No. _____

In The
Supreme Court of the United States

BATU SHAKARI,

Petitioner,

v.

ILLINOIS DEP'T OF FINANCIAL AND PROFESSIONAL REGULATION AND JAY STEWART, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE DIVISION OF PROFESSIONAL REGULATION,

Respondents.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois First Judicial District

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Did the Illinois courts' application of an Illinois statute deprive Batu Shakari of due process under the 14th Amendment?

PARTIES TO THE PROCEEDING

Batu Shakari – Petitioner/Plaintiff

The Illinois Dep't of Financial and Professional Regulation – Respondent/Defendant

Jay Stewart, in his Official Capacity as the Director of the Division of Professional Regulation – Respondent/Defendant

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Shakari v. IDFPR, 2018 IL 123448 (Illinois Supreme Court Summary Denial of Petitioner's Petition for Leave to Appeal)

STATEMENT OF JURISDICTION

The circuit court of Cook County, Illinois, affirmed the Respondents Illinois Dep't of Financial and Professional Regulation and Jay Stewart, in his Official Capacity as Director of the Division of Professional Regulation Department's (cumulatively "Defendants" herein) permanent revocation of Petitioner Batu Shakari's ("Plaintiff") RN license on January 5, 2017. Appendix, p. 23 ("A23").

Plaintiff timely filed his notice of appeal of the circuit court's Order on February 1, 2017, to the Illinois appellate court. A101; A151. The Illinois appellate court published its Opinion on February 20, 2018. See A1-A120. Plaintiff filed a timely Petition for Rehearing, which was denied on March 9, 2018. A21-A22.

Plaintiff timely filed his Petition for Leave to Appeal to the Illinois Supreme Court on April 12, 2018. A216-A229. The Illinois Supreme Court denied

Plaintiff's Petition for Leave to Appeal in a summary disposition on September 26, 2018. A53.

The Petition for Certiorari, being filed within 90 days of the Illinois Supreme Court's denial of Plaintiff's Petition for Leave to Appeal, is timely. Rules of Supreme Court, 13.1. The Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

United States Constitution, Amendment XIV, Section 1.

United States Constitution, Amendment V.

The Illinois Department of Professional Regulation Law, 20 ILCS 2105/2105-1, et seq., specifically.

Complete versions of the above are presented in the Appendix. A54-A58.

STATEMENT OF THE CASE

On September 30, 2015, Defendants-Appellees, Illinois Department of Financial and Professional Regulation and former director Jay Stewart (cumulatively "Defendant"), entered a Permanent Revocation Order, revoking Plaintiff's registered nurse license. A46-A52. It is this action that is at issue in this Petition.

In 1975, Plaintiff, formerly known as David E. Beverly, was convicted of attempted murder. A65-A67. The conviction being reversed on appeal, he subsequently entered into a plea bargain with the State of Illinois wherein he entered a guilty plea to an attempted murder charge in exchange for time served and probation. A71.

After completing probation, Plaintiff attended Dawson Skill Center, part of the City Colleges of Chicago, graduating in 1981 with his licensed practical nurse degree. Prior to sitting for the Nursing Board examination and obtaining his license, Plaintiff attended a hearing specifically addressing his past felony conviction. After the hearing, Plaintiff was allowed to sit for the Nursing Board examination; Defendant granted Plaintiff a Licensed Practical Nurse ("LPN") license in 1982. A72-A74.

Plaintiff attended Olive-Harvey College where he received an associate's degree in applied science in nursing in 1989. Prior to sitting for his State Boards to obtain a registered nurse ("RN") license, Defendant requested information about his past felony conviction. Plaintiff complied and provided the requested information; Defendant approved Plaintiff's request to take the RN examination and granted him an Illinois RN License in 1989. A72-A74.

Since 1989, Plaintiff has maintained his RN license with the Defendant; Defendant renewed Plaintiff's RN license each year until September 30, 2015. Plaintiff disclosed his felony conviction to Defendant

prior to its grant of licenses to him. For over a quarter of a century, Plaintiff worked as a licensed health care worker without any formal discipline or issues raised by the Defendant; he was a licensed health care professional, in good standing, in Illinois from 1982 through September 30, 2015. A72-A74.

In 2011, the Illinois legislature passed 20 ILCS 2105/2105-165 ("the Act"), which provides in part: "[w]hen a licensed health care worker, as defined in the Health Care Worker Self- Referral Act . . . (3) has been convicted of a forcible felony . . . then, notwithstanding any other provision of law to the contrary, the license of the health care worker shall by operation of law be permanently revoked without a hearing." 20 ILCS 2105/2105-165(a). A54-A58. The Illinois Administrative Code lists attempted murder as a "forcible felony." 68 Ill. Admin. Code § 1130.120. A54-A58.

In 2012 and 2014, after the passage of the Act which became effective on August 20, 2011, Defendant reviewed and renewed Plaintiff's RN license. Defendant did this with full knowledge of Plaintiff's past conviction. A132-A133.

In 2014, Defendant acknowledged that the renewal was delayed due to the conviction of a forcible felony in Plaintiff's past. After a full review though, Defendant again reissued and renewed Plaintiff's RN license. A132-A133.

On August 17, 2015, Defendant filed its Notice of Intent to Issue Permanent Revocation Order ("Notice of Intent"). A59-A69. Plaintiff submitted his response

to the Notice of Intent and argued, *inter alia*, that the Act was not applicable to him. A70-A75. Plaintiff's attorney of record addressed Defendant's Notice of Intent. Having reviewed the submissions of the parties, Defendant entered a Permanent Revocation Order on September 30, 2015; the Order permanently revoked Plaintiff's RN license. A46-A52.

On November 12, 2015, Plaintiff filed a Complaint in Administrative Review in the Circuit Court of Cook County, challenging the Defendant's determinations. A76-A77. On January 5, 2017, the circuit court affirmed the Permanent Revocation Order, relying on the Act. A23. A24-A42. It held that the Act applied to health care professionals who committed forcible felonies *before* they obtained their health care professional's license; the Department was not estopped from revoking Plaintiff's license after they renewed his license in 2012 and 2014. A24-A42. The trial court believed the Supreme Court case of *Hayashi v. Illinois Department of Financial & Professional Regulation,* 2014 IL 116023, mandated its findings in favor of the Defendant. A24-A42.

On February 1, 2017, Plaintiff timely filed his Notice of Appeal to the Illinois First District Appellate Court. A150-A151. On February 20, 2018, the appellate court affirmed the Defendant's Permanent Revocation Order. A20. Like the circuit court, it interpreted *Hayashi* so as to dismiss Plaintiff's primary arguments: 1) proper statutory construction of the Act did not require the revocation of Plaintiff's license (A10-A11) and 2) Defendant was estopped from such

revocation because it had renewed Plaintiff's RN license in 2012 and 2014, after the Act came into effect (A14-A16).

In overruling Plaintiff's estoppel arguments, the appellate court held that estoppel could not "be based on the unauthorized act of an administrative agency." A14-A16. Despite the fact that the Defendant had not taken the position that its renewal of Plaintiff's RN license in 2012 and 2014 was unauthorized, the appellate court made this the cornerstone of its ruling. Consequently, the appellate court held that estoppel cannot lie where an agency acts without authorization. *Id.*

In its analysis related to statutory construction, from the appellate court's perspective, *Hayashi* required the revocation of Plaintiff's license. A10-A11. *Hayashi* held that the revocation of a health care worker's license under the Act can be based upon a conviction "predating the effective date of the statute". *Id.*

Focusing on the Act's exact language, Plaintiff explained that, for a legal revocation, a person had to be a licensed health care worker *at the time of the conviction*. The *Hayashi* plaintiffs were health care workers at the time of their convictions. Since Plaintiff was not a licensed health care worker at the time of his conviction, his license could not be revoked under the Act.

The appellate court construed the "had been convicted" language in the Act to dismiss Plaintiff's interpretation. A11-A12. The relevant inquiry is only if a licensed health care worker has ever been convicted of

a forcible felony; it is irrelevant whether such a conviction occurred before or after that person became a licensed health care worker. A11-A13.

Plaintiff filed his timely Petition for Rehearing, identifying the misapplication of law contained in the Opinion. The Petition for Rehearing was denied on March 9, 2018. A21-A22.

On April 12, 2018, Plaintiff filed his Petition for Leave to Appeal ("PLA") to the Illinois Supreme Court. A216-A229. On September 26, 2018, the Illinois Supreme Court denied his PLA. A53.

The Plaintiff has raised his due process arguments through the lenses of statutory construction and estoppel throughout the proceedings. He raised the due process issue related to collateral estoppel at the hearing in the circuit court. A30-A31. Defendant argued that Plaintiff received due process after erroneously claiming Plaintiff's argument to be "equitable estoppel" instead of "collateral estoppel". A33-A34. The circuit court ruled against Plaintiff with regard to his due process arguments after also erroneously concluding Plaintiff's argument to be "equitable estoppel" instead of "collateral estoppel". A38. In each instance, the court or tribunal has declined to accept his arguments. A1-A20; A23; A53. Plaintiff raised both statutory construction and estoppel arguments before the appellate court. A145-A173; A199-A215. In his PLA, Plaintiff raised the same issues, which the Illinois Supreme Court would not even address. A53; A216-A229.

ARGUMENT

1. The Illinois courts' application of the Act statute deprived Plaintiff of due process under the 14th Amendment.

The Fourteenth Amendment of the Constitution provides in part that "[n]o State shall . . . deprive any person of life, liberty, or property without due process of law." *Blum v. Yaretsky*, 457 U.S. 991, 1002, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982). A person's property right in his/her professional licenses under state law can be sufficient in order to invoke due process protections. *Barry v. Barchi*, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979).

States have an inherent "police power" to promote public safety, health, morals, public convenience, and general prosperity. *Energy Reserves Group, Inc. v. Kansas Power and Light Company*, 459 U.S. 400, 410, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983). The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 98 S.Ct. 2716, 2722, 57 L.Ed.2d 727 (1978).

The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. *Allied Structural Steel Co.*, 438 U.S. at 245, 98 S.Ct. at 2723. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. *United States Trust Co. v. New Jersey*, 431 U.S. 1, 26-27, 97 S.Ct. 1505, 1519-20, 52 L.Ed.2d 92 (1977). On the other hand, state regulation that

restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. *Id.* at 31, 97 S.Ct. at 1522, citing *El Paso v. Simmons*, 379 U.S. 497, 515, 85 S.Ct. 577, 587, 13 L.Ed.2d 446 (1965).

In determining the extent of the impairment, the Court considers whether the industry the complaining party has entered has been regulated in the past. *Allied Structural Steel Co.*, 438 U.S. at 242, fn. 13, 98 S.Ct. at 2721, fn. 13, citing *Veix v. Sixth Ward Bldg. & Loan Ass'n*, 310 U.S. 32, 38, 60 S.Ct. 792, 794-795, 84 L.Ed. 1061 (1940) ("When he purchased into an enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic"). "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them." *Hudson Water Co. v. McCarter*, 209 U.S. 349, 357, 28 S.Ct. 529, 531, 52 L.Ed. 828 (1908).

If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, *United States Trust Co.*, 431 U.S. at 22, 97 S.Ct. at 1517, such as the remedying of a broad and general social or economic problem. *Allied Structural Steel Co.*, 438 U.S. at 247, 249, 98 S.Ct. at 2723-2725. Furthermore, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. *United States Trust Co.*, 431 U.S. at 22, fn. 19, 97 S.Ct. at 1518, fn. 19; *Veix v. Sixth Ward*

Bldg. & Loan Ass'n, 310 U.S. at 39-40, 60 S.Ct. at 795-796.

The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests. Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of "the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." *United States Trust Co.*, 431 U.S. at 22, 97 S.Ct. at 1518. Unless the State itself is a contracting party, see *id.* at 23, 97 S.Ct. at 1518, "[a]s is customary in reviewing economic and social regulation, . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Id.* at 22-23, 97 S.Ct. at 1518. See *Energy Reserves Group, Inc.*, 459 U.S. at 410-412, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983).

When confronted with a substantive due process claim, the Court asks whether the allegedly unlawful practice violates values "implicit in the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325, 58 S.Ct. 149, 82 L.Ed. 288 (1937). If the practice in question lacks any "oppressive and arbitrary" character, if judicial enforcement of the asserted right would not materially contribute to "a fair and enlightened system of justice," then the claim is unsuitable for substantive due process protection. *Id.* at 327, 58 S.Ct. 149. See *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3096, 177 L.Ed.2d 894 (2010).

It is Plaintiff's contention herein that the Defendant's actions and the lower courts' rulings, in eventually depriving him of his RN license, violated his due process rights under the 14th Amendment and its jurisprudence.

A. The Illinois courts' retroactive application of its statute deprived Plaintiff of a property right without due process.

Constitutional due process protections impose additional limitations on retroactive civil legislation. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17 (1976). To satisfy the Constitution, the State must show that the retroactive application of the legislation is itself justified by a rational legislative purpose. *Pension Benefits Guar. Corp. v. R. A. Gray & Co.*, 467 U.S. 717, 730 (1984); see also *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992).

While retroactivity is not sufficient to satisfy the due process violations in this case, concerns arise in how the State applied its statute. In 2012 and 2014, Defendant approved Plaintiff to be licensed, while the Act was in effect. The application of collateral estoppel should have resolved the issue of Plaintiff's licensure.

Collateral estoppel precludes a party from relitigating an issue decided in a prior proceeding. *Herzog v. Lexington Township*, 167 Ill. 2d 288, 294-95, 657 N.E.2d 926 (1995), citing *Illinois State Chamber of Commerce v. Pollution Control Board*, 78 Ill. 2d 1, 7, 398 N.E.2d 9, 34 Ill. Dec. 334 (1979). The doctrine of

collateral estoppel applies when a party, or someone in privity with a party, participates in two separate and consecutive cases arising on different causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389-390, 757 N.E.2d 471, 258 Ill. Dec. 782 (2001). The adjudication of the fact or question in the first cause will, if properly presented, be conclusive of the same question in the later suit, but the judgment in the first suit operates as an estoppel only as to the point or question actually litigated and determined and not as to other matters which might have been litigated and determined. *Id.*

The requirements for collateral estoppel are: (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question; (2) there was a final judgment on the merits in the prior adjudication; (3) the party against whom estoppel is asserted was a party or in privy with a party to the prior adjudication. *Du Page Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77, 744 N.E.2d 845, 253 Ill. Dec. 112 (2001). Collateral estoppel or issue preclusion prevents relitigation of an issue between the same parties or their privies in any future lawsuit based on a different claim. *Id.* Collateral estoppel applies to questions of law and findings of fact. *Id.* at 79.

All of the elements for collateral estoppel are applicable here. The issues raised in 2012 and 2014 were whether Plaintiff was a proper candidate for licensure

despite his forcible felony conviction. The issue in Defendant's Notice of Termination was the same – whether Plaintiff was a proper candidate for licensure despite his forcible felony conviction. The parties remained the same in each instance: Plaintiff and Defendant. Lastly, Defendant determined in 2012 and 2014 that the Act DID NOT apply to require either: 1) disqualification of Plaintiff as a proper candidate for licensure or 2) termination of his current licensure.

There has never been an explanation for Defendant's contradictions; it found Plaintiff suitable for RN licensure in 2012 and 2014. Yet, in 2015, under the same facts and law, Defendant instituted proceedings to revoke his license. Defendant's actions have not and cannot be explained in a rational manner. As a governmental entity, Defendant needs to have some rationality regarding its retroactive application of its statute. In this instance, the Defendant fails.

B. The Act does not apply in this case because it goes far beyond its temporal reach as defined by *Hayashi*.

Decisions that interpret a statute are substantive if and when they meet the normal criteria for a substantive rule – when they "alte[r] the range of conduct or the class of persons that the law punishes." *Welch v. United States*, 136 S.Ct. 1257, 1267, 194 L.Ed.2d 387 (2016), citing *Schriro v. Summerlin*, 542 U.S. 348, 351, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004).

The Illinois courts interpreted the Act so as to deprive Plaintiff of his license without due process under the 14th Amendment. The statute on its face requires the effected person to be licensed as a health care worker at the same time as the forcible felony conviction.

The plaintiffs in *Hayashi v. IDFPR*, 2014 IL 116023, 25 N.E.3d 570, 576 (2014), the case relied upon by the Illinois appellate court, fit the profile. They were health care workers at the time they committed forcible felonies. Under the Act, it is clear that it was proper for the Defendant to revoke their licenses.

20 ILCS 2105/2105-165(a)(3) states that when a "licensed health care worker" has been convicted of a forcible felony, then the license of the health care worker shall by operation of law be permanently revoked without a hearing.

Here, Plaintiff's forcible felony conviction was from 1975. The Act came into existence in 2011. Defendant moved to revoke his license in 2015 – 40 years after the forcible felony. Plaintiff was not a licensed health care worker when he was convicted of a forcible felony. He should not have had his license revoked.

C. Defendant violated federal constitutional law prohibiting "double jeopardy" when it subsequently revoked Plaintiff's license under the Act in 2015, after renewing it both in 2012 and 2014 under the same Act, as punishment for his attempted murder conviction.

The Double Jeopardy Clause provides: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const., Amdt. 5. The Clause serves the function of preventing both "successive punishments and . . . successive prosecutions." *United States v. Dixon*, 509 U.S. 688, 696 (1993), citing *North Carolina v. Pearce*, 395 U.S. 711 (1969). The protection against multiple punishments prohibits the Government from "punishing twice, or attempting a second time to punish criminally for the same offense." *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938). See *U.S. v. Ursery*, 518 U.S. 267, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996).

Whether a violation of the Double Jeopardy clause has occurred invokes a two-stage analysis. In the first stage, courts look to the intent of the statute at issue, i.e., whether the statute is intended to be civil or criminal in nature. In the second stage, courts analyze whether the statutory scheme was so punitive either in purpose or effect as to negate the legislature's intention to establish a civil remedial mechanism. *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 365 (1984); *United States v. Ward*, 448 U.S. 242, 248-249 (1980).

As the Act, on its face, purports to be civil in nature, the primary discussion needs to center around the second stage.

Only the clearest proof that the purpose and effect of the statute are punitive will suffice to override a legislature's manifest preference for a civil sanction. *Flemming v. Nestor*, 363 U.S. 603, 363 U.S. 617 (1960). In *Kennedy v. Mendoza-Martinez*, the Court set forth factors to be considered for the second prong of the *89 Firearms* analysis: whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment – retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions. 372 U.S. 144, 168-169 (1963).

Here, the factors weigh in favor of finding that the Act in its application has effected a punishment on Plaintiff. The Act certainly involves an affirmative restraint, namely in that it has revoked Plaintiff's ability to practice as a nurse in the State of Illinois. It has crippled his ability to make a living. The Act, only having been enacted and becoming effective in 2011, does not have much history so as to determine whether it "historically" has been regarded as punishment.

While the Act requires automatic revocation, eliminating any notions of scienter, it does promote the traditional aims of punishment – retribution and deterrence. It has punished Plaintiff for actions taken 40 years ago, adding the revocation of his hard-earned license to his sentence of time-served. It certainly acts as a deterrent, informing would-be offenders that their options to pursue professional licenses are seriously impaired in the event a forcible felony is committed.

The automatic revocation of Plaintiff's license was certainly excessive. If Defendant's rational purpose was to provide for the safety of Illinois citizens, it satisfied that purpose in requesting information regarding Plaintiff's background when he initially became a licensed nurse, when he was renewed in 2012, and when he was renewed in 2014. After requesting such information, Defendant approved Plaintiff as a provider of health care services to Illinois citizens. To decide to revoke his license in 2015 is arbitrary and excessive in relation to the Act's purpose.

The Act specifically applies to "forcible felonies" which are already crimes and effects its punishment on persons who are already convicted of such crimes. While there may be other purposes rationally related to the Act, Defendant's actions in this case indicate that the true purpose was to effect a second punishment. Given the time elapsed since the conviction (~40 years) and the fact that Defendant approved Plaintiff's licensure in two instances prior to seeking to revoke it, the issue becomes what is the purpose of the revocation. If there was a valid purpose, Defendant would not

have licensed Plaintiff in 2012 and 2014 after the effective date of the Act in 2011. If there was a valid purpose, Plaintiff would not have been licensed for ~30 years as a nurse. Despite an unblemished record of service over this long period, Defendant selected Plaintiff to suffer another punishment for a crime committed in the 1970's. This violates the Double Jeopardy Clause.

D. The Illinois court's application of operation of law as justification for revoking Plaintiff's license under the Act violates due process under the 14th Amendment.

The Fourteenth Amendment of the Constitution provides in part that "[n]o State shall . . . deprive any person of life, liberty, or property without due process of law." *Blum*, 457 U.S. 991, 1002, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982). A person's property right in his/her professional licenses under state law can be sufficient in order to invoke due process protections. *Barry*, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979).

According to Department of Professional Regulation Law, 20 ILCS 2105/2105-15, the Illinois General Assembly gave Defendant judicial power over professional licenses in Illinois to renew, suspend or revoke. Therefore, Defendant's decision to renew Plaintiff's license both in 2012 and 2014 were clearly authorized acts. In addition, the Illinois General Assembly also gave Defendant legal authority to formulate rules and regulations necessary for the enforcement of ANY ACT

administered by Defendant. The Act falls into this category.

The appellate court reviewed the case, and concluded that neither collateral estoppel nor equitable estoppel applies in this case because Defendant's decision to renew Plaintiff's license in 2014 was "based on the unauthorized act of an administrative agency." A16. This court also concluded that Section 2105-165 unambiguously revokes the licenses of certain health care workers "by operation of law." *Id*. Both of these conclusions run contrary to the facts in this case.

The authority given to Defendant by the Illinois General Assembly to renew professional licenses in Illinois is a matter of state law, and therefore to conclude that Defendant committed an "unauthorized act" by doing the job that they are mandated by law to do is erroneous. On the issue of Plaintiff's license being liable for revocation "by operation of law", the question becomes under what conditions does this principle of law apply? In this case, the application of this principle of law would indicate that the empowered agency responsible for administering and enforcing the law either failed to perform its duty, or the revocation is clearly stated as the liability that one will automatically suffer for a specific violation of the law in question.

In this case, Defendant performed its duty relative to the Act by reviewing Plaintiff's qualifications for licensure according to all applicable standards and laws, and subsequently made a final judgment to renew his

license both in 2012 and 2014. On the question of whether or not Plaintiff's license was liable for revocation "by operation of law", it is not clearly stated in the Act how Plaintiff's felony conviction 40 years ago, *and before he became a licensed health care worker*, constitutes him being in violation of the Act. Defendant made final judgments both in 2012 and 2014 that Plaintiff was not in any violation of the Act, and subsequently renewed his license on both occasions. Defendant had the incentive, opportunity and responsibility to know ANY ACT used by them to fulfill the powers and duties bestowed upon them by the Illinois General Assembly to issue professional licenses, and there is nothing in the record indicating that Defendant regarded its renewal of Plaintiff's license in 2012 and 2014 as being prohibited "by operation of law". Therefore, what arises in this case is the Illinois courts' seeking to usurp the legitimate authority of an empowered agency to make assessments and final judgments that are legally binding. Such an action is a violation of due process.

The circumstances of Plaintiff's felony conviction weigh in favor of finding that "operation of law" does not apply in this case, because the felony conviction being used to justify its application goes far beyond the temporal reach of the Act as defined by *Hayashi*. Plaintiff was not a licensed health care worker in 1975 when his felony conviction occurred, and since becoming a licensed health care worker he has not incurred any felony convictions whatsoever. Therefore, there is no *convicted licensed health care worker* in this case upon

which to base a claim that "operation of law" is justified in being triggered.

CONCLUSION

Plaintiff has served the public in the nursing field for 33 years with Defendant's full permission and renewed licensure throughout his entire tenure as both a licensed practical nurse and professional registered nurse with no felony or sex crime convictions as a health care worker. Yet, Defendant chose to revoke his license despite all of his many years of unblemished nursing service. Clearly, a substantive due process violation has occurred relative to the Defendant's permanent revocation of his license pursuant to the Act; this action did not bear a reasonable relationship to protecting the public health, safety and welfare of Illinois citizens.

Plaintiff respectfully requests this Honorable Court to grant his Petition, grant certiorari, and review the rulings of the courts herein.

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