No. 19-7641

original copy

IN THE

SUPREME COURT OF THE UNITED STATES

Yusong Gong
— PETITIONER
(Your Name)

vs.

The University of Michigan (Health System)& et al.
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Yusong Gong
(Your Name)

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Ann Arbor, MI 48105
(City, State, Zip Code)

(734)972-1252
(Phone Number)

QUESTIONS PRESENTED

1. Whether U. S. Supreme Court should enforce The Whistleblower Protection Enhancement Act of 2012 (WPEA) and The False Claim Act (FCA), and extend protections for public university employees who report research misconducts which fraud, wast, and abuse federal funded programs?

2. Whether U. S. Supreme Court should exclude the state immunity when a public university violated federal constitutions, laws and regulations (such as First Amendment, Title VII of the Civil Rights Act of 1964) and allow public university employees to sue their employers at federal courts for retaliations and discriminators?

3. Whether the district court and the court of appeals has any responsibility to request federal agencies to assist an investigation when concerns of government corruptions were arisen?

4. Whether the 6th court of appeals made mistakes when they determined the validation of the settlement/release agreement from a related old case 13-10469?

LIST OF PARTIES

*The petitioner is Yusong Gong, a state of Michigan resident and U. S. citizen.

*The Respondents are the University of Michigan (Health System), the Board of Regents of the University of Michigan, some officials of the University of Michigan Police Department, Timothy Lynch, Richard H Simon, and Michelle Henderson

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STATUTORY PROVISIONS INVOLVED

First Amendment
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment Section 1 &5
*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

*The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Whistleblower Protection Act of 1989, 5 U.S.C. 2302(b)(8)-(9)
"S. 20 — 101st Congress: Whistleblower Protection Act of 1989." www.GovTrack.us. 1989. January 23, 2020 <https://www.govtrack.us/congress/bills/101/s20>
The Whistleblower Protection Act of 1989, 5 U.S.C. 2302(b)(8)-(9), Pub.L. 101-12 as amended, is a United States federal law that protects federal whistleblowers who work for the government and report the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to public health and safety. A federal agency violates the Whistleblower Protection Act if agency authorities take (or threaten to take) retaliatory personnel action against any employee or applicant because of disclosure of information by that employee or applicant.(This summary is from Wikipedia).

42. U.S.C.§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. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
(R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

Title VII of the Civil Rights Act of 1964 (42 U.S.C. SEC 2000e-)

It shall be an unlawful employment practice for an employer, employment agency

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or

otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Title 42, Section 2000d-7(a)(1)(2)
(a) General provision
(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.
(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

Titles I and V of the Americans with Disabilities Act of 1990 (ADA) (42U.S.C. SEC 12101,12202,12203)

SEC. 12201(a)(b) *[Section 501]*

(a) In general. - Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws. - Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by sub-chapter I of this chapter *[title I]*, in transportation covered by sub-chapter II or III of this chapter *[title II or III]*, or in places of public accommodation covered by sub-chapter III of this chapter *[title III]*.

SEC. 12202. *[Section 502]*

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 12203. *[Section 503]*

(a) Retaliation. - No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. (b) Interference, coercion, or intimidation. - It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the

exercise or enjoyment of, any right granted or protected by this chapter. (c) Remedies and procedures. The remedies and procedures available under sections 12117, 12133, and 12188 of this title *[sections 107, 203 and 308]* shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III, respectively, of this chapter *[title I, title II and title III, respectively].*

Rehabilitation Act of 1973
42 U.S.C. SEC. 504

(a) No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency..... The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment

[42 U.S.C. § 2000e-5 note]

(b) REHABILITATION ACT OF 1973.— The amendments made by section 3 *[Lilly Ledbetter Fair Pay Act of 2009, PL 111-2, 123 Stat. 5]* shall apply to claims of discrimination in compensation brought under sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794), pursuant to—

> (1) sections 501(g) and 504(d) of such Act (29 U.S.C. 791(g), 794(d)), respectively, which adopt the standards applied under title I of the Americans with Disabilities Act of 1990 *[42 U.S.C. 12101 et seq.]* for determining whether a violation has occurred in a complaint alleging employment discrimination; and
>
> (2) paragraphs (1) and (2) of section 505(a) of such Act (29 U.S.C. 794a(a)) (as amended by subsection (c)).

REMEDIES AND ATTORNEYS' FEES SEC. 794a. *[Section 505]*

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)) (and the application of section 706(e)(3) (42 U.S.C. 2000e-5(e)(3)) to claims of discrimination in compensation), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefore or other appropriate relief in order to achieve an equitable and appropriate remedy. (2)The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e-5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Rule12(a)(1)(A)(i)
(A) A defendant must serve an answer: (i) within 21 days after being served with the summons and complaint.

Rule 45 CFR 681.10(a)(c)(d)(e)
(a) If a defendant does not file any answer within 30 days after service of the complaint, the reviewing official may refer the complaint to the ALJ.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under PFCRA.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

Rule 56 (a)
Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion

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 judgment 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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was October 17, 2019.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Novevember 06, 2019, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was Type text here. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT

I. This case presents a recurring question that has divided the courts of appeals and U. S. Supreme court: how to judge validation and enforcement of a settlement agreement under Civil Rights Act of 1964.

II. This case presents a recurring question that has divided the courts of appeals and U. S. Supreme court: how to judge the legality of a public university and it's divisions under Whistleblower Protection Act of 1989, 5 U.S.C. 2302(b)(8)-(9), The Whistleblower Protection Enhancement Act of 2012, False Claim Act, 31 U.S.C. §§ 3729 – 3733

III. This case presents a recurring question that has divided the courts of appeals and U. S. Supreme court: how to judge the legality of a public university and it's division under Title VII Civil Rights Act of 1964.

BACKGROUND

Petitioner (appellant/plaintiff) was a full-time employee at UM health system from April 2001 to April 2012. She started as a research assistant II, was promoted to research associate and research specialist II in 2004 and 2009, respectably, her annual reviews were mostly "Exceed Expectations". She had been awarded additional pay raise and bonuses for her outstanding performance in 2006, 2007, 2010 and January 2012. Plaintiff also worked at Cleveland Clinic as a senior research technologist from September 24, 2012 to March 10, 2013. Both her employments were ended by wrongful termination.

Dr. Richard Simon is a named respondent/defendant, an associate chair at the department of internal medicine. In the case for review, he is responsible for covering up scientific misconducts, disciplining and retaliating petitioner for filing complain on sexual harassment and national origin discrimination at the office of institution equality at UM. Dr. Simon is also responsible for retaliating and firing petitioner because she reported him to UM president and member of UM regents for bulling and covering up scientific misconducts.

Ms. Michelle Henderson is a named respondent/defendant, a HR director at the department of internal medicine, she carried out disciplines and retaliations which directly caused and aggregated petitioner's major depression disorder. Ms. Henderson is responsible for refusing to provide any accommodation for petitioner's disability. Ms. Henderson is also responsible for retaliating and firing petitioner because she was reported by petitioner to her boss for unprofessional in February 2012. Ms. Henderson left UM in 2015.

Mr. Timothy Lynch is a named respondent/defendant, a vice president at UM, the director of the department of general counsels. Mr. Lynch is responsible for all unlawful legal practices in his department, which include but are not limited to instruct UM lawyers to "be a little bit more creative when the party is difficult, not willing to settle the case in the way which the university wants". Mr. Lynch discriminated petitioner based on her racial and national origin. On January 14, 2016, he told her: "You don't belong here, you should seek help from your own people". He pushed her out of the building and threatened her "I will have you arrested by UM police if you keep trying to meet with leaders here". Mr. Lynch is also responsible for retaliating petitioner because she asked UM leaders to investigate scientific misconducts, filed complains to EEOC, filed lawsuits at courts. In June, 2016, Mr. Lynch ordered UM depression center to stop all treatments for petitioner "because of (her) prolonged legal issues with the University". On November 8, 2017, Mr. Lynch ordered hospital securities to arrest petitioner while she was waiting to visit a family member at UM hospital because she held a peaceful protest on campus for transparency and equal rights for affordable health care on November 7, 2017. Petitioner was locked at a psychiatric ER for 3 days, she was abused physically and mentally. She was forced to use a dirty toilet (urine on floor and seat) and was threatened to get an injection when she complained. On August 21, 2018, Mr. Lynch ordered the UM police chief to have petitioner be hosteled in a mental facility after she accused respondents' lawyer lying to the court and killing her with stress.

Some UM police department and hospital security officials (respondents refused to release their names) are unnamed respondents/defendants. They are responsible for unlawfully restrained, arrested and abused petitioner for their personal gain, such as job security and promotion. In April, 2008, UM police issued petitioner a trespassing warning tickets after she reported to an official that a faculty in the building had physically assaulted her and made false statement in a group meeting to harm her reputation. UM police rejected her appeals until later 2011 for "he is a professor, you might be hurt by him again if we allowed you being there". In later 2009, UM police placed a charge of malicious destruction of property without no evidence against petitioner after the same faculty made a false accusation of "a post was defaced". On November 8, 2017, a hospital security restrained and bruised petitioner after he received an ordered to knock her out by an injunction.

All members of the board of regents, UM president and Health System CEO are unnamed respondents/defendants. They are responsible for willful neglect of duty because they allowed misconducts at UM out of control for many years. In 2011, they did not response to petitioner's report on concerning of retaliation by Dr. Richard Simon because she refused to help him for covering up[4]

scientific misconducts. In 2015, they did not response to petitioner's request for investigation of scientific misconducts after they received evidence in documents. In 2017, they ignored petitioner[5] again after she reported to them that she was retaliated by UM legal department, she was barred from receiving health care, she was poisoned by a prescription drug for illness she never had.

According to 42. U.S.C.§1983, all individuals listed above as named and unnamed defendants are liable to petitioner (the party injured) in an action at law, suit in equity, or other proper proceeding for redress.

ARGUMENTS

I

A. The 6th Court of Appeals overly looked many important facts and cited an irreverent case law when they examined the validation of a controversial release from case 13-10479.

Supreme Court looks to three general considerations when determining whether enforcement of a release-dismissal agreement is appropriate. The Sixth Circuit should held: Before a court properly may conclude that a particular release-dismissal agreement is enforceable, it must specifically determine that (1) the agreement was voluntary; (2) there was no evidence of prosecutorial misconduct; and (3) enforcement of the agreement will not adversely affect relevant public interests (Patterson v. City of Akron Ohio, et al., 619 Fed. Appx. 462 *; 2015 U.S. App. LEXIS 12898). But, instead, the court of appeals cited an irrelevant case (Adams v. Philip Morris, 67F. 3D 580), mistakenly determined that "such a no-hire restriction is valid if it was the intend of the parties to permanently take Gong out of University's lab pool"(Gong v. University of Michigan 2019 U.S. App. LEXIS 31065, page 6). More importantly, such misjudgment will seriously affect relevant public interests.

In case (Adams v. Philip Morris, 67F. 3D 580), Mr. Adams was laid off with 53 co-workers. In order to receiving a severance pay and financial aid, he signed a release and agreed never suing his employer for discrimination and never applying any new job from the same employer. He took the money without asking any question. One year later, Adams applied job from the same employer and was rejected because the release permanently took him out of Philip Morris' lab pool.

In contrast, the situations in the case for review are completely different. First, petitioner was retaliated and fired because: (1) She was a whistleblower, reported scientific misconducts and covering up activities to several public bodies, such as the chief editors of journals, UM Regents, News reporters and NIH integrity office. (2) She had disabilities, such as depression and carpal tunnel syndrome. Respondents refused to provide any accommodation.

Second, there were judicial misconducts associated with the said release: (1) Petitioner's first whistlerblower protection act (WPA) case (12-749-CD) was secretively and unlawfully dismissed (a judicial misconduct investigation is initialed by the Michigan Judicial Commission). (2) District court (Judge Sean F. Cox) accepted a lawsuit (13-10469) under the Rehabilitation Act of 1973 without a "Right to Sue" letter from EEOC and allowed it sitting on his bench all time without any activity. (3) defendants did not file their response to this lawsuit, neither a motion for extension nor a motion for[6] dismissal. (4) Judge Cox overly extended respondents' due to file their response 4 times for total 5 months. (5) There was no discovery or damage evaluation ever done. (6) The settlement payment was not based on damage. (7) On July 8, 2013, Judge Cox portended not understanding when plaintiff told him that defendants were trying to use a settlement to prohibit plaintiff reporting scientific misconducts to government agencies. (8) One of UM lawyer told petitioner in later 2015: "the university has to be a little bit more creative when the party is difficult, not willing to settle the case in the way which the university wants".

Third, plaintiff was rushed and fooled by her attorney to sign a draft of the agreement on July 8, 2013 when she was at a motion hearing (the attorney wanted to withdraw representation because plaintiff wanted to have a trial by jury, attorney promised defendants to settle, the client-attorney relationship broken).

Forth, Plaintiff was forced by her attorney to say that she understood and was willing to accept conditions on the release. If making a confession of perjury is the only way to remove this controversial release, petitioner is willing to make such confession.

Fifth, petitioner did not sign the formal release which respondents provided to her on July 9, 2013. Petitioner did not accept any settlement money.

Sixth, Plaintiff asked her attorney to withdraw/revoke the signed draft several times, as early as on July 9, 2013. The attorney told her that he would notice defendants immediately.

B. The 6th court of appeals made many mistakes in their opinion (Gong v. University of Michigan 2019 U.S. App. LEXIS 31065). The court says:

(1)"at the time she signed the agreement, Gong was a forty-nine-year-old, college-educated medical researcher". In fact, the court ignored all facts such as: plaintiff was a patient of major depression, she wanted to kill herself on June 26, 2013 because of the unbearable stress (her attorney kept forcing her to lie not knowing any scientific misconducts and to promise UM never reporting any

misconduct to any government agency). She was sent to ER by ambulance on and hospitalized for 10 days.

(2) "she was represented by counsel". In fact, the court ignored a very important fact: Because plaintiff refused to lie for money and was not willing to settle the case, the attorney-client relationship was broken. The attorney was mad and had filed a motion to withdraw representation.

(3) "At a hearing and status conference..... Gong singed a settlement agreement". In fact, this was the hearing for plaintiff's lawyer's motion to withdraw representation. The defendants never filed their response to the case. There was no schedule order, no status conference for case 13-10469.

(4)"the parties had been engaged in settlement discussion for several months". In fact, the court ignored multiple facts: (a) as a party, petitioner did not know any negotiation between the parties other than that the lawyers of both parties kept forcing her to lie for money. (b) according to the email from respondents' lawyer, respondents' biggest concern was/is how to stop petitioner reporting misconducts. They wanted her attorney to help them to reach their goal. (c) on July 8, 2013, petitioner reported to the court that the defendants had been forcing her to promise not reporting misconduct to any agency and she believed such activities were violations against federal laws and regulations. Judge Cox ignored what she said.

(5) "Gong had a friend with her that day, Dr. Douglas Smith, he believes Gong was able to understand and communicate effectively with her attorney". In fact, Dr. Smith was/is neither a friend to petitioner, nor a psychologist or a family doctor who had/has the qualification to testify in court.

(6) "Gong did not submit any evidence to back up her assertions that her attorney yelled at her or threatened to kick her leg." ... and "evidence of bribes" In fact: petitioner asked the 6th court of appeal and Judge Cox to order a federal investigation on all suspicious activities related to case 12-749-CD and case 13-10479. She asked:

(a) why state court dismissed petitioner's WAP case (12-749-CD) without noticing the plaintiff and her attorney, why the said motion to reinstate the state case in June 2013 does not exist in state court files,

(b) why her attorney rushed to file a federal case and kept the complaint as a secret from her (she was told it was case based on WPA and Title VII of the Civil Rights Act of 1964)

(c) why Judge Cox did not dismiss the lawsuit (case 13-10469 was filed before plaintiff filed her EEOC charge),

(d) why UM did not file response to case 13-10469,

(e) why Judge Cox gave UM many extensions without any motion request, [7]

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(f) why her attorney did not file a motion based on Rule12(a)(1)(A)(i) and Rule 45 C681.10 [8] to ask for a deferred judgment,

(g) why Judge Cox told everyone at the hearing that he would record the signed draft of the release as an exhibit for the hearing, but entered an "order with prejudice" hours later (the document clearly stated "following her signature on this release she may revoke this release,..., the release will not become effective or enforceable until the seven days revocation period...),

(h) what kind of "creative activities" which respondents have done with judges in state court, judges in the federal court.

(i) why Judge Cox took over case 16-14516 from another judge,

(j) what kind of "creative activities" which respondents have done with plaintiff's attorney

Petitioner believes that any court which asks an average citizen, a person with disabilities, a victim of misconducts to produced all evidence associated with judicial misconducts and government corruptions, but refuses to provide any necessary support for investigation, has violated this person's rights which are guaranteed by the Fourteenth Amendments. Petitioner contacted UM police and the U.S. justice department in later 2017 and early 2018, she was told that the agencies would involve if the court asked them for their assistance. Petitioner asked district court to send her case to U.S. justice department, her request was denied.

II

The First Amendment provides all citizens their freedom of religion, freedom of speech, freedom of the press, the right to assembly and the right to petition the government. The Fourteenth Amendment (rev. 1992) clearly states: 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. The Eleventh Amendment was designed to protect public interest and state government authority. Unfortunately, it has been miss-used by some unethical government officials regularly for covering up corruptions and misconducts.

Science and technology has made the united states the greatest country in the world. Congress provides National Health Institutes tens of billions every years. The University of Michigan receives average $500 millions each year from NIH. Unfortunately, because of dishonesty or scandals, part of the federal funds are stolen or wasted. Thanks for whistlblowers and US department of justice, some of

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the damages are limited and recovered. In April 2017, Brigham and Women's Hospital in Boston, Massachusetts, and its health-care network agreed to pay the federal government $10 million to settle fraud allegations in stem-cell research funding. In 2019, Duke University settled a False Claims Act lawsuit related to scientific research misconduct and agreed to pay $112.5 million back to the federal government.

A. Petitioner worked at respondents' medical research laboratories for12 years, she witnessed multiple incidents which included using fabricated and falsified data to apply NIH grants, to report project progress and publish papers. In petition's original complaint, she clearly stated:

(1) From 2007, petitioner have reported alleged scientific misconducts to respondents' chairs at the internal medicine department, deans at the medical school, CEO of the health system, and the president, vice presidents of research and regents at the University of Michigan. The leaders at the university refused to investigate.

(2) From 2009, petitioner have contacted NIH- office of integrity, chief editors of publications, they told her to talk to the university directly.

(3) On April 16, 2012, Dr. Richard Simon wanted a manuscript with fake results to be submitted for publication. Because petitioner believes research integrity and wants to protect the reputation of the university, she called Dr. Martin Myers and stopped him from submitting.

(4) On April 20, 2012, petitioner received a printed memo/ termination letter (without signature) from her department, the letter said the call to Dr. Martin Myers was a serious violation, her employment with UM was terminated and not recommended for rehire.

(5) On September 17, 2015, petitioner provided UM president, regents and all other top leaders a package of evidence of the alleged scientific misconducts (everyone received his or her own copy) and how she was retaliated by her department and UM police officials. She asked leaders to investigate scientific misconduct and covering up activities.

(6) On December 23, 2015, for a follower up, petitioner requested an appointment to meet with UM president.

(7) On January 14, 2016, Timothy Lynch, a vice president at UM met with petitioner and told her "to seek help from your own people". Petitioner asked to meet with UM president. Timothy Lynch got very angry and asked a secretary to call police and have petitioner arrested. The staff did not call. Then[9]

Timothy Lynch pushed petitioner out of the building and threatened to have her arrested if she kept asking to meet with UM leaders. [10]

(7) On January 17, 2016, appellant received a threatening email from the director of UM police. The worry of being arrested and feeling of being more discriminated made petitioner unable to sleep for many nights which lead her doctor added Trazodone to her prescriptions.

(8) In June 2016, respondents stopped petitioner's mental health care at UM because of her prolonged legal issue with the university.

The retaliations by respondents have been kept going on after petitioner filed her case 16-14516. In May, 2017, respondents harmed petitioner with medical malpractice (intentional misdiagnosis, prescription drug for an illness which petitioner never have, the drug caused her liver injury), later they tried to cover up by giving all sort of lairs. In October, 2017, respondents retaliated petitioner by sending her to a mental institute after she protested on campus (wrote to CEO of UM health system, spoke at Regents meeting, placed posters, and requested investigations by state and federal agencies). On August 21,2018, the director of UM police department came to petitioner's home and have her arrested to a mental institute after she said that respondents had been trying to kill her.

Petitioner believes that both 6th court of appeals and district court were wrong for determining that all petitioner's claims of retaliation under First Amendment and Title VII of the Civil Rights Act of 1964 were barred by status limitation.

B. Petitioner was a Pro Se plaintiff/appellant with language barriers, she could not write a complaint without making any mistake. From the very beginning, petitioner believed that she had filed a lawsuit under both First Amendment and Title VII of the Civil Rights Act of 1964. She wanted to amend her complaint because (1) Judge Cox stripped case 16-14516 into a simple ADA violation claim against the university for not hiring her back. (2) During discovery, respondents/defendants refused to produce any document related to covering up scientific misconducts.

On May 15,2018, petitioner filed her first motion to amend her original complaint. On July 17, 2018, Judge Cox denied her motion for: First Amendment retaliation claim is barred by Eleventh Amendment Immunity and is therefore futile.

On July 31, 2018, plaintiff filed her second motion and asked district court to add all individual defendants back to the case. On September19, 2018, Judge Cox denied the motion for: "undue delay and prejudice to defendant, who has already filed a dispositive motion in this case".

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In fact, Judge Cox used "undue delay" as an excuse for favoring defendants. If he ever concerned about "undue delay", he would grant plaintiff a judgment of $750,000 anytime within that 5 months when case 13-10469 was sitting on his bench without any activity. Rule12(a)(1)(A)(i) states:"A defendant must serve an answer with 21 days after being served with the summons and complaint. Rule 45 CFR 681.10(d) says: "When a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision". [11]

Petitioner believes that Judge Cox performed his judicial duties on both case 13-10469 and 16-14516 with bias and prejudice. He favored defendants unconditionally and harmed plaintiff constantly.

Petitioner believes that the 6th court of appeal was wrong by using double standards, allowed big lawyers to amend their complaint after the expiration of discovery and only three weeks before a jury trial (United States v. Wood, 877 F.2d 453, 456 (6th Cir. 1989)), but prohibited a Pro Se plaintiff with language barrier from making any change or correction on her complaint.

C. The 6th court of appeal fabricated: "Because Gong specifically sought monetary damages for the claim that sough to amend,"(Gong v. University of Michigan, 2019 U.S. App. LEXIS 31065, page 4) when they supported district court on "the claim was barred against the university by Eleventh Amendment". In fact:

(1). The Eleventh Amendment does not stop a federal court from issuing an injunction against a state official who is violating federal law (Ex Parte Young, 28 S. Ct. 441, 209 U.S. 123,1908). In the case for review, all named and unnamed individual defendants and some police officials (respondents' lawyer refused to provide their names) directly violated federal laws. The district court should not remove them from the case and should add them back for all claims they were responsible after plaintiff filed motions to seek to amend complaint.

(2). The Eleventh Amendment does not automatically protect political subdivisions of the state from liability (Moor v. County of Alameda, 411 U.S. 693 (1973)). The main factor is whether the damages would come out of the state treasury (Hess v. Port Authority Trans-Hudson Corp., 115 S. Ct. 394 (1994)). In the case for review, UM lawyers has told petitioner: the university pays all it's legal expenses from insurance and investment; the state money (about 3.4% of UM annual budget) is for teaching, financial aid; the sate money has never been used for legal expenses. In addition, petitioner was an employee of health system which is independent from the rest of the university. The health system does not receive any money from the state for education..., it purchases it's own insurance

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policies with it's own money. The hush money which respondents offered to petitioner in 2013 would come from the health system's liability insurance if she accepted it.

(3) The states surrendered a portion of the sovereign immunity that had been preserved for them by the constitution when the Fourteenth amendment was adopted. Sovereign immunity is exempted when a government's action is in bad faith, the damages are compensatable (Keeter Trading Co., Inc. v. United States, COFC No. 05-243. On February 3, 2009). In the case for review, respondents' actions are clearly in bad faith. They intentionally cheated and wasted federal fund for scientific research, such as: used falsified data to apply NIH grants, paid the cheater (a fresh graduated research fellow) 50%[12] more than her peers who had the same or better qualification, retaliated petitioner to seriously ill, used unethical judges and immoral attorney to dismiss a WPA violation lawsuit without any discovery, and used hush money to enforce a controversial settlement release.

(4) Petitioner has never focused on seeking monetary damages from any of the claims. She wants respondents to apologize, to provide health care and to reinstate her employment. Petitioner will never accept any hush money. Her dignity is not for sale.

D. The U. S. Supreme court should extend protections to public university employees under Whistleblower Protection Act of 1989, 5 U.S.C. 2302(b)(8)-(9), The Whistleblower Protection Enhancement Act of 2012 and False Claim Act, 31 U.S.C. §§ 3729 – 3733.

Same as federal employees, many public university employees are purely paid by federal money for working on federal projects, but they are not protected by WPA or WPEA for reporting frauds and misconducts. Same as employees from federal contractors, employees at public universities find their bosses defrauding government programs, but they are not protected by FCA for reporting frauds and wast. The whistleblower laws enforced by OSHA are also not applicable to any research ethical problem. Therefor, the public universities become bullet free monsters in every state and federal courts when they are sued for violating WPA or First Amendment. Ideally, whisleblowers at public universities could sue their employers for retaliations under the state WPA laws. But, because of the super power and deep connections with the local court, public university lawyers can easily play around and have them double victimized at local court. Petitioner's state case 12-479-CD is great example, it was dismissed days after serving the defendants.

Petitioner has contacted Dr. Mattew J. Fenton, a NIH research integrity officer recently and hope that NIH will submit a bill to the Congress to address the fraud and wast problems at public universities.

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III

A. Rule 56 Summary Judgment says: The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. But in the case for review, the district court granted defendants' motion for summary judgment when the parties still had disputes on almost everything. Petitioner believes that the district court should not enforce a controversial settlement agreement to bar plaintiff new claims of F irst amendment and Title VII of the Civil Rights Act of 1964 violations again the university (health system). Petitioner believes that the court should get federal investigation agency on board because evidence showed there were possible prejudge and bribery which had interfered court rulings on both state case 12-749-CD and federal case 13-10469. Petitioner believes that Judge Cox should allow plaintiff to amend her complaint and have all parties accountable for their liabilities. Petitioner believes if she had trial by jury, the jury would agree that plaintiff was terribly retaliated by defendants for[13] protecting public interests, and defendants were responsible for causing and aggregating plaintiff's injuries and disabilities. Petitioner believes if she had a trial by jury, she would get a verdict favoring her, the victim. The evidences from a limited discovery include: (a) the state court dismissed a timely serviced lawsuit for "defendants were not served timely". (b) the state court lied that they did not have the address to send the notice. (c) the state court does not have the motion which respondents submitted to the district court as an evidence for "the parties has been negotiating a release for months". (d) defendants did not file their response to case 13-10469. (e) Judge Cox extended defendants' due to file their response for 4 time or 5 months without any motion. (f) The only motion of case 13-10469 was filed by plaintiff's attorney, he wanted to withdraw representation. (g)The only hearing heard was for motion to withdraw. Petitioner provided the district court all the evidence of above findings, evidence of scientific misconducts and covering up activities of respondents. Petitioner filed motion and asked district court to get the U.S. department of justice on board for additional investigation. Judge Cox denied her motion and removed all evidence she submitted to the court.

B. Title 42, Section 2000d-7(a)(1) explicitly states "A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C.A. § 794], ----, title VI of the Civil Rights Act of 1964 42 U.S.C.A. § 2000d et seq., or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance". Because (1) Tile VI and Title VII of the

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Civil Rights act of 1964 offer basically the same protections for people who are retaliated for claiming discrimination based on their age, sex, race and national origin. (2) the claims under Section 504 of the Rehabilitation Act of 1973 and ADA are mostly identical. (3) ADA and Title VII of the Civil Rights Act of 1964 offer essentially the same protections for people with disability, it should be clear if the state or local government entities federal funding for whatever purpose, they cannot claim sovereign immunity if they are sued in federal court for discrimination (based on age, sex, race, national origin and disability) (Thomas v. University of Houston of the 5th Circuit November 4, 2005), (Doe v. Nebraska 345 F.3d 593 8th Cir. 2003), (Elizabeth Fryberger v. University of Arkansas & Board of Trustees of the University of Arkansas 8th Cir. 2018), (Garrett v. Univ. of Ala. Birmingham Bd. of Trs., 344 F.3d 1288, 1290-91 (11th Cir. 2003)), *(Keller v. Florida Dept. of Health, 682 F. Supp. 2d 1302 (M.D. Fla. 2010))*

In the case for review, UM receives over $500 millions each year from NIH. The respondents/defendants were in bad faith for creating and covering up scientific misconducts, they were in bad faith for retaliating whishtleblower and causing petitioner's major depression disorder. In addition, Respondents have also discriminated petitioner based on her race and national origin (by Timothy Lynch in 2016 "seek helps from your own people") and retaliated her after she reported this incident to EEOC. In her second motion to seek to amend her complaint, petitioner clarified that in addition to ADA, she wanted the court to reconsider her claims of violations under First Amendment, Tile VII of the Civil Rights Act of 1964 and Rehabilitation Act of 1973. Her motion was denied.

C. The 6th court of appeals was wrong by believing: "her "EEOC charge did not include any allegation other than that her job application was rejected, and thus her claims of retaliation.... are exhausted". In fact, the content in a EEOC form 5 was filled by a field office staff without petitioner's control. Petitioner is not clear why EEOC did not want to investigate all other violations she claimed in her EEO intake questionnaires (Is it because the alleged racial discrimination was done by one of the top leaders at the university?). In her intake questionnaires, petitioner clearly included incidents which were related to the claim of being racially discriminated by Timothy Lynch in 2016 ("seek helps from your own people"), claim of being retaliated in 2016 (Timothy Lynch threatened to have petitioner arrested if she kept contacting UM leaders and asked for investigation on scientific misconducts) and claim of being retaliated in 2016 for contacting government agency and filing lawsuit (respondents' depression clinic stopped providing treatment because petitioner's "prolonged legal issues with the university"). Petitioner signed and dated that she wanted to file charge on discrimination based on race, sex, disability, national origin and retaliation (the 6th court of appeals mistakenly believed that[14]

petitioner claimed retaliation based on her nationality, page 1). Therefor, petitioner believes that[15] petitioner's intake questionnaires met all EEOC requirements (29C.F.R. §§ 1626.3, 1626.6, 1828.8) to constitute it as a formal charge of discrimination and retaliation. But, the 6th court appeals only accepts the form 5 as the formal charge regardless if it contains mistakes or not. Petitioner believes that the 6th court of appeals is wrong and conflicts with all other circuits and the supreme court (Edelman v. Lynchburg College, 535 U.S. 106,110 (2002)), and 29C.F.R. §§ 1626.3, 1626.6, 1828.8.

REASONS FOR GRANTING THE PETITION

1. The sixth court of appeals has entered decisions in conflict with the decision of other court of appeals on the same important matters.

(a) Whether an intake questionnaire form is sufficient to constitute a charge?

The sixth court appeals requires a formal charge, the formal charge is EEOC FORM 5. In the case in review, the sixth court appeals refused to consider any information included in intake questionnaire, but not in Form 5.

In contrast, Fifth and Seventh Circuits allows that an intake questionnaire may serve as a charge when it contains all the information necessary for a charge and the EEOC treats it like a charge by providing notice to the employer and instigating conciliation efforts. The Fourth and Ninth Circuits, holds that an intake questionnaire could be a charge, regard-less of how it is treated by the EEOC, if it includes all the requisite information necessary for a charge. In Edelman v. Lynchburg College, 535 U.S. 106,110 (2002), the Supreme Court stated that "a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of." Additionally, the Court held that Title VII is "a remedial scheme in which lay persons, rather than lawyers, are expected to initiate the process... [and as a result], the lay complainant who may not know enough to verify on filing will not risk forfeiting his rights inadvertently."

Petitioner prays the supreme court to ask the six court of appeals to consider the intake questionnaire as part of the charge or an essential supplemental to the charge.

(b) Whether public universities have waived their Eleventh Amendment immunity by accepting federal fund when they are sued for discrimination under Title VII of the Civil Rights act of 1964 or ADA

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The sixth court of appeals thinks that the University of Michigan is immured by Eleventh Amendment regardless the fact that the university only receives 3.4% of it's operational fund from the State of Michigan, all it's legal expenses are from insurance (premium and investment), not the state treasury.

In contrast, the eighth and eleventh court of appeals believe if the state or local government entities accepts federal funding for whatever purpose, they cannot claim sovereign immunity if they are sued in federal court for discrimination.

Petitioner prays the supreme court to provide a clear guideline on in which condition, the public university cannot claim sovereign immunity if they are sued in federal court for discrimination.

(c) In which circumstances, the court of appeals and district court should not approve or enforce a settlement agreement[16]

The sixth court of appeals believes a settlement agreement is enforceable as long as one party is willing to pay, the other party had once agreed to accept regardless public interests and circumstances.

Supreme Court looks to three general considerations when determining whether enforcement of a release-dismissal agreement is appropriate. (1) the agreement was voluntary; (2) there was no evidence of prosecutorial misconduct; and (3) enforcement of the agreement will not adversely affect relevant public interests. In Newton v. Rumery, No. 85-1449, 480 U.S. 386 (1987), the U.S. Supreme Court rejected any argument that a release of civil liability against police or other governmental employees or entities, when entered into in exchange for the dismissal of pending criminal charges.

In 2013, defendants wanted to use a settlement agreement based on rehabilitation act in the federal court to drop a WPA lawsuit in the sate court, the district court wanted to help defendants to reach their goal while he was fully knowledgeable that the release agreement he was approving was for covering up misconducts and against public interested.

In 2016 and after, defendants wanted to enforce a rejected settlement agreement to bar plaintiff's claims based on First Amendment and Title VII of the Civil Rights Act of 1964, the sixth court appeals and the same judge from the district court helped defendants regardless that such action was conflict with supreme court.

Petitioner prays the supreme court to exercise it's supervisory power and say that the controversial release from case 13-10469 is not valid and not enforceable.

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2. Public university employees need protections to protect federal funded programs

Research based on survey data tells us that 1.97% of scientists admitted that they fabricated, falsified or modified data or results at least once, and 14.12% of researchers believe that their colleagues had involved research misconducts (Fanelli D (2009) How Many Scientists Fabricate and Falsify Research? A Systematic Review and Meta-Analysis of Survey Data. PLoS ONE 4(5): e5738).

By the size of investment, NIH approximately lose up to $ 4.7 billions each year because of scientific misconducts. Because of FCA, government is able to recover some of damages from private universities, such as Harvard and Duck. According to the public data, half of the top 20 NIH funded universities are public universities. In 2019, UM received $454,017,078 from NIH and have1071 employees work full time for these projects. As estimating, approximate $8.9 million to $ 64.1 million NIH funding was wasted at UM because of scientific misconducts. Because the sixth court appeals believes public universities are immured from being sued at the federal court for First Amendment[17] violation, FCA only apply to federal contractors, private business, and WPA/WPEA only protects federal employees working in federal buildings, UM has become a play ground for unethical individuals to defraud government programs and wast public money.

Petitioner prays Supreme Court to extend WPEA protections to public university employees and to apply FCA to recover government funding damages from public universities

CONCLUSION

The petition for writ of certioratri should be granted.

Respectfully submitted.

Yusong Gong 

Jan. 29, 2020

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