19-7317

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FLORENCE R. PARKER CHAILLA, PETITIONER

VS.

Navient Department of Education; United States Department Of Education, Navient, (Sallie Mae); Michele Ahmad, Navient; Navient Consumer Advocate; Education Management Corporation Holdings LLC; Education Credit Management Corp. Inc.; Pam Esaw, ECMC Resolution Advocate; Melaine Engberg, Navient's Assistant Vice President Compliance Department and Student Assistance Foundation; collectively as 'the Enterprise'; AlliedInterstate; TransWorld Inc,; LLC Account Control Technologies, Inc., New York College of Health Professions, Rezen Akpnar; Steve Haffner, Pacific College of Oriental Medicine; Atlantic Institute of Oriental Medicine; Canadian College of Naturopathic Medicine; Laura Sun, Financial Aid Representative of CCNM and University Of Bridgeport College of Naturopathic Medicine; John Doe, Academic Board Director, Professor Gaulton, Dr. Zamprino, collectively as'University of Bridgeport College of Naturopathic Medicine Academic Board' and all Academic Institutions as 'AI' New England Association Of Schools and Colleges; Commission of Institutions of Higher Education; Carol Anderson personally and professionally; Barbara Brittingham, Personally and professionally; National Accrediting Agency for Clinical Laboratory Sciences; Gwen James-Oriakhi, personally and professionally, ., RESPONDENT(S).

NO. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

_____

Florence R. Parker Chailla,
PETITIONER

ON PETITION FOR WRIT OF CERTIORARI TO

United Stated 2ND Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Florence R. Parker Chailla, JD
P. O. Box 1111
Stroudsburg, PA 18360
Phone: 570 534-7082
January 9, 2020

QUESTIONS PRESENTED

First Question

Can an illegal decision be upheld that granted a nonparty' motion to dismiss after it refused to intervene in a False Claims Act lawsuit filed by a private citizen under Qui Tam legal provisions; especially since the Original Complaint et al., pled specific, affirmed and admitted evidence of frauds that took place under the Higher Education Act of 1965, et al., that defrauded both the government and relator?

Second Question

When the FCA prohibits retaliation against Relator engaged in protected activities, 31 USC [2006 E]§3730(h), and lower court issued a Standing Protective Order, is it proper for reviewing and lower courts to *disregard* the False Claims Act Anti-Retaliation law, its own Order and Relator's pleas filed requesting enforcement of the law, relief and to stop retaliation of named defendants who continued to call, collect fraudulent payments, garnish Relator' income and offset federal tax refunds?

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[X]. For cases from **federal courts**:

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

[x] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 4, 2019.

No petition for rehearing was filed in my case.

The beginning of the Ninety-day Jurisdiction days to file Certiorari within that time limit began November 4, 2019, until February 2, 2020.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Const. amend. XIV (XVI Amendment)

Section 1 of the Fourteenth Amendment to the U.S. Constitution, provides:

> 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.

U. S. Const. amend. V (V. Amendment)

> Takings Clause provides . . . .'nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

U. S. Const. amend. I (I Amendment)

> . . . to petition the Government for a redress of grievances.

42 U. S. C. A. §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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

FEDERAL STATUTES

31 U.S. Code § 3729, False Claims Act

Higher Education Act of 1965, P.L. 105-244;
Amendments to the Higher Education Act of 1965

HEROES Act

STATEMENT OF THE CASE

July 15, 2016, involving 12 federally insured student loans issued under the Higher Education Act of 1965, (HEA), a Qui Tam Relator False Claims Act lawsuit was filed under seal in the U. S. District Court for Connecticut. National Student Loan Data System, (NSLDS) reported during 2015 - 2017, principal and interest, (P&I) an estimated balance of $140,000.00 is outstanding as a federal debt. Relator' protected investigative activity discovered loans were paid by submissions of false certifications by five postsecondary schools, mismanagement by Services and lenders who failed to perform their due diligence duties under the HEA. All schools, Services and lenders are holders of a Program Participation Agreement, (PPA) under the HEA to participate in Title IV programs. Schools were unlawfully paid over $87,000 because they prepared, submitted and falsely certified applications to receive federal funds, used Relator's personal identifying information without her permission and based on their implied certification compliance, were paid. Relator authorized only cost of attendance: an estimated fraud of $87,000.00 was paid by the government to defraud it; Relator billed to repay over $140,000.00 with knowledge the PPA holders involved were not in compliance.

Relator discovered frauds were motivated to get paid, retain unpaid refunds and mismanaged crediting of refunds made by schools to Servicers/lender. Occasioned by three loans totaling $15,250.00 principal refunded by, - New York College of Health Professions, (NYCHP) on 2/4/2009, Loans 1 & 2; and Pacific College of Oriental Medicine, (PCOM) refunded loan #6, refunds were not credited to borrower account.

Instead the two NYCHP loans refunded February 4, 2009, were defaulted February 27, 2017, resulted into Relator mental, economic harm and injury personally.

This is an opportunity for the United States Supreme Court to stop federal HEA program corruption faced by over 44 million citizens who financed their education with student loans. Borrowers are defrauded by the Department of Education's, (DOE) failure to enforce the HEA against its noncompliant PPA holders who have knowingly violated HEA laws. DOE who has surrendered in defeat to allow its PPA holders to collectively operate in an out of control manner, wholly contrary to the compliance mandated under the HEAs. DOE's failure to enforce HEA, has directly rallied around to support noncompliant and out right criminal acts of its PPAs to economic detriment of borrowers and American citizens forced to pay a ballooned false student loan debt.

U. S. Congressionally delegated authority to administer and enforce the HEA, taking *judicial notice* Secretary DeVos on December 3, 2019, in Nevada, publicly admitted resolving the [student loan] problems would not happen[1]. Today, a $1.5 trillion debt grew exponentially from alleged student loan default. In twelve (12) loans a review of massive fraudulent state of the HEA program as currently operated is clearly revealed. Relator obtained Rule 36(b) Admissions multiple fraud counts.

[1] https://alliedprogress.org/news/devos-on-student-loan-woes-i-wont-fix-it-so-you-deal-with-it/ Washington D.C. — Education Secretary Betsy DeVos made a rare public appearance in Reno, NV today, but not to apologize for her Department's recent illegal mistreatment of student borrowers. Instead, in a desperate and transparent effort to distract from her Department's failures to hold the student loan servicing industry accountable or address the $1.5 trillion student debt crisis, DeVos rolled out a shiny new object: a call on Congress to make the Office of Federal Student Aid an independent, stand-alone agency separate from the Education Department.

False Certifications that defrauded the Government is shown below:

False Certifications that Defrauded Government and Relator				
PPA Holder	Disbursed Amounts	Relator permitted	*Unpaid refunds & false certifications*	HEA loan statuses near disbursements
NYCHP compl. Pgs. 15, 28-30	$20,750.00	$2,500.00	$18,250.00	Loans 1 to 4 false certifications
PCOM compl. Pgs. 26-27 &30	$9,250.00	$2,878.00	$6,372.00	Loans 5 and 6 Unpaid refund
CCNM compl. Pgs.22-23 & 30	$20,364.95	$6,039.00	$14,325.95	Loans 7 & 8 Unpaid refund
ATOM compl. Pgs. 24-25 &30	$29,450.00	HEROES ACT waiver	$29,459.00	Loans 9 and 10 False Certification HEROES waivers
UBCNM compl Pgs. 19-21 & 30	$9,250.00	$2,935.00	$6,315.00	Loans 11 & 12 misrepresented academic program fraud
Gov't defrauded	**$89,094.95 disbursed principal only**		**$74,721.95**	
Relator defrauded			**$74,721.95 Principal only**	

Government paid $89,094.95 to PPAs between 2003 thru 2007 to the five schools for 12 loans; Relator authorized amounts to cover attendance costs. Original Complaint pages 2-35. Since 2007 the amount outstanding alleged debt of P&I as of March 2017, has grown to $145,406.00. Appendix E - NSLDS for March 2, 2017. Relator's economic personal injury is $145,406.00 as of March 2, 2017.

HEA PROGRAM INTEGRITY VIOLATED, PLED RULE 9 SPECIFICITY ESTABLISHED WRITTEN RULE 36(b) ADMISSIONS WHICH CONCLUSIVELY PROVED FRAUD OVERCOME MOTION TO DISMISS

A. Program Integrity of the HEA - Refund Fraud Violations

Program Integrity HEA 1998 Amendments to the Higher Education Act of 1965 - P.L. 105-244; Title IV—Student Assistance Part H—Program Integrity – Sec 493 -- Eligibility and Certification Procedures (c) Financial Guarantees from Owners, provides: (1) AMENDMENT- Section 498(e) is amended by adding at the end the following:

> (6) Notwithstanding any other provision of law, any individual who--
> `(A) the Secretary determines, in accordance with paragraph (2), exercises substantial control over an institution participating in, or seeking to participate in, a program under this title;
> `(B) *is required to pay, on behalf of a student or borrower, a refund of unearned institutional charges to a lender, or to the Secretary*; and
> `(C) willfully fails to pay such refund or willfully attempts in any manner to evade payment of such refund, shall, in addition to other penalties provided by law, be liable to the Secretary for the amount of the refund not paid, to the same extent with respect to such refund that such an individual would be liable as a responsible person for a penalty under section 6672(a) of Internal Revenue Code of 1986 with respect to the nonpayment of taxes.'.

Rule 9(b) pled with specificity for frauds in Original Complaint pages 28 - 29, Exhibit 5, pgs 1 thru 3; 4/13/16 letter from Navient. It made Rule 36(b) Admissions[2] against its own penal, proprietary and pecuniary interests.

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[2] Rule 36(b) Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended.

RULE 36(b) CONCLUSIVELY ADMITTED FRAUDS

1. Navient Admitted[3] to Loans #1 for $4,250.00 and #2 for $6,000.00 had been refunded by NYCHP on February 4, 2009, a total of $10,250.00. Conclusively established on April 13, 2016, two frauds occurred. Seven years later, after its letter, on February 27, 2017, the two refunded loans were defaulted. Appendix E - See Loans #1 and #2. As of 2017, the two refunded loans balances increased to $13,678.00. Two additional frauds occurred when refunded loans were defaulted. As of 2017 until today 1/2020, neither of the two loans were credited to Relator' account. Instead, both loans remain recorded as a past due defaulted debt to repay. Making a total of six counts of fraud. No court or motion permits the admission to be withdrawn. Original Complaint, pgs. 34 , Exhibit 5 - Navient's 4/13/16 letter.

2. ***Pacific College of Oriental Medicine, (PCOM)*** Financial Aid Director admitted August 11, 2007, she by check the refunded Loan # 6 for $5,000.00 to "Sallie Mae." Original Complaint pages 26 - 27; Exhibit 1, pg., 7 - tuition; Exh. 13- Financial Aid Director email admitted refund of loan #6. Exh. 10 - ECMC demanded repayment. Appendix C Supplemental Complaint, Exhibit H, pg. 120 Loan 05 and 06. Loan #6 as of March 2, 2017, increased in principal from $5,000.00 to a P&I debt of $9,075.00. PCOM either did not refund Loan #6 or

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[3] Id.

Navient did not credit the account with the refunded amount as in the NYCHP case. Appendix E, see Loan #6 PCOM. Twelve years later, the same debt increased, coded as "RP" meaning in repayment, which is wrong. Two counts of fraud is conclusively established. **New Evidence** alleges Navient received refund, it did not credit borrower' account with the refund of Loan #6 from PCOM. Appendix G - New Evidence PCOM

3. ***Canadian College of Naturopathic Medicine, (CCNM)*** *attended* January 6, till May 20, 2005, for the Winter and only semester attended. Tuition paid was $7891- CND -$6,039 - USD. CCNM certified two loans, #9 for $8,500.00 and #10 for $9,078; totaling $17,578. At the currency exchange rate of $1.25 to $1.00 Canadian, CCNM received $21,972.50, deduct cost of attendance $6.039 ($7,891x 1.25) equals $15,933.50 CCNM should have refunded to the Department of Education within 90-days of 5/20/2007. Compl. Pgs, 22 Exhibit 1, pg 10 June 1, 2016, email of Laura Sun cost of tuition, Exh. 8, pgs 1 thru 6 and Appendix E Loans 9 and 10. CCNM untimely unpaid refunds for Loans 9 and 10 as of March 2, 2017, increased to $10,192 for Loan #9 and to $13,439 for Loan #10 a total of $23,631.00. Fifteen-years delay conclusively found three frauds.

New Evidence, despite 1.2% increase in Loan 9 and 1.5% for Loan 10 debts, CCNM's CEO & President has refused to investigate its audit records. It alleged it retains

records for five years contrary to HEA records requirements. Appendix G - New Evidence - CCNM.

4. ***Atlantic Institute of Oriental Medicine (ATOM)*** was attended for three semesters 5/2005 - 4/2006. October 24, 2005, Presidentially Declared National Disaster category V hurricanes Wilma in South Florida interrupted attendance. Public Law - Federal Student Financial Aid Program Requirements §202(a) of the Higher Education Hurricane Relief Act of 2005 - extended to academic years 2006 - 2007, provided:

> "Return of Title IV Funds - As announced in "Hurricane Katrina Information - Electronic Announcement #12 and "Hurricane Rita Information -Electronic Announcement #9 (February 23, 2006), the Secretary has determined that hurricane-impacted institutions that are in possession of Title IV, HEA program funds that were awarded to students enrolled for an academic period that was disrupted will not be required to return those funds. Institutions with for students who withdrew, or never began attendance for Fall 2005 payment period or period of enrollment and ***who did not return to the institution are not required to return funds***."

New Evidence - ATOM updated provisions reported in Federal Register Doc 2012-23831 Filed 9-26-12: 8:45 a.m. 34 CFR Parts 668, 674, 682, and 685 Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and the Federal Direct Loan Program) **AGENCY:** Office of Postsecondary Education, Department of Education - **ACTION:** Updated waivers and modifications of statutory and regulatory provisions under the Higher Education Relief Opportunities for Students Act of 2003 (HEROES

Act). On December 26, 2007, the Secretary published a notice in the **Federal Register** (72 FR 72947) extending the waivers and modifications published on December 12, 2003, to September 30, 2012. The Secretary is issuing these waivers and modifications under the authority of the HEROES Act, 20 U.S.C. §1098bb(a). In accordance with the HEROES Act, the Secretary is providing the waivers and modifications of statutory and regulatory provisions applicable to the student financial assistance programs under title IV of the HEA that the Secretary believes are appropriate to ensure that, in pertinent part:

> "• Affected individuals are not required to return or repay an overpayment of grant funds based on the HEA's Return of title IV Funds provision;"

Published in the Federal Register on December 12, 2003, (68 FR 69312), the Secretary exercised the authority under the HEROES Act (Pub. L. 108–76, 20 U.S.C. §1098bb(b)) and announced waivers and modifications of statutory and regulatory provisions designed to assist "affected individuals." Under 20 U.S.C. §1098ee(2), the term "affected individual" means an individual who:

> "• Resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; "

Relator resided in Fort Lauderdale Florida when hurricane Wilma arrived. It interrupted attendance, caused lack of affordable housing in Florida and prevented return. Exhibit 11, pgs. 6 thru 11 - FEMA 4/21/06 damage and loss report.

ATOM received two loans #7 and #8 disbursements of $10,543.00 and $18,500.00 for a total of $29,043.00. HEA relaxed the administrative requirements temporarily, however ATOM was required to return unpaid refunds under the HEROES Act. Further it was required to record in Relator academic Title IV records her interruption, notify lender, servicer and the DOE/Florida Department of Education. Alternatively, Servicer-Navient and Florida Department of Ed are required to be abreast of Secretary' regulations and rules. Loans 7 & 8 should have been waived during 2007 according to the HEROES Act.

Failure on the part of ATOM, Florida Department of Education and Navient to update the NSLDS report for Loans # 7 and 8 since September 2007 academic year was inconsistent and non compliant with the Higher Education Hurricane Relief Act of 2005; extended to years 2006-2007 and the HEROES ACT, Pub. L. 108-76, 20 U.S.C. 1098bb(b). **New Evidence**, Florida Department of Education demands repayment contrary to the Secretary HEA and HEROES Act Return of Title IV is not required. Appendix G - New Evidence - ATOM.

UNPAID REFUND AND BREACH OF CONTRACT

5. **University of Bridgeport College of Naturopathic Medicine, (UBCNM)** received two loans # 11 for $4,250.00 and #12 for $5,000.00 for a total of $9,250.00 to cover the cost of attending for two semesters, Fall and Spring 2003 - 2004, for a total of $2,945. Original Complaint 19 - 21, and 43 thru 55; Exhibit 6,

pages 8 thru 14 Withdrawn Spr. 2004, UBCNM was required within 90-days return the unpaid refund to the U. S. Department of Education or the lender $6,035.00. March 2, 2017, UBCNM's untimely unpaid refund the debt grew to $29,394.00. Appendix E, Loans 11 and 12.

UBCNM's 2002 - 2004 Catalogue made material misrepresentations about its program, rigors of its delivery and its facilities. UBCNM charged 58-students, including Relator for graduate laboratory equipment and facilities it did not have. It charged for nine (9) credits of laboratory facilities. Reported to UBCNM'S accreditor, New England Accreditation Schools & Colleges, requested it to investigate; it classified issue as an 'isolated individual grievance' and did not investigate as its accred. See Original Complaint pgs. 19 thru 21 , Exhibit 6. Its admissions personnel and 2002-2004 catalogue alleged it was accredited by National Accreditation Association of Clinical Laboratories, NAACL; however, NAACL stated it did not credit any UBCNM laboratory facilities. Cheating academic integrity occurred while Relator attended in its graduate Embryology course work. Cheating is a program integrity violations and breach of contract, actions were corroborated by Professor Christopher Bennett, Embryology Professor Compl. Pgs. 47 thru 50; Exhibit 6.

To survive a motion to dismiss, relators alleging a claim under FCA must identify specific false claims for payment or specific false statements made in order to obtain payment 31 U.S.C.A.§3729(a)(1). Relator has identified 12 specific claims for payment, of those claims eight payments were false, i.e., NYCHP - 2 loans, PCOM - 1 loan, ATOM - 2 loans, CCNM - 1 loan and UBCNM - 2 loans. Among those paid claims, all schools defrauded the government in the estimated amount of $64,885.00 that has been unlawfully retained for over 12-years. As of March 2, 2017, relator has suffered mental, economic and emotional personal injuries due to the false unlawful estimated $145,406.00 inflated student loan debt as a result of the multiple count frauds discovered.

Relator pled an underlying fraudulent scheme with sufficient particularity, as required to support a claim under FCA; relators plausibly alleged that schools, Services and lender engaged in frauds of the 31 U.S.C.A.§ 3729(a)(1); Fed. Rules Civ. Proc.Rule 9(b); HEA P.L. 105-244; Title IV—Student Assistance Part H—Program Integrity – Sec 493.

Reviewing and district courts engaged in illegal decision making on April 26, 2017, after DOJ declined to intervene. It was no longer a party with rights or authority to Motion those courts to Dismiss. Therefore, the decisions of both courts are illegal, particularly where multiple fraud allegations were conclusively established under Rule 36(b) through written Admissions. It is requested as a

matter of law that this Petition be granted, the reviewing court' decisions be vacated and reversed.

IMPLIED CERTIFICATION

Implied certification claims of legal falsity can rest on one of two theories — express false certification and implied false certification. An express false certification theory applies when a government payee falsely certifies compliance with a particular statute, regulation or contractual term, where compliance is a prerequisite to payment. An implied false certification claim can occur where the claimant fails to disclose that it violated regulations that affect its eligibility for payment.

> "The implied certification theory can be a basis for liability, at least where two conditions are satisfied: first, the claim does not merely request payment, but also makes specific representations about the goods or services provided; and second, the defendant's failure to disclose noncompliance with material statutory, regulatory, or contractual requirements makes those representations misleading half-truths." Universal Health Services v. United States ex rel. Escobar, 136 S.Ct. 1989, 2001 (2016).

Schools, Navient as Servicer and ECMC as lender alleged they have complied with their PPAs under the HEA. Evidence and facts support each has violated their PPAs: (1) ECMC was requested to validate the alleged student loan debt. Compl. pages 64 - 71; Exhibit 5, pgs. 40 - 41. It chose not to validate the debt or perform its due diligence PPA duties as a lender. It instead has garnished Relator's earned income, simultaneously Social Security Retirement income [Exhibit 3, pg 4 thru **New**

Evidence - SSA - 1- January 2020; and offset federal tax refund [New Evidence - IRS - Offset -2, ECMC took $685.00 tax refund. ECMC garnishment is in excess of 15%, 20 U. S. Code §1095a[4]. It was issued without notice 30-days prior, a hearing and with contempt of a Court issued Standing Protective Order, ECMCs Compliance Management stated, "*the Order does not apply to the debt with ECMC.*" Supplemental Compl., pgs. 31, Exhibit H - pg. 120. (2) Beginning May 2015 till January 2020, it collected over $9,882.80 for PCOM loans 5 and 6 as sated in its October 17, 2016, letter. Exhibit H, page 120. ECMC garnished from 2017 - 2018 earned income and SSA for $331.62/month. HEA law allowed .15%, or $302.55; however, it garnished incomes for 16.5% or $331.62 an overage of $29.00 more than the law allowed. (3) Schools have retained over an estimated $64,000.00 in unpaid refunds for over a 90-day period after the withdrawal of Relator. Schools, Servicer and lender has engaged in obstruction of justice[5] - 20 U. S. Code § 1097 (d) as all unpaid refunds trained are now more than 12-years old.

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[4] 20 U.S. Code § 1095a **(1)** the amount deducted for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;

[5] 20 U.S. Code § 1097.Criminal penalties - **(d)Obstruction of justice** — Any person who knowingly and willfully destroys or conceals any record relating to the provision of assistance under this subchapter or attempts to so destroy or conceal with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part, shall upon conviction thereof, be fined not more than $20,000 or imprisoned not more than 5 years, or both.

U. S. Department of Justice, (DOJ) has authority to litigate against defrauders to recover money the government paid to those who with knowledge submitted false certifications to receive payment by others. Equally, Qui Tam private citizens, also defrauded and suffered personal injuries can conduct actions.

U. S. Congress intended to ferret out frauds against the government; when the DOJ choses not to intervene, Congress provided DOJ with an option to assign counsel rather than dismiss a FCA Qui Tam suit; alternatively, the Relator could conduct the action without the DOJ. 31 U.S.Code 3729(b) and (c). Similarly, the District court also has options to assign counsel. Both chose to dismiss. Rather than assign counsel, recover the over $80,000.00 to $145,406.00 frauds trebled; it - U. S. Assistant Attorney General for Connecticut and granted by reviewing court raised U. S. Ex. rel. Mergent Services v. Flaherty demanded a Relator be a licensed counsel to assert a FCA qui tam suit. In contradiction to Constitutional Rights, the FCA, Qui Tam provisions 31 U.S.C.A. §3729(b) and (c) to being suits, grievances for redress into the court. Preemption of federal law foreshadows ***New York State caselaw.*** Intent on undermining Relator's 14th amendment rights to,

> "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."

NYS caselaw fails to overcome Constitutional rights and federal laws.

QUI TAM CLAIMS WITH RULE 36(B) ADMISSIONS OF FRAUDS OVERCOMES DISMISSALS AND FEDERAL LAWS OVER STATES

Procedurally, FCA requires that the Attorney General document a good cause reason to dismiss a lawsuit; it also requires that the court do the same. Neither the Attorney General documented a good cause, 31 U.S.C. § 3730(c)(2)(A) without an investigation or identified that there was a conflict with what it was investigating, that the Original documented evidence was not personal knowledge of fraud or had been introduced at an earlier time or that Relator was engaged in activities that brought about the matter to the courts fraudulently. The District Court denied Relators request for assignment of counsel. Attorney General gave no consent or good cause reason nor did the court unless the sole reason for dismiss was not to follow FCA procedures.

Constitutional rights in the Bill of Rights and the XIV Amendment and Preemption with federal laws takes precedent over all state and federal law that are contrary to those that already occupy the field. FCA preempts NYS case law. The Constitution preempts both federal and state laws. U. S. Ex rel. Mergents Services v. Flaherty is preempted by the FCA and Relator's Constitutional rights. Motions to dismiss are overcome when plausible facts, evidence especially such exists when Rule 36(b) Admissions of fraud are made to conclusively prove their occurrences.

REASONS FOR GRANTING THE PETITION

REFUSAL TO INTERVENE, STRIPPED DOJ OF PARTY STATUS, A NONPARTY CANNOT FILE *MOTION TO DISMISS*; IT TOO IS OVERCOME BY FRAUDS, DECISIONS THEREAFTER ARE ILLEGAL

Rule 4(a)(1)(B) allows 60-days *for a party* to file motions.[6] April 26, 2017, U. S. Assistant Attorney General for Connecticut (USAG-Connecticut) refused to intervene; [Appendix D] on that date it became a nonparty. Motion to Dismiss filed by USAG-Connecticut in District and Appellate courts was by a nonparty without authority to apply for any legal relief in a False Claims Act Qui Tam civil suit. Both the District and Appellate courts lacked jurisdiction to take, hear and decide USAG-Connecticut's April 26, 2017, motion to dismiss when Rule 36(b) admissions of frauds occurred, infra, pages. 5 thru 8. It was illegal for the reviewing court to take, decide and Order an improper dismissal of a Qui Tam claim under 31 U. S. Code §3729(b) and (c) both allow Relator to conduct action.

Indeed, intervention is the requisite method for a nonparty to become a party. See Marino v. Ortiz, 484 U. S. 301, 304. To hold otherwise would render the FCA's intervention provisions superfluous, contradicting the requirement that

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[6] Rule 4. Appeal as of Right—When Taken —(a) Appeal in a Civil Case. (1) Time for Filing a Notice of Appeal. (A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from. (B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is: (i) the United States; (ii) a United States agency;(iii) a United States officer or employee sued in an official capacity; or(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

statutes be construed in a manner that gives effect to all their provisions, see, e.g., Cooper Industries, Inc. v. Aviall Services, Inc., 543 U. S. 157, 166. The FCA expressly gave the United States discretion to intervene in FCA actions, and the Court cannot disregard that congressional assignment of discretion by designating the United States a "party" even after it has declined to assume the rights and burdens attendant to full party status.

This S. Ct. Opined in U.S. ex rel. Eisentein what it takes to make a party a nonparty:

> *First*, neither the United States' "real party in interest" status, see Fed. Rule Civ. Proc. 17(a), nor the requirement that an FCA action be "brought in the name of the Government," 31 U. S. C. §3730(b)(1), converts the United States into a "party" where, as here, it has declined to bring the action or intervene. *Second*, the Government's right to receive pleadings and deposition transcripts when it declines to intervene, see §3730(c)(3), does not support, but weighs against, *the reviewing court' illegal opinion*: If the United States were a party to every FCA suit, it would already be entitled to such materials under Federal Rule of Civil Procedure 5. *Third*, the fact that the United States is bound by the judgment in all FCA actions regardless of its participation in the case is not a legitimate basis for disregarding the statute's intervention scheme. Finally, given that Rule 4(a)(1)(B) hinges its 60-day time limit on the United States' "party" status, petitioner's contention that the limit's. underlying purpose would be best served by applying it in every FCA case is unavailing. U. S. Ex Rel. Eisentein v. City of New York, et al Cert No. 08-660; Argued April 21, 2009 - Decided June 8, 2009

It is inappropriate for a *non-party* who elected not to intervene to file a motion to dismiss absent party status in FCA; further to survive a motion to dismiss, Relator alleging a claim under FCA must identify specific false claims for payment or specific false statements made in order to obtain payment. 31

U.S.C.A. §3729(a)(1) U.S. ex rel. Dolan v. Manor, Inc., N.D. Ill 900 F. Supp. 2d 821. Appendix D.

Further, rights of United States citizens to present grievances to obtain relief from the courts, the U. S. Constitution Rights under 14th, 5th and 1st Amendments to exercise citizens rights of due process - procedurally and substantively- to assert personal injury disputes and for them to be heard, decided on their merits fairly by impartial judge via pleadings filed to seek relief, remedy and compensation damages in civil injuries caused by defendants in the same transactions and occurrences that caused the government to also be defrauded. U. S. Ex rel. Vaughn v. United Biologics, LLC 907 F.3d 187.

A college's entry into a program participation agreement (PPA) under Title IV of the Higher Education Act, as required to participate in financial aid programs under Title IV, is the condition of payment triggering potential FCA liability; in contrast, subsequent regulatory compliance, such as complying with accreditation regulations, is only a condition of continuing program participation and is governed by Title IV's administrative compliance regime. 20 U.S.C.A.§ 1094, 31 U.S.C.A.§3729. Further allegations that colleges and their owner made false certifications in Title IV PPA's; promising to comply with Title IV requirements, including the Incentive Compensation Ban, while knowingly violating the requirements they did not intend to comply with the HEA, were sufficient to state a claim and overcome a Motion to Dismiss from a party under FCA 20 U. S.C. A

1094; 31 U.S.C.A §3729. In a qui tam action the Relator sues on behalf of the government in addition to his or herself; if she prevails, she receives a percentage of the recovery, with the remainder to be paid to the government. As a result, the government may not both withhold its consent to settlement of qui tam action and refuse to intervene, thus forcing relator and defendants to continue litigating. U. S. Ex rel Pratt v. Alliant Techsystems, Inc., 50 F.Supp. 2d 942; 31 U.S.C.A. §3729.

New evidence obtained between December 2019 and January 7, 2020 provides Rule 36(b) Admissions by two schools, Servicer - Navient/Sallie Mae and failure of ATOM/Florida Department of Education to comply with the HEROES Act for Hurricane Disaster Relief *waivers and modifications* for borrowers affected by interrupted education due to presidentially declared national disasters as shown below and evidence provided in Appendix G:

SCHOOL OFFICIALS/SERVICERS	REFUNDS within 90-days	WHEN/WHOM
Betsy Smith, Vice President of PCOM Financial Aid- Appd. G PCOM 1/7/2020	$5,000.00	refunded 8/11/07 to Sallie Mae
John Bernhardt, President & CEO Canadian College of Naturopathic Medicine, (CCNM) - 12/27/19 Appendix G CCNM	$16,750.00	refunded to DOE/Navient
Navient 4/13/2016 admitted NYCHP Exhibit 5	$10,250.00	refunded 2/4/16

HEROES Act's waivers and	$18,500.00	repayment not
Modifications ATOMs loans	$ 10,543.00	required DOE
Appd. G - ATOM/FLDOE and Navient		
Total unpaid refund/waived	$61,043.00	

These same refunded/waived loans as of March 2, 2017, grew as P&I debts are:

SCHOOL/PPA HOLDER	MARCH 2, 2017 NSLDS report 12-years later Appendix F
PCOM	$ 9,075.00
CCNM	$10,192.00
	$13,430.00
NYCHP	$ 5,597.00
	$ 8,081.00
ATOM	$22,874.00
	$24,967.00
Total 12-year delayed debt as of 3/2/2017.	$94,216.00
Breach of contract by University of Bridgeport	$12,682.00
Skandera Trombley, Ph.D await loans 11 & 12 reply	$16,712.00
Loan Total Refunds past due unpaid	$123,510.00

Rule 9 pled frauds and Rule 36(b) Admissions overcomes motion to dismiss.

FALSE CLAIMS ACT: ANTI-RETALIATION

U. S. Ex rel. Schweizer v. OCE N. V. 677 F.2d 1228. -Anti-retaliation harassment occurred pending FCA-Qui Tam civil suit filed by Relator was awaiting a decision from the appellate court; similarly the court was motioned by Relator to;

(1) enforce Standing Protective Order; if lifted to issue another,
(2) stop the harassment, garnishment, collection communications and calls of defendants attempting to enforce collection of fraudulent student loan Title IV debts or
(3) Enforce the anti-retaliation provisions of the FCA while Relator is engaged in protected activities.

Reviewing court, in complete disregard of Motion for Relief filed and Relators 14th Amendment Equal Protection of the Laws rights, FCA Anti-Retaliation provision, she suffered retaliation while engaged in protected activities of investigating fraudulent payments, obstruction of justice despite defendants' admissions made against their own personal, pecuniary and penal interests, receipt of the the issued Standing Protective Order and the FCA prohibitions; review court's silence to the defendants was a signal to prompt continued contempt of defendants, especially Navient and ECMC. Both - Navient and ECMC - were made aware that a suit was pending by Standing Protective Order. Reviewing courts' indifference to Relator, not only allowed but tacitly support continued unlawful garnishment of Relator's income sources above15% permitted by the Department of Education under 20 U.S. Code 1095a(1) from her (i) earned income, (ii) off-set her federal tax refund and (iii) her social security income that exceed $10,900.00 and which continues till today, illegally. Appendix

Reviewing Court had knowledge that Relator was engaging in protected activity under the FCA as a Qui Tam Relator. Filed Original and Supplemental Complaints plead specific fraud that were Admitted under Rule 36(b) by the schools, Services and ECMC specifically who were all provided with the District Court's SPO to prevent retaliation while engaged in investigating the frauds that

affected the government and Relator legally with personal economic and emotional injuries.

Delayed decision of the District and 2nd Appellate Courts reduced the statute of limitations time for Relator to assert her claims. It is therefore requested that the statute of limitation be extended as this Court deems appropriate.

CONCLUSION

Petitioner prays this petition for a writ of certiorari should be granted, illegal decision of the 2nd Circuit Court of Appeals as a matter of law should be vacated and it is also requested that its decision be reversed.

Respectfully submitted,

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