

No. _____

In The
Supreme Court of the United States

JEFFREY A. CLOUSER,

Petitioner,

v.

KIM DOHERTY, ET AL.,

Respondents.

**On Petition For Writ Of Certiorari
To The Delaware Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. A Delaware Department of Education official, sued in his official and individual-capacities, knowingly disregarded available results of a State Police investigation exonerating Petitioner, a teacher, yet the official published information imputing Petitioner as a criminal of sexual misconduct to Delaware's Secretary of Education and to potential employers nationwide via a searchable database of educator misconduct. Summary judgment was granted to Respondents on sovereign immunity grounds. Does the Delaware Supreme Court's **application** of protection offered to the State by the doctrine of sovereign immunity under Del. Const. art. I, § 9, Delaware State Tort Claims Act (10 *Del. C.* § 4001), and Insurance for the Protection of the State (18 *Del. C.* § 6511), unconstitutionally place State financial interests above the fundamental rights and liberties guaranteed to individuals under the United States and Delaware Constitutions, ultimately turning a shield into a sword?

II. Is it possible for a state official, sued in his official and individual-capacities, to maintain sovereign immunity and qualified privilege defenses, when he is knowingly defrauding the state, compromising state interests, defying the officials' code of conduct, and consciously disregarding an individual's Federal and State constitutional rights through the conduct in question?

QUESTIONS PRESENTED – Continued

III. Did the Court commit reversible error by affirming summary judgment despite an obvious pattern of irregularities in proceedings argued by a litigant, for example, but not limited to

- a. Denying Petitioner's *pro se* Amendment, due by rule, despite Respondents' two-year late Answer;
- b. Refusing to address the denied Amendment on appeal stating the argument was not raised below, despite record to the contrary;
- c. Failing to address evidentiary objections and claims of fraud on the court raised but not passed on in the court of first instance, nor on appeal;
- d. Affirming summary judgment despite the lower court's failure to rule on a material Motion to Compel discovery before granting summary judgment; and,
- e. Failing to follow precedent.

leading to ill-advised, arbitrary, and capricious decisions denying the litigant's fundamental Federal and State Constitutional rights to due process and equal protection of the laws, particularly where a conflict of interest exists, as evidenced by multiple judges' recusals and disqualifications?

PARTIES TO THE PROCEEDINGS

Petitioner Jeffrey A. Clouser was the *pro se* plaintiff in the State of Delaware Superior Court proceedings and appellant in the State of Delaware Supreme Court proceedings.

Respondents Kim Doherty, Wayne Barton, Lillian Lowery, Mark Holodick, Patrick Bush, James Scanlon, Delaware Department of Education, Brandywine School District (Board of Education), Current and Former Members of the Brandywine School District Board of Education: Debra Heffernan, Olivia Johnson-Harris, Mark Huxsoll, Patricia Hearn, Cheryl Siskin, Ralph Ackerman, Joseph Brumskill, Dane Brandenberger were the defendants in the State of Delaware Superior Court proceedings and the appellees in the State of Delaware Supreme Court proceedings.

CORPORATE DISCLOSURE STATEMENT

Petitioner Jeffrey A. Clouser proceeds as an individual, and there are no corporate affiliations to disclose.

LIST OF PROCEEDINGS

- *Clouser v. Doherty, et al.*, In The Supreme Court of the State of Delaware. No. 175, 2019. *Order Denying Appellant's Motion for Rehearing en Banc.* Judgment entered December 3, 2019.

LIST OF PROCEEDINGS – Continued

- *Clouser v. Doherty, et al.*, In The Supreme Court of the State of Delaware. No. 175, 2019. *Order Affirming Superior Court Granting Summary Judgment in Favor of Appellees*. Judgment entered November 14, 2019.
- *Clouser v. Doherty, et al.*, The Superior Court of the State of Delaware. No. N15C-07-240-RBC. *Order Granting Defendants' Motion for Summary Judgment*. Judgment entered March 25, 2019.
- *Clouser v. Doherty, et al.*, The Superior Court of the State of Delaware. No. N15C-07-240-RBC. *Order Denying Plaintiff's Striking Answer and Denying Plaintiff's Default Judgment*. Judgment entered March 25, 2019.
- *Clouser v. Doherty, et al.*, In The Supreme Court of the State of Delaware. No. 405, 2018. *Order Denying Appellant's Interlocutory Appeal for Proposed Claim of Fraudulent Conduct, Adding Defendant, and Consideration of Discovery Documents*. Judgment entered September 4, 2018.
- *Clouser v. Doherty, et al.*, In The Supreme Court of the State of Delaware. No. 57, 2017. *Order Denying in Part and Affirming in Part Superior Court's Granting Appellees' Motion to Dismiss*. Judgment entered September 7, 2017.
- *Clouser v. Doherty, et al.*, The Superior Court of the State of Delaware. No. N15C-07-240-RBC. *Decision on Granting Defendants' Motion to Dismiss*. Judgment entered January 4, 2017.

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CITATIONS OF OPINIONS AND ORDERS

The Delaware Supreme Court’s opinion is reported at *Clouser v. Doherty, et al.*, 2019 Del. LEXIS 509, 2019 WL 6048091 (Nov. 14, 2019) and reproduced at App. 1-8. The Delaware Supreme Court’s denial of Petitioner’s motion for reconsideration and rehearing *en banc* (Dec. 3, 2019) is reproduced at App. 86-87. The first opinion of and interlocutory appeal to the Delaware Supreme Court are reproduced at App. 23-54 and App. 21-22, respectively. The Delaware Superior Court opinions are reproduced at App. 9-17, App. 18-20, and App. 55-85.

BASIS FOR JURISDICTION

The United States Supreme Court has jurisdiction to review State court decisions under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c). The State court decisions have implications in Federal law, principally the deprivation of Petitioner’s due process rights under the U.S. Const. amend. XIV, and the fundamental rights provided thereunder, such as the rights to pursue an occupation of one’s choosing, and under the U.S. Const. amend. I, the fundamental right of maintaining a reputation free from harm.

This Petition is timely-filed regarding *Clouser v. Doherty, et al.*, 2019 Del. LEXIS 509, decided in the Delaware Supreme Court on November 14, 2019 with Petitioner’s Interlocutory Request for Rehearing *en Banc* denied in the Delaware Supreme Court on December

3, 2019 (No. 175, 2019). App. 1 and App. 86, respectively.

**CONSTITUTIONAL PROVISIONS
AND STATUTES INVOLVED**

UNITED STATES CONSTITUTION

U.S. Const. amend. I

U.S. Const. amend. V

U.S. Const. amend. XIV

U.S. Const. art. VI, cl. 3

DELAWARE CONSTITUTION

Del. Const. art. I, § 9

Del. Const. art. XIV, § 1

UNITED STATES CODE

42 U.S.C. § 1983

DELAWARE STATUTES

10 *Del. C.* § 4001

14 *Del. C.* § 1218

18 *Del. C.* § 6503

18 *Del. C.* § 6508(5)

18 *Del. C.* § 6511
29 *Del. C.* §§ 5801-5810A

STATEMENT OF THE CASE

Petitioner's original case, *Clouser v. Doherty, et al.*, N15C-07-240-RBC, demonstrates the unbridled power of state entities at the expense of an individual's constitutional rights and liberties. App. 55. The ill-advised, arbitrary, and capricious decisions negating equal protection of the laws and the irregularities in proceedings favor state entities over the individual's due process rights particularly where a conflict of interest exists. Further, state officials knowingly defrauding the state and the courts compromise state interests and disregard an individual's fundamental rights and liberties.

Petitioner filed his complaint in the Delaware Superior Court (Court of First Instance) on July 28, 2015, presenting claims of Defamation, Tortious Interference with Prospective Business Relations, and Conspiracy against school district officials and state officials in their individual-capacities and official-capacities, as well as the State of Delaware Department of Education (DDOE).

The claims are based on the series of events after Petitioner, formerly a high school English teacher, was accused of inappropriate use of school district technology for internet searches flagged by the district's web

content filter as potentially pornographic, occurring after the school dismissal of students. Petitioner did not deny breaking the computer policy, but argued there were no pornographic websites or images. Petitioner was placed on immediate leave, and an ensuing investigation on the District level resulted in a Delaware State Police forensics investigation of Petitioner's school computer, the report of which found no pornography whatsoever. App. 108. The District-level investigation findings were based on unauthenticated evidence from the District's Human Resources Director, Kim Doherty's (Doherty) at-home investigation of explicit sites she claimed Petitioner visited, which did not appear on any of the District's internet access logs.

Petitioner resigned from his teaching position amid the pressure of the controversy. Despite the District superintendent's acceptance of Petitioner's resignation in writing, the District Board of Education converted the resignation into a termination, because the District's resignation offer was conditional upon Plaintiff forfeiting his legal rights, which he refused to do. Petitioner attempted to mitigate the circumstances by attending inpatient treatment for ninety-days to address self-sabotaging behavior and demonstrate his dedication to his profession.

Doherty reported Petitioner was searching for and viewing child pornography to the State of Delaware Department of Education (DDOE) despite the availability of the State Police report conducted by computer forensics experts stating the contrary. App. 108. Doherty met with DDOE Director of Professional Accountability,

Dr. Wayne A. Barton (Barton), who then conducted a State-level investigation of Petitioner's actions, including a one-on-one interview with Petitioner, which was not videotaped or audio-recorded, after which Barton composed and sent a letter to Delaware Secretary of Education Lillian Lowery (Lowery), with defamatory statements about Petitioner. Lowery notified Petitioner of the State's intent to revoke Petitioner's teaching license based on Barton's letter. However, Barton admits to intentionally withholding evidence at Petitioner's license revocation hearing with the State's Professional Standards Board. Rather than face a permanent revocation, Petitioner consented to a three-year license suspension, among other conditions for reinstatement, all the while not knowing the concealed defamatory documents existed. Petitioner states he would not have signed the consent-agreement had he known about the defamatory documents.

Respondent Barton was responsible for posting on the National Association of School Teacher Education and Certification (NASDTEC) Clearinghouse website, which is a searchable database of individual teachers' misconduct throughout the nation and world. Individual member jurisdictions from states' departments of education contract with NASDTEC to facilitate the transmission of information about educators' licensure. The DDOE official admitted responsibility for a posting on Petitioner's individual NASDTEC educator profile stating Petitioner was convicted of a crime and was guilty of sexual misconduct.

Updates to entries in the NASDTEC database are sent monthly to all member jurisdictions, who use NASDTEC to inform hiring decisions. Petitioner's inaccurate and defamatory profile was received by Pennsylvania's Department of Education (PADOE) directly from NASDTEC. Barton failed to respond to PADOE's request for investigation reports for Petitioner's case, nor did he send any of the requested police reports or hearing transcripts before he retired. PADOE took reciprocal action on Petitioner's Pennsylvania teaching license without knowledge of the police report or hearing transcript. Barton retired in 2012.

Despite his highly-qualified status, including a Master's of Instruction degree, National Board for Professional Teaching Standards Certification, superior performance assessments, and an otherwise flawless 17-year teaching career, Petitioner has applied for over 40 teaching and coaching positions without success since his license was successfully reinstated. Since Petitioner was blamelessly ignorant of withheld documents from his investigation, the statute of limitations was tolled under the discovery rule.

Petitioner was unable to secure willing professional representation to pursue redress for injuries to his reputation and career against the District and DDOE entities, so he appeared *pro se* in the Court of First Instance. Respondents divided into the "School Defendants" and "State Defendants" for litigation. Superior Court granted School and State Defendants' Motions to Dismiss in their entirety as to all defendants. Petitioner appealed to the Delaware Supreme

Court. One of the Supreme Court justices disqualified himself from the proceedings.

Petitioner argued the State Defendants improperly submitted an Affidavit of No Insurance at the Motion to Dismiss stage, to which the Supreme Court agreed. The Delaware Supreme Court affirmed dismissal for all School Defendants based on expiration of the statute of limitations, and dismissed the count of Conspiracy for all defendants. Claims of Defamation and Tortious Interference against Barton, in his individual and official-capacities, and the DDOE, were remanded to Superior Court to commence discovery. In its Order, the Delaware Supreme Court found the Defamation and Tortious Interference claims to be well-pled, specifically stated Superior Court needed to decide in what capacity the DDOE official was operating, and that Petitioner had effectively raised issues of material fact about the good faith exercise of qualified privilege.

During discovery, Petitioner had to file several motions to compel since the opposing counsel did not produce materials as requested. Most of these Motions were withdrawn after Respondents turned over documents. During discovery it became necessary for the Petitioner to file a Motion for Sanctions against State Defendants' counsel, which the Court denied. The response to Petitioner's discovery request for production sent to the Delaware Insurance Coverage Office (ICO) regarding the procurement and existence of insurance coverage for Petitioner's claims was inadequate, consisting of a substantial quantity of paperwork, some only partially filled out, with little relevance to Petitioner's

specific request. Petitioner wrote a letter to State Defendants' counsel, inquiring whether the ICO documents were a complete response. Petitioner moved to compel a more complete disclosure from the ICO, which was never specifically ruled upon by the Court of First Instance. Petitioner reminded the Honorable Judge in a separate correspondence that the Motion to Compel production from the ICO was still pending.

Petitioner filed a Motion for Leave to Amend the Complaint, which sought to add a defendant, reconsider two dismissed defendants, and add additional claims, including a claim under 42 U.S.C. § 1983, which all arose from the same transactions as the original Complaint. Petitioner argued the amendments were substantiated by evidence received through discovery. Petitioner received a Scheduling Order from the Court for Oral Arguments regarding the proposed Amended Complaint and deposition scheduling. At oral arguments, the Court of First Instance denied the *pro se* amendment stating it could have been brought sooner and merely attempted to reframe the original claims. The Court issued a scheduling order to finish remaining depositions and set a summary judgment deadline.

Petitioner was most upset about the disposition of the § 1983 claim, the claim of Fraudulent Misrepresentation, and the claim of Gross Negligence. The aspects of these claims, without their titles, were described in the Petitioner's lengthy Complaint. The § 1983 claim would have given Petitioner an avenue for recovery that was not disturbed by sovereign immunity, included evidence from discovery, and that Petitioner

argues related back to original pleadings for the statute of limitations.

Petitioner's attempt at an Interlocutory appeal of the denied Amendment was similarly refused, as was a motion for reconsideration. Respondents filed a Motion for Summary Judgment to which Petitioner replied. Petitioner asserted evidentiary objections and a claim of fraud on the court therein that were not addressed by the Court of First Instance.

Respondents then issued a letter to the Court apologizing for failing to submit an Answer to the pleadings despite two-years passing since it was due. Since discovery was closed and briefs on summary judgment had already been submitted, Petitioner argued the timing of the two-year late Answer prejudiced his opportunity to gather information and argue effectively against summary judgment. Petitioner moved to strike Respondents' Answer and moved for default judgment. The Court of First Instance denied Petitioner's Motion to Strike and Motion for Default Judgment, and contemporaneously granted summary judgment in favor of the Respondents.

On appeal to the Delaware Supreme Court, Petitioner argued regarding Respondents' late Answer that Petitioner was due an Amendment under Del. Super. Ct. R. Civ. P. Rule 15 and cited precedent in *Stoppel v. Henry*, 2011 Del. Super. LEXIS 1, stating a Motion to Dismiss is not considered a responsive pleading for the purpose of amendments. App. 105. Petitioner also presented the irregularities in proceedings, including the

Court's failure to rule on the Motion to Compel from the ICO, which would have provided material facts regarding the State's insurance coverage for the purpose of arguing Respondents' sovereign immunity defense. Neither the Court of First Instance, nor the Delaware Supreme Court addressed Petitioner's evidentiary objections or Petitioner's assertion that Respondents were knowingly defrauding the Court on facts material to the Defamation claim.

Delaware Supreme Court affirmed summary judgment on appeal without dissent but did not mail Petitioner the judgment as required by the rules of procedure. The Court denied Petitioner a subsequent Motion for Rehearing *en Banc*. *Clouser v. Doherty, et al.*, No. 175, 2019. App. 86.

Petitioner files the current Petition for a Writ of Certiorari to the United States Supreme Court praying for a review of the Delaware Supreme Court's decision on appeal from the Court of First Instance. Granting the Petition would, in the interest of justice, preserve Petitioner's rights to due process and equal protection of the laws as a *pro se* civil litigant with well-pled claims so the case can be tried on its merits.

Petitioner asks the United States Supreme Court to analyze the layered application of Delaware's immunity statutes for an unconstitutional infringement of the guaranteed rights of *pro se* civil litigants with meritorious claims against State-involved parties. Ultimately, Petitioner asks the Honorable Court to vacate summary judgment, grant Petitioner leave to amend

the pleadings, and reopen discovery so the case can proceed to a trial on its merits.

REASONS FOR GRANTING THE PETITION

“Quis custodiet ipsos custodes?”¹

(“Who will guard the guards themselves?”)

It is a shame that *pro se* litigants with well-pled claims are not taken seriously in court, particularly against a dominating political entity such as the State. Given the ubiquity of *pro se* litigation, this case begs to be addressed to assert the rights of all litigants, not just those with representation. This case is an ideal vehicle for the U.S. Supreme Court to assert the critical democratic notion that individuals’ constitutional rights need to stay in balance with the interests of the government. The egregious nature of the Respondents’ conduct, when coupled with the procedural due process errors allowed by the lower courts, demonstrates that Delaware’s judicial system and public officers are operating contrary to this nation’s democratic values.

¹ Juvenal, *Satires* (Satire VI, lines 347-348).

I. In the interest of constitutional fidelity, it is necessary for the U.S. Supreme Court to analyze the *application* of Delaware's immunity statutes and judicial precedent to ensure the availability of remedies for injuries to individuals by state-involved entities.

Although states' various sovereign immunity provisions may be constitutional when considered individually, it has become apparent in the current case that the application of the laws disrupts the intended balance between the interests of the state and of the individual. Delaware state laws are counterintuitive to the United States Constitution's Fourteenth Amendment. Simply put, if the order is to stand, Petitioner is unable to find a remedy for his injuries.

Delaware has recognized the potential for this issue in the past and has repeatedly asked the General Assembly to remove sovereign immunity's bar to recovery. On numerous occasions, Delaware courts have urged the General Assembly to remove the bar to recovery which sovereign immunity presents. *Doe v. Cates*, 499 A.2d 1175, 1177 (Del. 1985), 1985 Del. LEXIS 550 citing *Pajewski v. Perry*, 363 A.2d 429 (Del. 1976), 1976 Del. LEXIS 440,

[t]he reason, of course, is that the State, acting through its agents, does cause injury to others for which, in justice, it should be legally responsible. And a concept which draws its strength from the notion that the State is outside the law is hardly at home in our third century of independence.

Delaware's Supreme Court in *Pajewski*, 363 A.2d at 433, admits it is in the interest of justice for the State to be held liable for its or its agents' injuries to others.

The only way to waive or limit sovereign immunity, according to the Del. Const. art. I, § 9, is through an act of the General Assembly. However, the U.S. Supreme Court can find the application of sovereign immunity unconstitutional in this case since Petitioner has no other avenue for recovery. Petitioner can find no record that the holdings in *Doe*, 499 A.2d 1175, have been reviewed by the United States Supreme Court previously to assess whether it is constitutionally appropriate to apply the Delaware State Tort Claims Act 10 *Del. C.* §§ 4001-4005 *only* after a valid waiver of immunity has been identified. App. 88.

The 1969 act Insurance for the Protection of the State, 18 *Del. C.* ch. 65, was enacted to provide protection from injury to the State and members of the public. 18 *Del. C.* § 6503. App. 100. The intent of the General Assembly in passing 18 *Del. C.* ch. 65 was "to enact a viable program which would, in its own words, 'protect the public from wrongful actions of State officials and employees,'" *Pajewski*, 363 A.2d at 435. Since the General Assembly is aware of the possibility for state created danger and recognizes the need to protect the public, it seems counterintuitive to interpret the relationship of Del. Const. art. I, § 9, 18 *Del. C.* ch. 65, and the STCA² as being applied sequentially, requiring

² Delaware State Tort Claims Act 10 *Del. C.* § 4001. App. 88.

an explicit waiver of sovereign immunity under 18 Del. C. ch. 65 before the STCA comes into play. This structure would place a state statute, STCA, in a position more authoritative than U.S. Const. amend. XIV's fundamental guarantees.

In *Doe*, 499 A.2d at 1181, the Court instructs the following on the STCA, “The synopsis to the act also says that the act was to make clear that public officers and employees would be fully liable where they exercised their authority in a grossly negligent, or bad faith manner.” However, the Court also held in *Doe*, “the legislature did not intend by enacting 10 Del. C. § 4001 to waive sovereign immunity in all cases where a ministerial act was performed with gross or wanton negligence or in bad faith,” based on the General Assembly’s refusal to fund appropriations for a comprehensive insurance plan to provide protection for persons injured by the State or a public officer, and due to the title of the bill mentioning the *limitation* to civil liability. *Id.* at 1180. Petitioner argues “limitation” can be interpreted to mean both upper limits and lower limits; In other words, the application of the STCA as held in *Doe* does not acknowledge the possibility for the Act to *define a range* of liability, not simply an attempt to minimize the State’s liability under a certain threshold or under certain conditions.

Given the facts of this case, where the Delaware Department of Education (DDOE) operated as an arm of the State when Petitioner’s injury was sustained, sovereign immunity becomes the principle barrier to the litigant’s ability to receive a remedy for his injuries,

guaranteed under U.S. Const. amend. XIV and Del. Const. art. I, § 9. Respondents' reliance on *Doe*, 499 A.2d 1175, having been affirmed by the Delaware Supreme Court on appeal, functions to deny Petitioner a remedy for his injury since *Doe* ultimately holds that due to sovereign immunity and the State's decision to forego procuring insurance against this type of injury, that a right of action against the State never existed in the first place under 18 *Del. C.* ch. 65, Insurance for the Protection of the State.

Petitioner recognizes the important function sovereign immunity serves in protecting the State from frivolous and meritless suits for damages and to avoid chilling the essential acts of state officers. Petitioner also acknowledges the history of sovereign immunity's emergence out of the common-law. However, the benefits to the state must balance with maintaining the rights of state's constituents in order to maintain a democratic relationship. State officials take an oath swearing they will uphold State and U.S. Constitutions. The current application of sovereign immunity laws gives officials no incentive to do so since there is no measure of accountability, leading to abuse of power.

Individuals' substantive and procedural due process rights are fundamental and inalienable under the U.S. Constitution and protected by U.S. Const. amend. V, which states in pertinent part, "No person shall . . . deprived of life, liberty, or property, without due process of law . . ." In this case, Petitioner was accused of being a criminal on NASDTEC, yet was afforded no opportunity to contest these allegations. Further, with

regards to U.S. Const. amend. XIV, Petitioner has effectively been deprived of liberty interests regarding his ability to maintain a reputation free from unwarranted intrusion by the government, also damaging his employment prospects. *Willis v. City of Virginia Beach*, 90 F. Supp. 3d 597, 617 (E. D. Va. 2015), 2015 U.S. Dist. These rights are worth passionately protecting because they ensure preservation of the rights and liberties ensured by the Constitution which help define that which the individual considers his very identity and existence. Petitioner argues his case is a prime example of a deprivation since,

[t]he right to earn a livelihood by following the ordinary occupations of life is protected by the Constitution; such protection is particularly found in the guarantees of the Fourteenth Amendment. The right is fundamental, natural, inherent, and inalienable and is one of the most sacred and most valuable rights of a citizen. A person's business, occupation, or calling is 'property' within the meaning of the constitutional guarantee of the right of property protects it not only from confiscation by legislative edicts but also from any unjustifiable impairment or abridgment. (citations omitted)

16B Am. Jur. 2d *Constitutional Law* § 639 (2019).

When these rights are trampled by the State with a reckless disregard for the truth, and there is a bright-line rule preventing remedy or recourse for the individual's injury, we can conclude the law finds the

State's interests more important than the rights of the individual. This fails to balance state and individual interests and demonstrates an unconstitutional abuse of power that is contrary to our nation's democratic foundation.

The Court of First Instance stated the STCA only comes into play after proving the State has given an explicit waiver of sovereign immunity. *Clouser v. Doherty, et al.*, C.A. No. N15C-07-240-RBC (Del. Super., Dec. 28, 2016) at App. 64. With the current application of the STCA on top of 18 Del. C. § 6511 there is little reason for DDOE officials to abide by the promissory duties of their oaths and codes of conduct. App. 103. Petitioner argues officials' breach of their sworn duty to not compromise the integrity of the State or violate the Delaware and United States Constitutions cannot logically function as part of their employment.

Further, 18 Del. C. § 6511, in conjunction with precedent from *Doe*, 499 A.2d 1175, appears to provide a loophole for the State to avoid liability altogether. Although the State Insurance Program envisioned by the General Assembly was never fully funded, and since the State Insurance Coverage Office sufficiently demonstrated efforts to vitiate the program, *Doe*, 499 A.2d at 1179 held the Insurance Coverage Office had overcome the presumptive waiver of immunity requirements originally established in *Pajewski*, 363 A.2d 429, and that it is no longer necessary for the ICO to prove it met its responsibilities. As a result, the State has no incentive to fund liability insurance since the lack of insurance coverage is what protects them from tort

liability, and the ICO is not required to demonstrate they even tried to procure insurance due to precedent from *Doe*, 499 A.2d 1175.

In addition, as in this case, the Court did not rule on Petitioner's Motion to Compel relevant ICO information despite the possibility of discovering material facts, since the ICO is statutorily required by 18 Del. C. § 6508(5) to maintain records. App. 101. This situation is unfair to the individuals on the losing end of meritorious tort claims, at the hands of the State, and desperately needs to be addressed by the Supreme Court for the preservation of the Constitutional rights and liberties of all individuals interacting with the State government on any level.

Petitioner requested discovery production from the ICO authorized by the Delaware Supreme Court regarding the Affidavit of No Insurance. *Clouser v. Doherty, et al.*, 2019 Del. LEXIS 509 (Del. Nov. 14, 2019). App. 1. Numerous, yet irrelevant, documents were sent in reply, none of which included any policy language for Petitioner to analyze. The Court of First Instance and Delaware Supreme Court failed to ensure meaningful access to the courts by allowing the State to withhold information rightfully due to the Petitioner.

Petitioner did, in the course of proceedings, offer an argument to circumvent the authority of *Doe*, 499 A.2d 1175, which the court did not consider raised for the first time on appeal from the Motion to Dismiss. Petitioner, *pro se* below, was unaware this argument

would not be considered, as he had described the relationship between the State and NASDTEC as a membership in his Complaint. This Court has the authority to consider arguments not raised below if it is in the interest of justice referring to Del. Supr. Ct. R. Rule 8.³ *In re Viking Pump, Inc.*, 148 A.3d 633 n.27, 2016 Del. LEXIS 474.

Petitioner's argument proposed sovereign immunity was waived as to the State Defendants since DDOE contracted with NASDTEC to follow the responsibilities of membership, to which Petitioner was a third-party beneficiary, citing *Blair v. Anderson*, 325 A.2d 94, 96, 1974 Del. LEXIS 304,

[i]t is established Delaware law that a third-party beneficiary of a contract may sue on it. Generally, the rights of third-party beneficiaries are those specified in the contract; but if performance of the promise will satisfy a legal obligation which a promisee owes a beneficiary, the latter is a creditor beneficiary with standing to sue . . . In sum, we hold that the State, by entering into the contract with the United States, waived any defense available to it based upon the principle of sovereign immunity and that plaintiff is in law a creditor beneficiary of the agreement.

It would be in the interest of justice to consider this argument as it may be the only means of receiving

³ Del. Supr. Ct. R. 8. (. . . however, that when the interests of justice so require, the Court may consider and determine any question not so presented.)

a remedy for injuries caused by the State's egregious behavior should the Court uphold the current application of sovereign immunity law.

II. It is necessary to clarify the law regarding qualified privilege as it relates to individual-capacity tort liability, particularly regarding scope of employment in cases where a sovereign immunity defense is invoked, since the determination impacts the availability of a remedy due under U.S. Const. amend. XIV.

According to this Court's ruling in *Lewis v. Clarke*, 137 S. Ct. 1285, 1291 (April 25, 2017), 197 L. Ed. 2d 631, "in the context of lawsuits against state and federal employees or entities, courts should look to whether the sovereign is the real party at interest to determine whether sovereign immunity bars the suit." When considering Respondent Barton in his official-capacity, the Court must determine whether he is acting within the scope of his employment for sovereign immunity to shield him from liability. If Barton is found to be acting outside the scope of his employment, sovereign immunity is not a viable defense. Conversely, when the Court examines Barton in his individual-capacity, it must assess whether the defense of qualified immunity shields Barton from liability as an individual. Giving a thorough analysis to both individual-capacity and official-capacity consideration is necessary to ensuring Petitioner's due process in the Court of First Instance and Delaware Supreme Court on appeal.

Petitioner contends neither the Court of First Instance, nor the Delaware Supreme Court, gave adequate analysis to Barton's conduct in his individual-capacity. For the Court of First Instance to ignore the potential for individual-capacity liability deprives Petitioner of meaningful access to the courts, since the authenticated evidence of Barton's handwritten notes demonstrating knowledge of the State Police crime report were not objected to, and were neither addressed nor discredited in either court. This evidence is material to demonstrating Barton abused his qualified privilege through malicious reporting of half-truths. *Burr v. Atlantic Aviation, Corp.* 348 A.2d 179, 182 (Del. 1975), 1975 Del. LEXIS 520 states, "Here, Atlantic's final disciplinary action, withholding of known facts, failure to await reports of causation from other known sources, and withholding of the reports from Burr's counsel . . . is sufficient evidence from which a jury might conclude that the communications constituted malicious and intentional reporting of half-truths." In short, Barton knowingly and recklessly ignored and withheld an official investigative report written by law enforcement.

Petitioner's ability to receive a remedy for his injuries as guaranteed in the U.S. Const. amend. XIV has been denied since the Court of First Instance did not follow precedent in *Burr*, 348 A.2d 179, when deciding whether malice was present. In holding that Barton did not abuse his qualified privilege and was exercising his First Amendment rights to free speech in its *Order*

Granting Defendants Wayne A. Barton and Delaware Department of Education's Motion for Summary Judgment, Clouser v. Doherty, et al., C.A. N15C-07-240 (Del. Super., March 25, 2019), in defiance of precedent, the Court of First Instance demonstrates bias in favor of the State. App. 9.

The summary judgment *Order* also violates this Court's holding from *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 at 18 (1990), 110 S. Ct. 2695, 111 L. Ed. 2d 1, which states,

[e]ven if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications.

It is therefore conceivable that a jury could have found for Petitioner regarding qualified privilege, and that this fact should have precluded summary judgment. Instead, judicial prejudice was compounded when the Court of First Instance's decision was affirmed by the Delaware Supreme Court in *Clouser v. Doherty, et al.*, 2019 Del. LEXIS 509 (Del. Nov. 14, 2019). App. 1.

In addition, the United States Supreme Court has held,

"Since *Ex parte Young*, 209 U.S. 123, 52 L. Ed. 714, 28 S. Ct. 441 (1908)," we said, "it has been settled that the Eleventh Amendment provides no shield for a state official confronted

by a claim that he had deprived another of a federal right under the color of state law.”

Hafer v. Melo, 502 U.S. 21, 30 (Nov. 5, 1991), 112 S. Ct. 358, 116 L. Ed. 2d 301.

Further, “[t]he question whether a conditional privilege has been abused by malice or intent to harm ordinarily is a factual question for the jury,” *Burr* at *181, citing *Pierce v. Burns*, 185 A.2d 477 (Del. Supr. 1962). If the Court of First Instance analyzed the facts and evidence in the light most favorable to the Plaintiff on summary judgment, it would have been undeniable that a question of material fact exists; a qualified privilege must be exercised in good-faith, without malice, and without knowledge of falsity or desire to cause harm. Petitioner argues he met the burden of proof by proving malice in order to declare Barton’s qualified privilege a nullity under the standards in *Meades v. Wilmington Housing Authority*, 2006 Del. Super LEXIS 188, n.5.⁴ Clearly the determination of qualified privilege is material to the case, and clearly there is a genuine dispute to survive summary judgment for Barton in his individual-capacity. The ability for the Court of First Instance and Delaware Supreme Court to disregard precedent and evidence at the expense of a *pro se*

⁴ *Meades v. Wilmington Housing Authority*, 2006 Del. Super. LEXIS 188, n.5. (The plaintiff must demonstrate the conditional privilege was waived by showing it was “abused (1) by excessive or improper publication, (2) by the use of the occasion for a purpose not embraced within the privilege, or (3) by making a statement which the speaker knows is false.” In the alternative, the plaintiff must prove the statement was not made in good-faith or was made with actual malice or intent to harm the plaintiff.)

plaintiff-appellant exemplifies judicial bias that has denied Petitioner fair adjudication of his claims.

As to Barton's official-capacity, a sovereign immunity defense applies *respondeat superior* liability to the state of Delaware. According to the Restatement 2d of Agency § 247, "A master is subject to liability for defamatory statements made by a servant acting within the scope of his employment, or, as to those hearing or reading the statement, within his apparent authority." If Barton's tortious acts were found to be within the scope of his employment, they would be vicariously attributed to DDOE, and Barton would be immune from tort liability for Petitioner's injuries in his official-capacity. Although the Court of First Instance ruled Barton was acting within the scope of his employment, and Delaware Supreme Court affirmed, Petitioner's argument to the contrary was never given fair consideration.

According to 27 Am. Jur. 2d *Employment Relationship* § 224, in pertinent part, "The term 'scope of employment' has been defined as an act done in the furtherance of the employer's business and for the accomplishment of the purpose for which the employee was hired." Petitioner argues it is possible to consider Barton as acting outside the scope of his employment duties since he actively defrauded his employer in knowingly and intentionally supplying defamatory information about Petitioner. This misrepresentation was to the detriment of DDOE's interests and the interests of other NASDTEC member jurisdictions since it makes a talented and qualified teacher appear

unhirable and, therefore, unable to help accomplish the DDOE's duty to provide quality education to children across the state. Further, Barton's misrepresentation of Petitioner jeopardized the legitimacy of the DDOE as an agency, including public trust and its appearance of competency to administrate effectively in the interests of all citizens, as well as breaching its duty to provide accurate information to NASDTEC.

Although it is possible for a tortious act to be considered within the scope of a person's employment for purposes of vicarious liability,⁵ the **Restatement 2d of Torts does not appear to address whether intentional fraudulent misrepresentations made by an agent to defraud the employer itself can be considered in the scope of employment.** Since Barton made a fraudulent misrepresentation to his employer regarding Petitioner's conduct, which served as the basis for Barton's fraudulent misrepresentation on NASDTEC, he could not have been serving the interests of the DDOE. This theory contends that

[p]rohibition to do any acts except those of a certain class may indicate that the scope of employment extends only to acts of that class. Furthermore, the prohibition by the employer may be a factor in determining whether or not, in an otherwise doubtful case, the act of the employee is incidental to the employment; it accentuates the limits of the servant's permissible action and hence makes it [easier] to

⁵ Restatement 2d of Agency § 231. (An act may be within the scope of employment although consciously criminal or tortious.)

find that the prohibited act is entirely beyond the scope of employment.

Restatement 2d of Agency § 230.

Further, since a *State Employees', Officers', and Officials' Code of Conduct* is part of Delaware law,²⁹ *Del. C.* §§ 5801-5810A, we can gather what employees of the state are expected to do, or not to do. The Code of Conduct states,

[e]ach state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

29 Del. C. § 5806(a).

Delaware public officers take an Oath of Office in accordance with U.S. Const. art. VI, cl. 3 and also in accordance with the *Del. Const.* art. XIV, § 1. App. 104. It is clear through enacting this legislation that General Assembly intends to dissociate itself from impropriety and controversy caused by actions of its employees or officers. In taking the oath or subscribing to a specific code of conduct, an official is assuring the public through a personal, individual commitment to the Constitution. Richard M. Re, *Promising the Constitution*, 110 Nw. U. L. Rev. 299, 308, 313 (2016). App 114. Breaking this commitment would require the individual's motivation and action, not the employer's. Proscriptions for official

behavior, Petitioner argues, are relevant to the scope of employment inquiry in context of sovereign immunity.

Moreover, according to 3 Am. Jur. 2d *Agency* § 18, “When the facts pertaining to the existence of an agency are conflicting, or conflicting inferences may be drawn from the evidence, the question is one of fact for the jury. . . .” At the very least, this inquiry should constitute a question of material fact that would preclude summary judgment. It would therefore be reasonable, under a summary judgment standard, for a jury to conclude that Barton was not acting within the scope of his employment, as defined by the employer via a code of conduct or promissory duty via an oath of office.

An official-capacity suit would require a plaintiff to, “come forward with facts sufficient to establish that the [opposition’s] ‘policy, custom, or practice’ played a part in the alleged constitutional violations.” *Thomas v. Bd. of Educ.*, 759 F. Supp. 2d 447, 489, 2010 U.S. Dist. LEXIS 142222. Although the current case, at this point, does not have a specific claim titled under 42 U.S.C. § 1983, the claims constitute constitutional violations under color of state law, under 14 Del. C. § 1218. App. 89. The General Assembly enacted the *State Employees’, Officers’, and Officials’ Code of Conduct* to codify its policies and acceptable practices, which Barton violated.

The Court did not adequately assess the merits of Petitioner’s arguments that the DDOE official could

be acting in his individual-capacity. Petitioner is asking for review of the individual-capacity and official-capacity distinction as applied in this case regarding Barton's scope of employment to find there are indeed plausible alternatives to hold that Barton's actions were taken in an individual capacity. Clarifying this aspect of the law will aid all employers and employees in understanding their duties to establish accountability and possibly prevent instances of official misconduct.

Moreover, due to the subjective nature of the criteria for determining scope of employment, Petitioner argues there is an inherent risk of deprivation of litigants' due process rights because it would simply be easier to agree with the party asserting immunity; the nuances of scope of employment demand an in-depth inquiry, and a politically powerful entity with apparent authority is likely to garner a less controversial decision. However, judicial discretion is not doing justice if it rules for the easier, less controversial argument rather than giving fair consideration for a more difficult, but logical, alternative. To preclude recovery based on a vague set of criteria allows the state to use the law as a scapegoat and violates Petitioner's right to due process through Petitioner's inability to be compensated for a damaged reputation and career at the hands of Barton and the unbridled power of the State.

III. A U.S. Supreme Court review will instill judicial accountability for cases where there are various irregularities in proceedings affecting the substantive outcome of the case of a *pro se* litigant, particularly where there are demonstrated conflicts of interest and fraud on the court.

Like those represented by attorneys, *pro se* litigants need to enter the Court knowing they will get procedurally and substantively fair assessment of their claims. Litigants appearing *pro se*, most having little knowledge or experience with the law, are vulnerable to receiving unfair treatment by judges and the opposition since they are not trained to identify when appropriate procedure has gone awry. Not having the knowledge of when to object makes it unlikely these arguments will be preserved for appeal. Given the pattern of irregularities and errors in this case's proceedings in the Court of First Instance and Delaware Supreme Court, it is not evident in light of the record that Petitioner was afforded protection in the Delaware courts.

Perhaps the most substantive violation was the Court of First Instance's denial of Petitioner's Motion for Leave to Amend his Complaint. This motion was submitted after the Delaware Supreme Court's initial remand for the surviving claims and defendants and after discovery had formally closed. The motion was denied because the Judge of the Court of First Instance thought the claims should have been brought sooner, and found that the § 1983 claim did not relate back to

the original complaint resulting in its denial for statute of limitations. However, the new claims were submitted in light of evidence obtained through discovery, and Petitioner identified specific documents substantiating new claims which would have failed had they been submitted sooner.⁶ Additionally, the § 1983 claim is included significantly in the initial Complaint and other initial Court proceedings without being specifically mentioned in narrative form other than a footnote since the *pro se* plaintiff was not versed in the law to give this claim its rightful place in his early Court documents.

Since Petitioner, *pro se*, was unfamiliar with the appropriate procedure after remand, he did not pursue the Respondent-State Defendants' lack of submission of an Answer, assuming the Judge in the Court of First Instance and State Defendants' counsel, a Deputy Attorney General, knew the procedure better than he. State Defendants filed their Answer with an apology letter, but not until two-years later, after initial briefs for State Defendants' motion for summary judgment had been filed and after close of discovery. “[F]ailure to follow Court rules and procedure by an attorney, this Court finds disdain for the Court and the judicial process.” *Brody v. Eric Granitur & Settlement Funding*, 2011 Mich. Cir. LEXIS 1087 at *13 (Mich. Cir. Ct. March 11, 2011).

⁶ One document obtained through discovery is the Respondent DDOE official's authenticated hand-written notes stating he was aware that former defendants had the results of the State Police Crime Report.

The Answer was accepted by the court despite the fact it, too, should have been brought sooner, especially since counsel, as a Deputy Attorney General, knows civil procedure. “Defendant Granitur is an attorney. An attorney unlike a lay person is knowledgeable of civil procedure.” *Id.* at *16. Since the law assumes counsel is aware of civil procedure, it is not irrational that Petitioner, too, also assumed procedure was being followed appropriately regarding Respondents’ Answer. Consequently, the Delaware Superior Court Civil Rules did not contemplate the many scenarios of irregularities in proceedings, and Petitioner was unable to identify the defect before the Answer’s submission.

The delayed Answer relates directly to the denial of Petitioner’s amended complaint since in Delaware, Superior Court precedent states a Motion to Dismiss is not a responsive pleading for purposes of amendments. *Stoppel v. Henry*, 2011 Del. Super. LEXIS 1 at *7. In addition, the Del. Super. Ct. R. Civ. P. 15(a) supports the precedent in *Stoppel*. App. 105. Petitioner contested the denied amendment in an Interlocutory appeal which was denied by the Delaware Supreme Court. Petitioner included this argument, without directly stating the title of the rule, in his Motion to Strike and Motion for Default Judgment. The Third Circuit Court of Appeals’ decision in *Dluhos v. Strasberg*, 321 F.3d 365, 369, 2003 U.S. App. LEXIS 3014, stated, “because Dluhos has filed his complaint *pro se*, we must liberally construe his pleadings, and we will apply the applicable law, irrespective of whether the *pro se* litigant has mentioned it by name” (citing

Higgins v. Beyer, 293 F.3d 683, 688 (3d Cir. 2002), 2002 U.S. App. LEXIS 11274). Therefore, a *pro se* plaintiff's argument should not be dismissed for omitting the name of a rule if the substantive content is adequate.

Another irregularity proposed for this Court to review are Petitioner's claims of fraud on the court regarding the Defamation claim, in which Respondents misrepresented the material meaning of testimony to use against Petitioner. The testimony misrepresents Petitioner in the eyes of the Court since the testimony, taken out of context, accuses Petitioner of attempting to view and viewing child pornography, contrary to the official State Police crime report, apparently in an attempt to argue a substantial truth defense. App. 108. When the opposing attorney obtained the initial Complaint with an appendix of the State Police crime report stating there was no illegal activity, all fraudulent and defamatory statements against Petitioner should have ceased. This issue of Respondents' testimony of misrepresenting Petitioner in the eyes of the Court was raised in the lower court and on appeal but not addressed. "Case law provides that 'a finding of fraud on the court must be supported by clear, unequivocal, and convincing evidence'" (citing *Smith v. Williams*, 2007 Del. Super. LEXIS 394 (Del. Super. July 27, 2007)). *Johnson v. Preferred Prof'l Ins. Co.*, 91 A.3d 994, 1014, 2014 Del. Super. LEXIS 56. Petitioner asks this Court to assess the relief Petitioner is due from the unregulated, egregious conduct of the State. At the very least, the Courts or counsel could have

acknowledged the misrepresentation on record to pre-serv e Petitioner's reputation.

The Delaware Supreme Court Justice that had disqualified himself from the Motion to Dismiss appeal proceeding curiously did not recuse himself from the Interlocutory appeal decision, despite having a past work relationship with Respondent, the DDOE official. Petitioner attempted to strike the answer and move for default judgment due to prejudice and undue delay. Superior Court denied these two motions while contemporaneously granting State Defendants' Motion for Summary Judgment, not allowing Petitioner an opportunity to file a second Interlocutory appeal since summary judgment was a dispositive motion.

Despite the rulings in the Court of First Instance and Delaware Supreme Court, which hold that the two-year late Answer did not prejudice Petitioner's case, Petitioner asserts the delay prevented him from fair access to information that would have been useful to formulating questions during the Discovery process. Petitioner cited specific documents that fleshed out claims that could not have been brought sooner. Petitioner also argues the Court was more liberal with State Defendants' undue delay than with Petitioner's proposed Amendment, demonstrating unequal protection of the laws under U.S. Const. amend. XIV. This double standard happened despite this Honorable Court's holding that amendments should be liberally granted. *Tri-Supply & Equip., Inc. v. Southside Utils.*, 2009 Del. Super. LEXIS 328, n.4.

Instead, the Court of First Instance granted summary judgment while the Motion to Compel from the Delaware ICO was still pending.⁷ The Court argued that Petitioner's failure to mention the outstanding Motion to Compel at oral arguments regarding depositions yet to be completed waived Petitioner's motion. However, Petitioner, *pro se*, was only abiding the Court's Scheduling Order, which specifically addressed scheduling depositions. Petitioner's Motion to Compel the ICO was not on scheduling order. Further, Petitioner reminded the Judge about the pending motion in a separate mailing to the Court. Petitioner's conduct regarding the Motion to Compel was within the Court's rules, yet he was deprived of the information he would have needed to argue the sovereign immunity defense. Clearly, the Court of First Instance was acting to preserve State interests over the interests of the individual. Petitioner argues this pattern of decisions by the Court of First Instance amounts to a display of judicial bias.

These irregularities in proceedings occurred in a context where there was already a conflict of interest, and Petitioner argues judicial bias contributed to Judges' discretion favoring the State Defendants in the lower courts. After the submission of the Complaint, Petitioner received notice that two Judges from the Court of First Instance had recused themselves. A

⁷ *Galland v. Meridia Health Sys.*, 2004-Ohio-1416, 2004 Ohio App. LEXIS 1295. (Court abused its discretion when it ruled on summary judgment since the court never ruled on a pending motion to compel discovery).

third judge's request to Chief Justice revealed one of the defendants in the case is the spouse of the Superior Court President Judge. Delaware's Chief Justice appointed a Judge from Family Court to preside over the case. On Petitioner's first appeal to the Delaware Supreme Court, one Justice disqualified himself from proceedings, but the same Justice did not remove himself from participating in the Interlocutory appeal regarding denied amended complaint. On the Delaware Supreme Court appeal after summary judgment was granted for Respondents in the Court of First Instance, the Justice who disqualified himself from the initial appeal disqualified himself once again. In other words, this Justice disqualified himself from only two of the three proceedings, all of which decided the fate of the DDOE official, with whom the Justice had a past working relationship over a period of years. It is unclear why the Justice participated in the Interlocutory appeal denial. This fact suggests impropriety in favor of the State at the expense of Petitioner's right to an unbiased decision maker.

As a result, Petitioner is unable to have his case tried on its merits. This Honorable Court should choose this case to function as a "court of last resort" in a decision that will clarify how *pro se* litigants, opposing counsel, and judges can best apply the law in a consistent and fair manner, regardless of litigant's status.

IV. The injury to Petitioner's reputation and future job prospects are not disputed, nor is the misinformation imputing Petitioner of a crime disputed, simplifying the Court's analysis.

The facts surrounding the nature and extent of Petitioner's injuries are well-documented, and Respondents admit the alleged defamatory information is indeed false. The clarity of these aspects of the case will allow the Court to focus on the procedural irregularities and errors that have deprived Petitioner of his inalienable right to due process and have inappropriately shielded Respondents from liability.

V. Failure to follow precedent and court rules and instead ruling in favor of the State will raise public suspicion and jeopardize the public's confidence in the legal system.

Legal analysis of the Delaware judicial system disregarding precedent and their own court rules is documented in section III of Reasons for Granting the Petition. In summary, the Delaware Courts disregarded their own precedent held in *Stoppel v. Henry*, 2011 Del. Super. LEXIS 1 regarding Respondents' Motion to Dismiss not being a responsive pleading.

In addition, the Court of First Instance disregarded their rule found in Del. Super. Ct. R. Civ. P. Rule 15(a) by prohibiting Plaintiff's attempt to amend his Complaint. App. 105.

The Court of First Instance and the Delaware Supreme Court disregarded Delaware judicial precedent in *State ex rel. Mitchell v. Wolcott*, 46 Del. 362, 368, 83 A.2d 759, 1951 Del. LEXIS 34, also found in the Del. Super. Ct. R. Civ. P. Rule 56(c) when the Court granted and affirmed, respectively, the Defendants'-Appellees' motion for summary judgment. Rule 56(c) states,

[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

There remain genuine issues of material facts including, but not limited to, Respondents acting in bad faith, with malice, and intent to harm either in his individual-capacity or official-capacity or both. These genuine issues are factual questions for a jury to decide. Failure to follow their own State's precedent and court rules and instead rule in favor of the State when a *pro se* litigant has genuine issues of material facts in dispute will raise the public's suspicion and jeopardize the public's confidence in the legal system.

VI. *Pro se* litigants, the courts, and counsel nationwide would benefit from guidelines to better inform their conduct in *pro se* cases.

Petitioner made good faith attempts to follow appropriate court procedures and submit coherent legal

arguments *pro se*, yet has been rebuffed by the opposition as frivolous. Every individual deserves to know that their rights matter.

In the *State Defendants' Memorandum of Law in Opposition to Plaintiff's Motion to Amend the Complaint*, State Defendants complained they would be prejudiced by an amendment since they “were already forced to defend this case which deals with allegations, some of which date back to 2009.” ¶ 3. It is clear through opposing counsel’s conduct in discovery and in briefs that to Respondents, Petitioner is simply a bother that is not worth their time. In reality, this case exemplifies a layperson willing and interested in learning the legal procedure so he can avoid mistakes, and a person courageous enough to take on the State agency to protect his rights and liberties, despite attorneys’ unwillingness to represent him. Though it is true that *pro se* litigants pose a challenge to the judicial system and its resources, this fact cannot deprive an individual of his rights under the United States Constitution.

Through this case, the United States Supreme Court can take affirmative action to change the face of *pro se* litigation and influence how the bench and bar react to unrepresented litigants and their court submissions. This case offers a unique opportunity to dissect a pattern of irregularities and the consequences they had on the ability for the *pro se* litigant’s case to be decided on its merits.

This issue has been ripe for review for decades as evidenced by dozens of scholarly and law journal articles.

CONCLUSION

In the interest of justice and to preserve the fundamental and inalienable rights of the individual, this Honorable Court should grant a Writ of Certiorari.

Respectfully submitted,

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