

No. _____

In the Supreme Court of the United States

RALPH NADER,

Petitioner,

v.

LINDA S. SERODY, RODERICK J. SWEETS, RONALD
BERGMAN, RICHARD TRINCLISTI, TERRY TRINCLISTI,
BERNIE COHEN-SCOTT, DONALD G. BROWN AND
JULIA A. O'CONNELL,

Respondents.

*On Petition for Writ of Certiorari to the
District of Columbia Court of Appeals*

PETITION FOR WRIT OF CERTIORARI

Oliver B. Hall
Counsel of Record
1835 16th Street, N.W.
Suite 5
Washington, D.C. 20009
(617) 953-0161
oliverbhall@gmail.com

Counsel for Petitioner

QUESTIONS PRESENTED

The Supreme Court of Pennsylvania affirmed a judgment directing Petitioner to pay \$81,102.19 in litigation costs to Respondents. Thereafter, a criminal prosecution by the Attorney General of Pennsylvania revealed that Respondents' litigation had been prepared illegally, by state employees working at taxpayer expense. The Pennsylvania courts denied Petitioner's motion to set aside the costs judgment, however, without allowing Petitioner any opportunity to be heard or present evidence arising from the criminal proceedings. Instead, the Pennsylvania courts ruled, as a matter of law, that Respondents had not engaged in any wrongdoing, notwithstanding the felony convictions of those who prepared their litigation, and sworn testimony in the record directly contradicting that conclusion. The questions presented are:

1. Does the Due Process Clause permit a state court to require a defendant to pay litigation costs to plaintiffs who finance their litigation using stolen taxpayer funds and resources, without allowing the defendant any opportunity to present evidence of such criminal misconduct in his defense?
2. Does the Full Faith and Credit Clause require a state court to enforce a foreign judgment, where after-discovered evidence demonstrates it was obtained by means of a fraud upon the courts of the foreign jurisdiction, in proceedings that violated due process by denying the defendant any opportunity to be heard?

PARTIES TO THE PROCEEDING

Petitioner Ralph Nader was the defendant in the trial court proceeding. Respondents Linda Serody, Roderick Sweets, Ronald Bergman, Terry Trinclisti, Richard Trinclisti, Bernie Cohen-Scott, Donald G. Brown, and Julia A. O'Connell were plaintiffs. PNC Bank and Amalgamated Bank were garnishee-defendants.

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OPINIONS BELOW

The decision of the District of Columbia Court of Appeals is reported at 43 A.3d 327 (D.C. 2012) and is reproduced in the Appendix at 1. The District of Columbia Superior Court order appealed from is unreported and reproduced in the Appendix at 21.

JURISDICTION

The judgment of the Court of Appeals was entered May 10, 2012. The Court of Appeals' order denying rehearing *en banc* was entered January 25, 2013. App. 19. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Full Faith and Credit Clause of the United States Constitution states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State."

The Fourteenth Amendment to the United States Constitution states in relevant part: "No State shall deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

This case concerns the constitutionality of a state court judgment awarding litigation costs to parties who initiated an action that was prepared illegally, at taxpayer expense, where the defending party was denied any opportunity to present evidence of such facts. The judgment arises from an election law

challenge filed in Respondents' names by the law firm Reed Smith, LLP, in an effort to remove Petitioner Ralph Nader from Pennsylvania's ballot as an independent candidate in the 2004 presidential election. App. 2. The challenge succeeded, and the Commonwealth Court of Pennsylvania granted Reed Smith's request for \$81,102.19 in litigation costs. App. 3. The Supreme Court of Pennsylvania affirmed, with two justices dissenting on the ground that the award was not statutorily authorized. App. 3. Reed Smith then commenced attachment proceedings against Petitioner in the Superior Court for the District of Columbia, seeking to enforce its costs judgment. App. 3. While the attachment proceedings were pending, a Grand Jury investigation by the Attorney General of Pennsylvania revealed that Respondents' underlying challenge had been prepared illegally, by dozens of state employees working at taxpayer expense. App. 40-43. The employees' supervisors eventually pleaded guilty to, or were convicted of, multiple felony counts of criminal conspiracy and theft of services in the matter, and their convictions were affirmed. See *Commonwealth v. Perretta-Rosepink*, No. 1925 MDA 2010 (Pa. Super Ct., March 4, 2013) (unpublished decision); *Commonwealth v. Cott*, No. 1192 MDA 2010 (Pa. Super. Ct., March 4, 2013) (unpublished decision). The criminal proceedings also yielded sworn testimony that the Reed Smith attorney who requested the award of \$81,102.19 in costs had coordinated the state employees' effort to prepare the underlying challenge, and personally accepted the state employees' illegally prepared work-product at Reed Smith's offices. App. 44-49.

Despite mounting a vigorous defense against Reed Smith's ongoing effort to enforce the costs judgment in the courts of the District of Columbia, Petitioner has been denied any opportunity to present the foregoing evidence in his defense, either before the Pennsylvania state courts or the courts of the District of Columbia. Unless this Court intervenes, therefore, parties who concededly initiated litigation that was prepared using stolen taxpayer funds and resources will be permitted to collect an award of litigation costs for their efforts. Such a result would not only be unjust, but abhorrent to the very idea of an ordered system of law. It would penalize the innocent and reward the guilty. Yet, the District of Columbia Court of Appeals held the Full Faith and Credit Clause compels that result. App. 12-15. Because that decision effects a total denial of Petitioner's right to due process of law, and stands in stark conflict with this Court's decisions governing the Due Process Clause and the Full Faith and Credit Clause, the Court should grant certiorari, to resolve the conflict and protect the guarantee of the United States Constitution, that no state may abrogate the right of all citizens to be free from arbitrary and oppressive action.

A. The Underlying Challenge in the Pennsylvania Courts

In August 2004, in the Commonwealth Court of Pennsylvania, Reed Smith filed a challenge in Respondents' names, which sought to remove Petitioner and his running mate, the late Peter Miguel Camejo, from Pennsylvania's ballot in the 2004 presidential election. App. 2. The challenge succeeded,

and Petitioner did not appear on the ballot.¹ Thereafter, Reed Smith requested an award of \$81,102.19 in litigation costs. App. 48-49. The Commonwealth Court approved the award in an unpublished order entered January 14, 2005. App. 3. The Supreme Court of Pennsylvania affirmed on August 22, 2006. App. 3. Two justices dissented, however, in an opinion demonstrating the majority had misread the plain language of the statute, which only authorizes the imposition of costs against challengers, and not defending candidates. *See In re Nader*, 905 A.2d 450, 461-62 (Pa. 2006) (Saylor, J. dissenting). On January 8, 2007, this Court denied review of the constitutional questions raised by a state court judgment penalizing quintessentially protected First Amendment conduct. *See Nader v. Serody*, 549 U.S. 1117 (2007).

¹ To appear on the ballot, Petitioner was required to submit nomination petitions with the signatures of 25,697 registered Pennsylvania voters. App. 2 n1. Petitioner submitted 51,273 total signatures, but the Commonwealth Court invalidated more than 30,000 signatures based on minor technical defects – for example, because signers’ registered addresses and current addresses did not match, or because information such as dates or addresses was incomplete – and ruled the petitions lacked the required number of valid signatures. *See In re Nader*, 865 A.2d 8, 18 (Pa. Commw. Ct. Oct. 13, 2004). The Pennsylvania Supreme Court affirmed without opinion, with one justice dissenting on the ground that the Commonwealth Court had improperly invalidated thousands of valid signatures. *See In re Nader*, 860 A.2d 1, 2 (Pa. 2004) (Saylor, J. dissenting). The dissent further observed that the record contained “no evidence” the candidates engaged in fraud or misconduct of any kind. *Id.* at 8 n

1. The Pennsylvania Attorney General's Grand Jury Investigation

On July 10, 2008, the Attorney General of Pennsylvania filed a Grand Jury Presentment and felony charges of criminal conspiracy, theft of services and conflict of interest against twelve defendants, arising from an ongoing investigation into public corruption in the Pennsylvania legislature. App. 5 n.7, 40-43. The Grand Jury specifically found that the August 2004 challenge Reed Smith filed in Respondents' names had been prepared by dozens of state employees working illegally at taxpayer expense, and that it was among the "most outstanding examples of misappropriation of taxpayer resources in petition challenges." App. 41. The Grand Jury also found that the state employees "coordinated the dissemination of materials and information" relating to the challenge effort with the "law firm" that filed it, and that several employees personally delivered their work product to "the challenge attorney." App. 42.

2. Petitioner's Attempt to Seek Relief From the Pennsylvania Courts

On August 1, 2008, Petitioner filed a petition to open the record or set aside the costs judgment in the Commonwealth Court of Pennsylvania. App. 5. Relying on the Grand Jury Presentment, Petitioner averred that Respondents' challenge to his nomination petitions appeared to have been financed using funds and resources misappropriated from the Commonwealth of Pennsylvania, and if so, the costs judgment would require Petitioner to reimburse parties for costs incurred in connection with criminal misconduct. In

violation of Petitioner's right to due process of law, as well as the Pennsylvania Rules of Civil Procedure,² the Commonwealth Court stayed discovery, disregarded Petitioner's motion for a hearing, and denied the petition without allowing Petitioner any opportunity to be heard or present evidence. *See In re Nomination Paper Nader*, No. 568 M.D. 2004 (Pa. Commw. Ct. Dec. 4, 2008) (unpublished) (order staying discovery entered Oct. 23, 2008). Instead, the Commonwealth Court ruled, as a matter of law, that the alleged criminal misconduct in connection with the preparation of the challenge was "wholly extraneous" to its decision to assess costs, because "the Objectors did not act improperly or illegally in asserting the challenge to the nominations." *Id.* at 7-8. Petitioner moved for rehearing, attaching newly available testimony that directly contradicted the Commonwealth Court's conclusion, by showing that the same attorney who requested the award of \$81,102.19 in costs coordinated the state employees' effort to prepare the challenge and personally accepted their work product at Reed Smith's offices, App. 44-49, but the Commonwealth Court denied the motion without opinion. The Supreme Court of Pennsylvania denied Petitioner's motion for a hearing and affirmed without opinion. *See In re Nader*, 982 A.2d 1220 (Pa. 2009).

² Where a petition to open the record raises "disputed issues of material fact, the petitioner may take depositions on those issues, or such other discovery as the court allows." Pa. R. Civ. P. 206.7(c).

B. Reed Smith's Ongoing Effort to Enforce the Costs Judgment in the District of Columbia Courts

1. The Proceedings Before the District of Columbia Superior Court

On May 16, 2007, more than a year before the Attorney General of Pennsylvania filed criminal charges relating to the underlying challenge, Reed Smith entered its costs judgment in the Superior Court of the District of Columbia. On October 25, 2007, the Superior Court entered a judgment condemning the funds in Petitioner's bank accounts. App. 3-4 & n.4. On November 7, 2007, while the judgment was subject to an automatic stay under D.C. Civil Rule 62(a), Petitioner moved for relief under Rule 60(b), citing Reed Smith's failure to disclose several improprieties in the proceedings before the Pennsylvania Supreme Court.³ App. 4, 13 n.15.

On August 22, 2008, while Petitioner's Rule 60(b) motion remained pending, Petitioner filed a motion requesting that the Superior Court take judicial notice of the petition for relief he filed in the Commonwealth Court of Pennsylvania, as well as the Grand Jury Presentment it incorporated. App. 33-34. On November 3, 2008, Petitioner filed a notice of supplemental

³ The motion was filed under D.C. Civil Rule 60(b) (2), (3), (4), and (6), which permits relief from a judgment based on "newly discovered evidence," "fraud...misrepresentation, or other misconduct of an adverse party," because "the judgment is void," or for "any other reason justifying relief from the operation of the judgment."

authority, attaching the testimony implicating Reed Smith and the Reed Smith attorney who requested the award of \$81,102.19 in costs. App. 44-49. Finally, on April 16, 2009, Petitioner filed a motion to dismiss under Rule 41(b).⁴ As relevant here, the motion asserted that Reed Smith's apparent involvement in the criminal conspiracy constituted grounds for denying enforcement of its costs judgment. Petitioner also requested an oral hearing on the pending motions. Respondents did not oppose Petitioner's motion to dismiss.

On July 21, 2009, without permitting a hearing, the Superior Court entered an order denying Petitioner's motion for relief under Rule 60(b) and his motion to dismiss under Rule 41(b). App. 6. The Superior Court declined to take judicial notice of the Grand Jury Presentment, and disregarded the testimony implicating Reed Smith and the Reed Smith attorney who requested the award of \$81,102.19 in litigation costs. App. 35. Instead, the Superior Court took judicial notice only that Petitioner filed a petition for relief in the Pennsylvania Commonwealth Court, and that it was denied. App. 6.

2. The Proceedings Before the District of Columbia Court of Appeals

The District of Columbia Court of Appeals affirmed the Superior Court's order on May 10, 2010. App. 1-19.

⁴ "For failure of the plaintiff to prosecute or to comply with these Rules or any Order of Court, a defendant may move for dismissal...". D.C. Civ. R. 41(b).

As relevant to the constitutional questions raised herein, the Court of Appeals concluded the Full Faith and Credit Clause compels enforcement of Respondents' costs judgment. App. 12-15. The Court of Appeals acknowledged that foreign judgments procured in "proceedings lacking in essential due process safeguards" or "by a fraud upon the court" are not entitled to full faith and credit in the receiving jurisdiction, App. 11-12, but held that "principles of res judicata" bar Petitioner from raising such issues in the District of Columbia courts. App. 15, 17. Because Petitioner "appropriately sought recourse in the Pennsylvania courts," the Court of Appeals concluded, the District of Columbia courts were "bound to defer to that state's final judgment." App. 15. The Court of Appeals completely disregarded the Pennsylvania courts' refusal to allow Petitioner any opportunity to be heard or present evidence, and expressly declined to address the merits of Petitioner's claim that the Pennsylvania proceedings violated his right to due process of law, and that Reed Smith procured its costs judgment by fraud. App. 16 n.19.

C. Petitioner Timely and Properly Raised the Constitutional Questions to Be Reviewed

Petitioner timely and properly raised the constitutional questions to be reviewed by this Court in his motion for relief under Rule 60(b)(4), which expressly requested that the District of Columbia Superior Court vacate Reed Smith's cost judgment "as void and unenforceable, because it was rendered in violation of due process." Mot. for Relief at 20 (filed November 7, 2007). The Superior Court denied the motion without addressing the evidence that

Respondents' underlying challenge was the product of a criminal conspiracy. App. 30-32. Specifically, the Superior Court declined to take judicial notice of the Presentment and the ongoing criminal prosecution arising therefrom, App. 35, and disregarded the sworn testimony implicating the Reed Smith attorney who obtained the costs judgment. App. 44-49.

Because the District of Columbia Court of Appeals concluded that Petitioner was precluded from raising any issue relating to the denial of his right to due process in the Pennsylvania proceedings, or to Reed Smith's fraud in procuring the costs judgment, App. 16 n.19, Petitioner filed a petition for rehearing en banc, which asserted *inter alia* that the Court of Appeals' decision itself constituted a denial of his right to due process. Specifically, Petitioner argued:

The Panel's conclusion that Appellant is now precluded from raising newly discovered evidence in his defense, which was not and could not have been raised in the prior proceeding, is tantamount to a complete denial of due process. It binds Appellant to a judgment without permitting him to oppose it, regardless of the evidence that arises. Not even the Full Faith and Credit Clause requires such an absurd result, and the Panel was wrong to conclude it does.

Pet. for Rehearing En Banc at 8 (filed May 24, 2012). Petitioner therefore timely raised the issue of the denial of his right to due process in the proceedings before the Court of Appeals, because he did so at the first possible opportunity, in a petition for rehearing.

See Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 677-78 (1930). On January 25, 2013, the Court of Appeals denied the petition. App. 19-20.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Court of Appeals Conflicts With This Court's Decisions Recognizing That Due Process Requires an Opportunity to Be Heard and Present a Defense.

The Court should grant certiorari in this case because the decision below is not merely wrong, but contrary to the rule of law itself. The foreign judgment the District of Columbia courts are asked to enforce herein awards \$81,102.19 in litigation costs to parties who initiated an action that was prepared illegally, at taxpayer expense. As to this fact there is no dispute, nor can there be. The same Pennsylvania state courts that entered the judgment awarding such costs recently upheld felony convictions against those charged with supervising the unlawful effort. *See Perretta-Rosepink*, No. 1925 MDA 2010; *Cott*, No. 1192 MDA 2010. This anomalous result occurred only because Petitioner has been subject to a total denial of his right to be heard and present evidence in his defense.

This Court's decisions firmly establish that due process of law, in its "primary sense," requires that a litigant have "an opportunity to be heard and to defend its substantive right." *Brinkerhoff-Faris Trust & Savings Co.*, 281 U.S. at 678; *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982) ("our decisions have emphasized time and again, the Due

Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged”); *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971) (“Early in our jurisprudence, this Court voiced the doctrine that wherever one is assailed in his person or his property, there he may defend”) (citing *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876); *Baldwin v. Hale*, 1 Wall. 223 (1864); *Hovey v. Elliott*, 167 U.S. 409 (1897)); *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 162 (1951) (Frankfurter, J., concurring) (due process requires that parties be given “an opportunity to be heard respecting the justice of the judgment sought”) (quoting *Hagar v. Reclamation District*, 111 U.S. 701, 708 (1884)). Here, the undisputed facts make plain that Petitioner has been denied such basic procedural protections.

The record includes sworn testimony to the effect that the attorney who obtained the costs judgment coordinated the effort of Pennsylvania state employees to prepare the underlying challenge at taxpayer expense. App. 44-49. But while Petitioner diligently sought to introduce such evidence to the Commonwealth Court of Pennsylvania, the Supreme Court of Pennsylvania, the District of Columbia Superior Court, and the District of Columbia Court of Appeals, each one of those courts, in turn, rebuffed his efforts. Consequently, Petitioner has been denied any opportunity to present the very evidence on which he might base his defense, *see infra* Part II, and no court has addressed it. To hold, as the Court of Appeals did, that Petitioner is now precluded from raising any issue relating to that same evidence, App. 16 n.19, is to deny Petitioner any meaningful opportunity to defend himself based on the undisputed facts in this case. In

short, the decision of the Court of Appeals violates the command of the Due Process Clause, that every civil litigant be afforded “an opportunity granted at a meaningful time and in a meaningful manner, for a hearing appropriate to the nature of the case.” *Logan*, 455 U.S. at 437 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313 (1950) (quotation marks and brackets omitted)).

Because the Court of Appeals’ decision violates the fundamental precepts of this Court’s jurisprudence governing due process of law, the Court should grant certiorari to resolve the conflict.

II. The Full Faith and Credit Clause Does Not Compel the Arbitrary and Oppressive Result in This Case.

Certiorari also should be granted because Petitioner has a valid defense to Reed Smith’s costs judgment, which the courts below denied him any opportunity to present. As the Court of Appeals acknowledged:

a sister state need not give full faith and credit to another state’s judgments if the rendering state lacked jurisdiction over the person or subject matter, the judgment was obtained through lack of due process, the foreign court was incompetent to render the judgment, the judgment was the result of extrinsic fraud or if the judgment was invalid or unenforceable.

App. 11-12 (citations omitted). This is precisely the basis of the defense Petitioner attempted to assert at

each stage of the proceedings below, based on newly discovered evidence arising from the Attorney General of Pennsylvania's Grand Jury investigation and prosecution, but the lower courts in Pennsylvania and in the District of Columbia denied him any opportunity to do so. It is therefore incumbent on this Court to examine such evidence. *See Norris v. Alabama*, 294 U.S. 587, 589-90 (1935).

"When a federal right has been specially set up and claimed in a state court," this Court has consistently recognized that it must "inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect." *Id.* at 590; *see Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 498-501 (1984); *NAACP v. Claiborne*, 458 U.S. 886, 921-32 (1982); *New York Times v. Sullivan*, 376 U.S. 254, 285 (1964); *Napue v. Illinois*, 360 U.S. 264, 272 (1959); *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 122 (1954); *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951); *Feiner v. New York*, 340 U.S. 315, 316 (1951); *Watts v. Indiana*, 338 U.S. 49, 50-51 (1949); *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 659 (1945); *Ohio Valley Water Co. v. Borough of Ben Avon*, 253 U.S. 287, 289 (1920). This case provides striking confirmation of the wisdom of the Court's longstanding practice. Had the courts below afforded Petitioner the basic protections guaranteed by the Due Process Clause – that is, an opportunity to be heard and present evidence in his defense – he could have proven that Reed Smith obtained its costs judgment by fraud, in proceedings that violated Petitioner's right to due process. Instead, Petitioner remains obligated to pay a money judgment that reimburses parties for costs they incurred in connection with a criminal conspiracy.

Petitioner was subject to “a total denial of the right of defense” in this case, and the result is manifestly “arbitrary and oppressive.” *Roller v. Murray*, 234 U.S. 738, 746 (1914) (citing *Hovey*, 167 U.S. 409)). The Court should not permit such a result. The Full Faith and Credit Clause does not require it, and the Due Process Clause does not permit it.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

Oliver B. Hall
Counsel of Record
1835 16th Street, N.W.
Suite 5
Washington, D.C. 20009
(617) 953-0161
oliverbhall@gmail.com

Counsel for Petitioner

APPENDIX

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App. 1

APPENDIX A

**DISTRICT OF COLUMBIA COURT OF
APPEALS**

No. 09-CV-906

RALPH NADER,)
APPELLANT,)
)
v.)
)
LINDA S. SERODY, et al.,)
APPELLEES)
)

Appeal from the Superior Court
of the District of Columbia
(No. CAF-3385-07)

Oliver B. Hall for appellant.

Nathan R. Fennessy, with whom *Daniel I. Booker* and
Douglas K. Spaulding were on the brief, for appellees.

Before GLICKMAN and THOMPSON, *Associate
Judges*, and RUIZ, *Associate Judge, Retired*.

RUIZ, *Associate Judge, Retired*: Ralph Nader
challenges the trial court's denial of his Rule 60 (b) and
Rule 41 (b) motions to set aside a Pennsylvania
judgment that appellees sought to enforce in the

District of Columbia. We affirm the judgment of the trial court enforcing the Pennsylvania judgment, as consistent with the principles of the Full Faith and Credit Clause.

I. Procedural Posture

This case arrived at the doorstep of the Superior Court after a long and convoluted history in the courts of Pennsylvania. Appellees are registered voters in Pennsylvania. They successfully challenged, in the Pennsylvania courts, the validity of signatures on papers nominating appellant Ralph Nader and his running mate, Peter Miguel Camejo, for the 2004 presidential election in Pennsylvania. The Commonwealth Court of Pennsylvania, an appellate court that hears election-related matters, engaged in an extensive review of the nominating papers and, in a lengthy opinion issued on October 13, 2004, concluded that the papers failed to include the required number of valid signatures.¹ *In re Nader*, 865 A.2d 8, 18 (Pa. Commw. Ct. 2004). On October 19, 2004, the Supreme Court of Pennsylvania issued a per curiam order affirming the Commonwealth Court's decision, with one justice dissenting. *In re Nader*, 860 A.2d 1 (Pa.

¹To qualify candidates to be listed as President and Vice-President on the 2004 ballot, the nominating papers required the signatures of 25,697 persons registered to vote in the Commonwealth of Pennsylvania. *In re Nader*, 865 A.2d 8, 18-19 (Pa. Commw. Ct. 2004). Although the Nader-Camejo papers listed 51,273 signatures, the Commonwealth Court determined that only 18,818 of those signatures were valid and authentic and, accordingly, ordered the Secretary of the Commonwealth not to certify the Nader-Camejo ticket for the ballot. *Id.*

App. 3

2004). The Supreme Court of the United States denied Nader's petition for certiorari. *Nader v. Serody*, 543 U.S. 1052 (2005). On October 14, 2004, the Commonwealth Court assessed litigation costs² against the Nader-Camejo campaign and the candidates individually, and on January 14, 2005, approved appellees' bill of costs in the amount of \$81,102.19. *In re Nader*, 905 A.2d 450, 455 (Pa. 2006) (citing Commonwealth Court's two unpublished orders of Oct. 14, 2004, and Jan. 14, 2005, in 568 M.D. 2004). On August 22, 2006, the Supreme Court of Pennsylvania affirmed the cost assessment, with two justices dissenting. *Id.* at 460. On January 8, 2007, the Supreme Court of the United States denied Nader's petition for certiorari, *Nader v. Serody*, 549 U.S. 1117 (2007), and on April 23, 2007, the Pennsylvania Commonwealth Court entered judgment. It is this judgment that the voters sought to enforce in the District of Columbia, and that Nader resists.

The Pennsylvania judgment was entered on May 16, 2007, in the Superior Court of the District of Columbia as a foreign judgment, pursuant to D.C. Code § 15-352 (2001).³ On October 25, 2007, Nader's assets in D.C.

² The litigation costs covered stenographic services, transcript preparation and handwriting-expert witnesses. *In re Nader*, 905 A.2d 450, 459 (Pa. 2006).

³ "A copy of any foreign judgment authenticated in accordance with the laws of the District may be filed in the Office of the Clerk of the Superior Court." D.C. Code § 15-352.

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banks were attached to satisfy the judgment.⁴ On October 30, 2007, Nader filed suit in D.C. Superior Court against the Democratic National Committee, various party officials and voters' counsel, Reed Smith, LLP, accusing them of having engaged in "civil conspiracy, malicious prosecution and abuse of process" in connection with their challenges to the Nader-Camejo nomination papers in several states, including Pennsylvania.⁵ On November 7, 2007, Nader moved for relief from enforcement of the Pennsylvania judgment, under Rule 60 (b), based on what he claimed to be newly discovered evidence of Reed Smith's alleged undisclosed ties and campaign contributions to members of the Supreme Court of Pennsylvania who voted to affirm the judgments against him, see note 15, *infra*; in the alternative, he requested a stay of execution of the judgment in light of the independent

⁴ The voters advised the trial court they had reached a \$20,000 settlement with Camejo and, accordingly, sought the judgment award balance from Nader. On July 17, 2007, the Superior Court issued writs of attachment on Nader's banks, and on October 25, 2007, it granted the voters' motion to condemn the funds and issued judgments against the garnishee banks, in favor of the voters, for \$34,218.29 from Nader's account at PNC Bank and for \$22,710.26 from his account at Amalgamated Bank.

⁵ See *Nader v. Democratic Nat'l Comm.*, No. 07CA7245. In December 2007, this case was removed to the United States District Court for the District of Columbia, which dismissed the complaint. *Nader v. Democratic Nat'l Comm.*, 555 F.Supp.2d 137, 145 (D.D.C. 2008), *aff'd*, 567 F.3d 692, 694 (D.C. Cir. 2009), *reh'g denied*, 2009 WL 4250599 (D.C. Cir. Jan. 5, 2010).

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action he had just filed. See note 5, *supra*.⁶ The following year, on August 1, 2008, Nader petitioned the Pennsylvania Commonwealth Court to open the record or set aside its judgment directing him to pay litigation costs arising from the challenge to his nomination papers in light of criminal charges filed in Pennsylvania related to the challenge,⁷ and

⁶ The voters subsequently advised the Superior Court that the U.S. District Court granted their motion to dismiss in May 2008, which the D.C. Circuit affirmed. See note 5, *supra*. Nader's request to stay enforcement of the Superior Court's May 16, 2007, judgment pending resolution of that separate action was, accordingly, rendered moot.

⁷ Nader's petition was based on the Harrisburg, Pennsylvania Grand Jury's July 10, 2008 Presentment and charges filed by the Pennsylvania Attorney General against twelve individuals for engaging in criminal conspiracy as part of an ongoing investigation into public corruption and criminal misconduct in the Pennsylvania legislature. *In re Nader*, No. 568 M.D. 2004 (Pa. Commw. Ct. Dec. 4, 2008), at 4-5. The presentment and charges alleged that members and staff of the Pennsylvania House Democratic Caucus had devised a scheme that used public funds, employees, and resources for improper political campaign purposes, including challenging nominating petitions of candidates, such as Nader, who opposed party nominees and Pennsylvania incumbents. *Id.* at 5, 7. The presentment's section entitled, "Nader Petition Challenge" noted that "Nader's presence on the ballot would siphon votes from the [Democratic] Party's Presidential nominee," John Kerry. Nader's petition to the Commonwealth Court argued that the voters' challenge to his nomination papers filed by Reed Smith had been based on the fruits of these illegal activities and that the court's cost judgment should be set aside because otherwise it would "reimburse parties for costs allegedly incurred in connection with criminal misconduct." Nader's petition also "incorporated by reference," "adopt[ed]" and "reassert[ed]" the claims made in his 60 (b) motion,

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simultaneously filed a motion for judicial notice of this petition in D.C. Superior Court. On December 4, 2008, the Pennsylvania Commonwealth Court denied Nader's petition,⁸ *In re Nomination Paper Nader*, No. 568 M.D. 2004 (Pa. Commw. Ct. Dec. 4, 2008), *aff'd*, *In re Nader*, 982 A.2d 1220 (Pa. 2009). On April 16, 2009, Nader filed a motion in Superior Court for restitution of the funds disbursed from his PNC bank account⁹ and a Rule 41 (b) motion to dismiss the voters' enforcement action for failure to comply with Rule 62 (a). On July 21, 2009, after taking judicial notice of the filing (and subsequent denial) of Nader's petition in the Pennsylvania Commonwealth Court to set aside the judgment awarding costs to the voters, the Superior Court denied Nader's 60 (b) and 41 (b) motions. Nader timely appealed.

II. Enforcement of Foreign Judgments

Article IV § 1 of the Constitution commands that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every

which was then pending in D.C. Superior Court.

⁸ The Commonwealth Court of Pennsylvania reasoned that Nader's petition to open or vacate the judgment relying on alleged criminal misconduct in the pre-challenge review of the nominating papers "is wholly extraneous to the merits of the challenge to Petitioners' nominating papers and the assessing of costs, and the process by which the challenge and cost assessment were decided." *In re Nomination Paper Nader*, No. 568 M.D. 2004 (Pa. Commw. Ct. Dec. 4, 2008) at 8. The court did not expressly address the claims incorporated from the 60 (b) motion.

⁹ No funds were disbursed from Amalgamated Bank.

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other State.” Thus, “the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced.” *Underwriters Nat’l Assurance Co. v. North Carolina Life and Acc. and Health Ins. Guaranty Ass’n*, 455 U.S. 691, 704 (1982) (quoting *Hampton v. McConnel*, 16 U.S. (3 Wheat.) 234, 235 (1818)). “Pursuant to this [constitutional] provision and in furtherance of federalism and national unity,” *Fehr v. McHugh*, 413 A.2d 1285, 1287 (D.C. 1980), Congress has mandated that “judgments ‘shall have such faith and credit . . . in every court within the United States as they have by law or usage in the courts of the State from which they are taken.’” *Id.* (alteration in original) (quoting 28 U.S.C. § 687 (1940)).¹⁰

We have recognized that, “[u]nder the Full Faith and Credit Clause of the Constitution, a judgment properly authenticated and issued by a court having jurisdiction is entitled to the same degree of recognition in a sister state as would be afforded by the state of original rendition.” *Id.* at 1286 (citing, e.g., *Johnson v. Muelberger*, 340 U.S. 581 (1951)). These principles are embodied in the codified law of the District of Columbia. In 1990, the District of Columbia adopted the Uniform Enforcement of Foreign Judgments Act (“UEFJ”), D.C. Law 8-173, D.C. Code § 15-351 *et seq.* (2001), which sets out the procedures and standards for enforcement of foreign judgments in the Superior Court

¹⁰ Now codified at 28 U.S.C. § 1738 (2006).

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of the District of Columbia.¹¹ Section 2 of the UEFJ, D.C. Code § 15-352, provides:

A foreign judgment filed with the Clerk [of the Superior Court] shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner.

D.C. Code § 15-352.

The UEFJ's general purpose is "to obtain uniformity with the rulings of sister state courts." *Carr v. Bett*, 970 P.2d 1017, 1024 (Mont. 1998). The Council of the District of Columbia explained that its purpose in adopting the Uniform Act was to "provide an expeditious and simple procedure to enforce foreign judgments in courts of the District of Columbia." Council of the District of Columbia, Committee on the Judiciary, Committee Report on Bill No. 8-56, The Uniform Enforcement of Foreign Judgments Act of 1990 (June 20, 1990), at 2. In adopting the UEFJ, the Council intended to create an efficient mechanism to enforce foreign judgments "upon the mere act of filing," without "the need for another trial," "as if the judgment

¹¹ In 1996, the District of Columbia adopted the Uniform Foreign Money-Judgments Recognition Act, D.C. Law 11-84, D.C. Code § 15-381 *et seq.* (2001). This act deals with recognition and enforcement of judgments rendered in other countries. *See* D.C. Code § 15-381 (defining "foreign state").

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were a domestic one.” *Id.*¹² Section 15-352, however, must be read in harmony with the constitutional mandate to accord full faith and credit to the judgments of sister states. It cannot be interpreted in a manner that subjects foreign judgments to the same range of collateral attack as a judgment of the receiving court; to do so would defeat the purpose of the Full Faith and Credit Clause. Thus, “[t]he rights and defenses preserved by the Act are only those which the debtor may *constitutionally* raise.” *Data Mgmt. Sys., Inc. v. EDP Corp.*, 709 P.2d 377, 381 (Utah 1985) (emphasis added); see *Marworth, Inc. v. McGuire*, 810 P.2d 653, 657 (Colo. 1991) (“Most states have interpreted these restrictions to mean that the UEFJA may not create defenses to a foreign judgment that violate the full faith and credit clause.”); *Wooster v. Wooster*, 399 N.W.2d 330, 333 (S.D. 1987) (noting that “the nature, amount, or other merits of the judgment cannot be relitigated in the state in which enforcement is sought”); see also *Angel v. Bullington*, 330 U.S. 183, 188 (1947); *McKnett v. St. Louis & S.F.Ry. Co.*, 292 U.S. 230, 233 (1934) (“The power of a state to determine the limits of the jurisdiction of its courts and

¹² As the Judiciary Committee stated:

Passage of this bill will permit enforcement of a judgment of another state upon the mere act of filing the judgment in the Office of the Clerk of the Superior Court. The act of filing the foreign judgment gives it the effect of being a judgment of the court in the state in which it is filed, thereby eliminating the need for another trial. The process of enforcement then goes forward as if the judgment were a domestic one.

Id.

the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution.”).

Because the Constitution’s Full Faith and Credit Clause “overrides the local regulation of access to the procedures of state courts for the purpose of enforcing foreign adjudications,” *Data Mgmt. Sys., Inc.*, 709 P.2d at 381, the language in the UEFJ that calls for applying to foreign judgments the “same procedures, defenses, or proceedings for reopening, vacating or staying” that apply to local judgments, D.C. Code § 15-352 (Section 2 of the UEFJ), must be read narrowly and may not be used to defeat the purposes of the Full Faith and Credit Clause. *Data Mgmt. Sys., Inc.*, 709 P.2d at 381 (noting that allowance of motion under Rule 60 (b) pursuant to Section 2 of UEFJ should not be “interpreted in a manner which defeats the Full Faith and Credit Clause”).

Properly read, section 15-352 recognizes only a limited “caveat” to the application of the Full Faith and Credit clause because “the structure of our Nation as a union of States, each possessing equal sovereign powers, dictates some basic limitations on the full-faith-and-credit principles.” *Underwriter’s Nat’l Assurance Co.*, 455 U.S. at 704. Thus “[f]ull faith and credit shall be given . . . ‘only if the court in the first State had power to pass on the merits — had jurisdiction, that is, to render the judgment.’” *Id.* (quoting *Durfee v. Duke*, 375 U.S. 106, 110 (1963)); see *Vickery v. Garretson*, 527 A.2d 293, 299 (D.C. 1987). In addition to lack of subject matter and personal jurisdiction of the state rendering the judgment, there are other, limited exceptions to the obligation to give full faith and credit to another state’s

judgment. We join the consensus of courts in jurisdictions that have adopted the UEFJ and have held that a foreign judgment does not have to be accepted for enforcement in the receiving jurisdiction if the court rendering the judgment lacked jurisdiction or if the foreign judgment resulted from proceedings lacking in essential due process safeguards or was procured by fraud on the court.¹³ See *Jones v. Roach*, 575 P.2d 345, 348 (Ariz. App. 1977) (noting that “a sister state need not give full faith and credit to another state’s judgments if the rendering state lacked jurisdiction over the person or subject matter, the

¹³ Similar principles apply with respect to the enforcement of judgments rendered by other countries and with respect to the enforcement of state judgments in federal courts. See *Clarkson Co. v. Shaheen*, 544 F.2d 624, 631 (2d Cir. 1976) (applying principles of comity and noting, in connection with enforcement of a Canadian judgment, that “[c]lear and convincing evidence of fraud is required in order successfully to attack a foreign judgment, just as such proof is necessary before a court will set aside its own judgment.” (citing *Nederlandsche Handel-Maatschappij, N.V. v. Jay Emm, Inc.*, 301 F.2d 114, 115 (2d Cir. 1962)); D.C. Code § 15-381, note 11, *supra*; *Marrese v. American Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (noting that 28 U.S.C. § 1738 requires federal courts to give the same preclusive effect to state court judgments as would be given in the state in which the judgment emerged); *Griffith v. Bank of New York*, 147 F.2d 899, 903 (2d Cir. 1945) (recognizing that extrinsic fraud in the procurement of a state court judgment subjects it to collateral attack in federal court); *George v. McClure*, 245 F.Supp.2d 735, 738 (M.D.N.C. 2003) (applying law of North Carolina to challenged judgment rendered in that state, where “[a]n independent challenge to a final judgment can be brought to set aside a judgment that is procured by extrinsic fraud or ‘fraud upon the court’”) (quoting *Scott v. Farmers Coop. Exch., Inc.*, 161 S.E.2d 473, 476 (N.C. 1968)).

judgment was obtained through lack of due process, the foreign court was incompetent to render the judgment, the judgment was the result of extrinsic fraud or if the judgment was invalid or unenforceable”); *Carr*, 970 P.2d at 1024 (“[F]raud in the procurement of the judgment, lack of due process, satisfaction, or other grounds that make the judgment invalid or unenforceable may be raised by a party seeking to reopen or vacate a foreign judgment.”); *Fungaroli v. Fungaroli*, 280 S.E.2d 787 (N.C. Ct. App. 1981) (the final judgment of another jurisdiction may be collaterally attacked if it was fraudulently procured); *Schwartz v. Schwartz*, 173 N.E.2d 393 (Ohio Ct. App. 1960) (stating that where the judgment of a sister state is obtained through fraud, the Full Faith and Credit Clause does not apply). In joining this consensus, we further the UEFJ’s purpose “to make uniform the law of jurisdictions that enact it.” D.C. Code § 15-357. We now apply these principles to the motions filed in this case.

III. Nader’s Challenge to Enforcement of the Pennsylvania Judgment

A. Rule 60 (b) Motion

Nader challenges the denial of his 60 (b) motion,¹⁴ contending that the trial court erred in not allowing him to present newly discovered evidence that the

¹⁴ In *Threatt v. Winston*, we cited, in dictum, cases from other jurisdictions stating that “the proper way to attack a foreign judgment is by filing in the receiving jurisdiction a motion or independent action under Rule 60 (or the local equivalent).” 907 A.2d 780, 788 (D.C. 2006). Here, Nader filed both.

Pennsylvania judgment that the voters enforced against him in the District of Columbia was unlawfully procured, and in placing the burden on him to discover facts Reed Smith allegedly concealed.¹⁵ The trial court denied Nader's motion under 60 (b)(2) because the evidence Nader proffered was not "newly discovered" as it was publically available before the entry of the cost judgment in Pennsylvania in April 2007 and could have been the subject of a new trial motion in Pennsylvania. The trial court also ruled that Nader was not entitled to relief under Rule 60 (b)(3), (4), or (6) because none of Nader's allegations concerning the campaign contributions to the Pennsylvania justices or their failure to recuse raised due process concerns, citing *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009), or were in violation of Pennsylvania law or applicable ethical rules. Finally, the trial court took

¹⁵ The trial court's order recognized that Nader alleged newly discovered evidence (1) that Reed Smith made campaign contributions to five of the six Pennsylvania Supreme Court Justices who voted to affirm the award of costs against Nader in the Pennsylvania litigation; (2) that one of the justices had been employed by Reed Smith for three years prior to joining the Pennsylvania Supreme Court in 1994; (3) that Reed Smith represented the Chief Justice of the Supreme Court of Pennsylvania in a state ethics investigation during the pendency of the appeal of Nader's case before the Pennsylvania Supreme Court; and (4) that there were charges of criminal misconduct in the preparation of the nomination challenge to the Nader-Camejo ticket, as detailed in the Pennsylvania Grand Jury Presentment. The trial court noted that Nader's challenge to the judgment involves allegations of impropriety in connection with affirmance of the cost judgment by the Pennsylvania Supreme Court, and that Nader does not allege any wrongdoing in connection with the original judgment and assessment of costs rendered by the Pennsylvania Commonwealth Court.

judicial notice of Nader's petition to vacate the judgment filed in Pennsylvania and of the denial of that petition.

Once the foreign judgment was duly filed in Superior Court, *see* D.C. Code § 15-352, note 3, *supra*; Super. Ct. Civ. R. 72,¹⁶ and the court took judicial notice of Nader's challenge to the judgment in Pennsylvania, the Superior Court, as the receiving court, was constitutionally required to defer to the Pennsylvania court's denial of his challenge. Nader's 60 (b) motion in D.C. Superior Court challenged the validity of a judgment on the basis of claims that were either fully litigated — and rejected — in the Pennsylvania courts, or that could have been brought in those courts. We recognize that, as discussed earlier, D.C. Code § 15-342 provides that fraud in the procurement of a judgment can be a defense to the enforcement of a foreign judgment. Even if we assume that Nader's claims, if proven, would constitute fraud in the procurement of the cost judgment,¹⁷ however, challenges in the

¹⁶ Nader does not contend that the Pennsylvania judgment was improperly filed, or that he did not receive proper notice.

¹⁷ Fraud in the procurement of the judgment, sometimes referred to as "extrinsic fraud" "refers to the manner in which a judgment is obtained and concerns matters not directly in issue" in the litigation. *In re Delaney*, 819 A.2d 968, 981 n.4 (D.C. 2003) (distinguishing "intrinsic fraud," which refers to "fraud which arises within the court proceeding," and citing, as an example of extrinsic fraud, "fraud practiced on a party to the proceeding which prevents him or her from presenting a case"); *see also Fidelity Storage Co. v. Urice*, 12 F.2d 143, 145 (D.C. Cir. 1926); *Marworth*, 810 P.2d at 657 (distinguishing between two categories of fraud: "extrinsic, which denies a litigant the opportunity to fully litigate

receiving court are generally not permitted because of the strong presumption of the validity of a final decision by a sister state which resolved the merits of the controversy. The U.S. Supreme Court has stated that the Full Faith and Credit Clause “generally requires every State to give a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it.” *Durfee*, 375 U.S. at 109. Nader does not contend that the Pennsylvania judgment does not have res judicata effect in that state, and he is now precluded from mounting a second collateral attack under the guise of a 60 (b) motion in D.C. Superior Court challenging a foreign judgment. *See Carr v. Rose*, 701 A.2d 1065, 1074 (D.C. 1997) (holding that affirmance by the Supreme Court of Pennsylvania precluded claim in District of Columbia that could have been brought against same party in lawsuit filed in Pennsylvania). The same principles of res judicata that bar claims that have been — or could have been — aired and resolved in previous litigation against the same party have even greater force when the litigation has taken place in another state. Anything less would run afoul of the Full Faith and Credit Clause. Nader appropriately sought recourse by filing a petition in the Pennsylvania courts and the Superior Court was bound to defer to that state’s final judgment.¹⁸ The Superior Court, accordingly, did not

his or her rights or defenses upon trial; and intrinsic, which are fraudulent acts pertaining to an issue in the original action or are acts that were, or could have been, litigated in the original action”).

¹⁸ As noted, Nader’s petition to set aside the judgment filed in Pennsylvania incorporated by reference the claims asserted in his 60 (b) motion then pending in D.C. Superior Court; the

err in denying Nader's 60 (b) motion to set aside the Pennsylvania judgments.¹⁹

B. Rule 41 (b) Motion

Nader also challenges the trial court's denial of his 41 (b) motion to dismiss the voters' enforcement action and for restitution of the funds disbursed from his PNC bank account. He argues that 1) Reed Smith violated the automatic stay provision in Superior Court Civil Rule 62 (a) by executing on the judgment against the garnishee banks less than ten days from their entry in

Pennsylvania Commonwealth Court's order denying the petition did not expressly address those claims. See note 8, *supra*. The Superior Court denied the 60 (b) motion on July 21, 2009, after the Pennsylvania Commonwealth Court had denied Nader's petition to set aside the judgment, but while that denial was still pending appeal before the Pennsylvania Supreme Court. To the extent that the judgment was not yet final under Pennsylvania law, for purposes of res judicata, until the Pennsylvania Supreme Court ruled, *see Speyer, Inc. v. Goodyear Tire and Rubber Co.*, 295 A.2d 143, 146 (Pa. 1972) (for purposes of res judicata "there is only one judgment — the ultimate judgment, which is that of the appellate court"), the Superior Court should have waited for final resolution of the matter in Pennsylvania before entering judgment against the garnishee banks. By the time this appeal came for consideration before this court, however, the Supreme Court of Pennsylvania had affirmed, and any error in entering the judgment earlier was rendered harmless.

¹⁹ Because we rely on the preclusive effect of the Pennsylvania judgment, we do not address the merits of Nader's 60 (b) motion or review the Superior Court's ruling that the actions of Reed Smith and Pennsylvania Supreme Court justices that Nader argues led to a fraudulently procured judgment, did not violate due process, Pennsylvania law or ethical rules.

Superior Court, 2) the 60 (b) motion, filed within 10 days of the judgment against the garnishee banks, rendered those judgments non-final, and 3) by failing to oppose Nader's 41 (b) motion for restitution of the garnished funds, Reed Smith has not denied involvement in the alleged criminal conspiracy that led to the Pennsylvania cost judgment against Nader that appellees enforced in Superior Court. The same reasoning we have applied for denying Nader's 60 (b) motion, also defeats this last point: Nader either has raised, or has had the opportunity to raise, those claims in Pennsylvania; he is precluded from raising them in the District of Columbia. We, therefore, turn to the first two procedural issues, which in essence go to whether appellees' execution on the judgments against the garnishee banks was premature.

Rule 62 (a) provides that "no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry." Super. Ct. Civ. R. 62 (a). Appellees executed on the judgments against the garnishee banks on November 2, 2007. Nader argues this was premature because it was less than ten days after October 25, 2007, when the trial court granted the voters' motion to condemn assets in Nader's bank accounts and issued judgments against the garnishee banks. He also contends that the October 25, 2007 judgments against the garnishee banks were not final because they had been stayed by his November 7, Rule 60 (b) motion for relief from judgment.

Nader argues that the trial court erred in two respects: First, because it considered that for purposes of Rule 62 (a)'s 10-day period, the judgment being enforced was

the one that entered the Pennsylvania judgment on May 16, 2007, whereas he contends the relevant judgments were the two entered against the garnishee banks on October 25, 2007, and, second, because Nader's Rule 60 (b) motion rendered the judgment against the garnishee banks non-final.

These arguments are now moot. The purpose of the automatic 10-day grace period is, as Nader argues, to permit the filing of motions for relief from the underlying judgment and to request a stay, pursuant to Rule 62 (b), while such motion is pending. The trial court considered and denied Nader's Rule 60 (b) motion on the merits, and, as discussed in the previous section, we uphold that denial. Therefore, even if we assume, *arguendo*, that Rule 62 (a)'s 10-day period applies to the judgments entered against the garnishee banks, Nader has not been harmed. Moreover, the filing of his Rule 60 (b) motion on November 7, 2007, did not affect the finality of the October 25, 2007 judgments against the garnishee banks.²⁰ There is, therefore, no cause to grant relief on this ground.

For the foregoing reasons, the judgment of the trial court is

Affirmed.

²⁰ Rule 60 (b) states in relevant part, "[a] motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation." Super. Ct. Civ. R. 60. That a Rule 60 (b) motion filed within ten days tolls the time for appeal, *see* D.C. App. R. 4 (a)(4)(v), does not mean that the underlying order is automatically rendered unenforceable. It is within the trial court's discretion to deny a stay under Rule 62 (b).

APPENDIX B

**DISTRICT OF COLUMBIA
COURT OF APPEALS**

No. 09-CV-906

RALPH NADER,)
APPELLANT,)
)
v.)
)
LINDA S. SERODY, et al.,)
APPELLEES)
)

BEFORE: Washington, Chief Judge; Glickman*,
Fisher, Blackburne-Rigsby, Thompson*, Oberly,
Beckwith, and Easterly, Associate Judges; Ruiz**,
Senior Judge.

ORDER

On consideration of appellant's petition for rehearing
en banc; and it appearing that no judge of this court
has called for a vote on the petition for rehearing *en*
banc, it is

ORDERED that appellant's petition for rehearing *en*
banc is denied.

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PER CURIAM

****Judge Ruiz was an Associate Judge of the court at the time of argument. Her status changed to Senior Judge on July 2, 2012.**

Copies to:

Honorable Judith Bartnoff

Oliver B. Hall, Esquire
1835 16th Street, NW
Washington, D.C. 20009

Daniel I. Booker, Esquire
Douglas K. Spaulding, Esquire
Nathan R. Fennessy, Esquire
Reed Smith LLP
1301 K Street, NW, Suite 1100 East
Washington, DC 20005

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APPENDIX C

DISTRICT OF COLUMBIA SUPERIOR COURT

No. 2007 ca 003385 F

LINDA S. SERODY, et al.,)
Plaintiffs,)
)
v.)
)
RALPH NADER,)
Defendant,)
)
and)
)
AMALGAMATED BANK, M&T)
BANK and PNC BANK,)
Defendant Garnishees.)
)

ORDER

This case involves the plaintiffs' efforts to collect on a judgment entered in their favor against defendant Ralph Nader by the Commonwealth Court of Pennsylvania, which was affirmed by the Supreme Court of Pennsylvania. Mr. Nader has made repeated attempts in this case to forestall enforcement of that judgment against him. Now before the Court are the following: (1) Defendant's Motion for Relief from Judgment; (2) Defendant's Motion for Judicial Notice

of Petition to Set Aside Plaintiffs' Judgment Based Upon Newly Discovered Evidence of Criminal Misconduct; (3) Plaintiffs' Motion for Leave to File a Surreply to Defendant's Motion for Judicial Notice; and (4) Defendant's Motion for Restitution of Funds and Dismissal.¹

I.

This case was brought by plaintiffs Linda Serody, Roderick Sweets, Ronald Bergman, Terry Trinclisti, Richard Trinclisti, Bernie Cohen-Scott, Donald G. Brown, and Julia A. O'Connell against Ralph Nader and three banks in the District of Columbia where Mr. Nader reportedly had accounts.² The underlying litigation in Pennsylvania that gave rise to the judgment that the plaintiffs seek to enforce here involved a challenge to the nomination papers submitted by Mr. Nader and his running mate, Peter Camejo, to be candidates for President and Vice-

¹ The plaintiffs have filed oppositions to the motions for relief from judgment and for judicial notice, and the defendant has filed replies. The defendant has filed an opposition to the plaintiffs' motion for leave to file a surreply to the motion for judicial notice, to which the plaintiffs have filed a reply. The plaintiffs have not filed a separate response to the motion for restitution of funds and dismissal, but their opposition to the relief requested is set forth in the correspondence attached the defendant's memorandum in support of the motion.

² The named banks are Amalgamated Bank, M&T Bank, and PNC Bank. It was determined in these proceedings that Mr. Nader did have accounts at Amalgamated Bank and PNC Bank, but not at M&T Bank. The accounts at both Amalgamated Bank and PNC Bank were attached by writs of attachment filed on July 17, 2007.

President in the 2004 Presidential election in Pennsylvania. Under Pennsylvania law, candidates are required to submit petitions containing a certain number of signatures of registered Pennsylvania voters.

In August 2004, the plaintiffs filed suit in the Commonwealth Court of Pennsylvania to challenge the validity of the nomination papers submitted by Mr. Nader and Mr. Camejo. That challenge was successful. On October 13, 2004, the Court invalidated a majority of the signatures on the nomination papers and found that the number of valid signatures was insufficient to allow Mr. Nader and Mr. Camejo to be included on the ballot. On October 14, 2004, the Commonwealth Court further ruled that the plaintiffs were entitled to their costs against Mr. Nader and Mr. Camejo.

The decision of the Commonwealth Court on the merits was affirmed by the Supreme Court of Pennsylvania in a *per curiam* order issued on October 19, 2004. Following that ruling, counsel for the plaintiffs submitted a bill of costs to the Commonwealth Court in the total amount of \$81,102.19, and the defendants filed an opposition. On January 14, 2005, the Commonwealth Court approved the bill of costs in the full amount requested. That Order was affirmed by the Supreme Court of Pennsylvania on August 22, 2006. The defendants' petition for certiorari to the United States Supreme Court was denied on January 8, 2007, and judgment was entered by the Commonwealth Court on April 23, 2007.

The plaintiffs then sought to enforce the judgment in the District of Columbia. The Pennsylvania judgment

was entered in this Court on May 16, 2007, and the plaintiffs gave notice to Mr. Nader on that date, through counsel, of the filing of the foreign judgment. The plaintiffs have advised the Court that they settled with Mr. Camejo for \$20,000, and they now are seeking to collect the balance of the judgment from Mr. Nader. Mr. Nader's accounts at Amalgamated Bank and PNC Bank contained sufficient funds to satisfy most of the judgment, but not enough to cover the full amount owed, with allowable interest.

After some further proceedings, in which persons or entities affiliated with Mr. Nader attempted to challenge the attachments of the bank accounts,³ the plaintiffs filed a motion for condemnation of the funds held in Amalgamated Bank and PNC Bank. No opposition or other response was filed to that motion, and the Court granted it on October 25, 2007. On that date, the Court also entered separate judgments for the plaintiffs and against the garnishee defendants: for \$34,218.29 from Mr. Nader's account(s) at PNC Bank and for \$22,710.26 from his account(s) at Amalgamated Bank. The Court now is advised that payment was made by PNC Bank to plaintiffs' counsel, in accordance with the Court's Order, on November 2, 2007.

Mr. Nader did not seek a timely stay of the judgment entered in May 2007. But on November 7, 2007, he filed a motion for relief from that judgment, based on alleged "newly discovered evidence" regarding alleged improprieties, or the appearance of improprieties, between plaintiffs' counsel (the Reed Smith law firm)

³ The Court found no merit in those claims.

and certain of the justices of the Supreme Court of Pennsylvania. Subsequently, in late August 2008, Mr. Nader filed a motion requesting this Court to take judicial notice of a petition to reopen the record or to set aside the judgment that was filed on August 4, 2008 in the Commonwealth Court of Pennsylvania, as well as a Grand Jury presentment included in that filing. In addition, in April 2009, Mr. Nader filed a motion for restitution of the funds that had been paid by PNC Bank, pursuant to the Court's order of October 25, 2007, and to dismiss this action for plaintiffs' counsel's alleged failure to comply with the Rules of this Court.

II.

By its terms, the motion for relief from judgment is addressed to the judgment entered by the Court on May 16, 2007. The motion was filed pursuant to Rule 60(b) of the Superior Court Rules of Civil Procedure, and in particular, pursuant to subsections (b)(2), (3), (4), and (6).⁴

As noted above, the judgment entered on May 16, 2007

⁴ In the alternative, the motion for relief from judgment requests a stay of enforcement of the May 16, 2007 judgment and for the funds that had been attached to be accepted as security pursuant to Superior Court Civil Procedure Rule 62-I, pending resolution of Mr. Nader's claims against plaintiffs' counsel in *Nader v. Democratic National Committee*, Case No. 2007CA7245. That case was removed to the United States District Court for the District of Columbia in December 2007. The plaintiffs have advised the Court in their opposition to the defendants' motion for judicial notice that a motion to dismiss was granted by the District Court in May 2008. The alternative request for relief therefore is moot.

did not originate in this Court, but instead was a final judgment that previously had been entered in Pennsylvania, after that judgment was affirmed by the Supreme Court of Pennsylvania and defendant Nader's petition for a writ of certiorari was denied by the United States Supreme Court. The substantive issues relating to the validity of the judgment were litigated in Pennsylvania. All the plaintiffs are trying to do here is to collect the money that the Pennsylvania courts have found is owed to them by Mr. Nader.

The United States Constitution requires that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." U.S. Const. art. IV, § 1. The sole condition for one state to recognize a judgment entered in a sister state is jurisdiction. *See, e.g., Williams v. North Carolina*, 325 U.S. 226, 229 (1945) (judgment in one state is "conclusive on the merits" in all other states provided that the deciding court "had power to pass on the merits – had jurisdiction, that is, to render judgment"). The District of Columbia courts are mandated by the Full Faith and Credit Clause to give a foreign judgment the same legal effect that it would receive in the state where it originally was entered, if that state had jurisdiction to enter it. *See Vickery v. Garretson*, 527 A.2d 293, 299 (D.C. 1987).⁵

⁵ *Vickery* represents the rare circumstance where full faith and credit was not given to a foreign judgment, based on a lack of jurisdiction in the deciding court. In that case, the District of Columbia Court of Appeals found that a Maine judgment was not entitled to full faith and credit, because the Maine court exceeded its jurisdiction by ordering relief beyond what had been sought in the complaint, without the notice to the other parties required by

The fact that a party is attempting to challenge the judgment in the courts of the state that originally entered it is not grounds for this Court not to give full faith and credit to the foreign judgment. *See Fehr v. McHugh*, 413 A.2d 1285 (D.C. 1980). A party may seek enforcement of the judgment in this jurisdiction in the same manner as it would seek enforcement in the deciding state. 413 A.2d at 1287. In *Fehr*, a Colorado money judgment was found to be enforceable in the District of Columbia, even though an appeal of the judgment was pending in Colorado, when no supersedeas bond had been filed in Colorado pending the appeal. Because the judgment was not stayed and was enforceable in Colorado, it also was enforceable here.

There is no question that the Pennsylvania courts had jurisdiction to consider the issues presented with regard to the validity of the Nader/Camejo nomination papers and the legality of the award of costs to the plaintiffs, nor does defendant Nader contend otherwise. Further, the record is clear that the Pennsylvania judgment was final as of April 23, 2007. That judgment therefore is entitled to full faith and credit in the District of Columbia. Nevertheless, defendant Nader is asking this Court to review the judgment and to decline to enforce it, based on allegations that it was improper for certain of the justices on the Supreme Court of Pennsylvania to consider his appeals to that court because of their relationships with the plaintiffs' counsel and/or their receipt of campaign contributions from plaintiffs' counsel. Mr. Nader makes no claims

due process.

regarding the Commonwealth Court, which entered the original judgment.

Rule 60 is the appropriate basis to attack a foreign judgment that a party seeks to enforce in this Court. *See Threatt v. Winston*, 907 A.2d 780 (D.C. 2006) (finding that Rule 60 is the sole permissible basis for attacking a foreign judgment, under D.C. Code § 15-352). The Court considers a motion for relief from a foreign judgment under that Rule in the context of the Full Faith and Credit Clause, as well as “the general principle that relief from a judgment should be sought in the court that rendered the judgment.” *Id.* at 789. *See also Reilly v. SEPTA*, 489 A.2d 1291 (Pa. 1985).

The defendant makes four specific allegations in his motion for relief from judgment: (1) that plaintiffs’ counsel, Reed Smith, represented the Chief Justice of the Supreme Court of Pennsylvania in a state ethics investigation during the pendency of the appeal in this case; (2) that Reed Smith and Montgomery, McCracken, Walker and Rhoads, LLP, another law firm representing the plaintiffs, each had contributed \$5,000 to the justice who wrote the majority opinion; (3) that one of the justices had been of counsel to Reed Smith for three years before he joined the Supreme Court of Pennsylvania in 1994 (more than ten years before the appeals in this case in Pennsylvania); and (4) that lawyers from Reed Smith and Montgomery, McCracken had made contributions to several of the justices who voted to affirm the award of costs to the

plaintiffs.⁶

A.

Rule 60 of the Superior Court Rules of Civil Procedure permits a court to relieve a party from a final judgment based on “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” Super. Ct. R. Civ. P. 60(b)(2). In addition, the party seeking relief from judgment must show that the new evidence is not merely cumulative or impeaching and that the new evidence likely would produce a different result at a new trial. *See Mahallati v. Williams*, 479 A.2d 300, 305 (D.C. 1984).

Although the defendant claims that he did not learn of the alleged evidence of bias until September 2007, it appears that all the matters he now is attempting to raise were in the public record well before the entry of the judgment in Pennsylvania in April 2007 or the entry of that judgment in this Court in May 2007. The defendant does not dispute that campaign contributions to candidates for the Pennsylvania Supreme Court are matters of public record or that his

⁶ The defendant states, in particular, that the two law firms and lawyers affiliated with them gave a total of at least \$67,900 in campaign contributions to five of the justices who voted to affirm the judgment. The defendant further states that at least \$58,900 of that amount came from Reed Smith and its lawyers. There is no allegation of any extraordinarily large contribution from any single lawyer to any particular justice. The only specific dollar amounts provided are for the law firms’ contributions from of \$5,000 to one of the justices.

claims based on counsel's campaign contributions could have been raised with the Pennsylvania Supreme Court, in the first instance. The plaintiffs assert, and the defendant also does not dispute, that the prior employment of one of the justices with Reed Smith was a matter of public record and was published in the Pennsylvania Judicial Manual and on the Supreme Court's website. Nor does the defendant dispute that Reed Smith's representation of the Chief Justice with regard to an ethics complaint had been a matter of public record for well over a year before the entry of the final judgment in Pennsylvania or the entry of the judgment in this Court. Although the defendant argues that he had no obligation to discover the alleged facts underlying his claims, he is seeking relief under Rule 60(b)(2), and he therefore has the burden of showing that the alleged new evidence could not have been discovered by due diligence in time to move for a new trial under Rule 59(b), which provides for the filing of a motion for a new trial within ten days of the entry of the judgment. He cannot satisfy that burden when all the alleged facts on which he relies were matters of public record well before the judgment was entered, both in Pennsylvania and in this Court.

B.

The defendant also has not shown that he is entitled to relief from judgment under Rule 60(b)(3), (4) or (6). The fact that counsel may have contributed to a judge's political campaign does not of itself implicate federal due process concerns. *See Sheperdson v. Nigro*, 5 F. Supp. 305, 310 (E.D. Pa. 1998). To the contrary, the United States Supreme Court recently clarified that a due process violation occurs only when a judge with a

“direct, personal, substantial, pecuniary interest” fails to recuse. *Caperton v. A.T. Massey Coal Co., Inc.*, No. 08-22, 2009 LEXIS 4157 at **15-16 (U.S. June 8, 2009) (citations omitted). The Court further confirmed that “most matters relating to judicial disqualification [do] not rise to a constitutional level.” *Id.* (citing *FTC v. Cement Inst.*, 333 U.S. 683, 702 (1948)). Most campaign contributions to judges by litigants or attorneys do not create a probability of bias that warrants recusal, except in exceptional cases. *Id.* at 28. *Caperton* was such a case, given that the total contributions by the litigant to the judge’s campaign and to another organization created to support the judge’s candidacy exceeded the amounts spent by all the judge’s other supporters and were three times the amount spent by the judge’s own campaign committee. *Id.* at **10. Campaign contributions at that level presented “a serious risk of actual bias—based on objective and reasonable perceptions—where a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent.” *Id.* at 28.

The defendant has made no allegations here of campaign contributions of the magnitude that would raise due process concerns, under the *Caperton* standard. And although the defendant suggests that there was some impropriety in the justices’ failure to disclose the contributions during the course of the appeal of the costs judgment, no such disclosure is required under Pennsylvania law or the applicable

Rules of Professional Conduct.⁷

The defendant's allegations regarding one justice's prior employment by Reed Smith, which apparently ended in 1993, also provide no basis for relief from judgment under Rule 60. *See Martin v. Monumental Life Ins. Co.*, 240 F.3d 223 (3rd Cir. 2001) (judge not required to recuse based on past employment with law firm representing an interested party). No claim has been made that the justice ever had, much less maintained, any financial interest in the law firm.

Nor is there any basis for this Court to find that Reed Smith's representation of Chief Justice Cappy created a due process issue in this case. From the information provided by the defendant, the ethics complaint that gave rise to the investigation was filed in August 2005, several months after the Supreme Court of Pennsylvania affirmed the order of the Commonwealth Court regarding the invalidity of the Nader/Camejo nomination petitions. The record reflects that the complaint was dismissed at least a month before the Supreme Court heard argument on Mr. Nader's appeal of the Commonwealth Court's order awarding costs to the plaintiffs, and Reed Smith's representation of Justice Cappy in that matter was reported in the press at that time. There is no reason why any issue in that regard could not have been raised both before the

⁷ There are requirements for disclosure of campaign contributions in the Pennsylvania Election Law. It plainly would not be for this Court to determine whether those disclosure requirements were followed by the justices of the Pennsylvania Supreme Court, but the defendant has not challenged the plaintiffs' assertion that they were.

Supreme Court of Pennsylvania and the United States Supreme Court.⁸

In the circumstances, none of the defendant's claims are a basis for this Court to find that the Pennsylvania court lacked jurisdiction to enter or to review the costs judgment. Defendant Nader has provided no valid reason for his failure to raise his challenges to the Pennsylvania judgment in the Pennsylvania courts, in the first instance. Nor has he established that he is entitled to relief from the judgment entered by this Court, under Rule 60(b). The motion for relief from judgment therefore will be denied.

III.

Defendant Nader also has filed a motion for this Court to take judicial notice of a petition filed in the

⁸ The defendant also claims that plaintiffs' counsel had some obligation to disclose its alleged ties to the Pennsylvania Supreme Court justices. The only legal authority asserted to support that claim concerns the duty not to conceal evidence. But the defendant provides no legal grounds to support his assertion that there was a disclosure obligation in the first instance as to any of the matters he raises. He can point to no requirement that in the course of appearing before a court in Pennsylvania, attorneys must disclose their campaign contributions to a judge, or a judge's past employment with the law firm, or the law firm's past legal representation of a judge. Further, the purpose for any such disclosure presumably would be for the defendant to have had notice of issues to be raised with the Pennsylvania Supreme Court with regard to possible recusals. In this case, all the matters at issue were of public record while the defendant's appeal was pending before the Pennsylvania Supreme Court, although the defendant did not raise them.

Pennsylvania Commonwealth Court to set aside the judgment based on newly discovered evidence of alleged criminal misconduct, including a Grand Jury Presentment incorporated therein. The plaintiffs opposed that motion, on the grounds that the defendant was seeking far more than for this Court to take judicial notice of the filings in another court, that the new proceedings in the Pennsylvania court were not relevant to the judgment for costs that the plaintiffs were attempting to enforce in this case, and that the defendant's motion for judicial notice really was an indirect attempt to extend the briefing before this Court.

The defendant then filed a reply, to which he attached the opposition filed by the plaintiffs here to the petition that had been filed in the Commonwealth Court of Pennsylvania to open the record or set aside the judgment, as well as the reply filed by Mr. Nader and Mr. Camejo in that proceeding. The plaintiffs then filed a motion for leave to file a surreply, by which the plaintiffs sought to supplement the record before this Court with regard to the Pennsylvania proceedings. The defendant filed an opposition to that motion, and the plaintiffs filed a reply.

The Court agrees that it is appropriate to take judicial notice that a petition to reopen the record and to set aside the judgment was filed in the Pennsylvania court. The Court's judicial notice is limited to the fact that the petition was filed, and not to any issues relating to the merits of that petition, which is properly the province of the Pennsylvania courts. In that regard, the public records of the Commonwealth Court of Pennsylvania reflect that the petition to open the record or to set

aside the judgment was denied by that Court on December 4, 2008, and an order denying an application for reconsideration of that ruling was entered on December 31, 2008.

Had the Pennsylvania court decided to reopen the record and to set aside the costs judgment, the continued validity of the judgment that was entered here obviously would be in question. But that did not occur. This Court therefore will take notice that the defendant attempted to have the record reopened in Pennsylvania and for the judgment to be set aside, but it also will take judicial notice that the defendant's petition was denied. That petition therefore has no bearing on the ongoing validity of the judgment the plaintiffs are seeking to enforce in this Court. If anything, the Commonwealth Court's denial of the petition confirms the validity of the judgment.

The Court declines to take judicial notice of the Grand Jury presentment, which is neither a judicial order nor a judicial act, and which sets out findings that are very much disputed. *See Christopher v. Aguigui*, 841 A.2d 310, 312 n.2 (D.C. 2003); *Jonathan Woodner Co. v. Adams*, 534 A.2d 292, 297 (D.C. 1987).

The motion for judicial notice of petition to set aside plaintiffs' judgment therefore will be granted in part, to the extent that the Court will take judicial notice of the filing of the petition in the Commonwealth Court of Pennsylvania, but otherwise will be denied. The Court also takes judicial notice that the petition was denied by the Pennsylvania Court and that reconsideration of that ruling also was denied. Because the Court has read and considered all the papers filed by both parties

on this matter, the plaintiffs' motion for leave to file a surreply to the defendant's motion for judicial notice also will be granted.

IV.

Finally, defendant Nader has filed a Motion for Restitution and Dismissal, by which he is asking the Court to enter an order directing plaintiffs' counsel to return the \$34,218.29 that was paid to it from Mr. Nader's account at PNC Bank, in accordance with the Court's Order granting the plaintiffs' motion for condemnation and the judgment entered on October 25, 2007 against PNC Bank. The defendant also seeks dismissal of this action, based on plaintiffs' counsel's alleged failure to comply with the Court's rules. The defendant's motion is premised on a misreading of the Rules he is attempting to invoke.

In particular, defendant Nader bases his claim on Rule 62(a) of the Superior Court Rules of Civil Procedure, which provides that "no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry." Super. Ct. R. Civ. P. 62(a). The defendant contends that the plaintiffs improperly collected on the judgment because they received the funds on November 2, 2007, less than ten business days after entry of the judgment against PNC on October 25, 2007. The defendant further contends that the October 25, 2007 judgment was stayed by the filing of his Motion for Relief from Judgment, pursuant to Rule 60(b) of the Civil Procedure Rules, on November 7, 2007. The defendant is wrong in several respects.

First, the judgment in this case to which Rule 62(a) applies is the judgment entered on May 16, 2007, which was based on the final judgment entered in Pennsylvania on April 23, 2007. Defendant made no attempt to stay execution of that judgment, although he was provided notice of it on the day it was entered. On November 7, 2007, the defendant did file a motion for relief from judgment, pursuant to Rule 60(b). But that motion did not affect the finality of the judgment or operate as a stay; to the contrary, the Rule provides explicitly that “[a] motion made under this subdivision (b) does not affect the finality of a judgment or suspend its operation.” The defendant’s claim that the judgment is not final because of the filing of his Rule 60(b) motion ignores the plain language of the Rule.

Once the foreign judgment was filed, further proceedings “in aid of execution” of the judgment were governed by Rules 69 and 69-I of the Civil Procedure Rules, and not by Rule 62. The judgments entered on October 25, 2009 were directed to the garnishee banks, pursuant to Rule 69-II(e). Those judgments were “supplementary to and in aid of” execution of the original judgment under Rule 69, and the automatic stay provision of Rule 62(a), which had been applicable to the original judgment, therefore was inapplicable to them. The Court’s Order granting the plaintiffs’ motion for condemnation (which the defendant did not oppose) and the judgments against the garnishee banks were final when they were entered.⁹

⁹ Notably, the defendant’s Rule 60(b) motion was addressed only to the costs judgment entered in this Court on May 16, 2007, and not to the judgments that were entered against the garnishee banks

The premises of the defendant's motion therefore are without merit. The record does not reflect whether plaintiffs' counsel made any further demand on the garnishee banks after the Court's Orders of October 25, 2007 were entered, or whether PNC Bank simply made the payment on its own, as it had been directed to do by the Court. But that payment was properly made and accepted, consistent with Rules 69 and 69-II. The defendant's claims that plaintiffs' counsel engaged in any impropriety in connection with the enforcement of the judgment are entirely without merit. The motion for restitution and to dismiss therefore will be denied.

Based on the foregoing and the entire record, it is by the Court this **21st day of July 2009**

ORDERED that Defendant's Motion for Relief from Judgment be and it hereby is **DENIED**, and it is

FURTHER ORDERED that Defendant's Motion for Judicial Notice of Petition to Set Aside Plaintiff's Judgment Based Upon Newly Discovered Evidence of Criminal Conduct be and it hereby is **GRANTED IN PART**, to the extent that the Court takes judicial

on October 25, 2007, although those supplemental judgments were entered before the motion was filed. This is not to suggest that it would have been proper for defendant Nader to seek relief from the supplemental judgments, which were directed against the garnishees and not against him. But one reason such a motion would not have been proper is that any attempt to challenge the underlying judgment should be addressed to the judgment itself, and not to supplementary judgments obtained in proceedings in aid of execution of the underlying judgment, under Rules 69 and 69-II.

notice of the filing of that petition in the Commonwealth Court of Pennsylvania, and otherwise is **DENIED**, and it is

FURTHER ORDERED that Plaintiffs' Motion for Leave to File a Surreply to Defendant's Motion for Judicial Notice of Petition to Set Aside Plaintiffs' Judgment be and it hereby is **GRANTED**, and the surreply be and it hereby is accepted for filing, and it is

FURTHER ORDERED that Defendant's Motion for Restitution of Funds and Dismissal be and it hereby is **DENIED**.

The Court further takes judicial notice that the petition to open the record or to set aside judgment based on newly discovered evidence of criminal conduct, filed in the Commonwealth Court of Pennsylvania, was denied by the Court on December 4, 2008 and that an order denying an application for reconsideration of that ruling was entered on December 31, 2008.

Judge Judith Bartnoff
Signed in Chambers

APPENDIX D

**28th Statewide Investigating Grand Jury
Presentment**

July 10, 2008

INTRODUCTION

We, the members of the 28th Statewide Investigating Grand Jury, having received and reviewed evidence regarding allegations of violations of the Pennsylvania Crimes Code and related laws, occurring in Dauphin County, Pennsylvania, pursuant to notice of submission of Investigation No. 4, do hereby make the following findings of fact, conclusions, and recommendations of charges.

FINDINGS OF FACT

This investigation was commenced as the result of public allegations of potential corruption and criminal misconduct within the Pennsylvania Legislature. [...]

BONUS PAYMENTS FOR CAMPAIGN WORK

Idea and Implementation

Inquiries into allegations of misconduct within the Pennsylvania Legislature were initially sparked by a series of newspaper revelations, commencing at the end of January, 2007, that significant sums of taxpayer

funds were secretly paid, in the form of bonuses, to employees of the Pennsylvania Legislature. ... In its ensuing investigation, this Grand Jury has uncovered a concerted plan to use taxpayer funds, employees and resources for political campaign purposes. Over the course of a number of years, former Representative Mike Veon and others, some named herein and others yet un-named, engaged in a concerted pattern of illegal conduct in which millions of dollars in taxpayer funds and resources were misdirected to campaign efforts. [...]

[T]he award of bonuses was but a single facet of the concerted effort to employ taxpayer funds and resources for campaign purposes. The actual diversion of resources and employees to campaigns and political endeavors was of no less prominence. The subversion of taxpayer funds and resources was extensive and ranged from the obvious – directing public employees to conduct campaign work while paid by the taxpayers, to the subtle – issuing taxpayer paid contracts for campaign work disguised as legitimate legislative work. [...]

NOMINATING PETITION CHALLENGES

Our investigation has found that employees and resources of the House Democrat Caucus historically and routinely were utilized to conduct petition challenges against candidates who were opponents of Caucus incumbents or the Democratic Party. ... The two most outstanding examples of misappropriation of taxpayer resources in petition challenges were found in the challenges to the candidacies of Ralph Nader, for

President of the United States in 2004, and Carl Romanelli, for the United States Senate in 2006.

Nader Petition Challenge

It was generally assumed, in Democratic Party circles, that Nader's appearance on the ballot would be detrimental to Democratic Presidential Candidate John Kerry....[T]he Caucus quest to remove Nader from the ballot began before his petitions were even filed.... [A] veritable army of Caucus staffers was enlisted. The petition pages were divided among the staffers in the Capitol complex, the members of Veon's Beaver Falls District Office staff, and a law firm which was ultimately involved in filing the challenge. Manzo directed the day-to-day operation, with assistance from Jeff Foreman, and appointed a staffer who, along with Melissa Lewis from Veon's District Office, coordinated the dissemination of materials and information to the aforementioned law firm. [...]

As many as fifty Caucus staff members participated in the challenge effort, and contributed a staggering number of man-hours. As stated by Patrick Grill, a Caucus employee, referring to his fellow staffers, "Everybody was working on this." It was virtually a Caucus-wide endeavor. Many of the Caucus employees spent an entire week on it. Melissa Lewis, along with two other members of Veon's District Office, even drove boxes of materials necessary for the challenge filing to Harrisburg, where they were delivered to the challenge attorney. ... The fruits of the Caucus labor was reflected in the challenge petition, which was filed on August 9, 2004. [...]

Veon lauded the Nader challenge efforts and result in an October 13, 2004 email addressed to [his] 22-member Caucus staff. In that email, Veon stated:

“FYI... great job by our staff! This would never ever have been successful without your work. You have given John Kerry an even better opportunity to win this state... one of the most 5 [sic] important states to win this year. That is a very significant fact and significant contribution by each one of you to the Kerry for president campaign...”

Jeff Foreman expressed similar sentiments in a November 3, 2004 email to Veon staffers, by stating: “...clearly the volunteer effort regarding the challenge to Nader was a critical piece of the Kerry victory in Pa., and our staff...was essential in that effort...”. The Nader effort was further acknowledged, and rewarded, by Scott Brubaker, Manzo, Foreman, Brett Cott and Veon, as indicated in...emails regarding the campaign-related 2004 bonuses.

Based on the evidence presented to us, we have been able to identify, by name, [36 staff employees and four supervisors] who were involved with the Nader challenge. This list is certainly not exhaustive. [...]

APPENDIX E

**Transcript of Proceedings Before the Court of
Common Pleas, Dauphin County, Pennsylvania**

October 7 and 8, 2008

***Testimony of Pennsylvania House Democratic
Caucus Employee Melissa Lewis***

Q Tell us about the petition challenge involving Ralph Nader?

A We were told that once the petitions were filed to get on the ballot, we were instructed to go line by line through each of the petitions to make challenges to it. At that time we were getting boxes of binders of these petitions to go through.

And then I was instructed to go to Pittsburgh to a law office and trade out, give them what we completed and get new boxes of material to bring back. [...]

Q You said that you would take these results once you finished looking at the hard copies, you took them to a law firm. Where did you take them?

A We took those to Reed Smith in Pittsburgh, downtown Pittsburgh.

Q Was there one particular lawyer you were working for?

A Yes.

Q Who was that?

A Efrem Grail.

THE COURT: I didn't catch the name.

THE WITNESS: Efrem Grail.

THE COURT: Can you spell that?

THE WITNESS: E-f-r-e-m, G-r-a-i-l.

Q Would it be correct that Mr. Grail was coordinating the effort?

A Yes.

Q Did you deal with him personally?

A Yes.

Q You would come from the Beaver County office, go to Pittsburgh with your boxes of binders and nominating petitions and you would give those to Mr. Grail, he would give you other ones back and you go back and work on the new ones?

A Correct. [...]

Q You met with Attorney Efrem Grail?

A Yes.

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Q Do you know how many occasions you met with him?

A It was nearly every time I brought the completed work to him to be traded, almost every time.

Q You met with him personally?

A Yes, I did meet with him personally.

Q He was an attorney?

A Yes.

Q Can you give me any guess about how many times that may have been?

A I would say probably three, three or four times that I met with him personally.

Q Did you talk to him over the phone?

A Yes I did.

Q Approximately how many time would you have spoken with him over the phone?

A Probably about the same amount of time.

Q Do you know what kind of attorney Efrem Grail is or what his specialty is?

A No, I do not.

Q In your meeting with Efrem Grail, did he know who you were?

A Yes.

Q Did he know you worked in the district office of Mike Veon?

A Yes.

Q Did he know you were a legislative assistant?

A I don't know if he knew what my title was but he definitely knew I worked for Representative Veon.

Q Did he ever say to you, you know Miss Lewis, you really shouldn't be doing this on State time, it is improper?

A No, he never mentioned anything like that.

APPENDIX F

**IN THE COMMONWEALTH COURT OF
PENNSYLVANIA**

No. 568 M.D. 2004

In re: Nomination Paper of Ralph Nader)
and Peter Miguel Camejo as Candidates)
of an Independent Body for President)
and Vice President in the General)
Election of November 2, 2004)
)
Linda S. Serody, Roderick J. Sweets,)
Ronald Bergman, Richard Trinclisti,)
Terry Trinclisti, Bernie Cohen-Scott,)
Donald G. Brown and Julia A. O'Connell,)
Petitioners)

PETITIONERS' BILL OF COSTS

Petitioners, by and through their unsigned counsel, file this Bill of Costs, for those recoverable expenses incurred by Petitioners in connection with the above-captioned. Petitioners respectfully request that this Court order the Nader/Camejo Campaign and Ralph Nader and Peter Miguel Camejo, to pay Petitioners the costs specified below. [...]

III. CONCLUSION

Based on the facts, the Order of this Court, and the interest of justice, Petitioners respectfully request that this Court order the Nader/Camejo Campaign and Messrs. Nader and Camejo, individually, to pay to Petitioners the total of \$81,102.19 for the costs incurred by Petitioners for court reporter services and expert witnesses' services.

REED SMITH LLP

By: /s/Efrem M. Grail

Daniel I. Booker, Esq.
PA I.D. No. 10319
Efrem M. Grail, Esq.
PA I.D. No. 81570
Cynthia E. Kernick, Esq.
435 Sixth Avenue
Pittsburgh, PA 15219-1886
412.288.3131
Fax 412.288.3063

dbooker@reedsmith.com
egrail@reedsmith.com
ckernick@reedsmith.com

Attorneys the Western Pennsylvania
Petitioners: Linda S. Serody, Roderick
J. Sweets, Ronald Bergman, Richard
Trinlisti, Bernie Cohen-Scott, Terry
Trinlisti, and Donald G. Brown