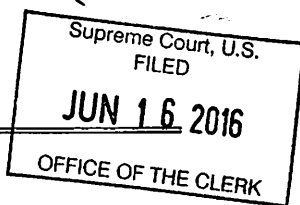


15-1524
No. 1524



**In The
Supreme Court of the United States**

LOUIS B. ANTONACCI,

Petitioner,

v.

CITY OF CHICAGO, et al.,

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether this Court's ruling in *Bell v. Hood*, 327 U.S. 678 (1946) prohibits the dismissal of Petitioner's well-pleaded RICO claims (18 U.S.C. §§ 1961 *et seq.*) for lack of subject matter jurisdiction.

Whether dozens of alleged acts of extortion, mail fraud, and wire fraud, perpetrated over a two-year period by lawyers, state court judges, and court reporters, sufficiently alleges a "pattern" of racketeering activity under RICO, when the criminal enterprise has undue influence over the state courts and attorney admission process and thus presents a clear threat of continued racketeering activity.

Whether a plaintiff may file an amended complaint, pursuant to FRCP 59(e), after a district court has already dismissed the complaint and entered judgment thereon.

Whether a district court may *sua sponte* dismiss a case for lack of diversity jurisdiction, and enter judgment thereon, without allowing any jurisdictional discovery, because the plaintiff used the word "resident" rather than "citizen" when describing the particular citizenship of the parties.

Whether a district court may *sua sponte* dismiss a case for lack of diversity jurisdiction, and enter judgment thereon, without allowing any jurisdictional discovery, despite the plaintiff's allegation that there is complete diversity of "citizenship" between the plaintiff and the defendants.

Whether the unsupported affidavit of alleged Seyfarth Shaw LLP partner Joseph Damato, submitted with the brief of appellee, may destroy diversity jurisdiction and, if so, whether Seyfarth may properly be dismissed as a dispensable party, pursuant to this court's holding in *Newman-Green Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989).

**PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT**

Petitioner is Louis B. Antonacci. Respondents are the City of Chicago, Seyfarth Shaw LLP, Anita J. Ponder, The Law Offices of Ruth I. Major, P.C., Ruth I. Major, Perkins Coie LLC, Matthew J. Gehringer, Kruse & Associates, LTD., Margaret Kruse, Toomey Reporting, Inc., Sosin & Arnold, Ltd., George A. Arnold, and Neal & Leroy LLC.

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The Seventh Circuit's opinion is unpublished and reproduced at Pet. App. 1a-9a. The Seventh Circuit's order requiring the petitioner to identify "by name" each member of Neal & Leroy LLC and Perkins Coie LLC, as well as each partner of Seyfarth Shaw LLP, and the state of citizenship of each member or partner thereof, is also unpublished and reproduced at Pet. App. 10a-12a. The district court's *sua sponte* memorandum opinion and judgment is unpublished and reproduced at Pet. App. 15a-21a.

The Supreme Court of Illinois's order denying Antonacci's petition for leave to appeal (Pet. App. 22a) is reported at 42 N.E.3d 369. The opinion of the Appellate Court of Illinois, First District, First Division (Pet. App. 23a-51a), is reported at 39 N.E.3d 225. The memorandum opinion of the Circuit Court of Cook County, Illinois, County Department, Law Division ("Cook County Circuit Court"), is unpublished and reproduced at Pet. App. 51a-80a. Other relevant, unpublished opinions of Cook County Circuit Court, as well as the transcript of the April 23, 2014 hearing before The Honorable Eileen M. Brewer, are reproduced at Pet. App. 81a-142a.

The Report of the Inquiry Panel convened by the Supreme Court of Illinois's Committee on Character and Fitness is unpublished and reproduced at Pet. App. 143a-148a.

JURISDICTION

The Seventh Circuit issued its per curiam opinion on March 18, 2016. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves 28 U.S.C. § 1331 “Federal Questions,” which states, in its entirety, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

This case also involves 28 U.S.C. § 1653 “Amendment of pleadings to show jurisdiction,” which states, in its entirety, “[d]eferred allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.”

The following statutory provisions are also involved in this case:

18 U.S.C. § 1341	160a-61a
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18 U.S.C. § 1951	164a-65a
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18 U.S.C. § 1961	170a-76a
18 U.S.C. § 1962	177a-78a
28 U.S.C. § 1332	149a-59a
720 ILCS 5/12-6	186a-88a
805 ILCS 206/401(f)	189a-91a
DC ST § 29-105.01(a)	179a-80a
DC ST § 29-601.04(b)	181a-85a

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

On April 29, 2015, Petitioner Louis B. Antonacci, an attorney and a citizen of the District of Columbia, brought against all respondents two (2) counts under the Racketeer Influenced and Corrupt Organizations Act, as well as one (1) count of common law civil conspiracy, in the U.S. District Court for the Northern District of Illinois. He also brought three (3) causes of action against his former lawyer, Ruth Major, and her law firm, Major Law, for common law fraud, breach of fiduciary duty, and legal malpractice.

Antonacci alleged both federal question (28 U.S.C. § 1331) and diversity (28 U.S.C. § 1332) subject-matter jurisdiction. On May 5, 2015, district judge Milton I. Shadur dismissed Antonacci's complaint, *sua sponte*, for lack of subject matter jurisdiction, and entered judgment thereon. Shadur reasoned that Antonacci could not invoke federal-question jurisdiction because his RICO claim 1) did not comply with the Federal Rule of Civil Procedure Rule 8(a)(2) requirement of a "short and plain statement of the claim showing that the pleader is entitled to relief," and 2) it "plainly appear[ed] to fail – flat-out – the 'plausibility' requirement established by the Twombly-Iqbal canon that has taken the place of the long-standing and overly generous Conley v. Gibson approach." Similarly, the district court found two (2) fundamental defects in the complaint that destroyed diversity jurisdiction: 1) Antonacci used the word "resident," rather than "citizen," when describing the parties, and

2) Antonacci alleged the state of organization for the two limited liability partnerships, and the one limited liability company, rather than the states of citizenship for each and every one of their limited liability partners or members.

For those reasons, the district court dismissed Antonacci's complaint and entered judgment thereon. Judge Shadur further concluded his memorandum opinion with the following:

But because this Court's view has always been that the "must dismiss the suit" language of [*Adams v. Catrambone*, 359 F.3d 858, 861 (7th Cir. 2004)] may be viewed as Draconian in nature, its consistent practice has been to comply with that case's mandate but, if a plaintiff were to cure that deficiency within the 28-day time frame made available by FRCP 59(e), to entertain a motion that would avoid the plaintiff's having to file a new lawsuit – on condition, however, that a payment equivalent to another filing fee must be tendered by the plaintiff to avoid his, her or its having to redraft a bulky complaint.

The district court's invitation to file a FRCP 59(e) motion – to alter or amend a judgment – does not seem to make sense where, as here, the complaint had been dismissed as a result of the judgment. And note the district court's indecipherable "condition" that Antonacci pay another filing fee so that he would not "redraft a bulky complaint."

Antonacci filed his notice of appeal on June 2, 2015. None of the respondents filed a cross-appeal.

On July 27, 2015, the Seventh Circuit issued an order striking Antonacci's brief for failing to identify "by name" each member of Neal & Leroy LLC and Perkins Coie LLC, as well as each partner of Seyfarth Shaw LLP, and the state of citizenship of each member or partner thereof. Pet. App. 10a-12a. The Seventh Circuit ordered Antonacci to file a new brief, by July 31, 2015, that conformed to this requirement.¹ On March 18, 2016, the Seventh Circuit affirmed the decision of the district court, albeit on different grounds. As set forth above, the district court erroneously dismissed the complaint for lack of subject matter jurisdiction pursuant to *Twombly* and *Iqbal*. The Seventh Circuit erroneously affirmed that decision because it found Antonacci's RICO claims "legally frivolous," and thus did not

¹ The lower courts' proceedings were rife with irregularity. Initially, Antonacci was not allowed electronic filing privileges, which is mandatory in the Seventh Circuit. The Seventh Circuit's clerk instructed Antonacci to file a motion requesting electronic filing privileges. Antonacci did so on July 6, 2015, together with his motion to amend his complaint to cure the alleged jurisdictional deficiencies regarding diversity of citizenship. The motion was denied in its entirety on July 8, 2015. Antonacci's production vendor attempted to file the brief of appellant in paper form on July 9, 2015, but the clerk rejected the filing and later instructed Antonacci to file a motion for extension of time to file his brief. Antonacci had to write a letter to the clerk, with a screen shot, proving that he did not have ECF privileges, before he was allowed to file electronically. Pet. App. 291a-94a. Additionally, on August 5, 2015, respondents jointly moved for a 35-day extension of time to file their Briefs of Appellee, which was granted the very next day. The Illinois Appellate Court issued its opinion eleven days later, without oral argument.

meet the *Bell v. Hood* standard. The Seventh Circuit reasoned that “[w]hile [Antonacci] premises his RICO claims on multiple allegations of fraud, each individual allegation is so unsupported by any plausible detail as to be preposterous.” The Seventh Circuit further ruled that diversity jurisdiction is not available to “salvage” this case because Seyfarth submitted the affidavit of Joseph Damato, which alleges he is an equity partner at Seyfarth and a citizen of the District of Columbia, and thus no jurisdictional discovery is required.

Finally, the Seventh Circuit incorrectly asserted the district court “gave [Antonacci] 28 days to file an amended complaint, which it promised to consider.” As demonstrated above, the district court entered judgment and closed the case in the district court, so no amended complaint could be filed. The district court even specifically instructed Antonacci not to file an amended complaint. And the district court’s invitation to file a FRCP 59(e) motion would do nothing to advance Antonacci’s case in any event. But the Seventh Circuit nonetheless went so far as to hold that Antonacci did not deserve another “chance” because of “his own failure to take advantage of the last-chance opportunity extended by the district court.”

The opportunity to do what, exactly, remains unclear.

B. THE UNDISPUTED FACTS

Antonacci will not belabor the details of his allegations because he reproduced the complaint in the appendix. Pet. App. 192a-263a. But he will

summarize his allegations briefly to demonstrate how they were misconstrued by the Seventh Circuit.

In August 2011, Antonacci relocated from Washington, DC, to his hometown of Chicago to work for Seyfarth in its commercial litigation group. Pet. App. 200a. Antonacci was already licensed to practice law in Wisconsin, Virginia, and the District of Columbia. Pet. App. 199a-200a. Antonacci successfully worked for numerous partners at Seyfarth, independently generated business, and received nothing but overwhelmingly positive performance evaluations. Pet. App. 201a-202a. Antonacci was nonetheless summarily terminated from Seyfarth, with seven hours' notice, on May 22, 2012, as the result of a purported layoff. Pet. App. 201a.

Antonacci hired a local attorney, Major and Major Law, who requested Antonacci's personnel file from Seyfarth. Pet. App. 203a. Antonacci's personnel file revealed that Ponder – a longtime Chicago lobbyist² who had been hired by Seyfarth as a result of Mayor Emanuel's recent election – had been lying about Antonacci and his work to numerous senior

² Oddly, the Seventh Circuit expressly doubted the veracity of facts that may be easily gleaned from public records. That Ponder was a City lobbyist until 2010 is a matter of public record. Similarly, Ponder's federal tax liens are a matter of public record as well. That Ponder was contributing to dozens of local political campaigns, rather than pay her federal taxes, is also a matter of public record. In ironic contrast, the Seventh Circuit seems to suggest that Antonacci is somehow capable of determining the state of domicile of every equity partner and/or member of the law firm respondents, without any jurisdictional discovery, as Chief Judge Diane Wood claimed during the oral argument of January 26, 2016. That is impossible.

partners at Seyfarth. Pet. App. 199a-200a, 202a-03a. Major agreed to aggressively pursue Antonacci's case against Seyfarth and Ponder. Pet. App. 203a, 234a. After initial claim settlement negotiations failed, Major worked with the City of Chicago to ensure that no privileged information was disclosed in the complaint. Pet. App. 205a. On November 21, 2012, Major filed Antonacci's verified complaint in Cook County Circuit Court, alleging defamation and other torts against Seyfarth and Ponder, and the enterprise sprang into action. Pet. App. 206a.

Antonacci had applied for admission on motion to the Illinois bar in April 2012. Pet. App. 201a. A member of the Illinois Supreme Court's Character and Fitness Committee, Ellen Mulaney, had scheduled a routine interview with Antonacci prior to Major filing the complaint. Pet. App. 206a. Shortly after Major filed the complaint, Mulaney postponed the interview indefinitely. Around the same time, Seyfarth offered to settle the case for \$100,000, but threatened that if Antonacci did not accept the offer, then they would make his professional life difficult. *Id.* Antonacci told Major to counteroffer, which she did not do. *Id.* Instead, she agreed to work with Seyfarth, Gehringer, and Perkins Coie to sabotage his case and run up his legal bills.³ Pet. App. 207a-09a. Shortly thereafter, Mulaney indicated to Antonacci that they would skip the interview and proceed directly to an Inquiry Panel. Pet. App. 206a.

Seyfarth and Ponder then moved to seal the complaint and dismiss it for failure to state a claim.

³ Major had refused to work on a contingency fee basis.

Pet. App. 211a. The Inquiry Panel met with Antonacci, at the offices of respondent Neal & Leroy, LLC, while those issues were briefed. Pet. App. 214a-16a. The Inquiry Panel was openly hostile towards Antonacci, focusing their harassment on Antonacci's intentions in filing the complaint. *Id.* They tried to coerce him into withdrawing the case, which he refused to do, so they instructed him to inform them of the results of the upcoming hearing on the motion to dismiss the complaint. *Id.* The Panel reasoned that Seyfarth and Ponder had alleged Antonacci may have violated the Rules of Professional Conduct by filing the complaint, and thus they wanted Circuit Judge Eileen Brewer's opinion on that issue. *Id.* The Circuit Court has no jurisdiction to hear allegations regarding violations of the Rules of Professional Conduct.⁴ Moreover, Judge Brewer had recused herself from hearing Seyfarth and Ponder's motion to seal the complaint, as a result of her own improper sealing of court records in cases where she was personally involved (*see* note 11, *infra*), but the Inquiry Panel was not interested in that hearing. Pet. App. 222a.

The April 2, 2013 hearing was held and Judge Brewer criticized Antonacci's complaint as incoherent and indecipherable, despite that it was verified and complete with numerous exhibits substantiating his allegations. Pet. App. 216a. Kelly Gofron's email memorializing some of Ponder's defamatory statements was not exhibited to the

⁴ The Illinois Supreme Court has exclusive and plenary jurisdiction over attorney disciplinary matters, which it has delegated to the Attorney Registration and Disciplinary Commission. *In re Harris*, 93 Ill.2d 285, 291, 443 N.E.2d 557 (1982).

verified complaint ("Ponder Slander Email"). Pet. App. 208a. She dismissed his defamation and tortious interference counts without prejudice and stated that the Ponder Slander Email must be exhibited to the amended complaint. Pet. App. 208-09a, 216a. Antonacci asked Major to seek dismissal with prejudice and appeal, so that he could stand on his verified complaint. Pet. App. 216a. Major refused, saying that he needed to let her manage the proceedings. *Id.* The Illinois Appellate Court would later rule that Ponder's lies, memorialized in the Ponder Slander Email, must be accepted as true, because the Ponder Slander Email was attached to the amended complaint. Pet. App. 35a, 39a-42a.

Major filed the amended verified complaint, with the Ponder Slander Email attached, and began filing a series of frivolous motions in order to run up his legal bills – she billed him \$50,000 in three months during the pleading stage of a four-count complaint against two defendants. Pet. App. 218a. Meanwhile, Antonacci reported to the Inquiry Panel, per its request, that Brewer had correctly indicated that she had no jurisdiction to determine allegations of violations of the Illinois Rules of Professional Conduct. Pet. App. 217a. Mulaney responded by asking Antonacci to keep the Panel apprised of developments in the case. *Id.* On April 23, 2013, Antonacci asked the Panel to disclose any communications with the respondents concerning his application or the circuit court case. *Id.* The Panel issued its report declining to certify him for admission to the bar the following day. *Id.*

Antonacci sought review of the Inquiry Panel's decision before a Hearing Panel chaired by former

City of Chicago lawyer, and former Cook County Circuit Court Judge, Philip Bronstein. Pet. App. 219a-220a. Pursuant to Rule 9.3(c) of the Rules of the Illinois Committee on Character and Fitness, Antonacci served subpoenas on Seyfarth, Ponder, members of his Inquiry Panel, the City of Chicago, and others seeking evidence that they had conspired to harass and intimidate Antonacci, cause him financial duress by indefinitely postponing his admission to the Illinois Bar, and coerce him into withdrawing the Circuit Court Case. *Id.* Upon notification that Antonacci had served those subpoenas, Bronstein immediately restyled Antonacci's hearing panel as a "pre-hearing conference," and, after unsuccessfully attempting to coerce Antonacci into withdrawing those subpoenas during that "conference," simply quashed them without any lawful authority. Pet. App. 220a-221a. Antonacci withdrew his application to the Illinois bar and moved back to DC. Pet. App. 222a.

Shortly after Antonacci relocated to Washington, DC, Major refused to execute Judge Maddux's order denying Seyfarth's motion to seal the verified complaint.⁵ Pet. App. 141a-42a, 222a. She then indicated that she could no longer represent Antonacci and would withdraw her representation after filing a response to Seyfarth and Ponder's motion to dismiss the amended complaint. Pet. App. 222a-223a. Antonacci fired her immediately and proceeded *pro se*. Pet. App. 223a.

Seyfarth and Ponder's motion to dismiss the amended verified complaint was scheduled to be

⁵ Judge Brewer had sealed the complaint pending the outcome of the motion to seal.

heard on December 6, 2013. Pet. App. 225a-26a. Antonacci had moved for leave to file a surreply to that motion *instantly* weeks before the hearing, but he presented it to Judge Brewer on December 5, 2013. Pet. App. 224a. Because Gehringer and Brewer were initially unaware that Antonacci had a court reporter present at the December 5, 2013 hearing, Brewer screamed at Antonacci in a hysterical manner for about the first minute of the proceeding. *Id.* When Antonacci received the transcript two weeks later, he noted that Brewer's hysterical tirade was absent. Antonacci spoke to the court reporter, Peggy Anderson, via telephone, and she claimed that she did not remember Brewer's hostile outbursts, but she had checked the transcript against the audio and it matched. Pet. App. 228a-29a. Antonacci asked if he could listen to the audio recording. Pet. App. 229a. Peggy Anderson said she would ask her boss, Sandy Toomey, president of respondent Toomey Reporting. *Id.*

Toomey left Antonacci a voice message where she falsely claimed that the audio recording of the hearing had been deleted and could not be retrieved. *Id.*; *see also* Pet. App. 105a-06a. Antonacci followed up with an email asking if he could review the court reporter's stenographic notes, which she had taken on a laptop computer. Pet. App. 87a-88a. Toomey responded "[w]e can't give our only copy of the notes to an attorney. With a court order in front of a judge we can read the notes to you." Pet. App. 274a. Antonacci issued subpoenas for documents and testimony, and for the forensic examination of the court reporter's laptop. Pet. App. 87a, 275a. Brewer quashed those subpoenas. Pet. App. 230a-32a, 276a, 278a.

Turning back to Seyfarth and Ponder's motion to dismiss the amended verified complaint, on December 6, 2013, Brewer dismissed the tortious interference claim with prejudice, but allowed Antonacci's defamation claim to proceed based solely on Antonacci's allegation that Ponder had falsely accused Antonacci of engaging in the unauthorized practice of law. Pet. App. 139a-40a, 225a-26a. Rather than require the defendants to answer the complaint, Brewer invited them to file a motion to strike every other allegation in the amended complaint. *Id.* She scheduled a "clerk's status" on that motion – when the parties meet with the judge's law clerk to set a hearing date – for mid-February 2014. Pet. App. 140a-41a. In light of Brewer's apparent efforts to unreasonably delay the proceedings, Antonacci asked her if she knew Ponder. Pet. App. 55a, 273a-74a. Brewer responded "I do not know Anita Ponder." *Id.* She later refused to execute an affidavit attesting to that fact. Pet. App. 58a, 277a.

Because Brewer had erroneously ruled that he could not allege Ponder had made additional defamatory statements about him to City of Chicago⁶ officials "upon information and belief," Antonacci served subpoenas on the City on December 20, 2013. Pet. App. 75a-76a, 225a. City attorney Mike Dolesh utilized U.S. mails and interstate wires to falsely claim that evidence of Ponder's fraudulent misconduct did not exist, and then further falsely claim that he had sent documents responsive to

⁶ Antonacci's work with Ponder involved advising the City of Chicago on reforms to its affirmative action programs in city procurement.

Antonacci's subpoenas to Brewer's chambers for an *in camera* review, which Dolesh did not do. Pet. App. 226a-28a. Brewer ultimately quashed Antonacci's subpoenas for the deposition testimony of Chicago Corporation Counsel, Stephen Patton, as well as its Director of Procurement Services, Jamie Rhee, and further ruled that the *in camera* review was mooted by her dismissal of the case. *Id.*, see also Pet. App. 134a-35a.

Antonacci moved to substitute Brewer for cause, which was heard before Judge Hogan on March 21, 2014. Pet. App. 137a-38a. A few weeks before the hearing, Antonacci delivered to Brewer a draft affidavit whereby she could corroborate her false statement of December 6, 2013, claiming she was not acquainted with respondent Ponder. Pet. App. 58a, 277a. Brewer refused to execute that affidavit. *Id.* She did not appear at the hearing to substitute her and no testimony was given. Pet. App. 137a-38a.

Brewer read a prepared opinion into the record during a hearing of March 23, 2014, but refused to issue an appealable order in the hope that Antonacci's case would get put into Cook County Circuit Court's "Black Line Pool," where cases that have been on the docket for extended periods of time are called for trial with little notice and subject to dismissal for want of prosecution. Pet. App. 277a-78a. Antonacci's case was put in the Black Line Pool, but he had it affirmatively removed and placed back on Brewer's docket. *Id.*

On April 23, 2014, a hearing was held on Antonacci's motion to reconsider Brewer's order

quashing the subpoenas he had served on Toomey. Pet. App. 81a-136a. The transcript of that hearing is reproduced in the appendix because it demonstrates Brewer's nonsensical and untoward harassment of Antonacci, and her deliberate, concerted effort to conceal Toomey's falsification of the December 5, 2013 hearing transcript. *Id.* The transcript also demonstrates the charade of legal process practiced by this criminal enterprise: Sandy Toomey and Peggy Anderson were present at the hearing, with prepared statements, but they were never actually sworn to give testimony, so they could simply lie without fear of repercussion, which they did. *Id.* And when Antonacci pointed out that he was never given any of the documents that the City of Chicago allegedly produced, Brewer ran off the bench and the hearing concluded. Pet. App. 134a-35a.

REASONS FOR GRANTING THE PETITION

This Petition should be granted because the Seventh Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. In addition, the Seventh Circuit has so far departed from the accepted and usual course of judicial proceedings, and further sanctioned such a departure by the district court, as to call for an exercise of this Court's supervisory power.

A. THE DISTRICT COURT HAS JURISDICTION UNDER 28 U.S.C. § 1331

From a purely legal perspective, this is an easy case. 28 U.S.C. § 1331 gives the district courts original jurisdiction over "all civil actions arising

under the Constitution, laws, or treaties of the United States.” Antonacci asserts two (2) causes of action under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961 *et seq.* “RICO”), and thus the district court had subject matter jurisdiction over this case so this Petition should be granted and the Seventh Circuit reversed.

The Seventh Circuit erroneously ruled that this Court’s decision in *Bell v. Hood* mandates dismissal of Petitioner Antonacci’s complaint for lack of subject-matter jurisdiction, despite the fact that Antonacci plainly alleged the respondents are part of a criminal enterprise, which unlawfully engaged in a pattern of racketeering activity prohibited by RICO, and further presents a clear threat of racketeering activity. The Seventh Circuit erred in this regard because “[j]urisdiction ... is not defeated as respondents seem to contend, by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover.” *Bell*, 327 U.S. at 682, 66 S. Ct. 773. “Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy.” *Id.* at 682. The Seventh Circuit relied on *Bell* for the opposite conclusion of law.

Indeed, this Court has “long distinguished between failing to raise a substantial federal question for jurisdictional purposes—which is what [*Goosby v. Osser*, 409 U.S. 512, 93 S. Ct. 854, 35 L. Ed. 2d 36 (2015)] addressed—and failing to state a claim for relief on the merits; only “wholly insubstantial and frivolous claims implicate the

former.” *Shapiro v. McManus*, 136 S. Ct. 450, 455, 193 L. Ed. 2d 279 (2015) (citing *Bell*). “It is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the courts’ statutory or constitutional *power* to adjudicate the case.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89, 118 S. Ct. 1003, 1010, 140 L. Ed. 2d 210 (1998).

This case arises, *inter alia*, under 18 U.S.C. §§ 1961 *et seq.* And, as set further demonstrated in Section B, *infra*, Antonacci’s RICO claims are neither insubstantial nor frivolous. The district court had subject-matter jurisdiction so the Seventh Circuit should be reversed. But this case is about much more than that.

Antonacci asks this Honorable Court to reverse the Seventh Circuit’s decision, affirming the Northern District of Illinois’s ruling, that the Chicago Machine may utilize the judicial and attorney-admission processes to commit fraud and extortion with impunity. Antonacci has plainly alleged the respondents are part of a criminal enterprise that engaged in dozens of acts of extortion, mail fraud, and wire fraud, over a two-year period. More importantly, the respondents and their co-conspirators exert undue influence over the state courts and attorney admission process in Illinois, and thus this enterprise presents a grave threat of continued racketeering activity.

Both the district court and the Seventh Circuit essentially ruled that the notion of corrupt lawyers and judges in Chicago is facially absurd, and

thus Antonacci cannot invoke federal-question subject-matter jurisdiction under RICO. According to both those courts, lawyers, judges, and court reporters in Chicago are simply incapable of engaging in such a pattern of fraud and extortion. Of course, Chicago has been a symbol of political corruption the world over for generations, and while many had believed that current Mayor Rahm Emanuel would seek aggressive reform of Chicago's systemic corruption, that reform has not materialized.⁷ So the conduct Antonacci has alleged is not only believable, but is indeed expected by anyone who knows anything about the way law and politics works in Chicago. Or rather, the way law and politics does not work, and that is precisely the point.

⁷ Jack Mirkinson, *Rahm Emanuel is a National Disgrace: Why He Represents Every Worst Instinct of the Democratic Party*, SALON (Jan. 7, 2016, 1:24 PM), http://www.salon.com/2016/01/07/rahm_emanuel_is_a_national_disgrace_why_he_represents_every_worst_instinct_of_the_democratic_party/; Jason Meisner, *Emanuel Averts Witness Stand as City Settles Suit by Whistleblower Cops*, CHICAGO TRIBUNE (May 31, 2016, 7:44 PM), <http://www.chicagotribune.com/news/local/breaking/ct-whistleblower-cops-code-of-silence-trial-met-20160530-story.html>; Fortune Editors, *The World's 19 Most Disappointing Leaders*, FORTUNE (March 30, 2016, 9:00 AM), <http://fortune.com/2016/03/30/most-disappointing-leaders/>; Jason Meisner, Stacy St. Clair, *Senior City Lawyer Quits after Judge Rules He Hid Evidence in Fatal Police Shooting*, CHICAGO TRIBUNE (Jan. 5, 2016, 6:51 AM), <http://www.chicagotribune.com/ct-chicago-cop-killing-retrial-ordered-met-20160104-story.html>; *The Fish Rots from the Head in Chicago*, NATIONAL JOURNAL (circa. Dec. 7, 2015), <https://www.nationaljournal.com/s/125098/fish-rots-from-head-chicago?oref=email> ("A Chicago cop killed a teenager and the Emanuel administration fucked with the evidence. Pick up the rhetorical knife, Democrats, and aim it at Rahmbo: dead man.")

The northern district and the Seventh Circuit are protecting a failed system of corruption. Maybe they are doing so because that is the only system they know. But, back in 1970, the United States Congress – at a time when it worked better than it does today – wisely passed the Racketeer Influenced and Corrupt Organizations Act, as part of the Organized Crime Control Act, because of the deleterious effect organized crime has on human life and interstate commerce. And the criminal enterprise Antonacci details in his complaint represents the most dangerous and insidious criminal gang possible, because its undue influence over legal processes allows the enterprise to perpetrate criminal acts with absolute impunity. As a result, Cook County Circuit Court – the largest unified court system in America – is a national disgrace⁸, the state of Illinois is effectively

⁸ Nicole Gonzalez Van Cleve, *Chicago's criminal court system is as flawed as its police*, Crain's Chicago Business (June 14, 2016) ("As I studied how attorneys and judges practiced the law, I observed an entire legal culture that often acted in criminal ways, blurring the boundaries between those enforcing the law and those breaking it."), http://www.chicagobusiness.com/article/20160614/OPINION/160619972#utm_medium=email&utm_source=ccb-morning10&utm_campaign=ccb-morning10-20160614; NICOLE GONZALEZ VAN CLEVE, *CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT* 161 (Stanford University Press) (2016) ("[W]e saw how due process was reduced to a ceremonial charade for the undeserving. We also examined the logics and narratives that allowed such curtailing of due process to seem justifiable. Procedural justice was reduced to a performance without substance."); Taylor Humphrey, David Krane, Alex Chew, John Simmons, *2015 Lawsuit Climate Survey: Ranking the States*, U.S. Chamber Institute for Legal Reform 8 (September 10, 2015) (ranking Illinois third from last in perceived fairness and reasonableness of courts in U.S.).

bankrupt⁹, and the City of Chicago is awash in the blood of those trapped in a cycle of poverty perpetuated by this Enterprise.¹⁰

Notably, the Seventh Circuit did not rely on the district court's erroneous ruling that it could dismiss the complaint for lack of subject matter jurisdiction under *Twombly-Iqbal*. That would have required remand. Rather, it relied on *Bell v. Hood* to reason that "Antonacci has flung wild accusations at

⁹ Amanda Robert, *In Illinois, Some Push Bankruptcy as Solution to Troubled Public Budgets*, FORBES (April 19, 2016, 9:46 AM), <http://www.forbes.com/sites/legalnewsline/2016/04/19/in-illinois-some-push-bankruptcy-as-solution-to-troubled-public-budgets/#6dfb4590122e>; NPR Staff, *The View from Illinois: Voters Frustrated that Government is Broken*, NPR (April 15, 2016, 9:13 AM), <http://www.npr.org/2016/04/15/474250134/the-view-from-illinois-voters-frustrated-that-government-is-broken>

¹⁰ Ben Austen, *Chicago after Laquan McDonald*, THE NEW YORK TIMES MAGAZINE (April 20, 2016) ("The footage was gruesome. But the routine way in which the October 2014 killing was covered up for more than a year exposed a deeper culture of secrecy and impunity in Chicago that implicated the entire police force and much of the city's government."), <http://www.nytimes.com/2016/04/24/magazine/chicago-after-laquan-mcdonald.html?emc=eta1&r=0>; Gregor Aisch, Eric Buth, Matthew Bloch, Amanda Cox and Kevin Quealy, *The Best and Worse Places to Grow Up: How Your Area Compares*, The New York Times | The Upshot (May 4, 2015) ("Cook County is extremely bad for income mobility for children in poor families. It is among the worst counties in the U.S."), http://www.nytimes.com/interactive/2015/05/03/upshot/the-best-and-worst-places-to-grow-up-how-your-area-compares.html?_r=0; see also Raj Chetty, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez, *Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States*, QUARTERLY JOURNAL OF ECONOMICS 129(4): 1553-1623 (2014).

a large number of people, but the state courts of Illinois found no merit in them, and we can see no reason to permit him to resuscitate them in the form of this RICO suit.” This reasoning is specious for two important reasons.

First, as briefly discussed above, *Bell v. Hood* stands for the proposition that a case may not be dismissed for lack of subject-matter jurisdiction if the plaintiff asserts a claim, for which it has standing, under federal law. Antonacci has quite plainly done so here. The Seventh Circuit relied on *Bell* for a proposition that is diametrically opposed to its holding.

Second, the Seventh Circuit’s reasoning suggests that the Illinois courts litigated some or all of the issues alleged in Antonacci’s complaint. But they did not, and again, this is the point: during 21-months in Cook County Circuit Court, Seyfarth and Ponder were never required to answer Antonacci’s verified allegations or submit any evidence whatsoever. Brewer quashed every subpoena that Antonacci served upon the City of Chicago and Toomey Reporting. No testimony was ever given. Not a single fact was discovered or adjudicated. The respondents falsified an official hearing transcript and Brewer helped them cover it up. Pet. App. 81a-136a.

Brewer even refused to execute an affidavit corroborating her in-court statement of December 6, 2013, from the bench, that she was not acquainted with Ponder. Demonstrating the pervasiveness of this criminal enterprise, the Illinois Appellate Court falsely claimed – in a published opinion – that, at the

hearing to substitute Brewer, which took place on March 19, 2014, Brewer testified, under oath, she was not affiliated with Ponder. Pet. App. 34a, 46a. Brewer was not even there. The relevant circuit court orders are reproduced in the appendix, so there can be no dispute about this judicially sanctioned fraud. *Contra*. Pet. App. 34a and 46a, with 55a and 137a-40a.

The enterprise's ongoing fraud has ostensibly perverted Illinois jurisprudence as well. The Illinois Appellate Court falsely claimed that respondent Ponder drafted the email memorializing some of the prejudicial, verifiably untrue statements that she made to numerous lawyers at Seyfarth concerning Antonacci. Pet. App. 37a-41a. But she did not. And it is now the "law" of the state of Illinois that those lies are capable of an innocent construction because the audience was limited to human resources personnel, even though they indisputably were not. *See, e.g., Gaynor v. American Association of Nurse Anesthetists*, 2015 IL App (1st) 150557-U ¶ 57 ("The *Antonacci* court found that the alleged statements were capable of an innocent construction when read in context of the email as a whole and given the purpose of the correspondence... and the audience for the email was limited to several human resources personnel.") Antonacci's petition for leave to appeal to the Illinois Supreme Court details the calculated, false averments made by the Illinois Appellate Court in support of this criminal enterprise. Pet. App. 279a-81a.

Antonacci has reproduced the report of the Inquiry Panel that declined to certify his admission to the Illinois Bar. Pet. App. 143a-48. That report

was issued one day after Antonacci requested all communications with respondents Gehringer, Ponder, and Seyfarth regarding the Inquiry Panel's decision to make his bar application contingent on the outcome of the Circuit Court Case. This is the essence of criminal extortion: Any request for the truth regarding the intent and nature of this criminal enterprise is met with immediate retaliation.

It bears repeating that Antonacci was, and is, licensed to practice law in three (3) jurisdictions without ever having any sort of disciplinary issue. He has worked as an honors attorney for numerous federal agencies and received professional recognition. He has published scholarly works.

Indeed, the Inquiry Panel's alleged concern that Antonacci did not respect client confidentiality *by allowing his lawyer* to file the state court complaint is belied by the fact that Cook County Circuit Court Judge, William Maddux, later denied Seyfarth and Ponder's motion to seal that complaint.¹¹ And the Inquiry Panel inexplicably

¹¹ Judge Brewer recused herself from deciding the defendants' motion to seal Antonacci's verified complaint (but nonetheless remained on Antonacci's case-in-chief), because the Chicago Tribune had recently published an article investigating cases that Judge Brewer had improperly sealed, where she was a defendant. Cynthia Dizikes, Todd Lightly, *Legal Battles Hidden from Public View*, CHICAGO TRIBUNE (February 24, 2013), http://articles.chicagotribune.com/2013-02-24/news/ct-met-cook-county-hidden-cases-20130224_1_former-judges-law-division-tribune. Shortly after that article was published, Mike Dolesh, City of Chicago lawyer acting on behalf of the enterprise, joined the Tribune's editorial board as a "community member," because "[Dolesh] always wondered how the editorial board

disregards the fact that he was represented by counsel when the complaint was filed.

The Inquiry Panel further suggested Antonacci, before moving back to Chicago, had engaged in the unauthorized practice of law by maintaining a federal practice in jurisdictions other than where he was licensed, despite the Panel having no jurisdiction to adjudicate allegations concerning the unauthorized practice of law anywhere. Not to mention that such practice is quite common, and Antonacci submitted literally a dozen affidavits from attorneys in government and previous law firms supporting his application, in accordance with Illinois Supreme Court requirements. And it bears repeating that Antonacci has never been subject to any disciplinary action.

Fortunately, however, the Inquiry Panel's retaliatory extortion betrays its bad faith efforts. The Inquiry Panel suggested that Antonacci might have engaged in the unauthorized practice of law by attending client meetings, with Ponder and at her direction, before he was admitted to practice in Illinois. Similarly, Ponder had the audacity to falsely accuse Antonacci of the unauthorized practice of law, for attending those meetings at her request, to senior attorneys at Seyfarth, which was one of the many bases of Antonacci's defamation claim. Of

determines what story or issue it is going to focus on at any given time and how it decides what position to take on the subject." Editorial Board, *We Are Listening: Profile on Michael Dolesh*, CHICAGO TRIBUNE (February 28, 2013), http://articles.chicagotribune.com/2013-02-28/opinion/ct-oped-0228-dolesh-20130228_1_editorial-board-piano-lessons-print-media.

course, both the circuit and appellate courts later ruled Ponder's false accusation – that Antonacci had engaged in the unauthorized practice of law – was subject to an innocent construction. Why? Because he was working under the supervision of an Illinois-licensed attorney – Ponder – and thus could not have engaged in the unauthorized practice of law, pursuant to the safe harbor provision of Illinois Code of Professional Responsibility 5.5(c).

So, to rehash, the “law” in Illinois, according to this criminal enterprise, is such that Ponder may falsely accuse Antonacci of engaging in the unauthorized practice of law, without fear of repercussion, when Antonacci could not have done so, as a matter of law, but the conduct giving rise to that false accusation may nonetheless subject Antonacci to professional criticism by the Inquiry Panel. For what? Engaging in the unauthorized practice of law. The respondents and their criminal co-conspirators disgrace the legal profession with their hypocrisy.¹²

¹² The Inquiry Panel's final alleged concern was “Lack of Judgment,” where it cited Antonacci's explanation of being forced to resign from a Washington, DC law firm after successfully prosecuting a civil RICO action, in the Eastern District of Virginia, where the defendants' attorney allegedly was an integral part of the alleged criminal enterprise, much like this case. (Civil Case No. 1:09-cv-00927-LMB-TRJ, filed August 18, 2009.) In the state court proceedings leading up the federal action, Fairfax County Circuit Court imposed sanctions on opposing counsel for his dilatory and meritless motions practice. Antonacci correctly indicated to the Inquiry Panel that it was certainly ridiculous senior attorneys at his law firm would suggest Antonacci's behavior in that case reflected any lack of judgment on his part. Indeed, opposing counsel in that case was subsequently disbarred. *Attorney Grievance*

Integrity is the backbone of professional ethics. Without it, the legal profession cannot function effectively. And integrity requires the courage to do the right thing when it is unpopular or otherwise difficult. Having the requisite character and fitness to practice law does not mean that one should cave into political pressure when unjustifiably threatened. If it did, then the entire legal profession would be administered by crooks and cowards, as it is in the state of Illinois and the City of Chicago. The defendants and their criminal co-conspirators have eviscerated the integrity of the legal profession in their jurisdiction, and it has ceased to function effectively as a result.

This criminal Enterprise is a growing threat to the rule of law. *See generally*, Francis Fukuyama, *America in Decay: The Sources of Political Dysfunction*, 93 Foreign Affairs 5, 5 (2014). The Seventh Circuit should be reversed and this Petition granted.

Commission of Maryland v. Gerald Isadore Katz, Miscellaneous Docket AG No. 6, September Term, 2014, available at <http://www.mdcourts.gov/opinions/coa/2015/6a14ag.pdf>. But, like the criminal enterprise that is the subject of this case, senior attorneys at Antonacci's previous firm had resisted the notion that opposing counsel could be culpable for any of the misconduct alleged. Indeed, the Inquiry Panel decidedly ignored the significant fact that Antonacci's supervising partner had been preoccupied embezzling money from the firm during Antonacci's tenure there. According to this criminal enterprise, the only mistake lawyers can make is questioning authority, regardless of how disgraceful that authority's conduct may be.

B. ANTONACCI HAS STATED PLAUSIBLE RICO CLAIMS FOR CONDUCT AND CONSPIRACY

A RICO plaintiff must prove four elements: (1) conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 128 S. Ct. 2131, 2133, 170 L. Ed. 2d 1012 (2008). As it pertains to this case, “racketeering activity” means “any act or threat involving ... extortion ... which is chargeable under State law and punishable by imprisonment for more than one year; or any act which is indictable under ... section 1341 (relating to mail fraud)... section 1343 (relating to wire fraud)... section 1951 (relating to interference with commerce, robbery, or extortion)... section 1952 (relating to racketeering).” 18 U.S.C. § 1961(1). A “pattern of racketeering activity” requires at least two predicate acts within a ten-year period. 18 U.S.C. § 1961(5). “Establishing a pattern also requires a showing that ‘the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.’” *Kaye v. D’Amato*, 357 F. App’x 706, 711 (7th Cir. 2009) (quoting *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989)).

Antonacci alleges that the respondents’ association-in-fact, together with certain members of the Illinois Supreme Court’s Committee on Character and Fitness and at least one Cook County Circuit Court Judge, are part of an ongoing criminal enterprise: “Specifically, the enterprise is an association-in-fact among individuals, business entities, and a municipal corporation, designed to

divert Chicago taxpayer money to members of the enterprise; protect the members of the enterprise from civil liability in Illinois by unlawfully influencing the outcome of civil cases, thereby keeping more money in the enterprise; defrauding litigants from monies to which they are legally entitled by unlawfully delaying and sabotaging meritorious civil cases; punishing attorneys who sue members of the enterprise by putting them on the Blacklist of disfavored attorneys; and protecting the enterprise by unlawfully preventing them from obtaining evidence of the enterprise's fraudulent misconduct." (Complaint ¶¶ 248-249, 264-65.)

The respondents used the enterprise unlawfully to engage in a pattern of racketeering activity, as alleged throughout the complaint. The respondents participated in, and conducted the affairs of this criminal enterprise by committing numerous acts of mail and wire fraud, in violation of 18 U.S.C. §§ 1341 and 1343. The respondents also conspired to commit several other predicate acts of "racketeering activity," as specifically enumerated in Section 1961(1) of RICO, including 18 U.S.C. § 1951 (Hobbs Act Extortion); 18 U.S.C. § 1952 (Interstate or Foreign Travel or Transportation in Aid of Racketeering Activity); and 720 ILCS 5/12-6 (Illinois Intimidation, "extortion" under Illinois law and punishable by imprisonment for more than one year).

Because the enterprise casually manipulates the Cook County justice systems, it has necessarily engaged in long-term, habitual criminal activity, and presents a clear threat of continued racketeering activity. Antonacci was injured by the respondents'

violations of federal criminal law, vis-à-vis the enterprise, in an amount that exceeds \$75,000, exclusive of interest and costs.

The lower courts erred in ruling that Antonacci has not stated a plausible RICO claim. A cause of action is “plausible” if the complainant alleges factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court must accept all the well-pleaded facts as true and draw all reasonable inferences in favor of the plaintiff. *Id.* Moreover, “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007) [internal citations omitted]; *see also*, *Riley v. Vilsack*, 665 F. Supp. 2d 994, 1004 (N.D.Ill. 2011) (“[a] complaint is implausible under *Iqbal* and *Twombly* not because the allegations are ‘fanciful,’ *Iqbal*, 129 S. Ct. at 1951, but because they are too conclusory or because they fail to include facts about the elements of a claim.”).

The issue of plausibility can be boiled down to one simple question: if the respondents admitted all of the factual allegations in the complaint, or even most, would Antonacci be entitled to the relief requested? *Twombly*, 550 U.S. at 557. The answer is yes, because Antonacci has properly alleged 1) conduct (complaint ¶¶ 24-29, 41-42, 67, 69-71, 73-75, 80-82, 84-94, 96-118, 127-36, 140-48, 150-97, 252-59, 266-85); 2) of an enterprise (complaint ¶¶ 248-49, 264-65); 3) through a pattern (complaint ¶¶ 24-29, 41-42, 67, 69-71, 73-75, 80-82, 84-94, 96-118, 127-36,

140-48, 150-97, 252-59, 266-85); 4) of racketeering activity. (complaint ¶¶ 24-29, 41-42, 67, 69-71, 73-75, 80-82, 84-94, 96-118, 127-36, 140-48, 150-97, 252-59, 266-85.) Antonacci has properly stated substantive RICO claims for conduct and conspiracy.

Most importantly, Antonacci has fulfilled this Court's relationship-plus-continuity test to allege a "pattern" of racketeering under RICO: 1) the predicate acts are obviously related, and 2) because this enterprise was able to manipulate legal processes and resort to extortion whenever it did not get its way, it undoubtedly poses a threat of continued criminal activity. *See Northwestern Bell*, 492 U.S. at 239. Contrary to the Seventh Circuit's reasoning that "[n]othing but sheer speculation would support the hypothesis of open-ended continuity," that court previously ruled a scheme forcing minority shareholders to contribute capital to a company, and another scheme forcing the sale of that company, were separate but related schemes that constituted a "pattern" under RICO, despite the fact that all the alleged racketeering activity took place within eight months and had a clear ending point: the sale of the company. *See Shields Enterprises, Inc. v. First Chicago Corp.*, 975 F.2d 1290, 1296 (7th Cir. 1992). The court reasoned that the allegations showed, like here, wherever the plaintiff hampered the enterprise, the enterprise resorted to extortion, so even though the company had been sold, the enterprise presented "a continuing threat of racketeering activity." *Id.*; *see also ChampionsWorld LLC v. U.S. Soccer Federation, Inc.*, 726 F. Supp. 2d 961, 971 (N.D.Ill. 2010) (plaintiff's allegations of scheme involving two dozen instances of mail and wire fraud, extortion,

and wrongful use of fear through economic threats and the color of official right, sufficiently alleged pattern of racketeering activity).

Moreover, "the repeated infliction of economic injury upon a single victim of a single scheme is sufficient to establish a pattern of racketeering activity for the purposes of civil RICO." *Liquid Air Corp. v. Rogers*, 834 F.2d 1297, 1304 (7th Cir. 1987). Antonacci has plainly alleged such repeated, continuing infliction of economic injury upon him.

To be sure, RICO does not concern all instances of wrongdoing, but rather focuses on eradicating racketeering predicates that "either constitute or threaten long-term criminal activity." *Northwestern Bell*, 492 U.S. at 230. Antonacci has alleged the existence of a criminal enterprise that has infiltrated Cook County Circuit Court and certain bodies of the Illinois Supreme Court. Because the enterprise has undue influence over the local courts and attorney admission process, it may exercise corruption with impunity. There is much more than just a "threat" of continued racketeering activity – this racketeering activity has metastasized into systemic corruption.

Perhaps these institutions have been rife with such rank corruption for so long that this seems acceptable to some, but Antonacci submits that the criminal activity by which the enterprise crushes dissent poses a systemic threat to the continued viability of the City of Chicago, Cook County, and the state of Illinois. Indeed, many scholars believe that this "vetocracy," by which the respondents and their co-conspirators stifle justice and rob taxpayers,

poses a threat to the American style of democracy. See generally, Francis Fukuyama, *America in Decay: The Sources of Political Dysfunction*, 93 Foreign Affairs 5, 5 (2014). This enterprise must be stopped.

C.. IF NECESSARY, THE CASE SHOULD BE REMANDED TO DETERMINE IF DIVERSITY JURISDICTION EXISTS

“[S]*ua sponte* dismissals without prior notice or opportunity to be heard are hazardous.” *Shockley v. Jones*, 823 F.2d 1068, 1072 (7th Cir. 1987) [internal quotation omitted]. “Thus, even when the dismissal is on jurisdictional grounds, unless the defect is clearly incurable a district court should grant the plaintiff leave to amend, allow the parties to argue the jurisdictional issue, or provide the plaintiff with the opportunity to discover the facts necessary to establish jurisdiction.” *Id.* at 1073.

Six days after Antonacci filed the complaint, the district court dismissed it *sua sponte*, entered judgment, and closed the case in the district court. The district court based its ruling that it does not have diversity jurisdiction on two facial defects in the complaint: 1) Antonacci used the word “resident” instead of “citizen” in describing the parties, and 2) Antonacci described three defendant limited liability companies/partnerships with regard to their states of organization and principal places of business, rather than the citizenship of their members. The district court further speculated that Seyfarth and Perkins Coie might have members who are also citizens of the District of Columbia, and thus “Antonacci’s access to this federal court” would be “destroyed.”

Importantly, both the district court and the Seventh Circuit decidedly ignored paragraph 16 of the complaint, which alleges “[t]his Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of *citizenship* between Mr. Antonacci and the Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.” Pet. App. 198a (emphasis added).

As a general rule, the citizenship of a partnership for diversity purposes is the citizenship of every general partner and limited partner. *Carden v. Arkoma Associates*, 494 U.S. 185, 187 (1990); see also, *Signicast, LLC v. Fireman’s Fund Ins. Co.*, 920 F. Supp. 2d 967, 967 (E.D. Wis. 2013) (finding that, without exception, a limited partnership is a citizen of every state of which any partner, general or limited, is a citizen). However, “there are cases in which a partnership may describe a person as one of its ‘partners’ even though that person is not actually a partner of the partnership under state law.” See, *Signicast*, 920 F. Supp. 2d at 970, citing *Morson v. Kreindler & Kreindler, LLP*, 616 F. Supp. 2d 171, 171 (D. Mass. 2009). In such cases, the citizenship of the supposed “partner” must be disregarded. *Id.* And with respect to the question of whether a person’s status as a partner is entitled to consideration, Illinois courts look to the “substance of the relationship not the form.” *Davis v. Loftus*, 334 Ill. App. 3d 761, 767 (1st Dist. 2002) (“income partner” did not share in profits or losses, did not participate in management, and was paid a salary plus bonus, so not liable for debts of partnership under Illinois law); see also, *Passavant Mem’l Area Hosp. Ass’n v. Lancaster Pollard & Co.*, 2012 U.S.

Dist. LEXIS 46590 at *7 (C.D. Ill. 2012) (“contract partners” are not “partners” for diversity purposes, pursuant to Illinois partnership law).

Illinois law controls this analysis because Seyfarth was formed under the laws of Illinois. Under District of Columbia law, the law of the jurisdiction of a foreign entity’s formation governs both the “internal affairs of the entity,” and the “[l]iability that a person has as an interest holder or governor for a debt, obligation, or other liability of the entity.” DC ST § 29-105.01(a). Moreover, “[A] partnership agreement shall not: (9) [v]ary the law applicable to a limited liability partnership under § 29-105.01(a).” DC ST § 29-601.04(b). The law of Illinois must therefore determine who is deemed a partner of Seyfarth for the purposes of diversity jurisdiction.

Under Illinois law, general partners are managers and agents of the partnership, and they owe their partners fiduciary duties. *See* 805 ILCS 206/401(f). But both general and limited partners must share in the ownership of the partnership and in its profits and losses. *Kramer v. McDonald’s System, Inc.*, 77 Ill. 2d 323, 332 (Ill. 1979). As such, in order for Seyfarth’s supposed partner to destroy diversity jurisdiction, at the very least he or she must have been, at the time the complaint was filed, an owner of Seyfarth who shared in its profits and losses. *Id.* The citizenship of an income or contract partner, who does not share in profits or losses, or participate in management, is simply irrelevant to whether the district court has diversity jurisdiction over this matter. *Passavant*, 2012 U.S. Dist. LEXIS

46590 at *7; *see also*, *Morson*, 616 F. Supp. 2d at 173; *see also*, *Davis*, 778 N.E.2d at 1150.

It is not possible for Antonacci to determine who is an equity partner of Seyfarth or any of the respondent law firms. And, because domicile is defined by the party's intent, he would not be able to determine their state of domicile, based on a public records search, even if he could. It is not clear why the Seventh Circuit seems to suggest that this is possible, as Chief Judge Diane Wood argued during the oral argument of January 26, 2016. The Seventh Circuit should be reversed and this case remanded so that jurisdictional discovery may proceed, if necessary.

D. IF NECESSARY, SEYFARTH SHOULD BE DISMISSED AS A DEFENDANT

With their brief of appellee, Seyfarth submitted the affidavit of a Joseph Damato, which claims he is an equity partner at Seyfarth and a citizen of the District of Columbia. If this Court rules that this untested affidavit does, in fact, destroy diversity jurisdiction, then Antonacci requests that this Court dismiss Seyfarth as a defendant. *Newman-Green Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989) (a court of appeals may grant a motion to dismiss a dispensable party whose presence spoils diversity jurisdiction). Seyfarth is not indispensable to this suit because each of the respondents are jointly and severally liable for Count III – Common Law Civil Conspiracy, which would be the remaining cause of action, except as against respondents Major and her law firm, The Law Offices of Ruth I. Major, P.C.

CONCLUSION

The Seventh Circuit's decision conflicts with this Court's decision in *Bell v. Hood*. In addition, the district court's failure to allow Antonacci to amend his complaint, and its improvident *sua sponte* entry of judgment, together with the Seventh Circuit imposing impossible requirements upon Antonacci, and further allowing the respondents to escape these proceedings with nothing more than the entry of one, untested affidavit, reflect such a departure from the usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. For all of the foregoing reasons, Antonacci respectfully requests that this Honorable Court grant this Petition so it may reverse and vacate both the Seventh Circuit and the Northern District of Illinois.

Respectfully submitted,

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