

No. _____

In The
Supreme Court of the United States

GREGORY P. NESSELRODE,
Petitioner,

v.

U.S. SECRETARY OF EDUCATION AND AGENCY,
Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner:

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Respondent:

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950 Pennsylvania Ave. N.W.
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October 15, 2018

QUESTIONS PRESENTED

1. WHETHER THE “TUCKER ACT” AND UNDER 20 § 1082(a)(2) OVERRULES THE “FEDERAL TORT CLAIMS ACT” GRANTS JURISDICTION FOR PETITIONER TO SUE RESPONDENT WITHOUT REGARD TO THE AMOUNT IN CONTROVERSY IN ANY U.S. DISTRICT COURT IS CONSTITUTIONAL WITHOUT RESPONDENT SOVEREIGN IMMUNITY.
2. WHETHER THIS COURT “DUE PROCESS LAW: ... WHEN A PROCESS IS DUE ... A PROCESS IS DUE WHEN PETITIONER IS INFRINGED UPON AND DENIED PRIVILEGES TO CONTINUE AND EDUCATION ...” AND UNDER 28 U.S.C. § 1653, 28 U.S.C. § 1733(a) IS VIOLATED WITH EXHIBIT F, UNAUTHORIZED FEDERAL STUDENT LOANS FROM 2000 TO 2006 IS DEFAULTED BY RESPONDENT IN 2010, PETITIONER IS IN GOOD STANDING OF ALL LOANS BY RESPONDENT, EXHIBIT G, THE COURT SHOULD DECLARE DUE PROCESS IS VIOLATED AND DENY RES JUDICATA, CLAIM PRECLUSION, AND ISSUES PRECLUSION IN ALL LOWER COURTS AND ALL PRIOR COURTS ORDERES AND JUDGMENTS SHOULD BE UNCONSTITUTIONAL.
3. WHETHER THE “DUE PROCESS LAW”, “TUCKER ACT”, STATUES 28 U.S.C. § 1653, 28 U.S.C. § 1733(a), 20 U.S.C. §9703(a)(2)(E), 20 U.S.C. § 1092(c), 20 U.S.C 31 § 1221-1, 28 U.S.C. § 1346, 28 U.S.C. §1331, AND 20 § 1082(a)(2), THE COURT SHOULD MANDATE THESE LAWS INTO THE “BILL OF RIGHTS” TO GRANT ALL STUDENTS INCLUDING PETITIONER THE PRIVILEGE TO FINANCE AN EDUCATION WITH RESPONDENT WITHOUT FINANCIAL BARRIERS TO SUPPORT TRANSPARANT LOANS SHOULD BE CONSTITUTIONAL.

LIST OF PARTIES

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APPENDIX A: EXHIBIT A, 6th Circuit order denying rehearing, dated August 6, 2018

APPENDIX B: EXHIBIT B, 6th Circuit order affirming district court judgment, dated June 18, 2018

APPENDIX C: EXHIBIT C, district court order denying alter or amend complaint, dated October 27, 2017

APPENDIX D: EXHIBIT D, district court order granting respondent motion to dismiss, dated July 25, 2017

APPENDIX E: EXHIBIT E, respondent Navient federal student loan summary declares Petitioner in good standing, dated September 6, 2018

APPENDIX F: EXHIBIT F, respondent National Student Loan Data System for Students summary declares Petitioner in default of loans 15 & 16 and unauthorized loans including 15 & 16 from 2000 to 2006, dated September 6, 2018

APPENDIX G: EXHIBIT G, The Ohio State University Financial Aid Department declares Petitioner in default of federal loans, dated September 6, 2018

OPINIONS BELOW

The orders and judgments from all lower courts are unpublished in Exhibits A,B,C, and D of the Appendix.

JURISDICTION

This Court Jurisdiction comes from the following:

The date on which the United States 6th Circuit Court of Appeals decided my case was June 18, 2018, Appendix Exhibit B.

A timely petition for rehearing was denied by the United States 6th Circuit Court of Appeals on the following date: August 6, 2018, and a copy of the order denying rehearing appears at Appendix Exhibit A.

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

TABLE OF AUTHORITIES

| CASES | PAGE NUMBER |
|---|-------------|
| <i>U.S. Supreme Court, Goldberg Mathews v. Eldridge</i> Pub. L. 93-380, title VIII, § 801, Aug. 21, 1974, 88 Stat. 597.) | 9,12 12 |

STATUES AND RULES

| | |
|---|------------|
| Under <i>F.R.A.P. 10(e)(2)(C)</i> , the record on appeal with requested corrections and modifications of the record of material omissions or misstated orders in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded by the Court of Appeals. | 14 |
| <i>20 § 1082(a)(2)</i> Legal powers and responsibilities, the Secretary may sue and be sued in any court of record of a state having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions | 9,11,12,14 |

arising under this part without regard to the amount in controversy.

| | |
|---|-------------|
| Under 20 § 1092(c), Simplification of lending process for borrowers(a) All like loans treated as one, To the extent practicable, and with the cooperation of the borrower, eligible lenders shall treat all loans made to a borrower under the same section of part B of this subchapter as one loan and shall submit one bill to the borrower for the repayment all such loans for the monthly or other similar period of repayment. Any deferments on one such loan will be considered a deferment on the total amount of all such loans. (b) One lender, one guaranty agency, To the extent practicable, and with the cooperation of the borrower, the guaranty agency shall ensure that a borrower only have one lender, one holder, one guaranty agency, and one servicer with which to maintain contact. | 12,14 |
| Under 20 §9703(a)(2)(E), appellee duties must avoid abusive, predatory, or deceptive credit offers and financial products in federal student loans. | 12,14 |
| 28 U.S.C. § 1254(1) by writ of certiorari granted upon the petition of any To any civil or criminal case, before or after rendition of judgment or decree. | 12,14 |
| Under 20 U.S.C 31 § 1221-1, National policy with respect to equal educational opportunity, recognizing that the Nation's economic, political, and social security require a well-educated citizenry, the Congress (1) reaffirms, as a matter of high priority, the Nation's goal of equal educational opportunity, and (2) declares it to be the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers. | 11,12,14 |
| 28 U.S.C. § 1346 and 28 U.S.C. §1331 to bring the two courts together for concurrent jurisdiction in the U.S. District Court for the Western District of Washington Seattle and the U.S. Court of Federal Claims, Washington DC and now U.S. District Court for the Southern District of Ohio, Columbus and 6 th Circuit Court of Appeals. | 12,14 |
| 28 U.S.C. § 1653, Defective allegations of jurisdiction may be amended, Upon terms, in the trial or appellate courts. | 10,12,13,14 |
| 28 U.S.C. § 1733(a), Books or records of account of proceedings of any Department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept. | 10,12,13,14 |

The “Due Process Law …when a process is due… a process is due when Petitioner is infringed upon and denied privileges to continue an education …”. 11,12,13,14

Federal Tort Claims Act” (FTCA) exempts jurisdiction with claims based upon the performance or failure to perform a function of duty. Clearly, the Court should agree respondent violated several federal laws and jurisdiction fall outside the boundary of the FTCA and moves into unconstitutional violations and failed due process. 11,12

Under the “*Tucker Act*” the United States waived its sovereign immunity as to certain kinds of claims and exposes the government to liability for certain claims as follows: The “*Tucker Act*” permits three kinds of claims against the government: (1) contractual claims, (2) non-contractual claims where the plaintiff seeks the return of money paid to the government, and (3) non-contractual claims where the plaintiff asserts that he/she is entitled to payment by the government. 9,10,12,14

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Bill of Rights: 12,14

The “Bill of Rights” Incorporation Doctrine, amendments of the United States Constitution (known as the Bill of Rights) are made applicable now to the states through the Due Process Law of the Fourteenth Amendment. The United States Supreme Court holds today the Bill of Rights, the Due Process Law, and the Fourteenth Amendment are held to the States, the Federal Government, and to Federal Cases.

The first ten Amendments to the Constitution, which set out individual rights and liberties is applied to the States and Federal Government through the legal doctrine of incorporation through the Due Process Law of the Fourteenth Amendment.

Fundamental Rights are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment. These rights are specifically identified in the Constitution, especially in the Bill of Rights, or have been found under the Due Process Law. Examples of fundamental rights not specifically listed in the Constitution include: marriage, privacy, contraception, interstate travel, procreation, custody of one's children, and voting.

Petitioner believes financing an education to achieve the highest potential with the Department of Education without financial barriers is a fundamental right under the questions presented to the Court and under the Constitution, Bill of Rights, Due Process Law, and the Fourteenth Amendment.

STATEMENT OF THE CASE

Petitioner presents important questions of federal law that have not been, but should be, settled by this Court for failed due process and respectfully prays that a writ of certiorari issue to review the orders, refer to Exhibit A and B from the 6th Circuit and Exhibits C and D from the U.S. District court in Columbus, Ohio in the Appendix under the Court *Stare decisis* review.

All lower courts orders and judgments should be unconstitutional from failed due process with Exhibit F from respondent National Student Loan Data System, respondent defaulted UNAUTHORIZED loans from 2000 to 2006, in 2010, in the amount of \$35,630 without interest. Exhibit E, Navient respondent declares all loans are current and in good standing. Exhibit G, the Ohio State University Financial Aid Dept. declares Petitioner in default of federal student loans and cannot obtain any loans, grants, or scholarships until the default is removed. The respondent infringed on Petitioner privilege to continue an education. (*U.S. Supreme Court, Goldberg Mathews v. Eldridge*) Therefore, the Court should grant the writ.

1. The “Tucker Act” and under 20 § 1082(a)(2) should overrule the “Federal Tort Claims Act” and grant jurisdiction for Petitioner to sue respondent without regard to the amount in controversy in any U.S. District court should be constitutional without respondent sovereign immunity.

The Tucker Act permits three kinds of claims against the government: (1) contractual claims, (2) noncontractual claims where the plaintiff seeks the return of

money paid to the government and (3) noncontractual claims where the Petitioner is entitled to payment by the government.

Under the "Tucker Act" section (1) contractual claims comes from the Master Promissory Note declaration to enforce all Federal Laws which were not enforced from failed due process. Exhibit E declares Petitioner loans are current and in good standing with respondent. Exhibit F declares respondent defaulted UNAUTHORIZED loans from 2000 to 2006 in the amount of \$35,630 in 2010. Under 28 U.S.C. § 1653, 28 U.S.C. § 1733(a), the lower courts and respondent must show why Exhibit E declares Petitioner in good standing of all loans and Exhibit F declare respondent defaulted UNAUTHORIZED loans in the amount of \$35,630 in 2010 and from failed due process all lower courts did not follows the above statutes.

Contrary to the "Tucker Act", the "Federal Tort Claims Act" (FTCA) exempts jurisdiction with claims based upon the performance or failure to perform a function of duty. Clearly, the Court should agree respondent violated several federal laws and jurisdiction fall outside the boundary of the FTCA and moves into unconstitutional violations and failed due process. The "Tucker Act" allows Petitioner to sue respondent without sovereign immunity for respondent unconstitutional violations without regard to the amount in controversy, and the FTCA does not.

The "Tucker Act" allows Petitioner to sue respondent for two types of claims to include (1) contractual claims for unconstitutional violations and (2) Petitioner is

entitled to payment by the government without regard to the amount in controversy under 20 § 1082(a)(2). The Court should grant jurisdiction for Petitioner to sue respondent under the “Tucker Act”.

2. The “Due Process Law ...when a process is due... a process is due when Petitioner is infringed upon and denied privileges to continue an education ...”. Exhibit F respondent is the National Student Loan Data System and defaulted UNAUTHORIZED loans from 2000 to 2006 in 2010. Exhibit E, respondent is Navient and declares Petitioner is current and in good standing with all federal student loans. Exhibit G, the Ohio State University Financial Aid Dept. in 2015 declares Petitioner in default of federal loans and cannot obtain any federal loans, grants, or scholarships until the default is removed. The unconstitutional default infringes on Petitioner privilege to continue an education and the Court should agree violates the Court “Due Process Law”. Furthermore, Respondent received Petitioner 2017 tax return in full without notifying Petitioner in regard to the 2017 tax return.

Under 20 U.S.C 31 § 1221-1, Petitioner has the right, as every citizen of the United States, to an education to meet his full potential without financial barriers. Petitioner studied at the Ohio State University, Autumn 2016, as a junior transfer with an A.S. Engineering Degree to earn three degrees: (1) B.S. Aviation Degree for Airline Pilot License, (2) B.S. Mechanical Engineering Degree, and (3) J.D. Law Degree.

The Court should remove Petitioner federal student loan default status with

respondent and deny res judicata, claim preclusion, and issue preclusion as defenses with all prior courts and these orders and judgments should be unconstitutional from failed due process. (*U.S. Supreme Court Held, Goldberg, Mathews v. Eldridge*)

3. The “Due Process Law”, “Tucker Act”, 28 U.S.C. § 1653, 28 U.S.C. § 1733(a), 20 U.S.C. § 9703(a)(2)(E), 20 U.S.C. § 1092(c), 20 U.S.C. 31§1221-1, 28 U.S.C. § 1346, 28 U.S.C. § 1331, 20 § 1082(a)(2), the Court should mandate these laws into the “Bill of Rights” to grant all students, including Petitioner, for the privilege to finance an education with respondent without financial barriers to support transparent loans, should be constitutional. (*Pub. L. 93-380, title VIII, § 801, Aug. 21, 1974, 88 Stat. 597.*)

REASONS FOR GRANTING THE PETITION

1. Clearly the “Tucker Act” has jurisdiction over the FTCA when the “Tucker Act” allows unconstitutional contractual claims and noncontractual claims where the Petitioner is entitled to payment by the government without regard to the amount in controversy under 20 § 1082(a)(2) without respondent sovereign immunity.

Exhibit E contradicts Exhibit F, UNAUTHORIZED federal student loans from respondent are charged to Petitioner account from 2000 to 2006 in the amount of \$35,630 and defaulted in 2010. The financial aid department of any college can only distribute loan funds to students while a student is enrolled in courses. Petitioner was not enrolled in college courses from 2000 to 2006 and the \$35,630

without interest are UNAUTHORIZED charges. The respondent received Petitioner 2017 tax return in full when Exhibit G declares Petitioner in good standing.

Under 28 U.S.C. § 1653, 28 U.S.C. § 1733(a), respondent and all lower courts must show why Exhibit E Petitioner is in good standing of all loans and in Exhibit F respondent defaulted UNAUTHORIZED loans in the amount of \$35,630 without interest when Petitioner was not in college.

2. Clearly the Court “Due Process Law” failed in all lower courts and their orders and judgments should be unconstitutional. The “Due Process Law” under this Court case (*U.S. Supreme Court, Goldberg Mathews v. Eldridge*) should override any prior court orders and judgments as unconstitutional. The failed due process in all lower courts should declare a process is due... a process is due when Petitioner is infringed upon and denied privileges to continue an education ...”.

Exhibit G, The Ohio State University declares Petitioner must resolve the financial aid default before funds can be distributed to Petitioner which infringes on Petitioner privilege to continue an education. Again, Petitioner studied at the Ohio State University, Autumn 2016, as a junior transfer with an A.S. Engineering Degree to earn three degrees: (1) B.S. Aviation Degree for Airline Pilot License, (2) B.S. Mechanical Engineering Degree, and (3) J.D. Law Degree.

Clearly this Court should agree the Court “Due Process Law” failed in all lower courts and should remove loan defaults with respondent and deny res judicata, issue preclusion, and claim preclusion as defenses with all lower courts and deny all prior courts orders and judgments as unconstitutional.

3. The respondent must provide transparent federal student loans to all student borrowers and the following laws "Due Process Law", "Tucker Act", 28 U.S.C. § 1653, 28 U.S.C. § 1733(a), 20 U.S.C. § 9703(a)(2)(E), 20 U.S.C. § 1092(c), 20 U.S.C. 31§1221·1, 28 U.S.C. § 1346, 28 U.S.C. § 1331, 20 § 1082(a)(2), should be a mandate into the "Bill of Rights" to grant all students including Petitioner the privilege to finance an education with respondent without financial barriers.

Under 20 U.S.C 31 § 1221·1, National policy with respect to equal educational opportunity, recognizing that the Nation's economic, political, and social security require a well-educated citizenry, the Congress (1) reaffirms, as a matter of high priority, the Nation's goal of equal educational opportunity, and (2) declares it to be the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers. The respondent infringed on Petitioner privilege to continue an education in 2010.

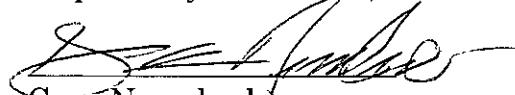
(Pub. L. 93-380, title VIII, § 801, Aug. 21, 1974, 88 Stat. 597.)

CONCLUSION

For the reasons set forth, Petitioner prays the Court Grant the Writ and Relief in Petitioner 6th Circuit briefs.

Executed on October 15, 2018

Respectfully Submitted,



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CORPORATE DISCLOSURE STATEMENT

A corporate disclosure statement is not applicable to this action.

COMPLIANCE

This writ complies with this Court Rule 33.2, in Century School Book Type, and 12 point font size.

PROOF OF SERVICE

I, Gregory P. Nesselrode, do swear or declare that on this date, October 15, 2018, as requires by the Supreme Court Rule 29 I have served the enclosed Writ of Certiorari, Appendix, and Motion for Leave to Proceed In Forma Pauperis on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly address to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 15, 2018



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