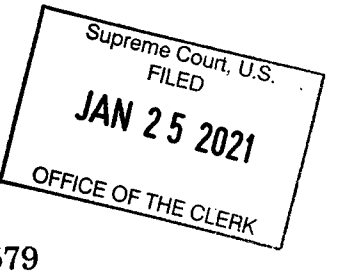
20-7015

In the

Supreme Court of the United States



DR. SABINA BURTON,

Plaintiff-Appellant-
Petitioner

v.

Appellate Case: 20-1579

District Case: 3:14-cv-00274-jdp

BOARD OF REGENTS UNIVERSITY OF WISCONSIN, DR. THOMAS CAYWOOD, DR. ELIZABETH THROOP and DR. MICHAEL DALECKI,

Defendants-Appellees

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether discovery violations can constitute the type of extraordinary circumstances which would justify relief on the basis of fraud on the court, and what test should be used to determine whether fraud on the court has occurred in circumstances involving discovery violations.
2. Whether the district court abused its discretion by denying Burton's Rule 60(b)(6) motion and her Rule 37 motion, which the district court construed to allege fraud on the court, where it failed to consider the merits; applied an inapplicable time limit; failed to consider the factors mandated by Congress in the Speedy Trials Act; failed to decide whether Defendants or their attorneys committed spoliation of evidence; failed to decide whether Defendants or their attorneys violated policy or law; failed to decide whether Defendants or their attorneys committed discovery violations; failed to decide whether Defendants or their attorneys acted in bad faith; relied on clearly erroneous factual determinations; failed to consider that Burton was prejudiced; applied an inapplicable one year time limit; failed to consider Burton's inability to bring the motion within one year; failed to adequately articulate its reasoning for the decision; and failed to consider the public importance of this case.
3. Whether the appellate court sanctioned the district court's abuse of discretion by failing to meaningfully review the case.

LIST OF DIRECTLY RELATED PROCEEDINGS

Burton I – filed on April 14, 2024 (Dkt. 1).

Burton v. Bd. of Regents of Univ. of Wis. Sys., 171 F. Supp. 3d 830 (W.D. Wis. 2016) (Granting Defendants' motion for summary judgment on March 18, 2016).

Burton v. Bd. of Regents of Univ. of Wis. Sys., 14-cv-274-jdp (W.D. Wis. June 21, 2016) (Denying Burton's motion to reconsider).

Burton filed an appeal of the summary judgment decision on July 20, 2016. (Dkt. 108). The district court's ruling was affirmed on March 17, 2017. (Case # 16-2982, Dkt. 40). *Burton v. Bd. of Regents of the Univ. of Wis. Sys.*, 851 F.3d 690 (7th Cir. 2017).

On August 19, 2019 Burton moved for the court to vacate judgment, (the Rule 60(b)(6) motion), based on exceptional circumstances and manifest injustice uncovered through newly discovered evidence, pursuant to Rule 60(b)(6). (Dkt. 113), (Dkt. 115). The motion was denied on September 4, 2019. (Dkt. 116), (App. A), *Burton v. Bd. of Regents of Univ. of Wis. Sys.*, 14-cv-274-jdp (W.D. Wis. Sep. 4, 2019).

Burton moved for reconsideration on September 18, 2019. (Dkt. 117). On September 19, 2019, the motion was denied. (Dkt. 118), (App. B).

On March 9, 2020 Burton moved for spoliation sanctions pursuant to Rule 37(b), (c) and (e) and the court's inherent powers (the Rule 37 motion). (Dkt. 119). The motion was denied on March 11, 2020. (Dkt. 121), (App. C). *Burton v. Bd. of Regents of the Univ. of Wis. Sys.*, 14-cv-274-jdp (W.D. Wis. Mar. 11, 2020).

Burton appealed the district court's denial of her Rule 37 motion on April 9, 2020. (Appeal Dkt. 1, Dkt. 124). On May 18, 2020 Burton filed her appellant's brief with the Appellate Court. (Appeal Dkt. 10). The appellate court affirmed the district court's decision on August 28, 2020. (Appeal Dkt. 17), (App. D), *Burton v. Bd. of Regents of Univ. of Wis. Sys.*, No. 20-1579 (7th Cir. Aug. 28, 2020).

Burton II – filed on January 17, 2017. (*Burton II* - Dkt. 1)

Burton v. Bd. of Regents of the Univ. of Wis. Sys., 17-cv-36-jdp (W.D. Wis. Sep. 5, 2017) (Dismissing in part and granting in part defendants' motion to dismiss).

Burton v. Bd. of Regents of the Univ. of Wis. Sys., 17-cv-36-jdp (W.D. Wis. Mar. 29, 2019) (Granting in part defendants' motion to dismiss).

Burton v. Bd. of Regents of Univ. of Wis. Sys., 17-cv-36-jdp (W.D. Wis. Jan. 14, 2020) (Denying or staying Burton's motion to compel, extend deadlines, file fifth amended complaint, and medical accommodations).

Burton v. Bd. of Regents of Univ. of Wis. Sys., 17-cv-36-jdp (W.D. Wis. Sep. 4, 2020) (Granting defendants' motion for summary judgment).

Burton v. Bd. of Regents of Univ. of Wis. Sys., 17-cv-36-jdp (W.D. Wis. Nov. 3, 2020) (Denying Burton's motion to correct or modify the record on appeal). (Pending appeal).

Burton's Wisconsin State Lawsuit – filed July 6, 2018.

A state judicial review appeal is currently pending with the Court of Appeals of Wisconsin District No. IV, (Court of Appeals Case No. 2019AP002276), (Circuit Court Case No. 2018CV218), regarding violations of Burton's due process and First Amendment rights.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

JURISDICTIONAL STATEMENT

Plaintiff-Appellant Dr. Sabina Burton brings this petition for a writ of certiorari for the Supreme Court of the United States to review her case. Review is requested of the decisions of the district court entered on Sep. 4, 2019, (Dkt. 116), (App. A), and March 11, 2020, (Dkt. 121), (App. C), and of the appellate court entered on August 28, 2020. (Appeal Dkt. 17), (App. D).

The normal time to file this petition was extended by Supreme Court order 589 on March 19, 2020 from 90 to 150 days due to Covid 19.

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

CONSTITUTIONAL PROVISIONS

The Speedy Trials Act states in part:

> "In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice."

18 U.S.C. § 3162(a)(2).

STATEMENT OF THE CASE

NOW COMES the Plaintiff, Sabina Burton, humbly beseeching the United States Supreme Court to review her motions alleging, extraordinary circumstances pursuant to Rule 60(b)(6), spoliation of evidence pursuant to Rule 37, and fraud on the court pursuant to Rule 60(d)(3).

Plaintiff-Appellant Dr. Sabina Burton initiated this civil rights action in the United States District Court for the Western District of Wisconsin on April 14, 2014, pursuant to 42 U.S.C. § 2000e et seq. (Title VII), 20 U.S.C. § 1681 (Title IX), the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983. (Dkt. 1). The district court possessed subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). (Id.). Judgment was entered in this case on March 18, 2016 on summary judgment. (Dkt. 90). The 7th circuit appellate court had jurisdiction pursuant to 28 U.S.C. § 1291, 28 U.S.C. § 41, and 28 U.S.C. § 1294.

Burton was, from 2009 until June 8, 2018, a tenured associate professor of criminal justice at the University of Wisconsin-Platteville (UWP). In October of 2012, a female student came to Burton with a complaint that a male professor had sexually harassed her. Burton helped the student file a report about the incident. Burton received retaliation for her advocacy of the student, and Burton filed complaints regarding the retaliation. She then received retaliation for her complaints, some of which was illegally hidden from her for many years. She properly filed complaints alleging retaliation, including filing *Burton I.* Burton

received more retaliation, she filed more complaints regarding the new, ongoing and escalating retaliation, and the cycle of retaliation and complaints continued. Burton was not given fair opportunity to be heard, and her complaints were improperly processed on all levels. Burton filed a second federal lawsuit, (*Burton II*), which is currently pending appeal in the 7th Circuit Court of Appeals.

Burton's dismissal on June 8, 2018, and surrounding events which she could not adduce prior to dismissal of *Burton I,* are the subject of *Burton II.* This petition regards evidence, facts and circumstances affecting *Burton I,* some of which were only discovered on April 1, 2019.

Long after dismissal of *Burton I* and long after the one-year limit for filing under Rule 60(b)(3), Burton serendipitously came into possession of exculpatory evidence proving retaliation, violations of policy and law, violations of due process, discovery violations, bad faith, extraordinary circumstances, manifest injustice, spoliation of evidence and fraud on the court that had occurred long before dismissal of *Burton I.*

Burton filed a motion pursuant to Rule 60(b)(6), (the Rule 60(b)(6) motion), to vacate judgment based on extraordinary circumstances and manifest injustice, which was exposed by the newly discovered evidence. (Dkt. 115). The district court denied the motion as untimely without considering the merits, without a reply from defendants, and without considering whether Burton could have adduced the evidence within one year after dismissal of *Burton I.* The district court did not construe the motion as invoking spoliation or fraud on the court. (Dkt. 116), (App.

A). Burton filed a request for reconsideration, (Dkt. 117), which was flatly denied without explanation. (Dkt. 118), (App. B).

Burton then filed another motion, this time asserting Defendants committed spoliation of evidence and moving for sanctions pursuant to Rule 37 and the court's inherent powers (the Rule 37 motion). The district court construed the motion to be fraud on the court. (Dkt. 121), (App. C). Fraud on the court is codified in Rule 60(d)(3), and is not time limited. The district court ignored Burton's Rule 37 allegations, but the district court's obligation to liberally construe a pro-se litigant's pleading does not allow it to ignore the stated pleading under Rule 37 and hold Burton to a higher burden of proof under Rule 30(d)(3).

The district court abused its discretion by considering Burton's motion to be the same issue she had raised before; applying an inapplicable filing deadline; failing to consider the seriousness of the alleged offenses; failing to decide whether defendants or their attorneys acted in bad faith; failing to decide whether Burton was prejudiced; failing to decide whether Burton's allegations rise to extraordinary circumstances; failing to decide whether defendants or their attorneys violated discovery laws; failing to consider the motion on the merits; deciding without a reply from defendants; failing to consider Burton's undenied allegations as true; failing to decide whether defendants or their attorneys committed fraud on the court; failing to decide whether defendants or their attorneys committed spoliation of evidence; and failing to clearly articulate the effect of Burton's arguments and evidence on the decision.

The district court attempted to justify its failure to consider the merits of Burton's case by finding that discovery violations can never amount to fraud on the court in any set of circumstances, which is an important issue of considerable conflict between circuit courts across the nation.

Burton appealed the decision to the 7th Circuit Court alleging that the district court had abused its discretion. The Appellate Court affirmed the district court's decision without meaningful review or consideration of the facts and circumstances, without consideration of the seriousness of the offenses or public importance of the case, and without adequate explanation of its decision thereby sanctioning the district court's abuse of discretion. Burton now requests a writ of certiorari for the Supreme Court to review the decisions on her Rule 60(b)(6) motion and her Rule 37 motion, which was construed as alleging fraud on the court.

ARGUMENTS

THE UNITED STATES SUPREME COURT SHOULD HEAR THIS CASE TO SECURE THE NATIONAL RIGHTS UNIFORMITY OF JUDGMENTS, BECAUSE ITS SUPERVISORY ROLE IS NEEDED, AND BECAUSE THIS IS A MATTER OF GREAT PUBLIC CONCERN.

In this case, the district court departed far from the accepted and usual course of judicial proceedings and the Appellate Court sanctioned the lower court's departure. Their decisions conflict with decisions by the Supreme Court, with prior decisions of the 7th circuit, and with decisions of other circuit courts on important issues including whether discovery violations can constitute fraud on the court. Review of this case is called for to settle conflict between circuit courts regarding fraud on the court, because this court's supervisory power is called for, and because

such review will have immediate effect on an issue of national concern, sexual harassment on college campuses and in the workplace.

Denying review of this case will perpetuate a culture of corruption that will negatively affect hundreds of thousands, and possibly millions, of sexual harassment victims and their advocates.

If the decision of the Court of Appeals remains undisturbed in this case, defendants and other university administrators will feel even more free to violate due process rights of their employees and students, and to flout the courts' discovery rules. As in *Nat'l Hockey*, under the circumstances of this case, extreme sanction is appropriate by reason of defendants' ""flagrant bad faith" and their counsel's "callous disregard" of their responsibilities" to provide proper responses to discovery requests and to be honest with the court. *See Nat'l Hockey League v. Met. Hockey Club*, 427 U.S. 639, 643 (1976).

Under the heading "Denial of the Motion will Perpetuate a Culture of Corruption," (Appeal Dkt. 10:56-58), Burton argued that "Defendants' failures to provide the hidden documents in response to Burton's discovery requests in *Burton II* demonstrate their continuing commitment to covering up these adverse actions and indicates that this spoliation will continue and will affect that case unless the court imposes sanctions. Moreover, the Defendants' wanton spoliation of evidence in this case indicates that they are comfortable that they will not need to answer to the courts for such violations of policy, state law or federal rules in the future. If the bad faith hiding of adverse actions exhibited in this case is not addressed by the

court, this case will become a bellwether of more abuse of the court's rules and of employees by the UW System." (Appeal Dkt. 10: 56).

Because the appellate court has now sanctioned the district court's abuse of discretion in this Wisconsin case, the potential harm is expanded to all three states in the 7th Circuit. University administrators and their attorneys in Wisconsin, Illinois, and Indiana now have reason to believe that there can never be any discovery violation, no matter how egregious, that could ever amount to fraud on the court even when attorneys lie to the court to hide violations of policy and law, retaliation, and bad faith spoliation of evidence. They also have reason to believe that running a former employee out of resources, such that her only options are to proceed unrepresented or quit, guarantees her side of the story will never be considered by the courts. Denial of review here would encourage and further entrench the incredible machinery that chews up and spits out sexual harassment victims and their advocates who dare to complain about retaliation by their employers.

Review of this petition by the Supreme Court would send a powerful signal to administrators in the University of Wisconsin System, and to administrators in public universities across the country, that violations of university policies, state laws, and federal discovery laws in bad faith, can be brought to the attention of the Supreme Court by employees, even after their entire life's savings have been spent on legal battles, their health has been compromised, and their reputations ruined.

Burton's case represents immediate importance with far reaching effect on the public.

"Among undergraduate students, 26.4% of females and 6.8% of males experience rape or sexual assault through physical force, violence, or incapacitation." *See* https://www.rainn.org/statistics/campus-sexual-violence. In a university of 7,000 students, like UWP, 2,324 students will experience rape or sexual assault through physical force, violence, or incapacitation. Those victims have been deprived of an advocate because Burton fought for the right to advocate for them and was fired for it. Her story is not unique. This court should act to protect Burton, and others like her, who stand up for victims of sexual harassment because this is a big problem that cannot be reasonably resolved by eliminating victim advocates through violations of policy, due process, and state and federal laws. The problem of sexual harassment on university campuses, and in the workplace, can only be resolved reasonably if voices of reason are heard. Reasonable discourse cannot happen without openness, and accountability. If Burton is returned to UWP, she will be able to enlighten students, fellow faculty, and administrators about the ways this society can get past its problems associated with sexual harassment, and the unfairness that has become too commonplace in dealing with victims and their advocates who are unfairly labeled as 'complainers.' What Burton has to say will help heal this divided nation if she is given a voice.

According to https://educationdata.org/college-enrollment-statistics, in the United States 14.8 million college students are enrolled full time, Wisconsin has 336,000 students, Illinois has 738,000, and Indiana has 388,000. In the states

comprising the 7th circuit court's jurisdiction then, are 1,462,000 college students. Applying the statistic above, 485,384 students within the 7th circuit's jurisdiction and 4,913,600 students nationwide will experience rape or sexual assault through physical force, violence, or incapacitation. The Supreme Court's supervisory role is needed here, not only to provide relief to Burton, but to send the message to university administrators that the court will no longer encourage them to abuse and dispose of professors who oppose sexual harassment and stand up for the rights of victimized students and for their own rights.

Sexual harassment is not only a problem in universities, but in many workplaces. Graduating students take into the workplace the values, or lack of values, they see advanced in college. The importance of this case, and of bringing openness and accountability to the cases that will surely follow, is obvious, even staggering.

Burton alleged in her motion that "as a consequence of her advocacy for this student and her subsequent efforts to assert her own rights, she has faced discrimination and retaliation from UWP administrators and UW System attorneys and ultimately by the Board of Regents." (Dkt. 119:5). The Supreme Court of the United States should grant review of this case because it is time for a review of the corruption that has allowed sexual harassment to destroy the lives of so many for too long. This is not just a case calling for relief for one person. It is a case for protection under the law for every potential victim of sexual harassment in the colleges and universities in at least three states, and possibly for every potential

victim of sexual harassment in America. Open discourse and accountability are essential to reasonably resolving the problems associated with sexual harassment. The discussion should include an answer by this court as to whether decisions of lower courts will be corrected if they abuse their discretion by failing to construe pleadings of pro se litigants "liberally," and by failing to consider the importance of complaints alleging sexual harassment and retaliation for victim advocacy.

"The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 246 (1944).

The decision conflicts with decisions of other circuit courts and the Supreme Court.

There is no time limit for Burton's Rule 60(b)(6) motion alleging extraordinary circumstances.

The district court denied Burton's Rule 60(b)(6) motion, (Dkt. 115), for untimeliness. (Dkt. 116:3), (App. A:3). However, "Rule 60(b)(6) does not impose a specific time limit for filing" *Rivera v. Puerto Rico Telephone Co.*, 921 F.2d 393, 395 (1st Cir. 1990).

"[O]f course, the one-year limitation would control if no more than "neglect" was disclosed by the petition. In that event the petitioner could not avail himself of the broad "any other reason" clause of 60(b)." *Klapprott v. United States*, 335 U.S. 601, 613 (1949). Burton alleged extraordinary circumstances far beyond mere "neglect," so her motion should have been considered on the merits.

Burton's Rule 37 motion alleging spoliation of evidence was timely filed.

The district court denied Burton's Rule 37 motion, (Dkt. 119), because it considered the motion to be the "same issue" Burton raised in her Rule 60(b)(6) motion. (Dkt. 121:1), (App. C:1). Logic indicates that the district court denied Burton's Rule 37 motion for untimeliness. However, the district court's ruling conflicts with that of the 2nd circuit court and this court's reasoning. See *Heinrichs v. Marshall and Stevens Inc.*, 921 F.2d 418, 420-21 (2d Cir. 1990). (Holding that "[t]he [Supreme] Court's reasoning that the determination of Rule 11 sanctions is a collateral issue that can be considered after an action is voluntarily dismissed under Rule 41(a)(1)(i) applies with no less force to discovery sanctions imposed under Rule 37 following a dismissal upon a grant of summary judgment under Rule 56.").

"[S]poliation usually becomes an issue relatively late in a case—indeed, spoliation motions tend to occur after the typical case would have already ended." (Motions for Sanctions Based Upon Spoliation of Evidence in Civil Cases Report to the Judicial Conference Advisory Committee on Civil Rules; by Emery Lee; https://www.uscourts.gov/sites/default/files/federal_judicial_center.pdf; Last visited on January 23, 2021; Federal Judicial Center - 2011; page 7).

There is no time limit for Burton's Rule 60(d)(3) motion alleging fraud on the court.

"Rule 60 was amended in 2007 to move parts of old subsection (b) into new subsections (b), (c), (d) and (e). Cases from before 2007 refer more generally to Rule 60(b) when discussing both general fraud and misconduct of an opposing party (now styled as a Rule 60(b)(3) matter) and fraud on the court (now addressed under Rule 60(d)(3))." *Kennedy v. Schneider Elec.*, 893 F.3d 414, 420 n.3 (7th Cir. 2018).

The district court construed Burton's Rule 37 motion to be fraud on the court. (Dkt. 121), (App. C). Logic indicates that the district court dismissed the construed allegations of fraud on the court for untimeliness. However, "a "motion to set aside a judgment on the ground of fraud on the court has no deadline" and can be brought at any time under Rule 60(d)(3) to challenge final judgments, ... The fraud must have been the kind of fraud that ordinarily could not be discovered, despite diligent inquiry, within one year or even many years." *Kennedy v. Schneider Elec.*, 893 F.3d 414, 419-20 (7th Cir. 2018). *Also see Kenner v. C.I.R.*, 387 F.2d 689 (7th Cir. 1968), ("[A] decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."); *In re Golf 255*, 652 F.3d 806, 5-6 (7th Cir. 2011), ("[A] motion to set aside a judgment on the ground of fraud on the court has no deadline."); *Craft v. Glob. Expertise in Outsourcing*, 657 F. App'x 730, 4 n.4 (10th Cir. 2016), ("Fraud on the court claims . . . are exempt from the one year time-period").

"If a judgment is procured by fraud, it can be set aside under Rule 60(b)(3). But that route is barred to [Burton] by the one-year limitation that Rule 60(b) places on motions under subsection (3)...Rule 60(b) [now Rule 60(d)(3)] has, however, an express exception for "fraud upon the court."... the fraud must involve corruption of the judicial process itself." *Matter of Met-L-Wood Corp.*, 861 F.2d 1012, 1018 (7th Cir. 1988).

> "Federal courts, both trial and appellate, long ago established the general rule that they would not alter or set aside their judgments after the expiration of the term at which the judgments were finally entered. This salutary general rule springs from the belief that in most instances society is best served by putting an end to litigation

> after a case has been tried and judgment entered. This has not meant, however, that a judgment finally entered has ever been regarded as completely immune from impeachment after the term. From the beginning there has existed alongside the term rule a rule of equity to the effect that under certain circumstances, one of which is *after-discovered fraud*, relief will be granted against judgments regardless of the term of their entry." (Emphasis given), (internal citations omitted).

Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 244-45 (1944)

> "The finality that a court can pronounce is no more than what the law in existence at the time of judgment will permit it to pronounce. If the law then applicable says that the judgment may be reopened for certain reasons, that limitation is built into the judgment itself, and its finality is so conditioned."

Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 234 (1995)

The district court ignored Burton's unawareness of the fraud until long after one year, ignored public interest in this case, and its decision conflicts with the Supreme Court and 7th circuit court.

Burton explained, and defendants did not deny, that she was unaware of the withheld evidence, which proves retaliation and uncovers false statements by defendants' attorneys to the court, until April 1, 2019. (Dkt. 115:28), (Dkt. 117:3-4), (Dkt. 119:8), (Appeal Dkt. 10:11, 12, 35-38). She explained that defendants, in bad faith, withheld the evidence, in violation of policy and state law, and failed to provide it in response to specific discovery requests in *Burton I* and *Burton II*. (Dkt. 115:24-26), (Dkt. 117:17-18), (Dkt. 119:16-24), (Appeal Dkt. 10:18, 28-30).

"To decide whether [the district court's] action was ... an abuse of discretion, [the Supreme Court] must determine whether the [district court] adequately considered the factors relevant" under the statute" *Gall v. United States*, 552 U.S. 38, 68-69 (2007).

"[A] motion to set aside a judgment on the ground of fraud on the court has no deadline. It must therefore be defined narrowly ... The question is, how narrowly? To answer this question we need to consider what kind of fraud ought to be a ground for setting aside a judgment perhaps many years after it was entered. The answer is the kind of fraud that ordinarily couldn't be discovered, despite diligent inquiry, within a year, and in some cases within many years — cases in which there are no grounds for suspicion and the fraud comes to light serendipitously." (internal citations omitted). *In re Golf 255*, 652 F.3d 806, 5-6 (7th Cir. 2011).

As in *Hazel-Atlas*, "[e]ven if [Burton] failed to exercise due diligence to uncover the fraud, relief may not be denied on that ground alone, since public interests are involved." *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238 (1944).

The district court's reasoning that it can construe Burton's filing to be 'fraud on the court' and ignore her stated claims conflicts with a Supreme Court ruling and it is completely unreasonable.

The district court concluded that Burton was "seeking to reopen this long-closed case.... she invokes the "fraud on the court" doctrine." (Dkt. 121:1), (App. C:1). The appellate court held that Burton "moved again to reopen the case, reiterating her belief that the defendants had withheld documents improperly. Their misconduct, she now asserted, amounted to a "fraud on the court" under Rule 60(b)(3)." (Appeal Dkt. 17:2), (App. D:2). However, Burton moved "for an order imposing sanctions and granting relief against Defendants ... for failure to disclose and for spoliation of material evidence." (Dkt. 119:1, 41). Burton proved bad faith

spoliation of evidence, but the district court ignored her arguments and evidence and failed to consider her Rule 37 motion alleging spoliation of evidence.

A district court does not have the discretion to ignore a pro-se litigant's pleadings of spoliation and extraordinary circumstances. Quite the opposite, "a *pro se* complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"" *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

Instead of determining whether Burton was able to prove her Rule 37 motion alleging spoliation of evidence, the district court held her to the higher burden of proof required under Rule 60(d)(3) and required her to prove "corruption of the judicial process itself." (Dkt. 121), (App. C). By the same flawed reasoning, a court can construe a pro se plaintiff's allegation of retaliation as an allegation of murder, and dismiss the case because plaintiff failed to produce a dead body and murder weapon. "All pleadings shall be so construed as to do substantial justice." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

The court's policy of liberally construing pro se submissions is meant to "protect" pro se litigants, not to increase their burden of proof unreasonably. *See Higgs v. Attorney Gen. of the United States*, 655 F.3d 333, 339 (3d Cir. 2011), (holding that "Our policy of liberally construing *pro se* submissions is "driven by the understanding that '[i]mplicit in the right of self-representation is an obligation on

the part of the court to make reasonable allowances to protect *pro se* litigants from inadvertent forfeiture of important rights because of their lack of legal training.' ""

Egregious discovery violations can obviously rise to 'extraordinary circumstances' under Rule 60(b)(6) and 'spoliation' under Rule 37, but whether discovery violations can also rise to 'fraud on the court' is an important question that should be decided here.

The district court construed Burton's motion to allege *only* fraud on the court, then disagreed with the construed argument as reason to deny her stated claim of spoliation, and supported its decision to dismiss Burton's Rule 37 motion by concluding that "Discovery violations do "not constitute the type of extraordinary circumstances which would justify relief . . . on the basis of fraud on the court."" (Dkt. 121), (App. C). The district court's implication, is that there can never be an instance of any discovery violation, no matter how egregious, that could support the construed allegations of fraud on the court, and that the district court is therefore within its discretion to ignore Burton's Rule 60(b)(6) and Rule 37 allegations and to dismiss the motion without consideration on the merits. This was affirmed by the appellate court. (Appeal Dkt. 17:2-3), (App. D:2-3).

The district court failed to decide whether discovery violations can rise to circumstances necessary to invoke Rules 60(b)(6) or 37 or whether Burton's circumstances invoke Rule 37 or 60(b)(6). "[A] court can apply the sanction of dismissal for Rule 37 violations with a finding of willfulness, bad faith or fault" *Maynard v. Nygren*, 332 F.3d 462, 468 (7th Cir. 2003). Burton has proven willfulness, bad faith, and fault. (Dkt. 115), (Dkt. 117), (Dkt. 119), (Appeal Dkt. 10),

(Appeal Dkt. 13). There is still question as to whether Burton proved "corruption of the judicial process itself."

There is conflict between circuit courts as to whether discovery violations *can* rise to 'fraud on the court.' The district court points to *Marquip, Inc. v. Fosber America, Inc.*, 198 F.3d 1363, 1370 (Fed. Cir. 1999) to support its decision. (Dkt. 121), (App. C). However, in *Marquip* the allegations did not rise to "extraordinary circumstances" necessary to invoke Rule 60(b)(6) because "the district court found no evidence of "false responses to discovery requests."" *Marquip, Inc. v. Fosber America, Inc.*, 198 F.3d 1363, 1370 (Fed. Cir. 1999). *Marquip* is inapposite because it does not address "corruption of the judicial process itself' but the lower burden of Rule 60(b)(6), does not address 'fraud on the court' or Rule 60(d)(3), and does not involve any discovery violations.

The district court's decision conflicts with decisions of other circuit courts and seems to conflict with the 7th circuit's own prior findings. The 7th circuit has considered dismissal as a discovery sanction to be comparable to fraud on the court decisions in other circuits. See *Maynard v. Nygren*, 332 F.3d 462, 468 (7th Cir. 2003), ("considering the severe and punitive nature of dismissal as a discovery sanction, a court must have clear and convincing evidence of willfulness, bad faith or fault before dismissing a case. *See Shepherd,* 62 F.3d at 1476-77 (comparing dismissal as a discovery sanction to civil fraud and civil contempt); *cf. Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) (holding that fraud on the court must be demonstrated "clearly and convincingly"").

Other circuits are clearer about the issue. *See Okros v. Angelo Iafrate Const. Co.*, 298 F. App'x 419, 427 n.12 (6th Cir. 2008), ("[I]ntentional, fraudulent non-disclosure during discovery can form the basis of a claim of fraud upon the court."); *Demjanjuk v. Petrovsky*, 10 F.3d 338, 348 (6th Cir. 1993) ("it would be error "to exclude from the definition of fraud on the court intentional, fraudulent nondisclosure during discovery.'").

In *Shepherd*, the D.C. circuit court did not question whether fraudulent or bad-faith litigation misconduct can rise to the level of fraud on the court, but merely by what standard it should be proven. *Shepherd v. Am. Broad. Cos.*, 62 F.3d 1469, 1476 (D.C. Cir. 1995) (answering the question "whether the inherent power sanction of default is proper for fraudulent or bad-faith litigation misconduct proven only by a preponderance of the evidence, or instead whether such misconduct must be proven by clear and convincing evidence").

> "The elements of fraud [on the court] set out
> in *Demjanjuk* are conduct:
> (1) On the part of an officer of the court;
> (2) That is directed to the "judicial machinery" itself;
> (3) That is intentionally false, wilfully blind to the truth,
> or is in reckless disregard for the truth;
> (4) That is a positive averment or is concealment when
> one is under a duty to disclose;
> (5) That deceives the court."

Workman v. Bell, 245 F.3d 849, 852 (6th Cir. 2001).

"[D]iscovery misconduct could, perhaps, sink to the level of fraud on the court" *Anderson v. Beatrice Foods Co.*, 900 F.2d 388, 396 (1st Cir. 1990).

"In deciding whether to impose case-dispositive sanctions, the most critical factor is not merely delay or docket management concerns, but truth. "What is most

critical for case-dispositive sanctions, regarding risk of prejudice and of less drastic sanctions, is whether the discovery violations `threaten to interfere with the rightful decision of the case.'" *Connecticut v. New Images*, 482 F.3d 1091, 1097 (9th Cir. 2007).

"Because corrupt intent knows no stylistic boundaries, fraud on the court can take many forms." *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989). Burton argued that defendants' and their attorneys' discovery violations and bad faith efforts to hide evidence, in addition to invoking Rule 60(b)(6) and Rule 37, can also amount to fraud on the court. (Appeal Dkt. 10:50), (Appeal Dkt. 13:29-33).

There are conflicting interpretations between the circuit courts, of the relationship between discovery violations and fraud on the court. An important question the Supreme Court should resolve is whether discovery violations can constitute the type of extraordinary circumstances which would justify relief on the basis of fraud on the court, and what test should be used to determine whether fraud on the court has occurred in circumstances involving discovery violations.

If Burton had the burden to show "corruption of the judicial process itself," then this conflict needs to be resolved. On the other hand, if Burton did not have that burden, then the district court abused its discretion by failing to consider her Rule 37 motion on its merits. "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1938 (2016).

The District Court failed to consider the seriousness of the offenses, and the facts and circumstances of Burton's Rule 37 arguments regarding spoliation of evidence and the appellate court sanctioned the district court's abuse of discretion.

Sanctions for spoliation should be "calibrated to the egregiousness of the conduct, the impact it will have on the opposing party and the intent of the party destroying the evidence ... repeated acts of gross negligence, particularly if accompanied by inaccurate representations to the court that serve to mask and perpetuate the spoliation, can be met with the same or a more severe sanction." *United Medical Supply Company, Inc. v. U.S.*, No. 03-289C, at *18 (Fed. Cl. June 27, 2007). "Aside perhaps from perjury, no act serves to threaten the integrity of the judicial process more than the spoliation of evidence." *United Medical Supply Company, Inc. v. U.S.*, No. 03-289C, at *1 (Fed. Cl. June 27, 2007). "[D]estruction of potentially exculpatory evidence is denial of due process only when done in bad faith." *Hart v. Mannina*, 798 F.3d 578, 589 (7th Cir. 2015).

"[A] district court deciding whether to impose sanctions for discovery violations should consider: (1) the prejudice or surprise to the party against whom the evidence is being offered; (2) the ability of the party to cure the prejudice; (3) the likelihood of disruption to the trial; and (4) the bad faith or willfulness involved in not disclosing the evidence at an earlier date." *Judson v. Dhimantec*, 529 F.3d 371, 386 (7th Cir. 2008).

Burton titled her motion "PLAINTIFF'S MOTION FOR SPOLIATION SANCTIONS AGAINST DEFENDANTS" and filed it "[p]ursuant to F.R.C.P. 37(b), (c) and (e) and the court's inherent powers. (Dkt. 119:1). The district court ignored

bad faith spoliation of evidence without explanation. (Dkt. 121), (App. C). The defendants highlighted the district court's failures by stating that "the [district] court did not address Rule 37 as to whether the Board actually violated discovery rules, whether sanctions were warranted, or whether any alleged violation would have prejudiced Burton." (Dkt. 12:20).

A spoliation sanction is proper where (1) a party has a duty to preserve evidence because it knew, or should have known, that litigation was imminent, and (2) the adverse party was prejudiced by the destruction of the evidence. *See J.S. Sweet Co., Inc. v. Sika Chemical Corp.*, 400 F.3d 1028 (7th Cir. 2005).

The appellate court held "the doctrine [of fraud on the court] would not apply because it covers only extraordinary circumstances such as corruption of the judicial process—far from the civil discovery violations alleged here." (Appeal Dkt. 17:2), (App. D:2). However, Burton's briefings, as highlighted in this brief, are filled with allegations far more serious than mere "civil discovery violations." (Dkt. 115), (Dkt. 117), (Dkt. 119), (Appeal Dkt. 10), (Appeal Dkt. 13). For example: Burton alleged, and defendants did not deny, that the newly discovered chapter 6 complaint of October 29, 2014 demonstrated that Throop had violated Burton's due process rights, that Throop filed the complaint because of Burton's protected speech, and that Burton was fired because of her protected speech. In addition to the discovery violations, the new evidence proved Burton's retaliation claim and violations of policy and law. (Dkt. 115:14-16), (Dkt. 119:27-31).

The appellate court cited *Wickens v. Shell Oil Co.* as a comparable situation to Burton's, but in that case, "Shell suffered no prejudice as a result of Shere's misrepresentations." *Wickens v. Shell Oil Co.*, 620 F.3d 747, 759 (7th Cir. 2010). Burton, on the other hand, was prejudiced by the spoliation. (Dkt. 119:29-30), (Appeal Dkt. 10:20).

The appellate court disregarded Burton's arguments citing *Domanus v. Lewicki* because it did not mention "fraud on the court." However, *Domanus* supports Burton's Rule 37 and Rule 60(b)(6) motions and does not diminish her Rule 60(d)(3) fraud on the court arguments.

> "Default judgment is strong medicine for discovery abuse. It is appropriate only where "there is a clear record of delay or contumacious conduct," where "other less drastic sanctions have proven unavailing," or where a party displays "willfulness, bad faith, or fault,""

Domanus v. Lewicki, 742 F.3d 290, 301 (7th Cir. 2014)

As in *Hazel-Atlas*, "[t]his is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury." *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 245 (1944). Here, defendants did not deny that Burton was prejudiced; or that defendants and their attorneys had a duty to preserve critically probative documents, withheld those documents in bad faith, and violated policy and law by withholding the documents. Further, though defendants deny that their attorneys' statements to the court were false, they did not deny that their attorneys knew of the withheld evidence, the attorney's representations are inaccurate, and the statements serve to mask and perpetuate the spoliation.

Burton proved spoliation of evidence and extraordinary circumstances.

Burton has adduced significant evidence of purposeful withholding of documents in violation of policy and state law and in violation of discovery laws, and other bad-faith discovery violations which rise to "extraordinary circumstances" necessary to invoke Rule 60(b)(6) and "spoliation" to invoke Rule 37 and the court's inherent powers. (Dkt. 119). "Any sanctions imposed pursuant to the court's inherent authority must be premised on a finding that the culpable party willfully abused the judicial process or otherwise conducted the litigation in bad faith." *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 776 (7th Cir. 2016).

New evidence, that was not available to Burton prior to summary judgment or for three years after, shows that Throop retaliated against Burton on October 29, 2014 when Throop filed a complaint against Burton. Defendants have not denied Burton's allegations regarding the complaint. Burton wrote in her motion for spoliation sanctions: "This shows causal connection between Burton's protected email and the Board's decision to dismiss her. Burton was prejudiced by the spoliation. She was fired because of it." (Dkt. 119:30). Defendants did not deny any of this.

"The crucial element in a spoliation claim is not the fact that the documents were destroyed but that they were destroyed for the purpose of hiding adverse information." *Norman-Nunnery v. Madison Area Tech. College*, 625 F.3d 422, 428 (7th Cir. 2010)." (Dkt. 119:14).

Burton's brief is replete with evidence demonstrating that the reason documents were withheld in violation of federal discovery law, state law and university policy, is because the Defendants were dissembling to cover up retaliation to hide the adverse information from the court. (Dkt. 119:2, 4, 6, 17, 18, 19, 20, 21, 22, 24, 25, 32, 33). Defendants did not deny these allegations. Burton's allegations not only rise to spoliation but also to extraordinary circumstances which meet the requirements of Rule 60(b)(6). (Dkt. 113).

Burton proved fraud on the court.

Defendants have never denied that Defendants' attorneys told the court that "Throop did not take any adverse employment actions against Burton." (Appeal Dkt. 10:53). Defendants cited *Oxxford Clothes XX, Inc. v. Expeditors Int'l of Washington, Inc.*, 127 F.3d 574, 578 (7th Cir. 1997), (Appeal Dkt. 12:20), which protects attorneys from fraud on the court only if they "believed" their statement. (Appeal Dkt. 12:15). Burton alleged, and defendants have not denied, that defendants' attorneys "knew about the chapter 6 complaints and other documents." (Appeal Dkt. 10:53). Taking Burton's undenied allegation as true, defendants' attorneys, could not have "believed" their statement to the court.

Defendants have not denied Burton's allegation that Throop filed a formal chapter 6 complaint against Burton on October 29, 2014. (Dkt. 119:8). Prior to April 1, 2019 Burton could not have known that defendants' attorneys' statements to the court were designed to cover up Throop's bad faith, discovery violation, retaliation, and spoliation of evidence associated with the complaint because Burton did not

know the complaint existed. (Dkt. 119:8). April 1, 2019 was not just the date Burton discovered exculpatory evidence, but the date she discovered defendants' and their attorneys' scheme to hide the complaint from Burton and from the court.

Burton argued that defendants and their attorneys "knowingly violated discovery rules in bad faith to hide adverse information from the court, deceived the court about the existence of the adverse information, and their deceit resulted in severe prejudice to Burton." (Appeal Dkt. 13:19). Such schemes can rise to fraud on the court sufficient to invoke Rule 60(d)(3) and rises to extraordinary circumstances and spoliation of evidence sufficient to invoke Rule 60(b)(6) and Rule 37.

"As an officer of the court, every attorney has a duty to be completely honest in conducting litigation." *Demjanjuk v. Petrovsky*, 10 F.3d 338, 352 (6th Cir. 1993).

The appellate court concluded that *Oliver v. Gramley*, 200 F.3d 465, 466 (7th Cir. 1999) is inapposite. (Appeal Dkt. 17), (App. D). However, that decision asserts "dismissal with prejudice is a permissible judicial sanction for fraud on the court" *Id.*

Burton had never before raised the issue of spoliation of evidence, so the district court is wrong to ignore her Rule 37 motion.

The district court erroneously concluded that Burton "contends that defendants withheld documents in discovery, which is an issue she has raised before. Dkt. 113." (Dkt. 121), (App. C). The appellate court parroted and expanded on the district court's error holding that "Burton nevertheless moved again to reopen the case, reiterating her belief that the defendants had withheld documents

know the complaint existed. (Dkt. 1168). April 1, 2019 was not just the date Burton discovered exculpatory evidence, but the date she discovered defendants and their attorneys's scheme to hide the complaint from Burton and from the court.

Burton argued that defendants and their attorneys "knowingly violated discovery rules in bad faith to hide adverse information from the court, deceived the court about the existence of the adverse information, and their deceit resulted in severe prejudice to Burton." (Appeal Dkt. 18:19). Such schemes can rise to fraud on the court sufficient to invoke Rule 60(d)(3) and rises to extraordinary circumstances and spoliation of evidence sufficient to invoke Rule 60(b)(6) and Rule 37.

"As an officer of the court, every attorney has a duty to be completely honest in conducting litigation." *Demjanjuk v. Petrovsky*, 10 F.3d 338, 352 (6th Cir. 1993).

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Buxton had never before raised the issue of spoliation of evidence, so the district court is wrong to ignore her Rule 37 motion.

The district court erroneously concluded that Burton "contends that defendants withheld documents in discovery, which is an issue she has raised before. Dkt. 113." (Dkt. 121). (App. C). The appellate court parroted and expanded on the district court's error adding that "Burton nevertheless moved again to reopen the case, reiterating her belief that the defendants had withheld docum ents

improperly. Their misconduct, she now asserted, amounted to a "fraud on the court" under Rule 60(b)(3)." (Appeal Dkt. 17:2), (App. D:2). However, fraud on the court is codified in Rule 60(d)(3), not Rule 60(b)(3); the issues of law and fact in Burton's Rule 37 motion, (Dkt. 119), were not litigated in her Rule 60(b)(6) motion. (Dkt. 113), (Dkt. 115). The Rule 60(b)(6) motion was denied for untimeliness without consideration of the merits. (Dkt. 116), (App. A), (Dkt. 118), (App. B).

The district court failed to explain how a motion for spoliation sanctions pursuant to Rule 37 is the "same issue" as a motion to vacate pursuant to Rule 60(b)(6), or how denial of the Rule 60(b)(6) motion, which was construed to be under Rule 60(b)(3) and subject to the one-year limit, would preclude Burton from bringing the Rule 37 motion, which is not time limited. The district court did not cite any authority which would allow it to ignore Burton's Rule 37 motion. (Dkt. 118), (App. B), (Dkt. 121), (App. C).

> "[B]ecause the overriding purpose of the [court's] inherent power is "to achieve the orderly and expeditious disposition of cases," the use of this power should reflect our judicial system's strong presumption in favor of adjudications on the merits." (internal citation omitted).

Shepherd v. Am. Broad. Cos., 62 F.3d 1469, 1475 (D.C. Cir. 1995).

> "Congress has declared that a decision will be governed by consideration of particular factors, a district court must carefully consider those factors as applied to the particular case and, whatever its decision, clearly articulate their effect in order to permit meaningful appellate review. Only then can an appellate court ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent to the choice of remedy, thereby failing to act within the limits prescribed by Congress."

United States v. Taylor, 487 U.S. 326, 336-37 (1988)

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THE APPELLATE COURT FAILED TO CONSIDER THE MERITS OF THE CASE AND THEREBY SANCTIONED THE DISTRICT COURT'S ABUSE OF DISCRETION.

> "Appellate review for abuse of discretion is not an empty formality. A decision calling for the exercise of judicial discretion "hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review." "
> *Gall v. United States*, 552 U.S. 38, 68 (2007)

> "A judgment that must be arrived at by considering and applying statutory criteria, however, constitutes the application of law to fact and requires the reviewing court to undertake more substantive scrutiny to ensure that the judgment is supported in terms of the factors identified in the statute."

United States v. Taylor, 487 U.S. 326, 336-37 (1988).

The U.S. Supreme Court previously has recognized that

> ""discretionary choices are not left to a court's `inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" Thus, a decision calling for the exercise of judicial discretion "hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review." Whether discretion has been abused depends, of course, on the bounds of that discretion and the principles that guide its exercise. Had Congress merely committed the choice of remedy to the discretion of district courts, without specifying factors to be considered, a district court would be expected to consider "all relevant public and private interest factors," and to balance those factors reasonably. Appellate review of that determination necessarily would be limited, with the absence of legislatively identified standards or priorities.
> In the Speedy Trial Act, however, Congress specifically and clearly instructed that courts " *shall consider*, among others, *each of the following factors*," 18 U.S.C. § 3162(a)(2) (emphasis added), and thereby put in place meaningful standards to guide appellate review. Although the role of an appellate court is not to substitute its judgment for that of the trial court, review must serve to

> ensure that the purposes of the Act and the legislative compromise it reflects are given effect. Where, as here, Congress has declared that a decision will be governed by consideration of particular factors, a district court must carefully consider those factors as applied to the particular case and, whatever its decision, clearly articulate their effect in order to permit meaningful appellate review. Only then can an appellate court ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent to the choice of remedy, thereby failing to act within the limits prescribed by Congress.
> Factual findings of a district court are, of course, entitled to substantial deference and will be reversed only for clear error. A judgment that must be arrived at by considering and applying statutory criteria, however, constitutes the application of law to fact and requires the reviewing court to undertake more substantive scrutiny to ensure that the judgment is supported in terms of the factors identified in the statute." (Internal citations omitted).

United States v. Taylor, 487 U.S. 326, 336-37 (1988).

> "In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice."

18 U.S.C. § 3162(a)(2).

The district court considered none of these factors mandated by Congress.

The appellate court failed to accept all of Burton's undenied allegations as true.

The 7th Circuit Court has held that "[i]n reviewing the evidence to determine whether the district court's denial constituted an abuse of discretion, we must accept as true the movant's undenied allegations." *Lonsdorf v. Seefeldt*, 47 F.3d 893, 897 (7th Cir. 1995). Defendants denied almost none of Burton's scores of allegations.

However, the appellate court did not accept and consider the undenied allegations as true. (Dkt. 13:9, 10, 12, 13, 18-28).

The appellate court rubber stamped the district court's decision and cursorily summed up all of Burton's stated arguments concluding "[w]e have considered Burton's other contentions and none has merit." (Appeal Dkt. 17), (App. D). The inadequate explanation given by the appellate court mirrors the inadequate and improper decision of the district court and ignores Burton's arguments.

> "Whether a defense is meritorious "is measured not by whether there is a likelihood that it will carry the day, but whether the evidence submitted, if proven at trial, would constitute a complete defense.""

State Street Bank v. Inversiones Errazuriz, 374 F.3d 158, 167 (2d Cir. 2004).

A federal court of appeals must consider "how the decision "confronts [the] set of facts" that were before the [lower] court."). *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011). "[A] proper answer to th[e] question [whether the trial judge abused his discretion] requires a study of the record." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 159 (1999).

"The district court's factual findings, including findings of bad faith and prejudice, are reviewed for clear error." *Leon v. IDX Systems Corp.*, 464 F.3d 951, 958 (9th Cir. 2006). The district court made numerous errors, as shown throughout the appeal briefs, (Appeal Dkt. 10), (Dkt. 13). Instead of correcting the district court, the appellate court accepted the errors without studying the facts and circumstances of the case.

However, the appellate court did not accept and consider the unidentified allegations as true. (Dkt. 129, 10, 12, 13, 18 88).

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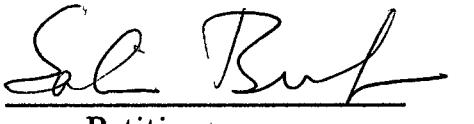
CONCLUSION

There have been many abuses perpetrated against Burton throughout her eight-year ordeal, sufficient to create a television mini-series to expose the severe retaliation and due process violations university professors in America can expect if they report sexual harassment and refuse to succumb to illegal retaliation. Cover up of retaliation and due process violations by lower-level employees and administrators against an employee who fights for her rights forces higher level administrators and judges to decide whether to do the right thing, or to abuse their authority and discretion. The law provides avenues to bring such abuse to higher and higher courts for good reasons, among them, to curb corruption of our society's values, to protect the innocent, and to give voice to truth.

Burton brings before this highest court in our land, the abuses of discretion of the district court, which were sanctioned by the appellate court, and humbly begs this court grant her petition for writ of certiorari and provide her relief as deemed appropriate by this honorable court.

Respectfully submitted,

Dated: January 24, 2021



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CONCLUSION

There have been many abuses perpetrated against Burton throughout her eight-year ordeal, sufficient to create a television mini-series to expose the severe retaliation and due process violations minority professors in America can expect if they report sexual harassment and refuse to succumb to illegal retaliation. Cover up of retaliation and due process violations by lower level employees and administrators against an employee who fights for her rights forces higher level administrators and judges to decide whether to do the right thing, or to abuse their authority and discretion. The law provides avenues to bring such abuse to higher and higher courts for good reasons, among them, to curb corruption of our society's values, to protect the innocent, and to give voice to truth.

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Respectfully submitted,

Dated: January 21, 2021

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