

No. 19-1122

IN THE

Supreme Court of the United States

HONG TANG

Petitioner

V.

THE UNIVERSITY OF BALTIMORE, et al.

Respondents

On Petition For Writ of Certiorari

To The United States Court Of Appeals For The

Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

HONG TANG

Pro se Petitioner

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QUESTION PRESENTED

1. Whether the lower courts should have liberally construed the *pro se* litigant's claims against the state officials' offices (the University of Baltimore) as claims against all six state officials (current and former university officials) in their official capacities. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam); *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Gramegna v. Johnson*, 846 F.2d 675, 677-78 (11th Cir. 1988); *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995); *Ghana v. Holland*, 226 F.3d 175,180 (3d Cir. 2000); *Ex parte Young*, 209 U.S. 123 (1908).

2. Whether the lower courts should have liberally construed the *pro se* litigant's claims for relief against the state officials in their official capacities as prospective declaratory or injunctive relief similar to an expungement *inter alia*, which was properly clarified in the *pro se* litigant's "Response (Memorandum In Opposition) to Defendants' Motion to Dismiss" filed on November 13, 2018. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam); *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Gramegna v. Johnson*, 846 F.2d 675, 677-78 (11th Cir. 1988); *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995); *Ghana v. Holland*, 226 F.3d 175,180 (3d Cir. 2000); *Ex parte Young*, 209 U.S. 123 (1908).

3. Whether the service should have been deemed proper and sufficient, pursuant to Fed. R. Civ. P. 4(j)(2)(B) and Fed. R. Civ. P. 5(b)(2)(E), when respondents' counsel did not challenge the validity of the service of the summons and the original complaint and in fact had already received a copy of the first amended complaint through the court's electronic-filing system.

4. Whether the *Ex parte Young* exception to Eleventh Amendment sovereign immunity should also be applicable to claims against the state officials' offices - in this case, the University of Baltimore, for prospective declaratory or injunctive relief. *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989)

**PARTIES TO THE PROCEEDING AND
RELATED CASE**

The *Pro se* Petitioner to the proceeding is Hong Tang.

The Respondents to the proceeding are the University of Baltimore, Kurt L. Schmoke, Darlene Brannigan Smith, Joseph S. Wood, Kathleen Anderson, Christy Lee Koontz, and Patria de Lancer Julnes.

Related Case: *Hong Tang v. Kurt L. Schmoke*, et al.,
Civil Action No. SAG-19-2965 (United States District
Court for the District of Maryland)

PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

This suit was brought by *pro se* litigant Hong Tang against the University of Baltimore and six current and former university officials of the University of Baltimore, pursuant to 42 U.S.C. § 1983.

The United States Court of Appeals for the Fourth Circuit affirmed the district court's dismissal order but modified the order to show that the dismissal was solely based on jurisdictional grounds and is without prejudice on August 7, 2019.

The court of appeals denied petitioner's petition for rehearing and rehearing en banc on September 24,

2019 and denied petitioner's motion to stay the mandate pending a petition for certiorari on October 1, 2019.

ISSUES AND REASONS

This suit was brought by a *pro se* litigant. The lower courts are required to liberally construe a *pro se* litigant's filing. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 197, 167 L.Ed.2d 1081 (2007) (per curiam); *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Gramegna v. Johnson*, 846 F.2d 675, 677-78 (11th Cir. 1988); *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995); *Ghana v. Holland*, 226 F.3d

175,180 (3d Cir. 2000); *Ex parte Young*, 209 U.S. 123 (1908).

Therefore, also in the light of the public policy strongly favoring the resolution of cases on their merits, the lower courts should have liberally construed the *pro se* litigant's claims against the state officials' offices (the University of Baltimore) as claims against all six state officials (current and former university officials) in their official capacities, and/or liberally construed the *pro se* litigant's claims for relief against the state officials in their official capacities as prospective declaratory or injunctive relief similar to an expungement *inter alia*, which was properly clarified in the *pro se* litigant's "Response (Memorandum In Opposition) to Defendants' Motion to Dismiss" filed on November

13, 2018, rather than simply dismissed the whole suit solely on jurisdictional grounds.

In this case, the summons and the original complaint were properly served on the University of Baltimore on September 14, 2018, pursuant to Fed. R. Civ. P. 4(j)(2)(B); Md. Rule 2-124(k)(2); Md. Rule 2-121(a)(3). Respondents did not challenge the validity of the service of the summons and the original complaint on the University of Baltimore. Instead, respondents were challenging the service of the first amended complaint on the University of Baltimore, in the footnote of their counsel's "Notice of Appearance" paper filed on October 9, 2018. However, the service of the first amended complaint is governed by Fed. R. Civ. P. 5 rather than Fed. R. Civ. P. 4.. Rule 5(b)(1)

states "If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.". Additionally, Rule 5(b)(2)(E) authorizes "sending it to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that the person consented to in writing...".

According to the records on file, respondents' counsel apparently had already received a copy of the first amended complaint through the court's electronic-filing system.

Therefore, petitioner has met his burden of showing proper service on the University of Baltimore, as to both the summons and the first amended complaint,

pursuant to Fed. R. Civ. P. 4(j)(2)(B) and Fed. R. Civ. P. 5(b)(2)(E) respectively.

Therefore, the service should have been deemed proper and sufficient, pursuant to Fed. R. Civ. P. 4(j)(2)(B) and Fed. R. Civ. P. 5(b)(2)(E), when respondents' counsel did not challenge the validity of the service of the summons and the original complaint and in fact had already received a copy of the first amended complaint through the court's electronic-filing system.

The Supreme Court of the United States held "A suit against state officials in their official capacities is not a suit against the officials, but rather is a suit

against the officials' offices...". *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989).

From the plain language of this decision, the *Ex parte Young* exception to Eleventh Amendment sovereign immunity should also be applicable to claims against the university officials' offices - in this case, the University of Baltimore, for prospective declaratory or injunctive relief.

In this case, petitioner is seeking prospective relief similar to an expungement *inter alia*, involving university student disciplinary proceeding and its recordkeeping and record issuance, university's and its internal college's degree program admission/re-admission matters, and university students' grades/transcripts recordkeeping and

issuance. In the light that a university's organizational, governance and functional structures are much more complex and unknown to an outsider than those of a state attorney general's office, it not only causes undue difficulty to and prejudice against *pro se* petitioner but also is contrary to the intent and spirit of the Supreme Court of the United States decision *Ex parte Young*, 209 U.S. 123 (1908) to require petitioner to accurately and conclusively name/sue all the applicable and correct individual defendants (current and former university officials) or choose to name/sue only the president of the university in the complaint. The court should have allowed the *Ex parte Young* exception to Eleventh Amendment sovereign immunity to be applied to claims against the University of Baltimore in this case, by allowing petitioner to name/sue the

university as a defendant as well, for prospective declaratory or injunctive relief. *Ex parte Young*, 209 U.S. 123 (1908).


Therefore, the *Ex parte Young* exception to Eleventh Amendment sovereign immunity should also be applicable to claims against the state officials' offices - in this case, the University of Baltimore, for prospective declaratory or injunctive relief. *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dated: March 5, 2020



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APPENDIX

1. Court of Appeals Unpublished Opinion
2. Court of Appeals Order Denying Rehearing
3. District Court Order