even when knowingly violating the Constitution or undertaking malicious acts. *Stump v. Sparkman,* 435 U.S. 349, 566-357 (1978)("This immunity applies even when a judge's acts are in error, malicious, or were in excess of his or her jurisdiction"). This creation of a class of persons above the law is contrary to U.S. Const. art. I § 9 cl. 8 which states "No title of nobility shall be granted by the United States". This clause clearly precludes the creation of a class of persons[10] that are above the law.[11]

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[10] There is no question that judge's occupy a special class all their own. No other office is granted absolute immunity. In light of this unequal treatment under the law one scholar referred to judges as "the pampered child of the law" and then suggested that a "cynic might be forgiven for pointing out who made the law [judges themselves]." Gray, *Private Wrongs of Public Servants,* 47 Cal. L. Rev. 263, 272 (1959).

[11] It cannot be argued that absolute judicial immunity does not create a class which holds itself superior to all others. As noted in the dissent in *Stump,* judicial immunity springs from ""an aura of deism which surrounds the bench . . . essential to the maintenance of respect for the judicial institution." Though th[is] rhetoric

The founders of the nation thought it sufficiently important to the preservation of our republic to include this clause. America was founded on the principles of an equal and just society. Thomas Paine decried titles of nobility as they had the effect of forbidding inquiry into the character of the possessor, much as absolute judicial immunity would preclude inquiry into acts of malice and corruption.[12] The Court on which the Defendants sit has clearly stated that no one ought to be above the law:

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the least, are creatures of the law, and are bound to obey it.

Butz v. Economou, 438 U.S. 478, 506 (1978); *citing United States v. Lee*, 106 U.S. 196 (1882).

Whether you call it nobility, royal sovereignty, or judicial immunity, it is all

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may be overblown," even the dissent does "not quarrel with it." *Stump v. Sparkman,* 435 US 349, 369 (1978). However, any "aura of deism" that once accompanied the bench has now been dispelled as evidenced by the increasing number of citizens who appear for jury duty wearing sweatpants and flip flops. If the dignity of the court is crucial to the operation of the court, then the Court must claim dignity by conduct which is above reproach not by concealing and protecting bad behavior. Judicial immunity in the absolute to the citizen appears not as a robe of honor but as a cloak for hypocrisy.

[12] *The Life and Works of Thomas Paine*. Edited by William M. Van der Weyde. Patriots' Edition. 10 vols. New Rochelle, N.Y.: Thomas Paine National Historical Association, 1925.

the same. They all work to but one end: a nation ruled by men and not laws. The arguments for absolute judicial immunity sound eerily like the protests of Charles I who refused to answer to any authority. The patriots threw tea into Boston Harbor as a token of their rejection of royal sovereignty. Thomas Jefferson penned and others signed the Declaration of Independence pledging their lives and sacred honor against the tyranny of a government of men. And later the Constitution was drafted to perfect our union and, of primary importance, establish justice – under law and not men. U.S. Const. Preamble. The drafters of the Constitution were well aware of the dangers of royal sovereignty (the Divine Right of Kings) and a privileged class that operated above the law; they faced it, fought it, and rejected it. Had they embraced the common law doctrine of royal sovereignty and its appendage, judicial immunity, they surely would have included it in the Constitution.

The doctrine of absolute judicial immunity is far too broad. The executive and legislative branches of government have a measure of immunity, but their immunity is humble in comparison to judicial immunity.[13] Neither the executive

[13] Defendants have not claimed qualified immunity but if they had, no protection thereunder could be afforded them. Defendants' actions in this matter were willful acts of malice against the Constitution. As stated in the Complaint, they left their station as interpreters of the constitution and took up the pen of the editor. They edited out protections for the liberty and rights of the people for the sake of

nor the legislative is immune for acts of corruption and malice.[14] The justification for the breadth of judicial immunity previously offered by its proponents is not sufficient.[15]

The Court has stated that the justification for absolute judicial immunity lies

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empowering government. The deletion of constitutional rights was worked by redefining liberty, freedom, and marriage setting ablaze the Constitution and the dictionary all at once. They were not satisfied with historical or even contemporary definitions of these terms, therefore they crafted new meanings from the imagination of their own hearts. If the Defendants are free to craft new meanings for words then the words of the Constitution have no meaning or value. With the power to invent new meanings the Defendants could have reached the same decision by interpreting the label from a box of Cracker Jacks. This disdainful practice not only violates the Separation of Powers doctrine, encroaching on the province of the legislature, but also disregards hundreds of years of the common law and sound advice. Sir Francis Bacon, *Essays and New Atlantis, #56 Of Judicature,* (New York: Walter J. Black) 1942 – originally published in 1612 ("Judges ought to remember that their office is *jus dicere* and not *jus dare;* to interpret law, and not to make law, or give law … Judges ought to beware of hard constructions and strained inferences, for there is no worse torture than the torture of laws.")

[14] *E.g. Imbler v. Pachtman,* 424 U.S. 409 (1976); *O'Connor v. Donaldson,* 422 U.S. 563 (1975); *Wood v. Strickland,* 420 U.S. 308 (1975); *Scheuer v. Rhodes,* 416 U.S. 349 (1974); *Butz v. Economou,* 438 U.S. 478, 506 (1978). No court has ever explained why judicial immunity must be absolute while executive and legislative immunity remain qualified and tempered. The courts have easily grasped their role in limiting executive and legislative authority but have yet to contemplate the need for restrained judicial authority.

[15] Absolute judicial immunity was more tolerable when other means of relief existed in law. *Bradley v. Fisher,* 13 Wall. 335 (1872). However, Plaintiff has no other means of remedy (including administrative remedies), therefore judicial immunity cannot be justified. It cannot be argued that the process of impeachment

in the need for a judge to act "upon his own convictions, without apprehension of personal consequences". *Stump v. Sparkman,* 435 U.S. 349, 363-364 (1978). However, the personal convictions of the Defendants are directly at odds with the Constitution. Defendants must not be allowed to act on personal convictions that place the Constitution in jeopardy. Defendants have followed the shameful example of their predecessors in the *Dred Scott* decision where the court rationalized away unalienable rights by disregarding both historical facts and the plain language of the Constitution.

The dissent from *Scott* gives this Court wise guidance:

> [W]hen a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and

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is the sole remedy at law to correct the Defendants. First, the Constitution nowhere grants immunity from civil suit to any judicial officer. Second, the Constitution nowhere identifies impeachment as the sole remedy for judicial officials that contemptuously disregard duty and the Constitution. Finally, since the impeachment trial of Samuel Chase it has been the position of congress that, short of a criminal act, the congress will not act to remove a Supreme Court Justice. *The Trial of Mr. Justice Samuel,* Maryland Law Review, Vol. 24 Iss. 4 Art 4 (1967). Further, *Bradley* reasoned that the court needs a "vigorous and independent mind" thus immunity is necessary. However, absolute immunity serves to protect the judiciary even in those cases when the mind is neither vigorous nor independent. Holding judges accountable for knowingly depriving citizens of their constitutional rights does not undermine judicial impartiality. Holding judges accountable for unreasonable or knowingly unconstitutional acts would only serve to encourage judges to pay careful attention to the merits of a dispute. This would improve not hinder judicial function.

> the theoretical opinions of individuals are allowed to control its meaning, *we have no longer a Constitution*; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean.

Scott v. Sandford, 60 U.S. (19 How.) 393, 621, 15 L.Ed. 691 (1857) (Curtis, J., dissenting)(*emphasis added*).

The oath of office entered into by Defendants acts as a limit on personal convictions. Defendants are not permitted to rule on the basis of personal convictions that are contrary to the plain language of the Constitution.[16]

Any justification for judicial immunity is crippled by an examination of the origins of the doctrine. The doctrine and all of its justifications sprang solely from the courts' own pronouncements. Over the years the justifications for the doctrine

[16] The plaintiff has been unfairly slandered in the reporting of this case by some sources who immediately attribute hate, animosity, prejudice or bigotry where none exists. Plaintiff has not attacked the LGBT community in anyway and has no desire to do so in the future. The nature of the issue is well stated in the Complaint. The actions of Defendants are reprehensible in that they impair the rights of all Americans which previously enjoyed protection under the 14th Amendment. The only desire of the Plaintiff is to protect the Constitution, the liberty of the people, and his vocation protecting the same. Regardless of how well intended the actions of Defendants may have been, "it is not right to prevent one evil by doing another, even worse one." Martin Luther, *How far Secular Authority Extends,* January 1, 1523. The loss of the Constitution and the protections of the accompanying 14th Amendment are too high a price to pay for accelerated changes in the distribution of government benefits.

have shifted. Initial arguments proclaimed the infallibility of judges, later arguments claimed that protecting judges from any liability protected the system itself and brought finality to disputes. However, these arguments lose credibility when we consider that absolute judicial immunity is a creature of the courts themselves; that judges are immune simply because they say so. They have proclaimed themselves above the law.

Judicial immunity is a doctrine that admittedly results in injustice. Under this doctrine acts of malice are protected. *Stump v. Sparkman,* 435 U.S. 349, 566-357 (1978). Judicial immunity foolishly proposes that injustice is a viable tool in the pursuit of justice. However, for justice to be had, justice must be done. Justice will never be had by intentionally protecting acts of injustice from consequences.

ARGUMENT

III.

FIDUCIARY AND CONTRACT OBLIGATIONS

Fiduciary Duty

Defendants have also argued that no fiduciary relationship exists between Defendants and Plaintiff. However, to support their arguments against the existence of either a fiduciary or contractual obligation they must assert that the

oath of office to protect the constitution is an oath to no one with a duty to no one. However, at common law a judge's oath of office is a promise to God. William Blackstone, *Commentaries on the Laws of England,* Book 4 Chapter 4 (Oxford: Clarendon Press 1765). If it is the case that the oath of office is a promise to God then it is sure that Plaintiff is the intended beneficiary of said promise, else there is no purpose for the oath in the first place. The oath of office is the specifically required act of execution and acceptance prescribed by the Constitution (a document that's authorship is attributed to the people in its Preamble). By taking their oath of office Defendants have signed the agreement. It defies both equity and justice to allow Defendants to disavow this binding agreement. In fact the act of disavowing the agreement is itself a breach. Plaintiff is an intended beneficiary as a citizen (the authors and offerors[17] of the contract) and as fellow partaker of the oath as a member of the bar to protect the Constitution. If Defendants had in fact kept their oath it would have inured, as intended, to the benefit of all others with the like covenant and obligation. Having willfully broken this obligation to protect the

[17]In his early work on *Rules of Constitutional Interpretation* (1833), Joseph Story affirmed that the Constitution was adopted by the people. "They avow that the constitution of the united states was adopted by them, 'in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity.'"

Constitution from their position of authority they have willfully harmed all, including the Plaintiff, who should have benefited by their fidelity to the oath. Not only have they breached their duty but have done so for the sake of self-dealing. By their breach they have usurped authority and power unto themselves, making their persons the supreme law of the land in the stead of the Constitution. Because there is a fiduciary relationship, Defendants must show that their usurpation (self-dealing) was done in good faith and that adequate consideration was provided to the beneficiaries to compensate for the loss. *International Ins. Co. v. Johns,* 874 F. 2d 1447 (11th Cir. 1989). Unfortunately, the Plaintiff (and any other beneficiary) has received no consideration for his loss.

As a result of the said breach Plaintiff has suffered damages as set forth in the Complaint. Plaintiff has a property interests in his law license.[18] *See Bell v.*

[18] Defendants have argued that no facts have been provided to support the 5th Amendment claim however, Plaintiff identified a property interest (his law license) that was damaged or diminished by the actions of Defendants (Plaintiff's practice is almost entirely devoted to protecting 14th Amendment rights that have now been supplanted by the illegal acts of Defendants) and described the said damage in terms of lost income.
J. Bruce Bennett, *The Rights of Licensed Professionals to Notice and Hearing in Agency Enforcement Actions*, 7 TEX. TECH ADMIN. L.J. 205, 208 (2006) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 262 n.8 (1970)) (footnote omitted); see also Mark R. Fondacaro & Dennis P. Stolle, *Revoking Motor Vehicle and Professional Licenses for Purposes of Child Support Enforcement: Constitutional Challenges and Policy Implications*, 5 CORNELL J.L. & PUB. POL'Y 355, 363 (1996) ("The United States Supreme Court has clearly recognized the issuance of

Burson, 402 U.S. 535, 539 (1971). Plaintiff has suffered damage to his property as Plaintiff's law license is utilized to protect the liberty and constitutional rights of clients which can no longer be effectively done due to Defendants' usurpation of the Constitution. Plaintiff acquires fees for his services as a licensed attorney. Said employment and the fees derived therefrom cannot be realized as a result of Defendants' breach. The damages requested in the Complaint represent the loss of income and enjoyment of a property interest as a result of Defendants' bad acts and breaches. The damages complained of are imminent and certain. The actions of Defendants have sown Plaintiff's fields with salt. No matter what is planted, the field is destroyed and no crop can grow thereon. We need not wait for successive seasons of harvest to calculate the damages. The injury has already occurred and the damages follow as a natural and unavoidable result of the actions of the Defendants alone. The Plaintiff intends to practice law for the next 40 years, keeping his covenant defending the constitutionally protected rights of his clients. However, now that the Constitution has been removed and supplanted by the Defendants he will not be able to put his license to its intended use.

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both professional and motor vehicle licenses as creating important property or liberty interests requiring due process protection.").

Breach of Contract

There exists a contract relationship between the parties. Each element of a claim is asserted, inferred, claimed and provided above and in the Complaint. (Doc. 1); *Berry v. Leslie,* 767 F. 3d 1144 (11th Cir. 2014)("the Court must view the facts and make all reasonable inferences in the light most favorable to the non-moving party"). As discussed above in the Historical Sketch there exists a contract between the government with its officials (Defendants) and the people (including Plaintiff). This contract was previously known as the social contract and was made flesh by the Constitution and Defendants' oath. The Constitution creates a duty on the part of government and its officials (such as Defendants) to perform as protector of liberty, freedom, and natural rights. There has surely been an acceptance and meeting of the minds on this contract as evidenced by the oath of office entered into by Defendants as well as centuries of history.

The duty of Defendants, under the agreement, is to the people and certainly to all officers of the court, who, like Plaintiff, have shared in the oath to protect the Constitution and thereby protect the freedom, liberty, and natural rights of the people. These mutual duties form a contractual relationship and duty between the Defendants and Plaintiff. Their position and duties under the contract were offered to them and they accepted the same with an oath. There was a clear meeting of the

minds as is evidenced by writing and oral oath, and consideration has passed by way of the detriment promised in the form of the mutual obligation to protect the Constitution. The contract has been breached as set forth above and Plaintiff has been damaged as set forth above in the previous section and Plaintiff is entitled to compensation. Where Charles I breached his similar duty it cost him his head, the Plaintiff by comparison seeks only modest compensation in the form of $6,000,000.00 in imminently lost fees over the rest of his legal career.

This action must be allowed to proceed. Plaintiff has sufficiently established an actual controversy and standing. If he is not allowed to proceed then Defendants will remain above the law and accountable to no one. There must be a remedy for the damage to Plaintiff's property interest. *Marbury v. Madison,* 5 U.S. 137, 163 (1803)("the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection."). If no one can address these wrongs then it is feared that history will repeat itself. The breach of promise to protect the rights of Americans has cost us the blood of a Revolutionary War and a Civil War.[19]

[19] Prior to the Civil War the Courts were afforded the opportunity to protect the rights of individuals and prevent the coming bloodshed. Unfortunately, the Court issued the famous *Dred Scott* decision and reasoned away unalienable rights and

It is the foremost duty of this Court to recognize this contract. For in recognizing this contract this Court affirms its own legitimacy and upholds its duty to support and defend the Constitution. The actions of Defendants have placed this Court in the unenviable position of having to choose between its duty to uphold the Constitution or support the opinion of Supreme Court Justices.[20] Though unenviable the task is a simple one. When placed on the scales of justice the natural unalienable rights to liberty and property far outweigh the whim of Defendants.

ARGUMENT

IV.

FURTHER RESPONSES TO THE DISTRICT COURT ANALYSIS OF REMEDIES

The District Court's decision grapples with the inconsistencies of absolute judicial immunity and attempts to provide justification for the unjustifiable. (Doc. 19). Some of these inconsistencies deserve further attention and therefore are

propelled the nation to war.

[20] While this case is not a collateral attack on a decision of the Court, but rather a direct defense of the Constitution it must be remembered that a "traditional justification for overruling a prior case as precedent may be a positive detriment to coherence and consistency in the law". *T.V. Inc. v. GTE Sylvania, Inc.,* 433 U.S. 36 (1977). The actions of Defendants are an island with no connection to any prior ruling or interpretation of the 14th Amendment.

addressed here.

Authority to Rewrite the Constitution

The trial court cited to *Bolin v. Story,* stating that: "the Eleventh Circuit Court of Appeals held that federal judges have absolute immunity from claims for damages and for injunctive relief "for those acts taken" while the judges "are acting in their judicial capacity unless they acted in the 'clear absence of jurisdiction.'" 225 F.3d 1234, 1239 (11th Cir. 2000). This position is interesting in that the actions of Appellees were clearly outside of their jurisdiction in the simplest of ways. The Appellees rewriting of the constitution, by both deleting and words and changing their meaning, was clearly beyond their authority. This fact has been understood from the earliest days of constitutional interpretation. Justice Story wrote regarding the proper interpreting of the Constitution:

> Where it's words are plain, clear, and determinate, they require no interpretation.
>
> …
>
> Nothing but the text itself was adopted by the people.
>
> …
>
> We are to construe, and not to frame the instrument.
>
> …

> Not to enlarge the construction of a given power beyond the fair scope of its terms, merely because the Restriction is inconvenient, in politics, or even mischievious. If it be mischievious, the power of redressing the evil lies with the people buy an exercise of the power of amendment. If they do not choose to apply the remedy, it may fairly be presumed, that the Mischief is less than what would arise from a further extension of the power; or that it is the least of two evils. Nor should it ever be lost sight of, that the government of the United States is one of limited and enumerated powers; and that our departure from the true import and sense of its powers is, pro Tanto, establishment of a new constitution. It is doing for the people, but they have not chosen to do for themselves. It is usurping the functions of a legislature, and deserting those of an expander of the law.
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> …
>
> Temporary delusions, prejudices, excitements, and objects have irresistible influence in mere questions of policy. And the policy of one age May till suit the wishes or the policy of another. The Constitution is not to be subject to such fluctuations. It is to have a fixed, uniform, permanent construction. It should be so far at least as human infirmity will allow, not dependent upon the passions or parties of particular times, but the same yesterday, to-day, and forever....

Story, Justice Joseph, *Rules of Constitutional Interpretation* (1833).

These parameters for the interpretation of the constitution were laid out nearly 185 years ago and have been well circulated. Appellees actions violate their duty and authority in the most fundamental of ways. The above-listed boundaries of interpretive authority (jurisdiction) cited by Justice Story were exceeded by Appellees. The Appellees had no authority to take a clearly understood protection of rights and transform it into a grant of authority to the government.

Oversight for the Court

The trial court also complains that allowing this suit to go forward "would be to allow a new method of oversight of federal court actions by co-equal or inferior courts." This argument ignores two main issues. First, that the relief requested, or "oversight" discussed, is not inconsistent with the Constitution and is only challenged by the abhorrent doctrine of absolute judicial immunity. Second, the argument implies that there is a current method of oversight in place that effectively addresses situations where Supreme Court Justices disregard the constitution. However, there is no actual oversight for the Supreme Court.

The trial court suggests that the error of *Obergefell* could be remedied by (1) the filing of another action hoping for a change of heart among the justices, (2) new legislation on the subject, or (3) amending the Constitution. However, none of the three proposed remedies are viable solutions.

First, waiting for a subsequent ruling overturning the prior ruling is not effective. In oral argument this proposal was discredited by a discussion of the *Dred Scott* decision as as an example. The corrective measures for that unconstitutional decision required the loss of over 600,000 lives in a bloody civil war before a correction was made. The trial court in its opinion cited to *Plessy v. Ferguson* (1896)and *Brown v. Board of Education* (1954) as a better example of

how later opinions can correct unconstitutional rulings. However, this example is not entirely satisfying as the correction came only after nearly six decades of segregation, oppression, violence and bigotry.

Second, the passage of new legislation is not a viable solution either. *Obergefell* overturned legislation from the states. It can hardly be argued that any action by state legislators would be able to correct the erroneous ruling. Additionally, the Supreme Court has also ruled that the federal government is prohibited from legislating in the area of marital issues. Thus, according to the court, no legislative body has the authority to undo the legislative acts of the Appellees.

Lastly, the suggestion that an amendment would cure the defect is perhaps the most disheartening. The issue complained of is that the defendants have disregarded the plain language of the constitution. Passing a new amendment would not prevent them from engaging in the same conduct once a new amendment is added. They disregarded the plain language of the 14th Amendment and by the same usurpation they would surely disregard any new amendment.

Additionally, it is nowhere stated in the Constitution that the judiciary is immune from suit or that civil remedies do not lie from violations of the

Constitution. At the founding it was recognized that a civil remedies were available when rights were violated by government officials.

> At the founding, plaintiffs could typically sue government officials directly whenever such officials had acted unconstitutionally. In such cases, courts generally awarded plaintiffs damages even when the unconstitutional conduct had occurred in good faith; in turn, the government typically indemnified the officials involved and thus indirectly footed the bill.

Amar, Akhil Reed, *America's Constitution – A Biography,* (2005), 336.

Judicial immunity must not render the 5th and 14th Amendments meaningless.

> Instead of respecting The Constitution's General theme of popular sovereignty, today's court has exalted governmental sovereignty and in fact made it harder for twenty-first-century Americans to achieve redress than it ever was in eighteenth century England. Instead of honoring the celebrated common-law maxim that "for every right, there should be a remedy"[21], the modern Court seems intent on insisting that for many a right there must be no remedy. Sovereignty means never having to say you're sorry.[22]

Id.

This case presents the opportunity to right the ship. Absolute judicial immunity has been expanding with each passing year since its introduction into

[21]*See Blackstone's Comm.,* 3:23; *Marbury v. Madison,* 5 U.S. (1 Cranch) 137. 163 (1803).
[22]*See Seminole Tribe v. Florida,* 517 U.S. 44 (1996)(Stevens, J., dissenting)(Souter, J. Dissenting, joined by Ginsburg and Breyer, JJ).

American jurisprudence. Its growth has yet to be checked by the court. And as a result its abuses have become more grievous. The greatest threat to our free society and the rights of citizens has been realized. The Appellees, men and women not selected by the people, have become the ultimate authorityover the people. The law , the constitution is no longer the ultimate authority. Its text no longer binds the court as shown above. The people who are the actual sovereign have had their authority usurped by those bound to be their servants. This corruption is concealed and sustained by the cloak of judicial immunity.

CONCLUSION

The doctrine of absolute judicial immunity is unconstitutional or, at a minimum, is unjustifiably broad. The Appellant has standing to bring this action. The judgment should be reversed and this matter remanded for trial on the merits.

DATED: January 24, 2017.

Respectfully submitted,

/s/Austin Burdick
Austin Burdick
Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Eleventh Circuit Rule 32(a)(7), I certify that the accompanying brief is double spaced, that a 14 point proportional font was used, and that there are 11,957 words in the brief.

Dated: January 24, 2017

/s/Austin Burdick
Austin Burdick

STATEMENT OF RELATED CASES

Counsel for appellant is aware of no other cases pending in this Court which relate to this action.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of January, 2017, I electronically filed this Brief with the Clerk of the Court using the Cm/ECF system, which will give notice of the filing to counsel of record.

s/ Austin Burdick
OF COUNSEL