

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

GREGORY STESHENKO — PETITIONER  
(Your Name)

vs.

THOMAS MCKAY, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
\_\_\_\_\_  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gregory Steshenko

(Your Name)

3030 Marlo Court

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Aptos, CA 95003

(City, State, Zip Code)

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(Phone Number)

### **QUESTION(S) PRESENTED**

1. Whether the mixed-motive defense doctrine of *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977) in employment terminations for the protected speech is applicable to educational expulsions.
2. Whether the federal court properly obrogated California Education Code through re-definition of what constitutes academic and disciplinary expulsions and what processes should be followed in each case.
3. Whether the court's re-definition of what constitutes academic and disciplinary expulsions violated the due process clause of the Fourteenth Amendment.
4. Whether Appellant's rights to due process afforded by the Fourteenth Amendment were violated by his immediate expulsion for his protected speech.
5. Whether declination of the court to impose remedial sanctions for the mass spoliation of the crucial evidence that was sufficient to prove the case violated the due process clauses of the Fifth and Fourteenth Amendments.
6. Whether the party that "prevailed" through spoliation of evidence should be awarded costs.

## LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Gregory Steshenko, Plaintiff-Appellant.

Thomas McKay, Dorothy Nunn, Anne Lucero, Cabrillo Community College District, Kristine Scopazzi, Berthalupe Carrillo, Sally Newell, Watsonville Community Hospital, Defendants-Appellees.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 25, 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 9, 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **The First Amendment to the United States Constitution:**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### **The Fifth Amendment to the United States Constitution:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **The Fourteenth Amendment to the United States Constitution, Section 1:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **California Education Code § 76032:**

The adopted rules of student conduct may authorize an instructor to remove a student from his or her class for the day of the removal and the next class meeting. The instructor shall immediately report the removal to the chief administrative officer for appropriate action.

If the student removed by an instructor is a minor, the college president or the president's designee shall ask the parent or guardian of the student to attend a parent conference regarding the removal as soon as possible. If the instructor or the parent or guardian so requests, a college administrator shall attend the conference. During the period of removal, a student shall not be returned to the class from which he or she was removed without the concurrence of the instructor of the class.

**California Education Code § 76033:**

As used in this article, “good cause” includes, but is not limited to, the following offenses, occurring while enrolled as a student:

- (a) Continued disruptive behavior, continued willful disobedience, habitual profanity or vulgarity, or the open and persistent defiance of the authority of, or persistent abuse of, college personnel.
- (b) Assault, battery, or any threat of force or violence upon a student or college personnel.
- (c) Willful misconduct which results in injury or death to a student or college personnel or which results in cutting, defacing, or other injury to any real or personal property owned by the district.
- (d) The use, sale, or possession on campus of, or presence on campus under the influence of, any controlled substance, or any poison classified as such by Schedule D in Section 4160 of the Business and Professions Code.
- (e) Willful or persistent smoking in any area where smoking has been prohibited by law or by regulation of the governing board.
- (f) Persistent, serious misconduct where other means of correction have failed to bring about proper conduct.
- (g) Sexual assault, defined as actual or attempted sexual contact with another person without that person’s consent, regardless of the victim’s affiliation with the community college, including, but not limited to, any of the following:
  - (1) Intentional touching of another person’s intimate parts without that person’s consent or other intentional sexual contact with another person without that person’s consent.
  - (2) Coercing, forcing, or attempting to coerce or force a person to touch another person’s intimate parts without that person’s consent.
  - (3) Rape, which includes penetration, no matter how slight, without the person’s consent, of either of the following:
    - (A) The vagina or anus of a person by any body part of another person or by an object.
    - (B) The mouth of a person by a sex organ of another person.
- (h) Sexual exploitation, defined as a person taking sexual advantage of another person for the benefit of anyone other than that person without that person’s consent, regardless of the victim’s affiliation with the community college, including, but not limited to, any of the following:
  - (1) Prostituting another person.
  - (2) Recording images, including video or photograph, or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s consent.

(3) Distributing images, including video or photograph, or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure and objected to the disclosure.

(4) Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.

**California Education Code §76034:**

(a) Except in response to conduct specified in subdivisions (g) and (h) of Section 76033, no student shall be removed, suspended, or expelled unless the conduct for which the student is disciplined is related to college activity or college attendance.

(b) This section is not intended to limit provisions of federal law, or limit the ability of community college districts to take appropriate action under federal law.

**California Code of Regulations Title 5, Division 6, Chapter 6, Subchapter 1, Article 3, §55031:**

(a) Academic probation. A student who has attempted at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on academic probation if the student has earned a grade point average below 2.0 in all units which were graded on the basis of the grading system described in section 55023.

(b) Progress probation. A student who has enrolled in a total of at least 12 semester or 18 quarter units as shown by the official academic record shall be placed on progress probation when the percentage of all units in which a student has enrolled and for which entries of "W," "I," "NP" and "NC" (as defined in sections 55023 and 55030) are recorded reaches or exceeds fifty percent (50 percent).

(c) The governing board of a community college district may adopt standards for probation not lower than those standards specified in subdivisions (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum number of units before academic or progress probation is assessed, a number of units fewer than 12 semester or 18 quarter units; or

(2) A district may establish, as the minimum grade point average for academic probation purposes, a grade point average greater than 2.0; or

(3) A district may establish, as the minimum percentage of units of “W,” “I,” “NP,” and “NC,” a percentage less than fifty percent (50%).

Note: Authority cited: Sections 66700 and 70901, Education Code.

Reference: Sections 70901, 70902 and 76000, Education Code.

**California Code of Regulations Title 5, Division 6, Chapter 6, Subchapter 1, Article 3, §55032:**

(a) A student on academic probation for a grade point deficiency shall be removed from probation when the student's accumulated grade point average is 2.0 or higher.

(b) A student on progress probation because of an excess of units for which entries of “W,” “I,” “NP” and “NC” (as defined in section 55023 and 55030) are recorded shall be removed from probation when the percentage of units in this category drops below fifty percent (50%).

(c) The governing board of a district shall adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. Such procedures and conditions may establish standards not lower than those standards specified in subdivisions (a) and (b) of this section. Specifically:

(1) A district may establish, as a minimum grade point average for removal from academic probation, a grade point average greater than 2.0; or

(2) A district may establish, as the minimum percentage of units of “W,” “I,” “NP,” and “NC,” a percentage less than fifty percent (50%) for removal from probation.

Note: Authority cited: Sections 66700 and 70901, Education Code.

Reference: Sections 70901, 70902 and 76000, Education Code.

**California Code of Regulations Title 5, Division 6, Chapter 6, Subchapter 1, Article 3, §55033:**

For purposes of this section, semesters or quarters shall be considered consecutive on the basis of the student's enrollment, so long as the break in the student's enrollment does not exceed one full primary term.

(a) A student who is on academic probation shall be subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters (5 consecutive quarters) which were graded on the basis of the grading system described in section 55023.

(b) A student who has been placed on progress probation shall be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of “W,” “I,” “NP” and “NC” (as defined in section 55023

and 55030) are recorded in at least 3 consecutive semesters (5 consecutive quarters) reaches or exceeds fifty percent (50%) in accordance with section 55031.

(c) The governing board of a district shall adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Such procedures and conditions may establish standards not lower than the standards specified in subdivisions (a) and (b) of this section. Specifically:

(1) A district may establish, as the minimum cumulative grade point average for dismissal purposes, a grade point average greater than 1.75; or

(2) A district may establish, as the minimum percentage of units of "W," "I," "NP" and "NC," a percentage less than fifty percent (50%), or

(3) A district may establish, as a minimum number of consecutive semesters or quarters, a number fewer than 3 consecutive semesters or 5 consecutive quarters.

(d) The district board shall adopt rules setting forth the circumstances that shall warrant exceptions to the standards for dismissal herein set forth.

Note: Authority cited: Sections 66700 and 70901, Education Code.

Reference: Sections 70901, 70902 and 76000, Education Code.

**California Code of Regulations Title 5, Division 6, Chapter 6, Subchapter 1, Article 3, §55034:**

Each community college shall make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect but, in any case, no later than the start of the fall semester or quarter. Each community college shall also make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. Each community college shall make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. Probation and dismissal policies and procedures shall be published in the college catalog.

Note: Authority cited: Sections 66700 and 70901, Education Code.

Reference: Sections 70901 and 70902, Education Code.

**California Code of Regulations Title 5, Division 6, Chapter 6, Subchapter 1, Article 3, §55003(o):**

The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification

that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course. If the student is dropped, the applicable enrollment fees shall be promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.



## STATEMENT OF THE CASE

1. Appellant, an Electronics Engineer with a long Silicon Valley career, lost his employment and employability as a result of the mass transfer of electronic industry abroad and abuse of non-immigrant visas, such as H1-B, for displacement of the American high technology workers.

2. The state determined that Appellant's reentry into the workforce requires professional retraining. Accordingly, Appellant was referred by the local Workforce Investment Act ("WIA") service center to its subcontractor Cabrillo College Nursing School, for training as a Registered Nurse, an occupation in which a shortage existed. Cabrillo College is a California community college, an arm of the state. Appellant observed numerous safety violations at the clinical agencies he was assigned to for the so-called "clinical training", and reported them to his instructors and to the school administrators. For these reports, Appellees sanctioned him and threatened him with expulsion. Appellees also claimed that Appellant is not suitable to become an "American nurse" because of his age, gender and national origin. Eventually, in response to Appellant's written grievance, Appellees immediately administratively withdrew Appellant from the "clinical training" class and expelled him from the school, citing a false disciplinary allegation, Appellant's grievance and his perceived disability. Appellees warned Appellant that if he sues, he would not be able to return to

Cabrillo College nursing School in perpetuity. Then, they took steps to preclude him from re-training at other nursing schools.

3. Appellant filed this case on November 23, 2009. At the commencement of the litigation and in the middle of it, Appellees committed mass spoliation of evidence by intentional and selective destruction of the crucial documents sought by Appellant. In particular, they destroyed all of their electronic communications regarding Appellant that pre-dated Appellants' expulsion. The district court issued eight orders on spoliation assuring that sanction would be imposed either at or before trial. Yet the ninth and tenth court orders on spoliation held that the partial denial of defendant's motion for summary judgment is the sufficient spoliation sanction, therefore evidence and argument of spoliation are excluded from trial. Appellant was ordered to try the case on his testimony versus that of Appellees, and on "circumstantial evidence." That ruling was against the basic principles of jurisprudence, violated Appellant's right to due process under the Fifth Amendment and was contrary to the current standards of case law on handling spoliation. See *Zubulake v. UBS Warburg* ("Zubulake IV"), 220 F.R.D 212 (S.D.N.Y Oct. 22, 2003); *Zubulake v. UBS Warburg* ("Zubulake V"), 229 F.R.D 422 (S.D.N.Y Jul. 20, 2004); *Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities, LLC* ("Zubulake Revisited"), 2010 U.S. Dist. Lexis 1839 (S.D.N.Y. Jan. 11, 2010); *Phoceene Sous-Marine, S.A. v.*

*U.S. Phosmarine, Inc.*, 682 F.2d 802, 806 (1982); *Hammond Packing Co. v. Ark.*, 212 U.S. 322, 349-54 (1909); *Nat'l Ass'n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 557, 558 (1987); *Computer Assoc. Intern., Inc. v. American Fundware, Inc.*, 133 F.R.D. 166, 170 (1990); *American Family Insurance v. Village Pontiac*, (Illinois) 166 Ill.Dec.93, 585 N.E.2d 1115 (1992); *Boyd v. Travelers Insurance*, (Illinois) 166 Ill.2d 188, 652 N.E.2d 267 (1995); *Fire Insurance Exchange v. Zenith Radio Corp.*, (Nevada) 103 Nev. 648, 747 P.2d 911 (1987); *Hirsch v. General Motors Corp.*, (New Jersey) 266 N.J.Super.222, 628 A.2d 1108 (1993); *Iowa Ham Canning, Inc. v. Handtmann, Inc.*, (Illinois) 870 F.Supp. 238 (1994); *Solano v. Delaney*, (California) 264 Cal.Rptr. 721 (1989); *Shimanovsky v. General Motors Corp.*, (Illinois) 271 Ill. App. 3d 1, 648 N.E.2d 91 (1994); *Callahan v. Home Depot*, (New Jersey) 306 N.J. Super. 488, 703 A.2d 1014 (1997); *U.S. v. Sivilla*, 714 F.3d 1168 (2013); *U.S. v. Loud Hawk*, 628 F.2d 1139 (1979); *Hynix Semiconductor Inc. v. Rambus Inc.*, 645 F.3d 1336 (2011) U.S. App. LEXIS 9728; *Micron Technology, Inc. v. Rambus, Inc.* 645 F.3d 1311 (2011); *Adkins v. Wolever*, No. 07-1421 (6th Cir. Feb. 4, 2009); *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (2001); *Reilly v. Natwest Mkts. Group Inc.*, 181 F.3d 253, 267 (1999); *Glover v. BIC Corp.*, 6 F.3d 1318, 1329 (1993); *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (1995); *Flury v. Daimler Chrysler Corporation*, F.3d , 2005 WL 2438380 (2005); *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 957-58

(2006); *Roadrunner Transportation Services, Inc. v. Tarwater*, Case Nos. 15-55448 and 14-55529 (2016); *U.S. v. Kitsap Physicians Serv.*, 314 F.3d 995, 1001 (2002); *Alexander v. Nat'l Farmers Org.*, 687 F.2d 1173, 1205 (1982); *Wiltec Guam, Inc. v. Kahaluu Constr. Co.*, 857 F.2d 600, 604 (1988); *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 354, 337, 348 (1995). Appellant had no other evidence sufficient to compensate for the destroyed evidence. Spoliation of evidence made a number of claims, including nearly all discrimination claims, untriable, and Appellant requested exclusion of these claims from trial. However, at trial Appellant presented his testimony about the discriminatory statements of Appellees as the case background information.

3. The court allocated for Appellant ten hours to prove by circumstantial evidence nine claims against four defendants and damages.

4. A one-week jury trial was held in the end of March 2015. In accordance with the jury instructions, to which Appellant objected, the jury found that Appellees violated Appellant's rights under the First Amendment; however Appellees are not liable because they would eventually expel Appellant for some other reasons, including illegal discrimination and other unlawful motives.

5. The district court:

a) Held that the mixed-motive doctrine of *Mt. Healthy City Sch. Dist.*

*Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977) is the proper defense in all

First Amendment retaliation claims, including those related to expulsions from the educational institutions. Moreover, the court broadened and greatly expanded the *Mt. Healthy* doctrine: if the primary motivation for Appellant's expulsion from the school was his protected speech, yet there is a possibility that Appellees would terminate him, even at a later date, for other illegal reasons, such as unlawful discrimination, they would not be liable for the First Amendment violations;

b) *De facto* obrogated the provisions of California Education Code related to expulsions and held that students in the state community colleges could be instantly removed from class and instantly expelled from the school at any moment for academic reasons. According to the court, the proper academic reasons are either any behavioral allegation that needs not to be proved, or a subjective evaluation by the course instructor of the student's academic performance, even if the student filed grievance against that instructor;

c) Held that Appellant's right to due process, afforded by the Fourteenth Amendment, was not violated by his immediate expulsion for his protected speech;

All in all, the court reasoned that any behavioral allegations against a student enrolled in a clinical class is an academic matter that need not to be proved and for

which a fair hearing is not needed; a mere opinion of the course instructor about Appellant's performance is also an academic matter sufficient to cause the student's termination, therefore Appellees were entitled to immediately withdraw Appellant from class and expel him from school.

6. The court's holdings strongly conflict with the established case law that requires due process for the adverse actions resulting from behavioral allegations against the students: *Dixon v. Alabama State Board of Education*, 294 F. 2d 157 (1961), cert. denied, 368 U.S. 930 (1961); *Women's Medical Center v. Bell*, 248 F.3d 411, 421 (2001); *Goss v. Lopez*, 419 U.S. 565 (1975); *Marin v. University of Puerto Rico*, 377 F. Supp. 613 (1974); *Bd. of Regents of St. Colleges v. Roth*, 408 U.S. 564, 573 (1972); *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78 (1978). It also conflicts with California Education Code and its derivative, Title 5 of California Code of Regulations ("5 CCR"). According to 5 CCR §§55031 through 55034, established pursuant to California Education Code §§ 66700, 70901, 70902, 76000, probations and dismissals are solely determined by the GPA. State law meticulously prescribes due process for student's placement on academic probation and termination for academic reasons. Removal of a student from class is governed by 5 CCR §55003(o) and California Education Code §§76032 through 76034. The involuntary removals, with an exception of a failure to meet prerequisites or excessive absences, are disciplinary matters that require a

fair hearing. The state law has no provisions for any involuntary withdrawal of a student from a course for academic reasons. Also, there are no provisions in law for expulsion of a student from school secondary to his withdrawal from class.

7. The Ninth Circuit affirmed the judgment in an unpublished memorandum, without any legal analysis. See Appendix A.

8. Appellant petitioned for rehearing (see Appendix C). In response to Appellant's polite criticism of the quality of the Ninth Circuit's memorandum and of the Ninth Circuit's consistently contemptuous treatment of the *pro se* litigants, the Ninth Circuit panel asserted that Appellant "attack[ed] the judicial branch of government" and baselessly labeled Appellant's appeal "frivolous" and a "jeremiad" (see Appendix B). After the further briefing on the groundless claims contained in the Ninth Circuit's order denying rehearing, the panel "declined" to impose sanctions on Appellant.

### **REASONS FOR GRANTING THE PETITION**

1. An improper application of the *Mt. Healthy* mixed-motive doctrine to educational expulsions from the state educational institutions reverses decades of case law establishing that the students possess the right to free speech under the First Amendment and the right to due process under the Fourteenth Amendment. The rulings of the district court and its affirmation by the Ninth Circuit deny the students the fundamental civil rights.

2. The obrogation by the district court of due process for academic expulsions prescribed by state law and re-definition of the behavioral allegations as an academic matter that needs not to be proved deny the students the fundamental civil right to due process. So does the district court's holding that a mere opinion of an instructor about the student's academic performance is sufficient for the student's administrative withdrawal from class and academic expulsion from school. The federal court arbitrarily abolished parts of California Education Code and legislated instead its own education law that is in conflict with the fundamental constitutional principles.

3. The district court's finding that an immediate expulsion of the student from a state educational institution for his protected speech does not violate the student's right to due process conflicts with the fundamental constitutional principles of the First and Fourteenth Amendments.

4. The district court permitted destruction of crucial evidence, sufficient to prove the case, with impunity. The court ruled that a partial denial of Appellees' motion for summary judgment is the sufficient sole remedial sanction for spoliation of evidence; hence Appellant must try the case without the destroyed evidence and without the remedial jury instructions. This decision conflicts with the basic principles of jurisprudence and the constitutional right to due process under the Fifth Amendment. As evident from the numerous latter days' cases,



destruction of unfavorable evidence is becoming the preferred legal strategy of litigants. It is the serious and immediate danger to the system of justice. While in the English system of law intentional destruction of evidence is serious crime that could be privately prosecuted, in the United States spoliators are relying on uncertain laws and arbitrary, frequently conflicting opinions of courts that allow to spoliator with the minimum consequences to the perpetrators, sometimes even affording the total impunity. It's about time for the Supreme Court's involvement in that matter.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 Gregory Steshenko

Date: October 4, 2018