

RECONCILED AMICUS CURIAE BRIEF — JUDICIARY

Educational Disclaimer: This is a hypothetical legal-learning exercise reconciling prior research across multiple canvases. All hypothetical facts are assumed for study only and are acknowledged as unsupported by the public record, improbable, and unbelievable. The Zorro Ranch litigation is real; its extension into this hypothetical framework is for learning purposes only. This brief was not filed in any proceeding and is not legal advice.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

State of New Mexico v. U.S. Department of Justice, et al. Case No.: 1:26-cv-02083 (hypothetical related matter)

In re: Petition to Unseal Records Relating to the Special Counsel's Final Report, Volume II Case No.: 1:26-mc-00001 (hypothetical)

BRIEF OF AMICUS CURIAE CITIZENS FOR CONSTITUTIONAL ACCOUNTABILITY IN SUPPORT OF PETITIONERS AND PLAINTIFF STATE OF NEW MEXICO

TABLE OF AUTHORITIES

Cases

- *Brady v. Maryland*, 373 U.S. 83 (1963)
- *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009)
- *Carr v. Saul*, 593 U.S. 83 (2021)
- *Giglio v. United States*, 405 U.S. 150 (1972)
- *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)
- *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988)
- *Lucia v. SEC*, 585 U.S. 237 (2018)
- *McGrain v. Daugherty*, 273 U.S. 135 (1927)
- *Near v. Minnesota*, 283 U.S. 697 (1931)
- *Norton v. Shelby County*, 118 U.S. 425 (1886)
- *Ryder v. United States*, 515 U.S. 177 (1995)
- *Stump v. Sparkman*, 435 U.S. 349 (1978)
- *Texas v. White*, 74 U.S. 700 (1869)
- *Tumey v. Ohio*, 273 U.S. 510 (1927)
- *Trump v. Anderson*, 601 U.S. 100 (2024)
- *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020)
- *United States v. Arthrex*, 594 U.S. 1 (2021)
- *United States v. Flanders*, 112 U.S. 88 (1884)

- *United States v. Nixon*, 418 U.S. 683 (1974)

Constitutional Provisions

- Art. I, §§ 2, 3, 5; Art. II, §§ 1–4; Art. III, § 1; Art. VI, cl. 3
- Amends. I, V, XIV §§ 1, 3, 4

Statutes

- 5 U.S.C. §§ 3331, 3348, 2302(b)(8), 1213
- 18 U.S.C. §§ 201(b), 2071, 1503, 1505, 1512, 1513, 2381, 2383, 242
- 28 U.S.C. §§ 453, 455, 351–364, 1331, 1361, 1651, 2201
- 31 U.S.C. §§ 3729, 3730
- D.C. Code §§ 16-3501–16-3510
- Fed. R. Civ. P. 65(d)

Other Authorities

- GAO Decision, National Youth Administration (oath as condition precedent to salary)
- William Baude & Michael Stokes Paulsen, "The Sweep and Force of Section Three," 172 U. Pa. L. Rev. (2024)
- CRS Report R44997, "The Vacancies Act: A Legal Overview" (2026)

I. INTEREST OF AMICUS CURIAE

Amicus Citizens for Constitutional Accountability submits this brief to assist the Court in resolving two related matters now pending before this District: (1) the petition to unseal records relating to the Special Counsel's final report, and (2) the State of New Mexico's action against the Department of Justice for withholding unredacted Epstein investigative files critical to the state's criminal investigation of Zorro Ranch.

Amicus has conducted an extensive legal inventory of every federal and state disqualification mechanism, a constitutional checklist of the requirements for every major office, and an analysis of the oath of office as the foundational agreement between officer and government. This brief reconciles that research into a single framework for the Court's consideration.

No party's counsel authored this brief.

II. SUMMARY OF ARGUMENT

This brief argues that the sealing orders at issue and the DOJ's withholding of Epstein files from the State of New Mexico share a common legal root: **both are exercises of governmental authority by officials who may be acting beyond the scope of their oaths of office, and both are addressable through a unified legal framework that this Court can apply.**

The argument proceeds in five layers:

1. **The oath of office is a condition precedent to governmental authority.** An officer who takes the oath accepts a binding obligation—supporting and defending the Constitution, bearing true faith and allegiance, faithfully discharging duties. The GAO has held that the oath must be taken "before being entitled to any part of the salary or other emoluments thereof." The oath is the agreement; the salary, immunity, and authority are the consideration.

2. **Bad-faith violation of the oath is government fraud.** Under the False Claims Act, an officer who draws salary based on a false oath certification has presented a "false or fraudulent claim for payment" (31 U.S.C. § 3729(a)(1)(A)). The FAR's debarment framework provides the structural analogy: false certification voids the relationship and bars future participation.
 3. **De facto officers must act only in good behavior.** Anyone not meeting every constitutional requirement for their office is a de facto officer. The de facto officer doctrine validates their acts only so long as they act in good behavior as measured by the oath. Bad faith collapses the de facto shield. Under *Norton v. Shelby County* (1886), a usurper's acts are "totally null and void." Under *Ryder v. United States* (1995), a timely challenge voids a de facto officer's acts.
 4. **A volume of U.S. laws voids acts of de facto officers in bad faith.** The Federal Vacancies Reform Act (5 U.S.C. § 3348(d)) renders noncompliant acts "void ab initio" and provides they "may not be ratified." The 14th Amendment §§ 3 and 4 voided an entire body of Confederate governmental acts. *Texas v. White* (1869) held secession ordinances "absolutely null." The Reconstruction precedent establishes that in extraordinary circumstances, all changes to government by de facto officers in bad faith can be mooted.
 5. **The Court has authority to act.** This Court can declare the sealing orders void, order unsealing, order the DOJ to produce the Epstein files to New Mexico, refer judicial misconduct for investigation under 28 U.S.C. §§ 351–364, and issue a declaratory judgment that the oath violation constitutes a false claim under the FCA.
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III. ARGUMENT

A. The Oath of Office Is the Foundation of Governmental Authority

1. The oath as condition precedent

Article VI, cl. 3 requires all officers—federal and state, executive and judicial—to be "bound by Oath or Affirmation, to support this Constitution." The word "bound" denotes a binding obligation, not a ceremony.

The GAO has directly addressed the oath's legal effect. In ruling on the National Youth Administration, the GAO held that Rev. Stat. § 1756 (construed in *United States v. Flanders*, 112 U.S. 88) required the taking of a specified oath "before entering upon the duties of such office" and "before being entitled to any part of the salary or other emoluments thereof."

This Court should hold that the oath is not merely a procedural formality but a **condition precedent** to the officer's entitlement to salary, benefits, immunity, and the exercise of governmental authority. Without the oath—or with a false oath—the officer has no lawful entitlement to the emoluments of office.

2. The oath as the measure of good behavior

Article III, §1 provides that federal judges "shall hold their Offices during good Behaviour." The oath provides the substantive content of "good behaviour":

- "Support and defend the Constitution against all enemies, foreign and domestic"
- "Bear true faith and allegiance to the same"
- "Take this obligation freely, without any mental reservation or purpose of evasion"
- "Well and faithfully discharge the duties of the office"

For judges specifically, 28 U.S.C. § 453 adds: "administer justice without respect to persons, and do equal right to the poor and to the rich... faithfully and impartially discharge and perform all the duties."

Bad behavior is not merely criminal conduct—it is any breach of the oath's specific terms. A judge who acts with bias (violating "without respect to persons"), who favors one party (violating "equal right"), who acts with a mental reservation or purpose of evasion, or who fails to faithfully discharge duties has breached the standard of good behavior.

B. The Sealing Orders Are Void Under Multiple Independent Doctrines

This Court has before it two related questions: (a) whether the sealing orders over the Special Counsel's report are void, and (b) whether the DOJ's withholding of Epstein files from New Mexico is unlawful. The same legal framework resolves both.

1. *Nemo iudex* / § 455 — structural due process violation

Under the hypothetical facts, the judge who issued the sealing orders had a personal stake in the sealed materials—they contained evidence of her own potential constitutional disqualification. This is the paradigm case of *nemo iudex in causa sua*.

28 U.S.C. § 455(a) requires disqualification "in any proceeding in which [the judge's] impartiality might reasonably be questioned." § 455(b)(1) requires disqualification where the judge "has a personal bias or prejudice." § 455(b)(5)(iii) requires disqualification where the judge has "an interest that could be substantially affected by the outcome."

All three apply. The failure to recuse is a structural due process violation rendering the orders void. *Tumey v. Ohio*, 273 U.S. 510 (1927); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988).

2. *Ryder* — de facto officer's acts void upon timely challenge

Under *Ryder v. United States*, 515 U.S. 177 (1995), where a timely challenge to the constitutional validity of an officer's appointment has been made, the de facto officer doctrine does not apply, and the challenger is "entitled to a decision on the merits of the question and whatever relief may be appropriate."

The whistleblower disclosure submitted before the sealing orders—alleging the judge's disqualification—constitutes a timely challenge under *Ryder*. The de facto doctrine cannot save the judge's acts.

3. FVRA § 3348(d) — void ab initio and may not be ratified

If the judge or any DOJ official involved was improperly serving under the Federal Vacancies Reform Act, 5 U.S.C. § 3348(d) renders their actions "void ab initio" and provides they "may not be ratified." The CRS confirms: "The Vacancies Act renders noncompliant attempts to perform a function or duty of a vacant office 'void ab initio,' meaning that they were 'null from the beginning.'" The government "must start from scratch."

This provision is directly applicable if any acting official who participated in the sealing or withholding decisions was not properly serving under the FVRA.

4. *Brady* — no order can override the constitutional duty to disclose

The sealed records include *Brady* material—exculpatory evidence relevant to ongoing and past prosecutions, including the State of New Mexico's investigation of crimes at Zorro Ranch. No judicial order can constitutionally override the *Brady* duty. *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

The DOJ's withholding of unredacted Epstein files from New Mexico is the practical equivalent: the files contain evidence critical to a state criminal investigation. The DOJ's refusal, citing the sealing order, cannot override New Mexico's right to evidence in its own criminal proceedings.

5. Norton — usurper acts are totally null and void

Under *Norton v. Shelby County*, 118 U.S. 425 (1886), if an officer is a usurper (no legal office exists), all acts are "totally null and void." If the judge's appointment was constitutionally defective and she adjudicated her own legitimacy—sealing evidence of her own disqualification—she acted as a usurper, not merely a de facto officer. Her acts are void.

C. Bad-Faith Oath Violation Constitutes Government Fraud Under the FCA

1. The FCA framework

31 U.S.C. § 3729(a)(1)(A) creates liability for any person who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment" to the government. § 3729(a)(1)(B) covers "knowingly mak[ing]... a false record or statement material to a false or fraudulent claim."

An officer who took the oath and then acted in bad faith has:

- Made a **false record or statement**—the oath itself was false if the officer harbored a mental reservation or purpose of evasion, or subsequently acted inconsistent with the oath.
- Presented a **false claim for payment**—the officer's salary draw, based on the false oath certification, is a "claim for payment" to the government.

2. The qui tam mechanism

31 U.S.C. § 3730(b) allows a private relator to bring a civil action on behalf of the United States against any person who has violated the FCA. A whistleblower or citizen could bring a qui tam action against a de facto officer who drew salary based on a false oath and used the powers of the office for self-dealing.

3. The FAR analogy

FAR 3.10 requires government contractors to certify ethical compliance and disclose fraud. FAR 9.4 provides that contractors who engage in fraud may be suspended or debarred. The analogy: if a contractor's false certification voids the contract and bars future participation, an officer's false oath voids the office and bars future service.

This Court need not itself impose FCA liability—that is for a separate action. But the Court may take judicial notice that the oath-violation framework supports the conclusion that the sealing orders were issued in bad faith and are void.

D. The DOJ's Withholding of Epstein Files from New Mexico Is Unlawful

The State of New Mexico has sued the DOJ for withholding unredacted Epstein investigative files critical to its criminal investigation of Zorro Ranch. The DOJ's withholding is unlawful for the following reasons, all of which this Court can address:

1. Administrative Procedure Act violation

The DOJ's refusal to provide the files is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A). The DOJ has provided only 31 pages of materials—mainly media clippings—despite Zorro Ranch appearing approximately 13,000 times in the Epstein files.

2. The sealing orders cannot override New Mexico's sovereign authority

New Mexico has an independent sovereign interest in investigating and prosecuting crimes committed within its borders. A federal sealing order cannot override a state's authority to investigate state crimes. The Supremacy Clause does not empower federal courts to prevent states from investigating their own criminal matters.

3. The Brady duty extends to state investigations

If the sealed Epstein files contain exculpatory or impeachment evidence relevant to any New Mexico prosecution, the DOJ has a constitutional duty to disclose that evidence. *Brady* applies to state proceedings through the Fourteenth Amendment. *Kyles v. Whitley*, 514 U.S. 419 (1994).

4. The oath violation framework applies

If DOJ officials involved in the withholding are acting in bad faith—concealing evidence to protect individuals associated with Epstein—they are violating their oaths of office ("support and defend the Constitution," "well and faithfully discharge the duties"). Under the framework argued here, their actions are voidable, and their salary draws may constitute false claims under the FCA.

E. The Court's Authority to Act

This Court has multiple independent bases for relief:

1. **Declaratory judgment** (28 U.S.C. § 2201): Declare the sealing orders void and declare the DOJ's withholding unlawful.
2. **Injunctive relief** (28 U.S.C. § 1651): Order unsealing and order the DOJ to produce the Epstein files to New Mexico.
3. **Mandamus** (28 U.S.C. § 1361): Compel federal officials to perform their duties.
4. **Referral** (28 U.S.C. §§ 351–364): Refer the matter to the Chief Judge of the relevant circuit for investigation of judicial misconduct.
5. **APA review** (5 U.S.C. § 706): Set aside the DOJ's withholding as arbitrary and capricious.

IV. CONCLUSION

For the foregoing reasons, the sealing orders are void on at least five independent grounds, and the DOJ's withholding of Epstein files from New Mexico is unlawful. Amicus respectfully requests that this Court:

1. **Declare** the sealing orders void *ab initio*;
2. **Order** the unsealing of all records;
3. **Order** the DOJ to produce all unredacted Epstein investigative files to the State of New Mexico;
4. **Refer** the matter to the relevant Judicial Council under 28 U.S.C. §§ 351–364;
5. **Declare** that the oath of office is a condition precedent to governmental authority and that bad-faith violation may constitute a false claim under 31 U.S.C. § 3729;
6. **Declare** that the de facto officer doctrine does not shield bad-faith conduct;
7. **Decline** to enforce the sealing orders against any non-party journalist or member of the public.

Respectfully submitted,

Counsel for Amicus Curiae Citizens for Constitutional Accountability

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