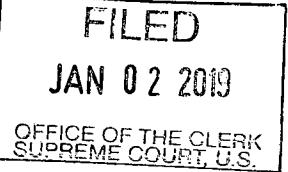


18-886 |
No. 18-_____

In the
Supreme Court of the United States



LILLIAN M. JONES, M.D.,

Petitioner,

v.

THE HAWAII RESIDENCY PROGRAMS,
INCORPORATED A SUBSIDIARY
OF THE UNIVERSITY OF HAWAII,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether citizens should still be afforded protection under the 14th Amendment against state abuses committed when the State disguises itself as a private corporation and uses 21st Century technology to defraud the Court.
2. Whether the Ninth Circuit Court sanctioned the District of Hawaii's ruling that departed from the accepted and usual course of judicial proceedings by relying on the Respondent's Declaration while disregarding the Hawaii Revised Statutes that define state actors.

PARTIES TO THE PROCEEDINGS

Petitioner Lillian M. Jones, M.D. is a non-practicing physician who enrolled in the University of Hawaii John A. Burns School of Medicine (UH JABSOM) Residency Training Programs in July 2000. Specifically, she was a resident physician in the Triple Board at UH JABSOM until she was dismissed in her fifth and final year of training in November 2004. The Triple Board program is an accelerated program that permits a physician to become board certified in pediatrics, psychiatry, and child and adolescent psychiatry. Jones became board eligible only in pediatrics before her training was terminated.

Respondent Hawaii Residency Programs, Incorporated was established by the University of Hawaii John A. Burns School of Medicine as a privately incorporated subsidiary to administer its residency programs.

TABLE OF AUTHORITIES

| | Page |
|--|------|
| QUESTIONS PRESENTED | i |
| PARTIES TO THE PROCEEDINGS | ii |
| TABLE OF AUTHORITIES | v |
| OPINIONS BELOW | 1 |
| STATEMENT OF JURISIDICTION..... | 1 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3 |
| INTRODUCTION | 5 |
| STATEMENT OF THE CASE..... | 8 |
| A. In 2007, Petitioner Jones Filed a Com- plaint Against the University of Hawaii's Subsidiary, Hawaii Residency Programs, Incorporated Under the Provisions of Amendment XIV § 1983 for Deprivation of Constitutionally Protected Rights. But the District Court Ruled That "Purely Private Behavior Does Not Violate the 14th Amend- ment."..... | 8 |
| B. In April 2017, Petitioner Jones filed a "Motion to Set Aside Judgment for Fraud on the Court" that the Hawaii Residency Programs Committed in 2007. Yet, the Court Cited the Declaration of the "Resi- dency Program's" CEO as "Evidence" that the "Residency Program" Did Not Commit Fraud on the Court. | 12 |
| C. Jones Filed a Motion for Reconsideration with the District Court of Hawaii..... | 16 |

TABLE OF AUTHORITIES—Continued

| | Page |
|--|------|
| REASONS FOR GRANTING THE PETITION..... | 17 |
| I. THIS PETITION SHOULD BE GRANTED TO PRESERVE THE NEARLY 150 YEAR LEGACY OF SUPREME COURT RULINGS AGAINST STATE ABUSES GUARANTEED BY THE FOUR- TEENTH AMENDMENT DESPITE A STATE'S ABILITY TO CONCEAL ITSELF TECHNO- LOGICALLY | 17 |
| II. THIS PETITION SHOULD BE GRANTED TO SERVE AS AN OBJECT LESSON TO ALL JURISTS TO JUDICIOUSLY GUARD AGAINST INHERENT BIASES THAT MAY UNFAIRLY SUSPEND OBJECTIVE DECISION-MAKING PRACTICES..... | 18 |
| III. THIS PETITION SHOULD BE GRANTED BECAUSE THE NINTH CIRCUIT COURT SANCTIONED THE LOWER COURT'S ABUSE OF DISCRETION THAT SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER..... | 20 |
| CONCLUSION..... | 25 |

TABLE OF AUTHORITIES—Continued

| | Page |
|--|------|
| APPENDIX TABLE OF CONTENTS | |
| Memorandum Opinion of the Ninth Circuit (June 20, 2018) | 1a |
| Minute Order of the District Court of Hawaii (August 25, 2017) | 3a |
| Order Denying Plaintiff's Filing Entitled "Motion to Set Aside Judgment of the Hawaii Residency Programs, Incorporated, Et Al." (ECF No. 103) (July 12, 2017) | 9a |
| Order Granting Defendant University of Hawaii's Motion to Dismiss Plaintiff's Amended Complaint (November 30, 2007) | 22a |
| Order of the Ninth Circuit Denying Petition for Rehearing (October 4, 2018) | 34a |

TABLE OF AUTHORITIES

| | Page |
|---|------------|
| CASES | |
| <i>Adickes v. S. H. Kress Co.</i> , 398 U.S. 144 (1970) | 22 |
| <i>Blue Chip Stamps v. Manor Drug Stores</i> , 421 U.S. 723 (1975) | 23, 24 |
| <i>Cooter & Gell v. Hartmarx</i> , 496 U.S. 384 (1990) | 23 |
| <i>Evans v. Newton</i> , 382 U.S. 296 (1966) | 18 |
| <i>Flagg Bros., Inc. v. Brooks</i> , 436 U.S. 149 (1978) | 21 |
| <i>Jackson v. Metropolitan Edison Co.</i> , 419 U.S. 345 (1974) | 19, 21 |
| <i>Kelly v. Robinson</i> , 479 U.S. 36 (1986) | 23 |
| <i>Moose Lodge No. 107 v. Irvis</i> , 407 U.S. 163 (1972) | 22 |
| <i>Pullman-Standard v. Swint</i> , 456 U.S. 273 (1982)..... | 23 |
| <i>Rendell-Baker v. Kohn</i> , 457 U.S. 830 (1982)..... | 21 |
| <i>San Francisco Arts Athlete, Inc. v. U.S.O.C.</i> , 483 U.S. 522 (1987) | 19, 22, 23 |
| <i>United States v. Cruikshank</i> , 92 U.S. 542 (1876) | 25 |
| <i>United States v. Gasperini</i> , 2018 WL 3213005 (2d Cir. Jul. 2, 2018) | 7, 16 |

TABLE OF AUTHORITIES—Continued

| | Page |
|--|-----------|
| <i>United States v. Oregon State Medical Society,</i> 343 U.S. 326 (1952) | 23 |
| CONSTITUTIONAL PROVISIONS | |
| U.S. Const. amend XIV..... | passim |
| STATUTES | |
| 26 U.S.C. § 501(c)(3) | 9 |
| 28 U.S.C. § 1254..... | 1 |
| 42 U.S.C. § 1983..... | passim |
| HRS § 304A-1701..... | passim |
| HRS § 304A-1702 | 4, 22 |
| HRS § 304A-1703 | 4, 23 |
| HRS § 304A-1704 | 4, 23 |
| HRS § 304A-1705 | 4, 22, 23 |
| JUDICIAL RULES | |
| Fed. R. Civ. P. 52 | 21 |
| Fed. R. Civ. P. 60(d)(3) | 2, 13 |
| Fed. R. Evid. 901 | 6 |
| I.R.C. 501(c)3 | 22 |
| Sup. Ct. R. 10(a) | 3 |

TABLE OF AUTHORITIES—Continued

| | Page |
|---|------|
| OTHER AUTHORITIES | |
| http://theconversation.com/every-year-millions-try-to-navigate-us-courts-without-a-lawyer-84159, September 2017)..... | 18 |



OPINIONS BELOW

The unpublished opinion of the Ninth Circuit dated June 20, 2018 is reproduced in the Appendix at App.1a. The Order of the Ninth Circuit Court, Denying Petition for a Panel Rehearing is at App.34a. The unpublished opinion from District Court of Hawaii dated August 25, 2017 is at App.3a. The unpublished opinion from District Court of Hawaii dated July 12, 2017 is at App.9a. The unpublished opinion from District Court of Hawaii November 30, 2007 is at App.22a.



STATEMENT OF JURISDICTION

On October 4, 2018, the Ninth Circuit Court denied Petitioner Jones's request for a panel rehearing. This Court has jurisdiction under 28 U.S.C. § 1254. Petitioner unearthed a plain reading of the Hawaii Revised Statutes substantiating her claims that the Respondent, the Hawaii Residency Program, Incorporation (HRP) was indeed a state actor. The lower court relied on the Respondent's Chief Executive Officer's (CEO) Declaration to support its findings in the court's analysis. A. Richard Philpott, HRP's CEO, previously the attorney for the Respondent, was intimately familiar with and well-equipped to manipulate information about the programs. However, the Hawaii Revised Statutes rendered his statements regarding HRP being a private residency program false. If the court had realized that the University of Hawaii established HRP to operate its residency program,

the Respondent would have been considered a state actor. Thus, the lower court would have established jurisdiction and heard the merits of Jones's federal and state tortious claims including obstruction of her transfer to the Medical College of Wisconsin. But, to date, the merits of Jones's claims have never been addressed in federal court for violation of the 14th Amendment.

On Appeal, the Ninth Circuit Court sanctioned the lower court's departure from the accepted and usual course of judicial proceedings that relied on the words of the duplicitous Respondent as "evidence" to support its findings. Philpott's carefully-crafted words were accepted as truth at the expense of the Hawaii Revised Statutes and other credible evidentiary documents. This departure from judicial objectivity invites the oversight of this Court's supervisory power. Perhaps pearls of wisdom can be gleaned to serve as a reminder, particularly to those in positions of power, that we must judiciously guard against presuming that those with the most influence are right.

Petitioner Jones seeks review of the Ninth Circuit Court's ruling that was entered on June 20, 2018. It found that "[t]he district court did not abuse its discretion by denying Jones's motion for relief under Federal Rule of Civil Procedure 60(d)(3) because Jones failed to establish by clear and convincing evidence a fraud on the court." Yet, if the governing Hawaii Revised Statutes (HRS) unequivocally contradict the Respondent's statements, then there exists clear and convincing evidence that fraud was perpetrated on the court. Further, Jones submitted additional credible evidence that aligns with the HRS. Hence, of the three compelling

reasons the Supreme Court may exercise oversight of a case, Jones seeks a review under Rule 10(a) of the Rules of the Supreme Court of the United States. Under this Rule a review may be granted when “a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power.” This Court has jurisdiction under Rule 10(a) to review this case.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV, 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.

42 U.S. Code § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Hawaii Revised Statutes Involved

The Hawaii Revised Statutes (HRS) under the Government of Hawaii, University of Hawaii System HRS § 304A-1701 – HRS § 304A-1705 explicitly explains all the aspects of the training of physicians at the University of Hawaii. The first statute consists of definitions [§ 304A-1701]. It defines graduate medical education, a graduate medical education program, other health related training programs and funding sources. The second statute HRS § 304A-1702 focuses specifically on the Graduate Medical Education Program itself. This is the program in which the Petitioner was enrolled. The third statute, HRS § 304A-1703, describes the Medical Education Council which was created within UH JABSOM. This Council is charged with submitting an annual report to the Legislature no more than twenty days before the regular legislative sessions. HRS § 304A-1704 details the duties of the Council and the HRS § 304A-1705 outlines the power of the Medical Education Council. While the governing HRS § 304A-1701-§ 304A-1705 do not define the Respondent in the plain

reading of the statutes, the Medical Education Council established by the third statute clearly states in its annual report to the Hawaii Legislature that the University of Hawaii operates through its private administrator, the Hawaii Residency Programs, Incorporated.



INTRODUCTION

The U.S. Supreme Court has repeatedly ruled in favor of individuals against state abuses under the 14th Amendment for almost 150 years. However, the state of Hawaii avoided scrutiny under this Amendment by representing itself as a private corporation and using 21st Century technology to conceal its misrepresentations. The state of Hawaii, through its public university, strategically established a private corporation and named it a Residency Program despite it simply being the administrative arm of the University of Hawaii's Residency Program. A residency program is referred to as graduate medical education and "means that period of clinical training of a physician following receipt of the medical doctor degree and prior to the beginning of an independent practice of medicine." Hawaii Revised Statute § 304A-1701. Among the thousands of state-run and privately-run residency training programs in the country, one can usually easily decipher whether each is state-run or private. But this is difficult to determine for the country's most isolated residency training programs at the University of Hawaii (UH). What makes it confusing is that the name of the privately incorporated administrative arm includes "Residency Programs." This allows one to

easily equate the Hawaii Residency Programs, Incorporated with “*the Residency Program*” in which Jones was enrolled. Although false, it is precisely what the district court concluded. “The Residency Program in its purpose, structure and operation, is a purely private entity The Residency Program provides a health care training program for doctors. The provision of this service is not a state function.” Gillmor at 11 (2007). But this understanding contradicts the governing state laws and even the Respondent’s self-description that appeared in the past on its website.

The Respondent’s website stated that it was the liaison between the University’s Residency Programs and the hospitals where the physicians trained. Being both “the Residency Programs” and the liaison for “the Residency Programs,” is impossible. So, with a few clicks, the Respondent quietly erased this contradiction from its website after the litigation process began. Further, it removed the simple fact that it was established by the University in 1982. The University did likewise on its own website. By using 21st Century technology, the Respondent morphed from being the administrator of a public state Residency Program that would be responsible for depriving Jones of her constitutional rights guaranteed under the 14th Amendment into a private “Residency Program” without any constitutional obligations to her. And as technology becomes more sophisticated, the ease of deceiving courts could become greater with more erasures of electronic footprints. The Second and Third Circuit Courts have guarded against this vulnerability in recent rulings by permitting evidence from the Wayback Machine in accordance to the Federal Rules of Evidence 901. “The Wayback Machine is a technology

that preserves a comprehensive record of all websites, documents and other information contained on the internet. Because of the inherent fluidity of internet-based content, information that is available one minute can be gone the next.” (Weighing up the Wayback Machine: an analysis of the admissibility of archived websites.” De Rebus, Jan/Feb 2014:32 [2014]). The Wayback Machine is an inconceivably large, entirely free archive that “captures and preserves evidence of the contents of the Internet at a given time.” *United States v. Gasperini*, 2018 WL 3213005, at *5 (2d Cir. Jul. 2, 2018). Fortunately, since the Ninth Circuit Court’s final ruling on October 4, 2018, Petitioner Jones has accessed the Wayback Machine to follow the metamorphosis of the website of the Hawaii Residency Program, Incorporated that successfully aided in defrauding the court. This discovery is meant to augment the evidence Jones submitted to the lower courts, strengthening her charge of fraud on the court. If this petition is granted, Petitioner can include snapshots of the evolution of HRP’s website in her opening brief.



STATEMENT OF THE CASE

- A. In 2007, Petitioner Jones Filed a Complaint Against the University of Hawaii's Subsidiary, Hawaii Residency Programs, Incorporated Under the Provisions of Amendment XIV § 1983 for Deprivation of Constitutionally Protected Rights. But the District Court Ruled That "Purely Private Behavior Does Not Violate the 14th Amendment."

In 2007, Petitioner Jones filed a Complaint against Respondent Hawaii Residency Programs, Incorporated (HRP) and several individual physicians who were administrators/faculty members at the University of Hawaii John A. Burns School of Medicine (UH JABSOM). However, several of them are no longer employed by the University. Hence, in April 2017, Jones petitioned the court to set aside judgment only against HRP for fraud on the court. In the original Complaint, Jones petitioned the court for damages, lost earnings, and an order directing the Defendants to expunge all derogatory information from her record. Redress was sought because the Defendants dismissed Jones from a 5-year-triple board residency training a couple of months shy of her completion date without adequate substantive and procedural due process. Thus, she sought property and liberty rights protections pursuant to 42 U.S.C. § 1983 under Section 5 of the Fourteenth Amendment. But the court determined that the Defendant's actions belonged to that of a private corporation. "The Court GRANTS Defendants' motions for summary judgment because Defendants' action of dismissing Plaintiff from the Residency Program does not constitute state action pursuant to 42 U.S.C. § 1983." (Gillmor's Order at 2, 2007).

Further, the Court found that “[i]t is undisputed that the Residency Program in its purpose, structure, and operation, is a purely private entity. As Plaintiff states in the amended complaint, the Residency Program is a non-profit educational corporation under 26 U.S.C. § 501(c)(3).” (Gillmor’s Order at 11, Paragraph 3, 2007) “Plaintiff asserts the Residency Program is a state actor because it has ‘a monopoly on producing physicians of essentially all medical disciplines’ in Hawaii, and is sponsored by the University of Hawaii, making Defendant a state employer. (citation omitted) Plaintiff offers no evidence in support of these conclusions.” (Gillmor at 11, Paragraph 2, 2007). At the time, Jones did not dispute that the Hawaii Residency Program was a private residency program. It is now understood that HRP is not a residency program but rather an administrator for the public UH JABSOM’s residency program. What Jones understood at the time was that the University of Hawaii was the only Sponsoring Institution for residency training in the state of Hawaii among civilians. However, the Respondent had relegated UH JABSOM to simply one of the voting representatives on “[t]he Board of Directors which governs the Residency Program.” (Gillmor at 5, 2007). The intent was to deceive the court by minimizing the University’s role.

While Petitioner Jones understood UH JABSOM’s role on some level, she did not possess the necessary understanding of the relationship between UH JABSOM and HRP to offer a legally sound argument for its status as a state actor in 2007. But this confusion was not limited to this pro se litigant. For example, in the interim between Jones filing a Complaint against the Defendants in 2007 and petitioning the

district court to set aside judgment for fraud on the court in 2017, she pursued justice in the state court system where the Defendants continued their show of force from federal court by having four attorneys appear at each hearing. It was there at the state court that the junior level attorney who had represented UH JABSOM for three years at the time stated, “Furthermore, Plaintiff’s declaration is misleading in that it gives the impression that Plaintiff had a contractual relationship with UH Plaintiff makes assertion that she was “enrolled in” or “in a contractual relationship with the University of Hawaii Child and Adolescent Psychiatry Program” giving the reader the impression that Plaintiff had some type of direct relationship with UH when that was not the case.” (UH’s reply memo at 2, March 8, 2010). This statement reveals the power of presumptive thinking. Rather than reviewing the contract between Jones and HRP and “allegedly” UH JABSOM, UH’s Attorney Christine Tamashiro confidently engaged in oral arguments, three days later, without fact-checking the document that she admitted to handling several times.

During oral argument, Jones read directly from her contract with HRP and UH, confirming her relationship with both. Attorney Tamashiro exclaimed, “I just wanted to mention that this is the first time that the university is hearing from plaintiff that she has a contract with the University of Hawaii And because she’s raising this for the first time that she has a contract with UH, I apologize, I was not prepared, and I do not have a copy of the contract But it’s been submitted numerous times as an exhibit in the Federal Court case, as well as this case” (Transcript 3/11/10 at 27, 28). Tamashiro tried to explain the Hawaii Revised

Statute defining the residency program as a statute intended for medical students in undergraduate medical education, which was inaccurate. The power of presumption even continued with the Court who stated, “[t]here is no dispute that the Plaintiff, Miss Jones, had a contractual relationship with Hawaii Residency Program. She did not execute a contract with the University of Hawaii.” . . . Dr. Jones responded, “I want to make a correction. . . . My contract states that it is with the University of Hawaii . . . I have a copy of it here.” (T 3/11/10 at 23-24). Nonetheless, Judge Nishimura stated, “In looking at Judge Gillmor’s order . . . the Hawaii Residency Program [is] a private educational organization incorporated as a non-profit corporation, not a part of any Federal or State governmental entity, independent of both of the University of Hawaii and the John Burns School of Medicine . . .” Jones responded, “Your honor, with all due respect, Judge Gillmor was misinformed. In fact, in the Hawaii Revised Statutes, the graduate medical education program is codified at the Hawaii Revised Statute 304A-1701. There is only one graduate medical education program in the State of Hawaii . . . Without the University of Hawaii, the residency program cannot exist . . . contrary to what my opponents have cited, and again, they misinformed Judge Gillmor, [it] is basically contradictory to what the facts are” (T 3/11/10 at 24, 25 LL 7-11). The state judge declined to consider Jones’s contract because it had not been submitted as an exhibit in her memorandum of opposition during that hearing. When Jones asked, “why has the University of Hawaii been present on this case?” The Court responded, “Well, they’re present because you sued them.” (T 3/11/10 at 26, 29) In

hindsight, the fact that the Hawaii Residency Program is independent of both the University of Hawaii and the John A. Burns School of Medicine is irrelevant to its being a state actor. The fact that the University established a private corporation as a legal independent entity does not erase its purpose of exclusively acting on behalf of the State in the training of physicians as outlined in the Hawaii Revised Statutes.

In a separate Summary Judgement hearing Jones defeated the Respondent, HRP, for intentionally obstructing her transfer to the Medical College of Wisconsin under Judge Victoria Marks, who retired. Jones was unable to collect damages under Judge Nishimura, who took over the case. Jones appealed her case in the state court system to the Supreme Court of Hawaii where four of the five justices recused themselves. But her petition for a writ of certiorari was denied. Jones ultimately appealed to the United States Supreme Court in 2012. She was not granted a Petition for a Writ of Certiorari. Now at this phase of the litigation process, she can fully understand the vulnerabilities of her previous petition.

B. In April 2017, Petitioner Jones filed a “Motion to Set Aside Judgment for Fraud on the Court” that the Hawaii Residency Programs Committed in 2007. Yet, the Court Cited the Declaration of the “Residency Program’s” CEO as “Evidence” that the “Residency Program” Did Not Commit Fraud on the Court.

In 2017, Jones became aware of a provision to redress injustices for fraud on the court without time limit under the Federal Rules of Civil Procedure 60(d) (3). Hence, she filed a motion to set aside judgement for

fraud on the court. However, the Respondent tried to divert Jones's attempt by informing the district court that the Motion should have been filed under FRCP 60(b)(3) which has a one-year time-limit. The District Court followed the Respondent's cue and offered its analysis based on Rule 60(b)(3), stating the Motion was filed in an untimely manner. Nevertheless, the Court considered Jones's argument commenting that Rule 60(d)(3) required a higher burden of proof. Ultimately, the Ninth Circuit Court determined “[t]he district court did not abuse its discretion by denying Jones's motion for relief under Federal Rule of Civil Procedure 60(d)(3) because Jones failed to establish by clear and convincing evidence a fraud on the court.”

In the district court's order dated July 12, 2018, the Court rejected Jones's claims of fraud against HRP stating, “[t]he Motion specifically claims that Philpott misled the Court into finding that the Defendant Hawaii Residency Programs, Inc. was not a state actor. The Motion cites to multiple sections of the Hawaii Revised Statutes and the Internal Revenue Code as a basis for the theory that the Defendant Hawaii Residency Programs, Inc. should have been treated as a state actor. The argument is not well taken. None of the sources cited in the Motion support the claim. Mere dissatisfaction with the 2007 Order and Judgment of the Court is not a sufficient basis to set it aside.” (Gillmor at 8, Order July 12, 2017)

Petitioner Jones submitted six exhibits to help clarify what the Hawaii Revised Statutes had stated—that the residency program codified under the University of Hawaii System was public despite its private administrator. She submitted a copy of her contractual

agreement with both the Respondent and the University of Hawaii. Yet, the Court only remarked on the agreement portion between Jones and Respondent HRP. Jones submitted a certificate of completion from the University of Hawaii's Triple Board Program. The Court remarked that both documents were previously discoverable without remarking on the fact that the residency program belonged to UH and not to HRP. In fact, the parenthetical description in the opening statement of the contract defines "the University of Hawaii Affiliated Hospitals Child and Adolescent Psychiatry Residency Training Program" as the "Program," and "Lillian M. Jones, M.D." as the "Resident". This was attached as Exhibit 4 in the Motion. Jones submitted another document showing the organizational structure of physician training as described on UH JABSOM's website, listing UH as the Sponsoring Institution with authority over its residency programs. However, the Court ruled:

"The Motion claims the Defendant is a state actor and argues there was a fraud upon the Court in 2007. Neither Exhibit 3 nor Exhibit 6 support such a claim. The evidence demonstrates that the Defendant Hawaii Residency Programs, Inc. and the University of Hawaii changed their relationship in 2012. The change in the relationship occurred well after Plaintiff was a resident. The evidence of the change in relationship does not support a finding of fraud in 2007.

Defendant Hawaii Residency Programs, Inc. submitted a Declaration from its Chief Executive Officer Arthur Richard Philpott.

(citations omitted). Philpott explained that in 2012, five years after the Court issued its Judgment, the Defendant Hawaii Residency Programs, Inc. redefined its relationship with the University of Hawaii.” (Gillmor’s Order at 11, 7/12/17) (emphasis added).

Philpott’s “evidence” was inconsistent with the Hawaii Revised Statutes and with the Accreditation Council of Graduate Medical Education (ACGME), the body that accredits the residency programs in Hawaii based on its adherence to specific Institutional Requirements. Yet, the Court accepted Philpott’s mere words as facts, stating “Philpott explained that in 2012, five years after the Court issued its Judgment, the Defendant Hawaii Residency Programs, Inc. redefined its relationship with the University of Hawaii Philpott stated that despite the changes, the Defendant Hawaii Residency Programs, Inc. remains a Section 501(c) (3) non-profit organization, which is a separate entity from the University of Hawaii Medical School.” (Gillmor at 11, 12, 7/12/17.) Again, this legal independence does not prevent HRP from being a state actor.

Jones gave a historical account of medical education at the University of Hawaii in her reply to the Respondent’s Memorandum in Opposition for Motion to Set Aside Judgment for Fraud on the Court. She chronicled the opening of John A. Burns School of Medicine at UH in 1965 when it began as a two-year medical school, through the time it established its residency training program in 1982. “Since the inception of training of civilian physicians in Graduate Medical Education (GME) in the state of Hawaii, it has been under the oversight of one sponsoring insti-

tution, the University of Hawaii, John A. Burns School of Medicine (UH JABSOM) as required by the GME accrediting body ACGME's requirement that the UH JABSOMs residency program operate under the authority of UH via its Designated Institutional Official (DIO) was mandated in 1998, in direct contrast to Philpott's 5/8/17 declaration that UH only recently assumed this authority from HRP after "extended negotiations" in 2012." (Petitioner's Reply Memo at 2, June 2017). "What Philpott failed to convey is that it was Jones who contacted ACGME seeking clarity regarding the relationship between UH and HRP. Since the nature of the relationship was murky, ACGME required UH to establish an Office of the DIO to be housed in the dean of School of Medicine's office to show the seamless existence between both UH and HRP. Of note, Philpott was also UH's DIO, a position that directly gave him oversight of the residency program. The University of Hawaii appointed him to this role." (*Id.* At 7) In 2012, following ACGME's investigation, UH divested Philpott of the dual role of being both the CEO of the Hawaii Residency Programs, Incorporated and the Designated Institutional Official (DIO). In effect, Philpott's oversight of himself was removed. The new DIO is rightfully a physician, rather than an attorney, in charge of overseeing the training of physicians.

C. Jones Filed a Motion for Reconsideration with the District Court of Hawaii

Jones invited the Court to re-examine the evidence in her Motion for Reconsideration. She pointed out the Court's assessment that "Plaintiff objected to her dismissal from the Defendant's medical residency." (Order

at 5, LL 20, 21) But the Defendant does not have a residency program. It is simply an administrative arm. This misrepresentation of HRP as a residency program has been confusing to colleagues, attorneys and judges alike. The District Court failed to recognize the fraud despite opposing facts in the Hawaii Revised Statues, the accrediting body's Institutional Requirements, and several other documents. Hence, Jones was compelled to appeal her case.



REASONS FOR GRANTING THE PETITION

I. THIS PETITION SHOULD BE GRANTED TO PRESERVE THE NEARLY 150 YEAR LEGACY OF SUPREME COURT RULINGS AGAINST STATE ABUSES GUARANTEED BY THE FOURTEENTH AMENDMENT DESPITE A STATE'S ABILITY TO CONCEAL ITSELF TECHNOLOGICALLY.

On April 20, 1871, Congress enacted Section 1983 primarily to provide a means to enforce the 14th Amendment. The intent was not to liberate states from abuses against citizens if technology evolved to hide the abuse. Rather, the bill was intended to protect the rights of all citizens against state-sponsored infringement of constitutional rights. However, if a court fails to recognize state abuses because of fraud, constitutional protections are removed. ACGME identifies the University of Hawaii as the Sponsoring Institution for residency training in Hawaii. HRP, as a subsidiary of UH, administers the programs. The fact that HRP is privately incorporated does not release it from its sole role of acting on behalf of the State.

Private corporations established by the State have been held liable for their actions in the past. "The Court has repeatedly held, however, that 'when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations. *Evans v. Newton*, 382 U.S. 296, 299 (1966) Moreover, a finding of government action is particularly appropriate when the function performed is "traditionally the exclusive prerogative" of government. *Jackson v. Metropolitan Edison Co.*, *supra*, at 353." *San Francisco Arts Athlete, Inc. v. U.S.O.C.* 483 U.S. 522 (1987). UH's private corporate administrator for its physician training program was exclusively established to carry out functions on behalf of the state. As such, Appellant Jones filed a Complaint for relief guaranteed under the 42 U.S.C. Amendment XIV § 1983 for deprivation of property and liberty rights. If UH ceased to exist tomorrow, so would the Hawaii Residency Program, Incorporated.

II. THIS PETITION SHOULD BE GRANTED TO SERVE AS AN OBJECT LESSON TO ALL JURISTS TO JUDICIOUSLY GUARD AGAINST INHERENT BIASES THAT MAY UNFAIRLY SUSPEND OBJECTIVE DECISION-MAKING PRACTICES.

"Judge Richard A. Posner, a legendary judicial figure, retired abruptly earlier this month to make a point: People without lawyers are mistreated in the American legal system." <http://theconversation.com/every-year-millions-try-to-navigate-us-courts-without-a-lawyer-84159>, September 2017). While judges have been quick to point out to Petitioner Jones that

despite her Pro Se status, she is expected to adhere to certain standards, Jones has likewise expected objectivity. It is the bread and butter that sustains the wheel of justice. Yet, it was lost in the shadow of a powerful corporation. This theme looms large in a society with an ever-widening gap preventing access to justice. Ironically, problem solvers and creative thinkers are among great legal minds that have looked to technology to help narrow this gap. But as this case has shown, corporations will use technology to obstruct justice. Despite ever-changing technology, judges must remain objective and unbiased. The Court relied on the declaration of Attorney Richard Philpott, Chief Executive Officer of the Hawaii Residency Programs, Incorporated (HRP), as factual, citing it to substantiate its ruling. Jones charged Philpott with committing fraud on the Court for his history of distorting facts and using misleading statements over several years during the litigation process. He continued this deception in 2017 when referring to the changes between UH and HRP in 2012. These distortions were substantiated in Jones's reply and can be clearly established with proper analysis of the Hawaii Revised Statutes, regulatory documents from the Accreditation Council of Graduate Medical Education (ACGME) and the Annual Report from the Hawaii Medical Education Council to the Legislature of Hawaii as well as the Internal Revenue Services (IRS) regulatory guidelines for 501(c)(3) organizations. The Court misapprehended the references Jones provided, demonstrating that persons in positions of power can easily garner underserved trust.

III. THIS PETITION SHOULD BE GRANTED BECAUSE THE NINTH CIRCUIT COURT SANCTIONED THE LOWER COURT'S ABUSE OF DISCRETION THAT SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

Jones petitioned the Ninth Circuit for a panel rehearing with the following argument:

"A district court by definition abuses its discretion when it makes an error of law. 496 U.S. at 405." *Koon v. United States*, 518 U.S. 81. The District Court in the instant case erroneously concluded a public university's private corporation specifically incorporated to act on its behalf was not a state actor under the provisions of 42 U.S.C. § 1983. "Most fundamentally, this Court has held that a government "normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the [government]." *Blum v. Yaretsky, supra*, at 1004; *Rendell-Baker v. Kohn, supra*, at 840. See *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 166 (1978); *Jackson v. Metropolitan Edison Co., supra*, at 357; *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 173 (1972); *Adickes v. S. H. Kress Co.*, 398 U.S. 144, 170 (1970)." *San Francisco Arts Athlete v. U.S.O.C.*, 483 U.S. 522. UH's private corporation exists exclusively to meet the needs

of the state as outlined in the Hawaii Revised Statutes (HRS). Thus, despite being privately incorporated, Appellee is a state actor for Section 1983 purposes. The Appellee intentionally misled the court to believe that its private status made it a non-state actor. The Declaration of the CEO of UH's private corporation cannot be true because it is contradicted by the HRS governing UH's training program for physicians. Yet the Court relied on the CEO's declarations rather than law. To prove that a party committed fraud on the court, the evidence must be clear and convincing, which means that the accusing party must prove that more likely than not, the alleged fraud is true.

In the instant case, the honesty of the private corporation's self-description as a non-state actor (fact-based issue) was considered by the District Court to be more credible than the Hawaii Revised Statutes. Thus, one can reasonable call into question the Court's discretion. "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter Gell v. Hartmart Corporation* 496 U.S. 384. "The Court has long noted the difficulty of distinguishing between legal and factual issues. *See Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982) . . . Issues involving credibility are normally considered factual matters. *See* Fed. Rule Civ. Proc. 52; *see also* *United States v. Oregon State Medical*

Society, 343 U.S. 326, 332 (1952)” *Id.* The district court erred when weighing a fact-based issue at the exclusion of looking to the law (HRS and case law) for guidance in determining whether UH’s private corporation was a state actor or private actor despite its I.R.C. 501(c)3 status.

“[T]he ‘starting point in every case involving construction of a statute is the language itself.’” *Kelly v. Robinson*, 479 U.S. 36, 43 (1986) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975))” *San Francisco Arts Athletic v U.S.O.C.* 483 U.S. 522. “Before a court properly could consider taking such liberty with statutory language there should be, at least, unmistakable support in the history and structure of the legislation. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975). The University of Hawaii’s Residency Programs is codified under Division 1 – Government, Title 18 – Education, and Section 304A, the University of Hawaii System. The HRS § 304A-1701 – HRS § 304A-1705 (five statutes) explicitly explains all the aspects of the training of physicians at the University of Hawaii. The first statute consists of definitions [§ 304A-1701]. It defines the funding sources, the creation of the Medical Education Council, graduate medical education and healthcare training. The second statute HRS § 304A-1702 focuses specifically on the Graduate Medical Education Program itself. This is the program in which the Appellant was enrolled. The third

statute, HRS § 304A-1703, established the Medical Education Council within the University of Hawaii. HRS § 304A-1704 details the duties of the Council and the HRS § 304A-1705 outlines the power of the Medical Education Council. While the governing HRS § 304A-1701-§ 304A-1705 do not define the Appellee in the plain reading of the statutes, the Medical Education Council established by the third statute clearly identifies that the UH operates through its private administrator in its annual report to the Hawaii Legislature. Appellant Jones submitted this report as Exhibit 7 in her Opening Brief. Despite Appellant Jones using the Hawaii Revised Statutes among other valid evidentiary documents as a guide to establish the basis for her Section 1983 claims, the district court ruled “[t]he Court GRANTS Defendants’ motion for summary judgment because Defendants’ action of dismissing Plaintiff from the Residency Program does not constitute state action pursuant to 42 U.S.C § 1983.” (Gillmor’s Order at 2, 11/30/07).

On October 1, 1875, in *United States v. Cruikshank et. al*, the Court stated in reference to the 14th Amendment that “[t]he duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty.” *United States v. Cruikshank et. al*

(U.S. Supreme Ct. Oct. 1, 1875). Yet, if the courts fails to recognize the state as the state because it disguised itself as a private corporation by using advanced technology and misdirection techniques, then constitutional protections can be lost. Congress never intended that technology would nullify the powers of the Constitution of the United States.

The rulings in this case undermined a plethora of Supreme Court rulings since Section 1983 was enacted under the Fourteenth Amendment in 1871 to protect citizens from abuses by the state. Given the website tampering, a well-spun story, and the fact that the state's private corporation had the name "residency program" (Hawaii Residency Program, Incorporated) embedded in its title, one can readily understand in hindsight how both the District and Ninth Circuit Courts misapprehended the state's private corporation to be a private actor rather than the state actor that it truly is.



CONCLUSION

For the foregoing reasons, Petitioner Jones respectfully petitions this Court to grant her Petition for a Writ of Certiorari.

Respectfully submitted,

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