No. _____

# In the Supreme Court of the United States

Lincoln Rymer, *Petitioner*

v.

UT at Martin, et al., *Respondents*

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

## VERIFIED PETITION FOR EXTRAORDINARY WRIT OF CERTIORARI

Lincoln Rymer
154 Fowler Cemetery Lane
Hurricane Mills, TN 37078
931-296-3001

## QUESTIONS PRESENTED

Circuit Judge Andrew Kleinfeld considers it to be capital punishment when teachers destroy students' career prospects as punishment for the students' exercise of free speech. Rymer's survival is threatened by his professors' retaliation for his speech.

Despite the Tennessee Court of Appeals and three federal judges allowing claims in this case to proceed, Judge Victoria Roberts *sua sponte* dismissed this case, finding Docket Entry #1 frivolous. Judge Roberts spin-doctored the gravamen of this case and passed over key facts and claims. For five months, Judge Roberts defied an order of the Chief Judge of the Sixth Circuit removing her from this case. Judge Roberts exceeded her jurisdiction and disavowed Supreme Court precedent. On appeal, the Sixth Circuit disavowed this Court's rulings on at least seven occasions, e.g., decisions never made by the District Court cannot be affirmed. The Sixth Circuit uses staff attorneys to dispose of pro se appeals and does not allow pro se's to have oral arguments.

1. Judgments rendered without due process are void. Does the conduct of the lower courts or the inadequate appellate review warrant a GVR with instructions to consider in the first instance arguments pressed upon but passed over or otherwise given short shrift?

2. Whether the circuits that consider state law to not be dispositive in determining if an entity is an arm of the state are correct?

3. Whether *Hans v. Louisiana* was abrogated by the ratification of Article 2 of the ICCPR which requires effective remedies for rights violations by state officers?

4. If UT is an arm of the state, does 42 U.S.C. §2000d–7 abrogate its immunity to claims brought under 20 U.S.C. §1011a?

## PARTIES TO THE PROCEEDING

Petitioner is Lincoln Rymer (plaintiff/appellant).

Respondents are the following: Robert Lemaster, Doug Sterrett, and the University of Tennessee (defendants/appellees).

## LIST OF ALL PROCEEDINGS IN OTHER COURTS

- *Rymer v. Oldham et al.*, Ch16-CV-41, Chancery Court for Robertson County Tenn. Judgment entered June 29, 2016 (vacated).
- *Rymer v. TSAC* (John Doe 3), No.17-941-IV, Chancery Court for Davidson County Tenn. Settlement reached, non-suited Sept. 5, 2018.
- *Rymer v. Lemaster, et al.*, No. 3:16-cv-2711, U.S. District Court for the Middle District of Tenn. Judgment entered May 21, 2018.
- *In Re Rymer*, No.18-5650, U. S. Court of Appeals for the Sixth Circuit. Judgment entered July 30, 2018.
- *Rymer v. Lemaster, et al.*, No.18-5655, U. S. Court of Appeals for the Sixth Circuit. Judgment entered February 22, 2019.

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# In the Supreme Court of the United States

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This Court has said that a ruling arrives at the appellate court "fortified by presumptions" "of truth due to the judgments of a tribunal appointed by law and informed by experience." *Interstate Comm. Com. v. Chi., RI & Pac. Ry.*, 218 U.S. 88,110 (1910); *Berger v. United States,* 255 U.S. 22, 36 (1921). When those judgments are the product of bias, "[t]he remedy by appeal is inadequate," Justice McKenna noted in his opinion in *Berger*. "It comes after the trial, and, if prejudice exist, it has worked its evil and a judgment of it in a reviewing tribunal is precarious." *Ibid.*

Once Judge Victoria Roberts borked Rymer, this case was dead on arrival at the court of appeals. Resuscitation was made impossible by the Sixth Circuit's reliance upon a staff attorney to give the panel a unilateral perspective and a recommended disposition, defeating the purpose of having panels comprising of three judges. Unless, this Court intervenes, the staff attorney and Judge Victoria Roberts will have sealed Rymer's fate and written his epitaph.

> "With actual bias, ordinary appellate review is insufficient because it is too difficult to detect all of the ways that bias can influence a proceeding. [...] ("[I]f prejudice exist[ed], it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient." (quoting *Berger v. United States*, 255 U.S. 22, 36 (1921)). With apparent bias, ordinary appellate review fails to restore "public confidence in the integrity of the judicial process." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988)."*In Re: Al-Nashiri*, 791 F.3d 71 (D.C. Cir. 2015)

## OPINIONS BELOW

Judge Victoria Roberts dismissed the case under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). (App.,1d-11d). The district court denied a motion to set aside the judgment under Fed. R. Civ. P. 59(e) and 60 and denied leave to amend the complaint. (App.,1i-6i). A petition for a writ of mandamus seeking vacature of the judgments was denied. (App.,1j-2j). The district court orders were affirmed. (App.,1k-12k). All decisions are unpublished.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). In the alternative[1], jurisdiction of this Court is invoked under 28 U.S.C. §1651. The judgment of the court of appeals was entered on January 14, 2019. The petition for panel rehearing and en banc rehearing was denied on February 22, 2019. A combined petition for certiorari and mandamus was received by the Clerk of this Court on May 23, 2019. Pursuant to Sup. Ct. R. 14.5, the Clerk extended the filing deadline of this certiorari petition to July 22, 2019.

## CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS

The constitutional provisions, treaties, and statutes involved in this case are as follows:

- U.S. Const. amend. I
- U.S. Const. amend. X
- U.S. Const. amend. XI
- U.S. Const. amend. XIV
- Tenn. Const. art. II, § 31 (App.,1m)
- International Covenant on Civil and Political Rights (ICCPR), Article 2 (App.,1n-4n)
- 28 U.S.C. § 453
- 20 U.S.C. § 1011a (App.,1o-3o)
- 42 U.S.C. § 1983
- 42 U.S.C. § 1985(3)
- 42 U.S.C. § 2000d–7 (App.,1p)

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[1] A petition seeking both statutory and common law writs of certiorari may be combined into one document. *See* Boskey, 1A *West's Federal Forms*, §296 p387 n.6.

## STATEMENT

1. The jurisdiction of the district court was invoked under 28 U.S.C. §§1331 and 1343.

2. In 2017, Circuit Judge Kethledge authored a book that describes same general phenomenon Rymer experienced at UT Martin's school of engineering:

> "The leader who defies convention must bear the disapproval of establishment types, who will try to coerce him morally, and failing that might box his ears. The leader who defies bureaucracy is usually in for harder treatment, as its machinery, given the chance, will run over him with the indifference of a tank."
> Hon. Raymond Kethledge, *Lead Yourself First* (2017)

Circuit Judge Posner has written about the dean of the Harvard Law School attempting to derail his early career.[2] Circuit Judge Kleinfeld considers such conduct to be capital punishment.[3] This case challenges the capital punishment imposed

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[2] Hon. Richard A. Posner, *Reforming the Federal Judiciary*,142 (2017)

[3] Hon. Andrew J. Kleinfeld, *Politicization: From the Law Schools to the Courts*, The Long Term View, Spring 1995;*see also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985)(in which the Court "recognized the severity of depriving a person of the means of livelihood"). "We live in a society where if you don't have a job, you are left to die." Rep. Alexandria Ocasio-Cortez

upon Rymer for speaking about the disjunction between academia and the needs of corporate America.[7]

3. The Tennessee Court of Appeals[4] and three federal judges allowed Rymer's case to proceed.

   This case on appeal is about a 16-year-old child who, without a high school diploma or a GED, was illegally[5] admitted to an unaccredited engineering school staffed by bureaucrats, many of whom were laid-off Cold War engineers. Rymer was one of the school's first students. The formerly named School of Engineering was within UT Martin, which was placed on accreditation probation in December 2015 by the Southern Association of Colleges and Schools (SACS), one of six regional accreditation organizations recognized by the United States Department of Education.[6]

   Much like Justice Sotomayor had done as a student at Princeton, Rymer sought an addition to the curriculum. Unlike Justice Sotomayor,

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[4] A suit for discovery was commenced in Chancery court against a party considered to be in privity with the Martin respondents. The pure bill of discovery alleged substantially the same set of facts as this case. The Middle Division of the Tennessee Court of Appeals vacated the trial judge's order, eliminating potentially thorny res judicata issues in federal court.

[5] **Rymer was admitted to college as an underage minor** in violation of T.C.A. §49-6-3005 and **was loaned money** in violation of 20 U.S.C. §1091, 34 C.F.R. 668.32, and 34 C.F.R. § 600.4(a)(2)

[6] www.jacksonsun.com/story/news/education/2016/04/22/**utm-repeatedlyfailed-fix-issues-led-probation**/83399600/

Rymer attended a school that believes it is entitled to sovereign immunity and is above the law.

Rymer criticized the disjunction between academia and the needs of industry.[7]

Rymer expressed views now endorsed by corporate America.[8]

At the time of Rymer's statements, the engineering school was seeking ABET accreditation. The naïve kid had no concept of bureaucracies or the grave danger he was in by voicing his opinions. Upon hearing Rymer's complaints, Profs. Lemaster and Sterrett demanded Rymer to design and manufacture a miniature high-speed CNC Milling Machine with an automatic toolchanger. At the time, no comparable machine on the market existed. Rymer submitted an initial design and Lemaster burst into an expletive-laced fit of rage. Lemaster raised the goalpost five times making the project harder and harder. Lemaster justified the goalpost changes as being necessary "iterations." During the second semester of the project, Rymer suffered an aneurystic injury and dropped out for nearly two years.

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[7] *Cf.* Hon. Harry T. Edwards, ***The Growing Disjunction Between Legal Education and The Legal Profession***, 91 Mich. L. Rev. 34 (1992); Hon. John G. Roberts, 2011 Judicial Conference of the Fourth Circuit; Hon. Stephen G. Breyer, *Response of Justice Stephen G. Breyer*, 64 N.Y.U. Ann. Surv. Am. L. 33 (2008).

[8] Condoleezza Rice et al., ***U.S. Education Reform and National Security***, *Council on Foreign Relations, Independent Task Force Report No. 68* (2012); Engler et al., *The Work Ahead, Machines, Skills, and U.S. Leadership in the Twenty-First Century, Independent Task Force Report No. 76* (2018)

In 2015, Rymer found an advertisement by Haas, a billion-dollar corporation, offering the world's first machine of the type that he was assigned to build. The listed MSRP of the Haas machine is $80,000. At that point, Rymer knew he had been setup for academic failure. The wild-goose chase assignments caused a year's worth of bad grades and delayed his graduation by which time the economy had tanked, preventing him from obtaining gainful employment.

4. In October 2017, Judge number eight (8), Judge Victoria A. Roberts, found Docket Entry #1 to be frivolous and *sua sponte* dismissed the case. In doing so, she omitted from her ruling all of the preceding facts stated in ¶3, *supra.*

5. On April 12, 2019, while researching other cases in Nashville presided over by Judge Victoria Roberts, by serendipity Rymer discovered, Judge Roberts had failed to timely relinquish this case in violation of the express command of the Chief Judge of the Sixth Circuit Court of Appeals. (App.,1e). Judge Roberts unlawfully continued to preside over this case five (5) months past her term expiration. (App.,1f).

6. Judge Roberts had relinquished all of the other cases still pending before her at the time of the expiration of her term in Nashville. (App.,1g-1h).

7. Five months past the expiration of her term, Judge Victoria Roberts relinquished the case to a newly-commissioned Judge William Campbell. Eleven days later, Judge Campbell issued a

ruling in this case that cited a specific sentence from footnote five of *Exxon*[9] that no judge in the Middle District of Tennessee has cited before or since, but is frequently cited in Judge Victoria Roberts's home district.

8. Regretfully, Petitioner's complaint compared his mistreatment by Martin to the lynchings of African Americans in the Old South.

9. In briefing an issue, Petitioner cited a 1975 Tennessee Supreme Court decision[10] in which the Justices had referred to an African American by an n-word. The Justices also remarked upon the man's death as though he were just a piece of livestock. Shortly after that filing, this case was reassigned to Judge Victoria Roberts in Detroit. A few weeks prior, Judge Roberts had quoted from Judge Pamela Ann Rymer's controversial landmark ruling in *Cato v. United States*, which is hostile to Judge Roberts's life mission. Petitioner's complaint named Judge Rymer as a family member.

10. Rymer has extrajudicial evidence to support a finding that Judge Roberts was unfairly biased. That evidence, for the public welfare, should be introduced in camera.

11. In addition to ignoring the case against Doug Sterrett and Lemaster, Judge Roberts ignored Rymer's argument invoking the discovery rule by arguing that the statute of limitations did not

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[9] *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008)
[10] *Huckeby v. Spangler*, 521 S.W.2d 568, 573 (Tenn. 1975)

begin to run until Rymer discovered the $80,000 Haas machine.

On appeal, Rymer briefed it thusly:

> "Engineering school is *supposed* to be hard. But when is it *too* hard? When is it *intentionally* made too hard?...Before my 2015 discovery of...the Haas OM-2A, not even Sherlock Holmes could have discovered that I had been set up for failure. [Martin's] defense was wholly frivolous because they expected me to have knowledge of future technology which did not exist in the year 2000...I am not Nostradamus, a soothsayer with a crystal ball."

The lower courts did not consider that argument. Instead, Judge Roberts *sua sponte* raised an argument no party had briefed. Judge Roberts found that because Rymer had been a Christian and had suffered PTSD following his collegiate ordeal he was mentally incompetent for most of the 21st century. Rymer challenged that in the lower courts, to no avail. Despite Rymer's arguments that the collateral consequences of the ruling jeopardize his fundamental rights, the Sixth Circuit found the issue moot.

12. Rymer has had only one employer in the past ten years. He worked as a low wage manual laborer, working in a place his employer called "death row." While juggling his job and the appeal of Judge Roberts's hatchet job, Rymer lost his job. Rymer has since been unable to obtain employment at any skill level.

13. The Sixth Circuit has a staff attorney program to dispose of pro se appeals, such as Rymer's.[11] Circuit Judges Gil Merritt and Alex Kozinski have described the staff attorney programs:

> "[S]taff attorneys...process...the cases... and prepare a proposed disposition ...[J]udges don't see the briefs in advance and...generally rely on the staff attorney's ...description of the case in deciding whether to sign on to the proposed disposition. After you decide a few dozen such cases on a screening calendar, your eyes glaze over, your mind wanders, and the urge to say OK to whatever is put in front of you becomes almost irresistible."
> Hon. Alex Kozinski, *The Appearance of Propriety,* Legal Affairs (Jan | Feb 2005 issue).

> "If case loads and time pressures on appellate judges should continue to increase, we should probably expect consequences such as a tendency towards deference to the interests of established authority and a tendency towards giving the cases of individuals, particularly those of ordinary citizens and the poor, less attention. Less experienced lawyers, underpaid lawyers or the absence of any lawyers at all characterize

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[11] Federal Judicial Center, *Deciding Cases Without Argument: An Examination of Four Courts of Appeals*, 93 (1987)

> the cases in which this effect most often occurs. Delegation of decision-making authority to others, the elimination of oral argument and reasoned decisions, quick decisions based upon defenses which avoid the merits, and decisions which rely on discretion rather than specific legal principles may be some of the effects of a judicial process driven by haste.
>
> ...[T]he judicial process will turn from reflection to ritual, from deliberation to delegation if case loads continue to increase...[C]onsistent deference to authority by the courts undermines the very notion of the rule of law.
>
> Hon. Gilbert S. Merritt, *Judges on Judging: The Decision Making Process in Federal Courts of Appeals*, 51 Ohio St. L.J. 1397 (1990).

14. Rymer requested an evidentiary hearing and oral arguments on several occasions, to no avail. The Sixth Circuit does not allow pro se's to have oral argument.[12]

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[12] "[T]he court does not hear argument in pro se cases" Federal Judicial Center, *Deciding Cases Without Argument: An Examination of Four Courts of Appeals*, 103 (1987)

## REASONS FOR GRANTING THE WRIT

Where there is a serious question about the fairness of judicial proceedings, this Court has remanded for reconsideration. 16B Wright and Miller, *Federal Practice and Procedure* (3d), §4004.5 at 128 (citing *Wellons v. Hall*, 558 U.S. 220 (2010) (a GVR remanding with instructions to order discovery and an evidentiary hearing which had been wrongly withheld).

The lower courts' conduct in this case poses a serious question about the fairness of the judicial proceedings. Thus, at minimum, a GVR is appropriate. However, plenary consideration is justified given the important questions presented pertaining to the sovereign immunity of commercial enterprises.

### I. Judge Victoria Roberts's misconduct and the lack of adequate appellate review warrant vacature with instructions upon remand to consider in the first instance arguments pressed upon but passed over or otherwise given short shrift.

The lower court rulings should be vacated because the lower courts conducted sham proceedings. While this Court may not have previously considered the question of whether a void judgment is transmuted to a valid judgment when affirmed, numerous state supreme courts have held they are not.

**A. The judgments are void.**

**1. Judge Victoria Roberts presided over a kangaroo court.**

The lower courts threw procedural due process and the doctrine of stare decisis out the window. The lower courts put an inaccurate spin on the facts and wrongfully portrayed Rymer and his case in a false light.

Rulings rendered in sham judicial proceedings are void. *Betts v. Brady*, 316 U.S. 455, 464 (1942) ("trial was a mere sham and pretense, offensive to the concept of due process.");*see also Williams v. North Carolina*, 317 U.S. 287, 306 (1942)(Judgments are valid "only where such judgments meet the tests of justice and fair dealing that are embodied in the historic phrase, "due process of law"");1B *Moore's Federal Practice* P 0.406(2), p. 905; 7 id. at P 60.25(2), p. 309-11.("[A] judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void, and attackable collaterally").

Judge Roberts defied an order of the Chief Judge removing her from this case. (App.,1e). Five months past the expiration of her term in Nashville, the case was reassigned to Judge Campbell. (App., 1f). Eleven days later a ruling was entered that cited a specific sentence from footnote five of *Exxon*[13] never cited before or since in the Middle District of Tennessee but very frequently cited in Judge Roberts's home district in Michigan. Why did Judge

[13] See footnote 9, *supra*

Roberts defy Chief Judge Cole's order? Who *actually* wrote the order denying the post-judgment motions?

Judge Roberts "conceal[ed] the role of personal preferences in [her] decisions by stating the facts selectively, so that the outcome seems to follow from them inevitably." Hon. Richard A. Posner, *How Judges Think*, 144 (Harv. Press 2008). By her hatchet job and comparison of Rymer to the delusional people in the inapposite cases she cited, Judge Roberts "distort[ed] the case in point beyond all recognition, so as to slip its whole force [a]nd...include[d] the unvarnished citation of a few alleged authorities which have little or nothing to do with the proposition for which they are cited." Karl Llewellyn, *The Common Law Tradition: Deciding Appeals, 133* (1960).

Judge Roberts exceeded[14] her jurisdiction by reaching the statute of limitations issue after dismissing under Rule 12(b)(1) and deprived Rymer of due process by improperly[15] *sua sponte* declaring him incompetent without an evidentiary hearing or impaneling a jury.[16]

The facts found do not pertain to the case on appeal. The irrelevant, distracting, and bogus

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[14] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)
[15] *Boals v. Gray*, 775 F.2d 686,691 (6th Cir. 1985)(*sua sponte* consideration of unraised arguments is improper, absent injustice or public policy)
[16] *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971) ("Where a person's good name, reputation, honor, or integrity is at stake...notice and opportunity to be heard are essential.")

findings that Christians[17], persons in love[18], and persons suffering from PTSD are mentally incompetent do not, as a matter of law, support the orders made. Therefore, the orders are void. *Interstate Commerce Commerce v. Louisville & N. R. Co.*, 227 U.S. 88, 91-92 (1913)(collecting cases)(order is void "if the facts found do not, as a matter of law, support the order made").

Justice Alito has said, "A judge can't have any agenda, a judge can't have any preferred outcome in any particular case...[t]he judge's only obligation-and it's a solemn obligation-is to the rule of law."[19] Judge Victoria Roberts did not abide by that principle in this case.

### 2. The lower courts disregarded Supreme Court precedent as well as their own.

The holdings of this Court are not mere precatory meanderings to be adhered to or not as the lower courts so choose. This Court takes action when a lower court disregards the law. Shapiro, *Supreme Court Practice*, 10th Ed. (2013) at 669 (citing *Will v. United States*, 389 U.S. 90, 100 n.10 (1967) (granting mandamus for a district judge's disregard of the Rules of Civil Procedure)). Likewise, certiorari

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[17] App. 3d

[18] Though wholly irrelevant to the case on appeal, "love" is the unspecified form of "insanity" *sua sponte* referenced by the Sixth Circuit in spinning their rehash of claims that were never ever briefed in the lower courts. See Appx. C.

[19] Hon. Samuel Alito, *Confirmation Hearing on the Nomination of Samuel A. Alito, Jr. to be an Associate Justice of the Supreme Court of the United States*, Serial No. J–109–56, p56

should be granted where, as here, the lower courts have persistently disregarded this Court's hallowed precedents.

- *Terrell v. Morris,* 493 U.S. 1 at 3 (1989)

The Sixth Circuit repeated its mistake in *Terrell v. Morris* by affirming a decision that the District Court never made. *Terrell* forbids that practice. The District Court never decided that the professors have qualified immunity, but the Sixth Circuit decided that it is within the scope of a teacher's job to assign a student a **multi-million-dollar** project as a graduation requirement.

Additionally, in doing so, the Sixth Circuit departed from its own precedent when it "summarily decided the merits of the controversy "without the ordinary incidents of a trial, including the right to a jury...under the guise of determining the jurisdictional issue."" *Fireman's Fund Ins. Co. v. Ry. Express Agency, Inc.*, 253 F.2d 780, 784 (6th Cir. 1958) (internal citations omitted). Rymer sought a jury trial to determine whether the projects were unfeasible or retaliatory. In either case, the professors would not be entitled to qualified immunity. The case must be remanded, proceed to discovery, and go to trial before a jury.

- *Milliken v. Bradley*, 433 U.S. 267 (1977)[20]

The court of appeals failed to address the argument that Rymer is entitled to remedial measures for lingering effects from antecedent violations of his constitutional rights, notwithstanding sovereign immunity.

- *Foman v. Davis*, 371 U.S. 178 (1962)

The lower courts disregarded *Foman* by requiring Rymer to overcome the requirements of Rule 59(e) prior to granting leave to amend his complaint. The lower courts also disavowed circuit precedent by failing to address the argument that Rymer is entitled leave to amend under the even less stringent requirement set forth in *Berndt v. Tennessee*, 796 F.2d 879 (6th Cir. 1986)

Rymer sought leave to amend his complaint to improve its wording, narrow the issues[21], and to add §§1983, 1985(3) claims. In seeking leave, Rymer relied on this Court's holding in *Foman*, 371 U.S. 178

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[20] Rymer also argued that Martin continues to degrade the economic value of his abilities by maintaining libelous academic records containing retaliatory bad grades. It was argued that declaratory judgment and a mandatory injunction ordering Martin to adjust the grades falls squarely within Martin's narrow view of the scope of *Ex parte Young*.

[21] The 11th Circuit might have considered Rymer's complaint, which plead two severable cases in one complaint, to be a "shotgun" pleading and ordered repleading. *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1296 (11th Cir. 2018) (holding district courts are to sua sponte order repleading when presented with "shotgun" complaints).

and the Sixth Circuit's holding in *Berndt*, 796 F.2d 879 (allowing pro se's to amend their complaints without having to meet Rule 59's requirements).

- *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60 at 66 (1976)

The appellate court disregarded this holding by requiring Rymer to include in his complaint a prayer for injunctive relief. *Holt* interpreted Fed. R. Civ. P. 54(c) to require courts to provide entitled remedies regardless of whether they are specified in the pleadings.

- *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."

The lower courts disregarded precedent by dismissing under both Rules 12(b)(1) and 12(b)(6).

- *Erickson v. Pardus*, 551 U.S. 89 (2007)

The lower courts failed to liberally construe the 20 U.S.C. §1011a claim as claims under 42 U.S.C. §§ 1983 and 1985(3).

- *Fox v. Vice*, 563 U.S. 826, 834 (2011)

*Fox* recognized that each claim must be weighed on its own merits. The lower courts basically lumped all of Rymer's claims together once they chunked him into the loony-frivolous bin.

### 3. The Sixth Circuit passed over determinative sovereign immunity arguments pressed upon it.

Courts of appeals have no discretion to pick the issues to be reached. Cooper & Berman, *Passive Virtues and Casual Vices in the Federal Courts of Appeals*, 66 Brook. L. Rev. 685, 716-17 (2001). When courts of appeals have passed over issues, this Court takes either of two courses: 1.) remand for further consideration or 2.) undertake initial decision of the matters. Wright & Miller, *17 Federal Practice and Procedure*, §4036 at 47-49.

The following issues were pressed upon but passed over by the Sixth Circuit.

- Whether this case is a good fit for application of this Court's ruling in *Milliken* which held lingering effects from antecedent unconstitutional violations are remediable, notwithstanding sovereign immunity?

- Whether district court rulings and unpublished appellate decisions are binding precedent when they are predicated upon outdated financial reports from the year 1928?

- Whether state laws conferring sovereign immunity upon financially independent corporations are valid, and, if so, whether those statutes are retroactive?

**4. Void orders that are affirmed on appeal are still void.**

Though probably not an issue of first impression in this Court, no case could be located as to whether a void order may be transmuted into a valid judgment when it is affirmed on appeal. The highest courts of several states which have considered the issue have unanimously ruled that such judgments remain void.

"[T]he affirmance of a void judgment on appeal does not make it valid." *Kennedy v. Chadwell*, 202 Okla. 491, 496, 215 P.2d 548, 553 (Okla. 1950)(citing *Ball v. Tolman*, 135 Cal. 375, 67 P. 339, 87 Am. St. Rep. 110; *Pioneer Land Co. v. Maddux*, 109 Cal. 633, 42 P. 295, 50 Am. St. Rep. 67 (Cal. 1895); *see also Vane v. Jones*, 13 Idaho 21, 24 (Idaho 1907); *Gille v. Emmons*, 58 Kan. 118, 48 P. 569, 62 Am. St. Rep. 609 (Kan. 1897);*Wilson v. Montgomery*, 22 Miss. 205, 207 (Miss. 1850);*Chambers v. Hodges*, 23 Tex. 104 (Tex. 1859).

**B. Inadequate appellate review justifies a GVR.**

There was no appellate review complying with the requirements of 28 U.S.C. §46 and 28 U.S.C. §453

and therefore no due process.[22] Shunting Rymer's appeal to a staff attorney also deprived Rymer of equal protection of the law. A remand by this Court with instructions to put the case on the oral argument calendar will enable adequate appellate review.

### 1. The Epimenides Paradox proves no Article III judge participated on Rymer's appellate panel.

In 1991, Circuit Judge John Rogers, who was supposedly on Rymer's panel, wrote an article that referenced the Epimenides Paradox which is stated thusly, "Epimenides the Cretan is reported to have said, "All Cretans are liars."" Hon. John M. Rogers, *"I Vote This Way Because I'm Wrong": The Supreme Court Justice as Epimenides,* 79 Ky. L.J. 439 (1991). In other words, "Epimenides the Cretan says, 'that all the Cretans are liars,' but Epimenides is himself a Cretan; therefore he is himself a liar. But if he is a liar, what he says is untrue."[23]

Here we have a supposed appellate panel of Article III judges who have affirmed a bogus ruling that Christians are mentally incompetent. Yet, two of the members of that supposed panel are

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[22] This Court has inquired into the legality of the composition of a federal appellate court, even though no question in that respect was raised by the parties in the lower courts. Ernest H. Schopler, *Annotation: What Issues Will The Supreme Court Consider, Though Not, or Not Properly, Raised by the Parties,* 42 L. Ed. 2d 946 at 14 (citing *William Cramp & Sons Ship & Engine Bldg. Co. v. International Curtiss Marine Turbine Co.,* 228 U.S. 645 (1913); *Lamar v. United States,* 241 U.S. 103 (1916); *Glidden Co. v. Zdanok,* 370 U.S. 530 (1962)).

[23] Fowler, Thomas, *The Elements of Deductive Logic* (3rd ed.). Oxford: Clarendon Press. p. 163 (1869)

Christians[24] themselves! Obviously, the two Christians on the panel did not do much reviewing of this case. Otherwise, the alternative conclusion, that they actively participated in the review, would give rise to a paradox similar to Epimenides's. It is apparent there was no appellate review conforming to the requirements of 28 U.S.C. §46, and therefore no due process.

### 2. The use of a staff attorney deprived Rymer of equal protection of the law.

Appeals brought by pro se's are automatically sent to a staff attorney for disposal.[25] As a pro se appellant, Rymer was deprived of equal protection of the laws that provide an appeal as of right before a panel of three Article III judges. 28 U.S.C. §46; 28 U.S.C. §453 (equal judicial consideration to the poor and to the rich); *Dig. Equip. Corp. v. Desktop Direct*, 511 U.S. 863, 865 (1994) (§1291 provides an appeal as of right from final judgments of district courts).

Because law clerks are not judges, nor are staff attorneys. *Doe v. Cabrera*, 134 F. Supp. 3d 439, 452 (D.D.C. 2015) ("term law clerk is not a judge"). Because staff attorneys are not supervised by judges and rarely, if ever, even meet with the judges for

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[24] Circuit Judge Siler is a former President of the Kentucky Baptist Convention; Circuit Judge Cook is Catholic.
[25] See footnote 11, *supra*

whom they work[26], staff attorneys pose a greater risk of injecting or perpetuating bias into their work than law clerks. *Cf. id.* at 453 ("judges are able to ferret out and set aside the potential biases of *their* law clerks")(emphasis added).

Delegating judicial duties to staff attorneys in pro se appeals violates 28 U.S.C. §453. Such policy harkens to the days of Cincinnatus who decreed only Patricians were entitled to due process. Ironically, eventually Cincinnatus himself fell on hard times.

In this case, the staff attorney put a toxic spin on non-issues not on appeal, threw the doctrine of stare decisis out the window, and ignored arguments raised by Rymer. In doing so, the staff attorney ensured his or her recommended disposition would be affirmed by the panel. The staff attorney "twisted the knife" in the wounds inflicted upon Rymer by Judge Victoria Roberts's hatchet job.

### 3. Because of Judge Victoria Roberts's bias, appellate review was an inadequate remedy.

Even if a panel of three Article III judges had not delegated their duties to a staff attorney, as Justice McKenna wrote, appellate review is an inadequate remedy when the trial court judge is biased. *Berger*, 255 U.S. at 36.

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[26] Hon. Richard A. Posner, *Reforming the Federal Judiciary*, 166 (2017)

Circuit Judge Gil Merritt tells it best,

> "[W]e learn from an early age to defer to the authority of parents and established institutions...We do not entirely lose that tendency when we grow up to be judges who decide cases between individuals and established institutions like governments, corporations, officials and other representatives of groups of higher social rank. The less time we have to decide a case between an individual and the representative of established authority the more pressure there is to decide quickly and we may be less likely to analyze and reflect on the condition and circumstances of the individual's case...It is with the courts of appeals that the deference to authority is most apparent...cases have been reviewed already ...before they arrive for further review. It is easier for a court of appeals to defer to [lower tribunals]...and affirm denials...than to take the time to consider the case fully." Hon. Gilbert S. Merritt, *Judges on Judging: The Decision Making Process in Federal Courts of Appeals*, 51 Ohio St. L.J. 1396-1397 (1990).

When Judge Victoria Roberts issued her biased rulings she initiated a snowball effect. The appellate court deferred to her because she is an Article III judge. A remand by this Court will cause the Sixth Circuit to look more closely at Rymer's appeal.

### C. Either statutory or common law writs of certiorari may be used to review the judgments.

Review by statutory writ of certiorari may be granted because the lower courts "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10. GVR is used to "achieve individual justice even in cases that do not warrant plenary consideration." 16B Wright & Miller, *Federal Practice and Procedure* (3d), §4004.5 p133. See also 17 Wright & Miller, §4035 p8, citing *Montana v. Kennedy*, 366 U.S. 308, 309 (1961) (granting certiorari "in view of the apparent harshness of the result entailed").

Alternatively, "Ex parte Chetwood established common law certiorari as an independent means of reviewing lower court action." 16B Wright & Miller, *Federal Practice and Procedure* (3d), § 4005 at 161(citing *In re Chetwood*, 165 U.S. 443, 461-62 (1897)). The writ may be used "to correct excesses of jurisdiction and in furtherance of justice." *Ibid.* It is a "means of giving full force and effect to existing appellate authority[27] and of furthering justice in other kindred ways." 23 *Moore's Federal Practice - Civil* §

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[27] "The term 'appellate jurisdiction' is to be taken in its larger sense, and implies in its nature the right of superintending the inferior tribunals." 23 *Moore's Federal Practice* - Civil § 520.02 n.5

520.12 (2019) (citing *In re 620 Church Street Bldg. Corp.*, 299 U.S. 24, 26 (1936)).

The factors guiding the discretion to review by common law writ of certiorari are not as stringent. There is **no need for a case to involve a question of national importance nor the need for a circuit conflict**. *See e.g.*, *Chetwood*, 165 U.S. at 461(review of a contempt order); *McClellan v. Carland*, 217 U.S. 268 (1910)(a federal diversity lawsuit against an intestate decedent's administrator).

Here, the Sixth Circuit affirmed a void order entered by a biased judge who defied an order of the Chief Judge of the Sixth Circuit, removing her from this case. Upon review, the Sixth Circuit disavowed this Court's rulings at least seven times. By affirming Judge Roberts's void order that this suit is frivolous and Christians are mentally incompetent, Rymer's fundamental rights are in limbo, a particularly harsh result, justifying granting the statutory writ of certiorari. Alternatively, the common law extraordinary writ of certiorari is appropriate because it will aid this Court's appellate jurisdiction and will achieve the ends of justice.[28]

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[28] "[N]o distinction is to be made between orders in aid of a court's own duties and jurisdiction and orders designed to better enable a party to effectuate his rights and duties." *United States v. N.Y. Tel. Co.*, 54 L. Ed. 2d 376 (1977), Headnote 13. "[A] federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it." *Id.*, 434 U.S. 159, 173 (1977) (internal citation omitted). "The court's supplemental powers under the All Writs Act, 28 U.S.C.S. § 1651(a), are not limited to those situations where it is "necessary" to issue a writ or order in the

## II. The circuits that consider state law to not be dispositive in determining whether an entity is an arm of the state are correct because it makes no sense to allow sovereign immunity to give public corporations an unfair advantage over private enterprise.

The Seventh, Tenth, and Eleventh Circuits consider state law to not be dispositive in determining whether an entity is an arm of the state. The modern Sixth Circuit disagrees. In the context of federal public corporations chartered with a "sue-and-be-sued" clause, this Court typically considers such an entity to be a business to be held as liable as any other business. This Court's jurisprudence on federal public corporations supports the Seventh, Tenth, and Eleventh Circuits' jurisprudence on state public corporations. By applying such rules to UT, Rymer's claims may proceed.

### A. Current arm-of-the-state tests in the Sixth Circuit.

In the Sixth Circuit, there are two arm-of-the-state tests, *Hall*[29], for the "peculiar circumstances" of

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sense that the court could not otherwise physically discharge its appellate duties." *Id.*

[29] *Hall v. Med. Coll. of Ohio*, 742 F.2d 299, 302(6th Cir. 1984)(finding the nine-point test in *Blake v. Kline*, 612 F.2d 718 (3d Cir. 1979) to be a better approach for examining the "peculiar circumstances" of different colleges and universities).

colleges and universities, and *Ernst,* for other entities. Until this case, the Sixth Circuit has never attempted to apply either test to UT. Here, it applied the wrong test prematurely and incorrectly.

This Court has said the question of "whether a particular state agency has the same kind of independent status as a county or is instead an arm of the State, and therefore "one of the United States" within the meaning of the Eleventh Amendment, is a question of federal law. But that federal question can be answered only after considering the provisions of state law that define the agency's character." *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429-30 n.5 (1997). There appears to be confusion, at least in the modern Sixth Circuit, as to how to properly consider all of the provisions of state law that define an agency's character.

In the district court, Rymer sought an evidentiary hearing to require UT to carry its burden of proving its allegation that it is an arm of the state. The lower courts denied the hearing and placed the burden of proof on Rymer, in violation of circuit precedent. *Gragg v. Ky. Cabinet for Workforce Dev.*, 289 F.3d 958 (6th Cir. 2002)(entity claiming entitlement to sovereign immunity bears the burden of proving itself an arm of the state);*see also J.S. Haren Co. v. Macon Water Auth.*, 145 F. App'x 997 (6th Cir. 2005) (vacating a dismissal and ordering discovery to determine whether a party is an "arm of the state" and whether there has been a waiver or abrogation of sovereign immunity).

In support of its motion to dismiss, UT relied upon court rulings predicated upon its financial relationship with the State in the year 1928. In 1975, in considering those rulings, the Sixth Circuit said:

> "We are uncertain whether the University of Tennessee is a state instrumentality protected by the eleventh amendment. The record before us contains little data on the University's financial relationship with the State of Tennessee, and the Tennessee cases and statutory materials do not compel a conclusion one way or the other."

*Soni v. Bd. of Trs.*, 513 F.2d 347, 352 (6th Cir. 1975).

In 1991, Circuit Judge Damon Keith authored a conflicting opinion. *Woolsey v. Hunt*, 932 F.2d 555, 565 (6th Cir. 1991). *Soni* never held UT to be an arm of the state, but *Woolsey* mistakenly thought it had. *Woolsey* yields to *Soni*. *See Darrah v. City of Oak Park*, 255 F.3d 301, 309 (6th Cir. 2001) ("When a later decision of this court conflicts with one of our prior published decisions, we are still bound by the holding of the earlier case"). Ever since *Woolsey*, the Sixth Circuit has confounded the issue of waiver of immunity with the separate issue of whether UT is an arm of the state. For more than 40 years, the Sixth Circuit has failed to address, in a published opinion, whether UT is an arm of the state under the *Hall* test.

Here, the Sixth Circuit not only applied the wrong test (*Ernst*), but it also applied that test prematurely because UT failed to submit any evidence supporting its claimed status. In the absence of any

evidence upon which to run the test, the Sixth Circuit ran the test using *selectively chosen* state laws and court rulings predicated upon *selectively chosen* state law. The Sixth Circuit erroneously regarded a state statute, Tenn. Code Ann. § 9-1-103, supreme over Tenn. Const. art. II, § 31 (barring the state from owning stock in corporations, an activity UT participates in). *Goddard v. Sevier County*, 623 S.W.2d 917, 919 (Tenn. 1981) (state constitution takes precedence over state statutes). "A governmental agency or subdivision may not do that which the State is forbidden to do by the Constitution." *Mich. Sav. & Loan League v. Mun. Fin. Com.*, 79 N.W.2d 590, 592 (Mich. 1956). Either UT is not an arm of the state or its investment activities are ultra vires.

### B. Seventh, Tenth, and Eleventh Circuit holdings can unify sovereign immunity jurisprudence in the realm of state and federal public corporations.

Can states pass laws to *confer* sovereign immunity upon entities, particularly in instances where, as here, the entity receives less than 30% of its funding from the State and engages in activities barred to the State by the State constitution? The Seventh, Tenth, and Eleventh Circuits would say "no way" given "[a] state would have too much self-interest in extending sovereign immunity to as many of its agencies and corporate creations as possible to allow local laws to be determinant." *Miller-Davis Co. v. Ill. State Toll Highway Auth.*, 567 F.2d 323, 330 (7th Cir. 1977);

*accord Versiglio v. Bd. of Dental Exam'rs*, 651 F.3d 1272, 1277 (11th Cir. 2011);*Duke v. Grady Mun. Sch.*, 127 F.3d 972, 978 (10th Cir. 1997).

*Miller-Davis* nicely meshes with this Court's holdings on federal public corporations chartered with "sue-and-be-sued" clauses. Such entities which are "launched ... into the commercial world" and "authorize[d] to engage" in "business transactions with the public" should have the same "amenab[ility] to judicial process [as] a private enterprise under like circumstances." *Thacker v. TVA*, 203 L. Ed. 2d 668, 677 (2019); 587 U. S. ____ (2019). "[A]n entity with a sue-and-be-sued clause may receive immunity only if it is "clearly shown" that prohibiting the "type[] of suit [at issue] is necessary to avoid grave interference" with a governmental function's performance...That is a high bar." *Id.* at 678.

UT's charter includes a "sue-and-be-sued" clause. *UT Charter*, Art.V,§1. In competition with private schools, it sells educational services to the public. It is a business. UT is not above the law and should be held accountable for abusing Rymer.

## III. *Hans v. Louisiana* should be overturned given the ratification of the ICCPR which requires effective remedies for rights violations by state officers.

Because of an international law binding upon the United States that requires the government to provide effective remedies to victims of rights violations

by government officials, *Hans v. Louisiana* should be overturned.[30]

As will be discussed, it has been held that the provision of effective remedies includes, where necessary, monetary compensation. Where, as here, the rights infringing employees are likely financially unable to make their victim whole, there is no effective remedy if Martin is entitled to sovereign immunity. "To take away all remedy for the enforcement of a right is to take away the right itself. But that is not within the power of the State." *Poindexter v. Greenhow*, 114 U.S. 270, 303 (1885).

The International Covenant on Civil and Political Rights (Covenant) was ratified by this nation. "[T]he Covenant does bind the United States as a matter of international law". *Sosa v. Alvarez-Machain*, 542 U.S. 692, 735 (2004). "Notwithstanding its non-self-executing status, the Supreme Court and lower federal courts have frequently consulted the ICCPR as an interpretive tool to determine

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[30] Overturning *Hans v. Louisiana* is part of a larger argument raised in the lower courts, that sovereign immunity does not bar Rymer's lawsuit, and hence may be considered by the Court. Wright & Miller, 17 *Federal Practice and Procedure*, §4036 at p46 (collecting cases, *see e.g. PGA Tour, Inc. v. Martin*, 532 U.S. 661, 678 n.27 (allowing PGA to raise argument that is part of a larger argument raised below). Moreover, because only this Court can overturn its rulings, it would have been futile to ask the lower courts to consider doing so. *Roper v. Simmons*, 543 U.S. 551, 629 (2005)("it is this Court's prerogative alone to overrule one of its precedents"). *See generally Noatak v. Hoffman*, 872 F.2d 1384, 1387 (9th Cir. 1989)(questioning the "continued vitality" of *Hans*, but duty-bound to uphold it).

important issues in the area of human rights law." *Garcia v. Sessions*, 856 F.3d 27, 60 (1st Cir. 2017)(Stahl, J., dissenting)(applying the Covenant to find that deference to a federal agency caused the United States to be in violation of its commitments under the Covenant's provisions).

The Covenant also applies to all government entities and agents, including all state and local governments in the United States. When the U.S. Senate ratified the Covenant, it included an Understanding that recognized our federal system of government, and specifically stated that the Covenant "shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered" by the Covenant, "and otherwise by the state and local governments" with support from the federal government for the fulfillment of the Covenant. 138 CONG. REC. 6, 8070 (1992).

Article 2 of the Covenant requires effective remedies for rights violations by state officers. The United Nations Human Rights Committee, in overseeing and interpreting the Covenant, has established that an effective remedy includes compensation. In its General Comment analyzing the legal obligations imposed by the Covenant, the Human Rights Committee specified that the provision requiring an effective remedy can only be fulfilled if "appropriate compensation" is made available to victims of human rights violations. "Article 2, paragraph 3, requires that States Parties make reparation to

individuals whose Covenant rights[31] have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy...is not discharged." U.N.H.R.C., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, at ¶16.

"[T]he Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations." *Id.*

The interpretations of the Eleventh Amendment in *Hans v. Louisiana*[32] and of the Tenth Amendment in *Alden v. Maine*[33] cause the United States to be in violation of its binding obligation to provide an effective remedy for Covenant rights violations perpetrated in the name of the government.

In *Hans* and *Alden*, the Court acknowledged that the literal text of the Eleventh Amendment does not foreclose lawsuits in federal court brought by citizens against their own states. *Hans*, 134 U.S. at 11; *Alden*, 527 U.S. at 713. In *Alden*, the Court relied

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[31] The Covenant rights provided by Article 19 subsections (1) and (2) mirror the rights provided by the free speech clause of the First Amendment.
[32] *Hans v. Louisiana*, 134 U.S. 1 (1890)
[33] *Alden v. Me.*, 527 U.S. 706 (1999)

upon the Tenth Amendment to enshrine the British common law doctrine of sovereign immunity. *Id.* In doing so, the Court rendered the Eleventh Amendment superfluous. *Id.* at 760-61 (Souter, Breyer, Ginsberg, and Stevens, JJ., dissenting).

Justice Scalia recognized that "[a]t the time of Marbury v. Madison there was no doctrine of domestic sovereign immunity, as there never had been in English law." Hon. Antonin Scalia, *Historical Anomalies in Administrative Law*, 1985 YEARBOOK 103,104 (Supreme Court Historical Soc'y);*cf. Edelman v. Jordan*, 415 U.S. 651, 687-88 (1974) (Brennan, J., dissenting) ("nonconstitutional but ancient doctrine of sovereign immunity" is not a bar to suits against the states by their own citizens).

There is much that could be presented on this subject upon plenary consideration. One of those arguments is *Hans* relied upon the no longer true supposition that "civilized nations" cannot be sued. *Hans*, 134 U.S. at 17. Today, civilized nations across the globe have abrogated sovereign immunity, e.g., Argentina, Australia, France, Germany, Ireland, and the UK.[34] Why should a defunct and misunderstood British common law doctrine be allowed to deny justice to Americans who have been gravely injured by employees of their home state?

*Hans* has lost its vitality and should be overturned.

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[34] Gilman, *Calling the United States' Bluff*, 95 Geo. L.J. 591,637 (2007)

## IV. 42 U.S.C. §2000d–7 abrogated Martin's purported immunity to claims brought under 20 U.S.C. §1011a.

Rymer filed a claim against Martin under 20 U.S.C. §1011a. The Sixth Circuit ruled that "the Higher Education Act does not create a private right of action and instead "provides for enforcement through an administrative action brought by the Secretary [of Education]."" The truth is, in 1979, this Court held there *is* a private right of action under the Higher Education Act. *Cannon v. Univ. of Chi.*, 441 U.S. 677 (1979)(recognizing a private right of action under Title IX). Furthermore, the Secretary provides no enforcement of §1011a. If that law is to be enforced, it will only be through private action. The same grounds that established a private right of action under Title IX of the Higher Education Act (HEA) and abrogated sovereign immunity against monetary damages by Title X of the Rehabilitation Act Amendments of 1986 establish the same under Title I of the HEA. The door to an effective remedy can open.

### A. The *Cort* factors support a private right of action under 20 U.S.C. §1011a.

This Court has established a four-factor test for discerning whether a statute creates a private right of action. *Cort v. Ash*, 422 U.S. 66 (1975). Under that test, the Court considers: (1) whether the plaintiff is a member of a class that the statute especially intended to benefit, (2) whether the legislature explicitly or implicitly intended to create a private cause of

action, (3) whether the general purpose of the statutory scheme would be served by creation of a private right of action, and (4) whether the cause of action is traditionally relegated to state law such that implication of a federal remedy would be inappropriate. *Id.* at 78.

An in-depth analysis of those factors as applied to 20 U.S.C. §1011a is beyond the proper scope of a cert petition[35], but it is clear the *Cort* factors favor a private right of action.

§1011a is entitled "[p]rotection of student speech and association rights." The statute incorporates the Fourteenth Amendment's prohibition of discrimination. Therefore, it has "teeth" to protect student speech. As to the intention of Congress to provide a private right of action, this Court has said the main thing is Congress must not explicitly *ban* a private right of action. *Cannon*, 441 U.S. at 696. And with §1011a it has not. The third factor is satisfied because a private right of action is "necessary...to the accomplishment of the statutory purpose" because the Secretary does not enforce §1011a. *Cf. id.* at 703. Finally, the fourth factor is satisfied because §1011a covers invidious discrimination against students on the basis of the content of their speech and protecting citizens from "invidious discrimination of any sort" has been a role of the federal courts since the Civil War. *Id.* at 708.

Upon plenary consideration, these arguments would be briefed in full.

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[35] Hon. Antonin Scalia, *Making Your Case*, 77 (2008)

### B. §1011a incorporates a prohibition of discrimination thereby abrogating state sovereign immunity through 42 U.S.C. §2000d–7.

Congress abrogated state sovereign immunity "from suit in Federal court for a violation of...the provisions of any...Federal statute prohibiting discrimination by recipients of Federal financial assistance." 42 U.S.C. §2000d–7. This Court held §2000d–7 to be an "unambiguous waiver of the States' Eleventh Amendment immunity." *Lane v. Peña*, 518 U.S. 187, 200 (1996).[36]

§1011a incorporates the Fourteenth Amendment's prohibition of discrimination by recipients of Federal financial assistance. Therefore, §1011a is a statute Congress included within §2000d–7. Thus, Martin, a recipient of Title IV funds, has no sovereign immunity from claims under §1011a.

## CONCLUSION

Judge Victoria Roberts's disobedience to the Chief Judge's order and her spin-doctored hatchet job, in conjunction with the inadequate appellate review, if nothing else, warrant a GVR with instructions for the court of appeals to recall its mandate and put this case on its oral argument calendar.

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[36] Because of §2000d–7 there is no need to resurrect the constructive waiver doctrine laid to rest in *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 668, 119 S. Ct. 2219, 2222 (1999).

However, the certworthy issues pertaining to the sovereign immunity of commercial enterprises warrant plenary consideration.

Respectfully submitted,

Lincoln Rymer
154 Fowler Cemetery Lane
Hurricane Mills, TN 37078
931-296-3001

VERIFICATION

I, Lincoln Rymer, do hereby swear and affirm under 28 U.S.C. §1746 that the matters stated and contained herein and appended thereto at C, E-H, and L are true to the best of my knowledge and information. May 16, 2019

X 

Lincoln Rymer