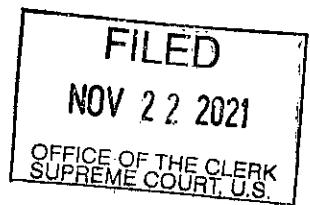


**ORIGINAL**

No. **21-1051**  
IN THE  
SUPREME COURT OF THE UNITED  
STATES



**Mengyang Li,**  
Plaintiff/Petitioner  
vs.

**Shepherd University President's Office,**  
Defendant/Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE STATE OF WEST VIRGINIA SUPREME  
COURT OF APPEALS

**PETITION FOR WRIT OF CERTIORARI**

Mengyang Li  
12 Turkey Tract Place  
Keedysville, MD 21756  
mengyang.li@hotmail.com  
301-432-5727

## QUESTION(S) PRESENTED

It is a practice of Age Discrimination in deeming an old scientist (Petitioner)'s very significant scientific contributions prior to his changing career at an old age to teaching [including a publication in journal *Nature* that significantly advanced Langmuir's 1917 work of a Chemistry Nobel Prize (awarded in 1932),<sup>1</sup> and a publication in journal *Science*<sup>2</sup>] as "inadmissible" in evaluating the old scientist for his later application for promotion to Professor rank and denying his promotion solely for this on-paper-reason.

It is understandable for an old individual, who made very significant contributions in scientific research earlier and changed to teaching in his/her later career at an old age, to restart at a low rank at a teaching university, since the person still needs professional growth in teaching and since the institution is a teaching university, even if the individual's professional growth in scientific research before arriving at the teaching university already surpassed the standard of the Professor rank at the teaching university. The individual already paid a

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heavy professional and financial price by restarting at a low rank in his/her later career and his/her older age.

The old scientist/Petitioner came to the United States from China as a young scientist in 1986, became a US citizen of Asian descent in 1999. The old scientist/Petitioner was hired as an Assistant Professor of Chemistry at Shepherd University in 2008, was promoted to Associate Professor in 2012, and became an accomplished teacher and researcher at Shepherd. In 2017 and 2018 Petitioner's applications for promotion to Professor rank were denied solely for the on-paper-reason of lack of full length journal publications during Associate Professor rank.<sup>3</sup> Robert Warburton, a Caucasian colleague without any publication during his Associate Professor rank, who published less in quality and less

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<sup>3</sup> After 5 years' research, in October 2016 (prior to Petitioner's application for promotion in 2017), Petitioner submitted a research paper to the top physics journal Physical Review Letters and already had two referees and total five experts agreed with the main conclusion of the paper (Complete authors: Petitioner and his two undergraduate students); also during his Associate Professor rank prior to his application for promotion in 2017, Petitioner (as Principal Investigator) was granted beam-time at the largest synchrotron accelerator in the U.S; Petitioner gave a speech presentation of his research at the American Chemical Society National Meeting. These accomplishments are rare among teaching university faculty. The Physical Review Letters paper's publication process is on-hold because Petitioner has since been occupied by fighting the continuous and increasing discriminations and harassments, and by the pro se grievances and lawsuits due to his limited financial resources.

in quantity than Petitioner did, was promoted at a young age to Professor rank on the same written criteria. Warburton has been a friend of the University President Mary Hendrix and was further promoted to Dean in 2017. Warburton and other officers denied my promotion. Multiple Caucasian colleagues, who published less in quality and less or the same in quantity than Petitioner did, were promoted to Professor rank. Dean Robert Warburton and current department chair Jacquelyn Cole (under 40, Caucasian) conspired with and encouraged multiple Caucasian colleagues, ganged up on, continuously discriminated against and harassed Petitioner from Fall 2014 (right after the romantic personal relationship between Petitioner and a female Caucasian professor stopped in Fall 2014 in consideration of Petitioner's children<sup>4</sup>) to the present.

The West Virginia State trial court granted Defendant/Respondent's Motion to Dismiss my Complaint (pro se due to my limited financial resources) of Age, Race and National Origin Discriminations without hearing any of the 119 facts presented in the Complaint supported by evidences in the 19 Exhibits filed including transcriptions of

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<sup>4</sup> The romantic personal relationship is not physical. We only had one meal (a lunch) together [in the one-year relationship]. Fact # 117 in the Amended Complaint filed on Dec.16, 2019 in West Virginia Jefferson County Circuit Court No. CC-19-2019-C-102.

Defendant's testimonies under oath in Administrative branch hearings.

The State trial court made the false conclusions in contradiction to the facts presented in the Complaint (Appendix B)<sup>5</sup>: "Mere citation of the [West Virginia Human Rights] Act, without setting forth a factual predicate for an alleged violation" [NOT true. See Petition Pages 15-47.]; "None of the facts cited support a claim that Shepherd University discriminated against the Plaintiff on the basis of age or race" [NOT true. See Petition Pages 15-47.]; "the Plaintiff claims that the discriminatory acts occurred more than two years before this suit was filed" [NOT true. See Petition Pages 15-47.], "such claims are barred by the applicable two-year statute"; "The facts alleged do not demonstrate a continuing course of action such as to save the claim from dismissal" [NOT true. See Petition Pages 15-47.]; "Dismissal is warranted as the Plaintiff's Amended Complaint as it fails to state a claim upon which relief can be granted

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<sup>5</sup> State trial court Order Granting Shepherd University[Defendant's/Respondent's] Motion to Dismiss was completely written by Defendant's Counsel. State trial court judge issued the final Order Granting Shepherd University's Motion to Dismiss without changing any word, without any editing, except deleting the signature line "Honorable Debra H. McLaughlin" at the end of the order. There is no signature of the State trial court judge at the end of the order. Please see Appendix B.

[NOT true. See Petition Page 48.] when viewing the facts in a light most favorable to the Plaintiff."

The West Virginia State Supreme Court's Memorandum Decision (Appendix A) cited "A motion to dismiss may be granted when a complaint 'makes only conclusory allegations without *any* material factual allegation in support thereof.' [NOT true in my case] *Par Mar v. City of Parkersburg*, 183 W. Va. 706, 710, 398 S.E.2d 532,536 (1990) ". The West Virginia State Supreme Court's Decision wrote "Based upon our review of the amended complaint, we find that amended complaint is substantially similar to the original complaint which was dismissed for a lack of jurisdiction as containing claims that fell within the jurisdiction of the WVPEGB [West Virginia Public Employees Grievance Board]." The West Virginia State Supreme Court denied my petition (pro se due to my limited financial resources) and affirmed the State trial court decision without a hearing.

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date of first denying my promotion in May 2017. Kanawha County Circuit Court denied my appeal of WVPEGB dismissal of my first grievance and affirmed WVPEGB dismissal of claims of all of my Age and Race Discriminations claims even including discriminations happened in 2018 long after the 2017 denying promotion, plus the denying promotion in 2017, except the Discrimination claim directly associated with second denying my promotion in 2018. My second grievance created by WVPEGB (which covers 2<sup>nd</sup> denying promotion in 2018 and only the discrimination claim directly associated with the 2<sup>nd</sup> denying promotion in 2018) is not moving at WVPEGB.

My Complaint filed on May 31, 2019 at the West Virginia Jefferson County Circuit Court is before the expiration of the 2-year Statutes of Limitation of Discrimination claims for the first denying promotion on May 3, 2017.<sup>6</sup>

The dismissals by the WVPEGB, Kanawha County Circuit Court, Jefferson County Circuit Court and Affirmation by the West Virginia Supreme Court emboldened my discriminators and harassers: In Summer and Fall 2021 I suffered reduced class size which resulted near 50% loss of my Summer 2021

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<sup>6</sup> WV Rules of Procedure for Certain Actions Against the State. WV Code Section § 55-17-3 allows 30 more days passed the May 3, 2019 deadline as I delivered the Letter of Intent to Sue to State Agencies including Shepherd University on April 19, 2019.

pay from the conspiracy of my major discriminators  
Department Chair Jacquelyn Cole and Dean Robert  
Warburton driving students away from my  
classes. The systematic scheme by my major  
discriminators Department Chair Jacquelyn Cole and  
Dean Robert Warburton to further drive students  
away from my future Spring 2022 classes is actively  
continuing. Shortly after I sent the excerpt of my  
January 10, 2021 Reply Brief in WV Supreme Court<sup>7</sup>  
to the Chemistry Department and asked the  
information of the Chemistry Program Reviewer to  
submit the Reply Brief to the Reviewer, on Nov. 10,  
2021, Shepherd University Interim Provost with the  
advice and support of my discriminators Department  
Chair Jacquelyn Cole and Dean Robert Warburton  
prohibited me from my job duty as a member of  
the STEM College Promotion & Tenure  
Committee and any other job duties requiring  
“sensitive information” “confidential  
information as to current employees, former  
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<sup>7</sup> The Reply Brief disclosed illegal conducts including **fraud** by Shepherd University Provost Scott Beard, Dean Robert Warburton, Department Chair Jacquelyn Cole and others. The Reply Brief was filed and admitted into the Court public record by the WV Supreme Court Order on January 20, 2021. The excerpt of the Reply Brief is in Appendix C. Provost Scott Beard died suddenly and unexpectedly on March 28, 2021. No cause of death was given to Shepherd University employees.

**Administrative branch WVPEGB dismissed my claims of denying my first promotion in 2017 on the basis of passing the 15-day Statutes of Limitation. Without a judicial branch hearing of facts, wrongfully denying my first promotion in 2017 deprived my rightfully earned income property; Age, Race and National Origin discriminations violated equal protection of law (The US Constitution 14<sup>th</sup> Amendment Section 1).**

It is not rare for honest hard working scientists suffering from abuses and unfair exploitations by some people in power in academia or by unfair tradition. Famous examples include: American mathematician Yitang Zhang who after his PhD worked in restaurants for 8 years before landing a teaching position as visiting scholar then lecture; Hungarian biochemist Katalin Kariko who was demoted from a tenure-track position and could not regain her position after her discovery that leads to the revolutionary mRNA vaccines. I had the fortune working with many decent colleagues in my career, but also witnessed that a postdoctoral colleague suffered work-prohibiting depression from abusive treatment by a leading scientist with notorious bad reputation (who received a Nobel Prize later) and was told that in the same lab a postdoctoral committed suicide.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

- Mengyang Li v. Shepherd University, President's Office, No. CC-19-2019-C-102, Circuit Court of Jefferson County, West Virginia. Order Granting Shepherd University's Motion to Dismiss entered Feb. 28, 2020 (Appendix B).
- Mengyang Li v. Shepherd University President's Office, No. 20-0393, State of West Virginia Supreme Court of Appeals. Memorandum Decision entered June 23, 2021 (Appendix A).

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## **INDEX TO APPENDICES**

### **APPENDIX A**

Mengyang Li v. Shepherd University President's Office, No. 20-0393, West Virginia State Supreme Court. Memorandum Decision entered June 23, 2021

### **APPENDIX B**

Mengyang Li v. Shepherd University, President's Office, No. CC-19-2019-C-102, Circuit Court of Jefferson County, West Virginia. Order Granting Shepherd University's Motion to Dismiss entered Feb. 28, 2020

## APPENDIX C

Mengyang Li v. Shepherd University President's Office, No. 20-0393, West Virginia State Supreme Court. Excerpt of 1/10/2021 Reply Brief & WV Supreme Court Order about 1/10/2021 Reply Brief, entered January 20, 2021

## TABLE OF AUTHORITIES CITED

The Constitution of the United States 14<sup>th</sup> Amendment Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(Without a judicial branch hearing of facts, wrongfully denying my promotion deprived my rightfully earned income property; Age, Race and National Origin discriminations violated the equal protection of law)

The Constitution of the State of West Virginia Article III 3-1. Bill of rights Section 1:

All men are, by nature, **equally free and independent**, and have certain inherent rights, of which, when they enter into a state of society, **they cannot, by any compact, deprive** or divest their posterity, namely: The enjoyment of life and liberty, with the **means of acquiring and possessing property**, and of pursuing and obtaining happiness and safety.

The West Virginia Human Rights Act, W.Va. Code §5-11-1 *et seq.*, that prohibits unlawful discriminatory practices including:

W.Va. Code §5-11-3 Definitions (h) The term **"discriminate" or "discrimination"** means **to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status** and includes to separate or segregate; (k) The term **"age"** means the age **of forty or above**;

W.Va. Code §5-11-9. Unlawful discriminatory practices.

**(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if**

**the individual is able and competent to perform the services required** even if such individual is blind or disabled: Provided, That it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision: Provided, however, That an employer may grant preference in hiring to a veteran or a disabled veteran in accordance with the provisions of section nine-a of this article without violating the provisions of this article.

**(2) For any employer**, employment agency or labor organization, prior to the employment or admission to membership, **to:** (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or membership; **(B) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex, disability or age;** or (C) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness or disability;

**(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:**

**(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;**

**(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of a duty under this article; or**

**(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.**

IN THE  
SUPREME COURT OF THE UNITED  
STATES

PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

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

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

The opinion of the highest state court to review the merits appears at **Appendix A** to the petition.

The opinion of the state trial court appears at **Appendix B** to the petition.

## JURISDICTION

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

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

The date on which the highest state court decided my case was June 23, 2021. A copy of that decision appears at **Appendix A**.

**[X]** An extension of time to file the petition for writ of certiorari was granted to and including November 22, 2021 by the US Supreme Court July 19, 2021 COVID Order. I sent the petition for writ of certiorari on 11/20/2021. An extension of time to correct my 11/20/2021 petition for writ format was granted to and including January 24, 2022 on November 24, 2021 by the US Supreme Court Clerk Office.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States 14<sup>th</sup> Amendment Section 1:

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**(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;**

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**(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.**

## STATEMENT OF THE CASE

It is a practice of Age Discrimination in deeming an old scientist (Petitioner)'s very significant scientific contributions prior to his changing career at an old age to teaching [including a publication in journal *Nature* that significantly advanced Langmuir's 1917 work of a Chemistry Nobel Prize (awarded in 1932),<sup>1</sup> and a publication in journal *Science*<sup>2</sup>] as "inadmissible" in evaluating the old scientist for his later application for promotion to Professor rank and denying his promotion solely for this on-paper-reason.

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The old scientist/Petitioner came to the United States from China as a young scientist in 1986, became a US citizen of Asian descent in 1999. The old scientist/Petitioner was hired as an Assistant Professor of Chemistry at Shepherd University in 2008, was promoted to Associate Professor in 2012, and became an accomplished teacher and researcher at Shepherd. In 2017 and 2018 Petitioner's applications for promotion to Professor rank were denied solely for the on-paper-reason of lack of full length journal publications during Associate Professor rank.<sup>3</sup> Robert Warburton, a Caucasian colleague without any publication during his Associate

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Professor rank, who published less in quality and less in quantity than Petitioner did, was promoted at a young age to Professor rank on the same written criteria. Warburton has been a friend of the University President Mary Hendrix and was further promoted to Dean in 2017. Warburton and other officers denied my promotion. Multiple Caucasian colleagues, who published less in quality and less or the same in quantity than Petitioner did, were promoted to Professor rank. Dean Robert Warburton and current department chair Jacquelyn Cole (under 40, Caucasian) conspired with and encouraged multiple Caucasian colleagues, ganged up on, continuously discriminated against and harassed Petitioner from Fall 2014 (right after the romantic personal relationship between Petitioner and a female Caucasian professor stopped in Fall 2014 in consideration of Petitioner's children<sup>4</sup>) to the present.

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It is not rare for honest hard working scientists suffering from abuses and unfair exploitations by some people in power in academia or by unfair tradition. Famous examples include: American mathematician Yitang Zhang who after his PhD worked in restaurants for 8 years before landing a teaching position as visiting scholar then lecture; Hungarian biochemist Katalin Kariko who was demoted from a tenure-track position and could not regain her position after her discovery that leads to the revolutionary mRNA vaccines. I had the fortune working with many decent colleagues in my career, but also witnessed that a postdoctoral colleague suffered work-prohibiting depression from abusive treatment by a leading scientist with notorious bad reputation (who received a Nobel Prize later) and was told that in the same lab a postdoctoral committed suicide.

## **STATEMENT OF FACTS AND RELIEF**

For the convenience of reviewers, I copied 12/16/2019 Amended Complaint STATEMENT OF FACTS and RELIEF (in West Virginia Jefferson County Circuit Court No. CC-19-2019-C-102) in the following.

### **STATEMENT OF FACTS (WV Jefferson County Circuit Court No. CC-19-2019-C-102)**

1. I experienced discrimination and harassment by coworkers and supervisors from fall 2014 through the signing of this law suit.
2. White faculty members and supervisors ganged up to discriminate against and to harass me for a number of years. I testified and had witnesses testified heavily about this at the WV Public Employees Grievance Board 2018-0654-SU both level one and level three of hearings. See Exhibit N 2018-0654-SU Level one hearings transcripts: 12/1/2017 PAGES (4-8, 10-38, Warburton), (39-49, Mader), (50-62, DiLella); 12/8/2017 PAGES (2-31, Li); and 12/15/2017 PAGES (2-22, Li), (31-32, Li, Beard). And see Level three hearing transcripts Volumes I (10/4/2018), II (10/5/2018) and III (10/18/2018): PAGES 17-964 (Kyle Hassler, Scott Beard, Nicholas Martin, Jacquelyn Cole, Mary Haendrix, Jordan Mader, Robert Warburton, Colleen Nolan, Jennifer

Sirbaugh, Yulia P. Freeman, Dan DiLella, Carol Plautz, Mengyang Li). See attached Exhibit B (filed level one grievance, especially documents 1-4 inside) and Exhibit C (filed level three grievance, especially Additional Statement of Level Three Grievance inside).

3. I am Asian, born in China, came to the United States for scientific research in 1986, and became a U.S. citizen in 1999.
4. I spoke to my Department Chair DiLella about discrimination and harassment at least twice before filing a grievance. See Exhibit N Level One 12/8/2017 Hearing Transcript page 4.
5. In March 2017, I wrote to my Department Chair and Dean, and Dean forwarded to Provost and President of Shepherd University, that the policies of Shepherd are unfair to faculty based on "his/her older age". See Exhibit N Level One 12/8/2017 Hearing Transcript page 5, and **Exhibit B (document 4 inside)**.
6. I wrote to President of Shepherd University about discrimination and harassment twice before filing my grievance. See Exhibit N Level One 12/8/2017 Hearing Transcript page 4. See **Exhibit B (documents 1 and 3, letters to President)**.

7. I delivered my letter about discrimination and harassment to Provost, Christopher Ames, before filing my grievance. See Exhibit N Level One 12/8/2017 Hearing Transcript page 18.
8. I talked to the Shepherd General Counsel Alan Perdue about discrimination and harassment before filing my grievance. . See Exhibit N Level One 12/8/2017 Hearing Transcript page 9-12.
9. I talked to the Shepherd University Human Resource Director Marie DeWalt about discrimination and harassment before filing my grievance. See Exhibit N Level One 12/8/2017 Hearing Transcript page 4.
10. Right after I told the above people about the discrimination and harassment, Robert Warburton was promoted to Acting Dean of the School. See Exhibit N Level One 12/8/2017 Hearing Transcript page 17.
11. Robert Warburton was one of my major harassers. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGES (4-8, 10-38, Warburton); 12/8/2017 PAGE 17.
12. Jordan Mader was also one of my major harassers. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGES (39-49, Mader), 12/8/2017 PAGE 4.

13. On October 12, 2017, general counsel Alan Perdue wrote to me on behalf of the University President, denying any discrimination. See attached Exhibit B (document 13 inside, letter).
14. On October 30, 2017, I filed my grievance with the Grievance Board. See attached Exhibit B.
15. I filed my grievance 12 working days after I received the letter from Alan Perdue.
16. I went through levels 1, 2 and 3 of the grievance procedure.
17. Jordan Mader, Robert Warburton and I testified about discrimination and harassment in the level one hearing. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGES (4-8, 10-38, Warburton), (39-49, Mader); 12/8/2017 PAGES (2-31, Li); and 12/15/2017 PAGES (2-22, Li), (31-32, Li, Beard).
18. On September 4, 2018, Associate Professor Jordan Mader was promoted to the Promotion & Tenure Committee. Mader was under age 40.
19. On September 4, 2018, I was not promoted to the Promotion and Tenure Committee. I was age 56.
20. The Grievance Board held a level three hearing on October 4, 5 and 18, 2018.
21. I raised the committee promotion issue at the level three hearing, and it was not objected to.

See Level three hearing transcripts Volume I (10/4/2018) Pages 41-48, 361-368, especially in Page 48 Shepherd University General Counsel Alan Perdue answered "No objection."

- 22.**I received transcripts of the level three hearing on 8/30/2019.
- 23.****My applications for promotion were denied on the basis of not meeting the minimum standard that "Refereed Full Length Journal Publications MUST be published DURING Associate Professor Rank". See Exhibit B (documents 11 and 12 inside), Exhibit C (documents 14 and 15 inside). I am Asian, originally from China.**
- 24.****"Refereed Full Length Journal Publications MUST be published DURING Associate Professor Rank" is a misinterpretation of the minimum standard published in the Faculty Handbook. See Exhibit B (documents 1-4, 8, 9 inside) and Exhibit C (Additional Statement of Level Three Grievance, and document 16 inside).**
- 25.****Using "Refereed Full Length Journal Publications MUST be published DURING Associate Professor Rank" as the minimum standard is especially unfair to older people who made very significant scientific discoveries and very important**

publications before their career change to teaching. See Exhibit B (document 4 inside).

- 26.Using “Refereed Full Length Journal Publications MUST be published DURING Associate Professor Rank” as the minimum standard leads to absurd results. See Exhibit B (documents 2 and 4, document 3 PAGE 7 inside).
- 27.US Equal Employment Opportunity Commission (EEOC) stated: Age Discrimination & Employment Policies/Practices. An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees age 40 or older and is not based on a reasonable factor other than age (RFOA).
- 28.I searched 10 universities'/colleges' including 6 peer institutions' policy for promotion to Professor. I did not find any requiring “Refereed Full Length Journal Publications MUST be published DURING Associate Professor Rank”. I did not find any disallowing the candidate's earlier significant scientific contributions in the later evaluation for promotion.
- 29.The Promotion & Tenure Committee Chair Nicholas Martin testified in the

**Level three hearing that the Committee only checked the dates of the publications to see if they were during Associate Professor and only counted the number of publications during Associate Professor. The committee did not give any consideration of the quality or scientific significance of the publications.** See Level three hearing transcripts Volume I (10/4/2018) Page 217 lines 16-22, Page 221 lines 8-13, Page 232 lines 1 – Page 233 line 6.

- 30. The former Promotion & Tenure Committee Chair and current Dean Robert Warburton was promoted to Professor without any publication during Associate Professor rank. Robert Warburton is white, from UK. Robert Warburton is one of my major harasser.**
- 31. Robert Warburton published less in quality and less in quantity than me before he was promoted to Professor.** See Exhibit D (Robert Warburton CV inside). See Exhibit B (Document 5 Li CV inside).
- 32. In the 9/25/2018 prehearing conference conducted by Administrative Law Judge Joshua Fraenkel, Shepherd University General Counsel Alan Perdue admitted that Robert Warburton was promoted to Professor under the same published**

**promotion policy as for my 2016-2017 application for promotion which was denied.** See Level three 9-25-2018 prehearing conference transcript Page 44 line 10 to Page 45 line 12 (also in Exhibit Q). **On October 1, 2018 Administrative Law Judge Joshua Fraenkel ruled not to allow or to hear the evidences of Warburton's promotion.** See Exhibit Q (Grievance Board Secretary Ryan Lawler's October 1, 2018 e-mail inside).

- 33. The Promotion & Tenure Committee Vice Chair Carol Plautz published less in quality and less in quantity than me before she was promoted to Professor in 2017. My applications for promotion to Professor was denied in 2017 and in 2018. Carol Plautz is white.** See Exhibit D (Carol Plautz CV inside). See Exhibit B (Document 5 Li CV inside).
- 34. Carol Plautz testified in the Level three hearing that she did not have any major breakthrough publications before her promotion to Professor.** See Level three hearing transcripts Volume II (10/5/2018) Pages 658 line 11 to Page 661 line 8.
- 35. The Promotion & Tenure Committee Chair Nicholas Martin published less in quality than me and the same in quantity as me before he was promoted to**

**Professor in 2016. My applications for promotion to Professor was denied in 2017 and in 2018. Nicholas Martin is white. See Exhibit D (Nicholas Martin CV inside). See Exhibit B (Document 5 Li CV inside).**

**36. Nicholas Martin testified in the Level three hearing that he could not confirm that he had any major breakthrough publications or publications in pup [sic top] journals before his promotion to Professor. See Level three hearing transcripts Volume I (10/4/2018) Page 209 line 16 to Page 210 line 6. And Page 212 lines 16-21.**

**37. I testified in the Level three hearing that, before my application for promotion, I had published 3 major breakthroughs including 2 publications in the most prestigious scientific journals Nature and Science, and at Shepherd University I had 1 more major breakthrough submitted to the top physics journal Physical Review Letters with two referees and total four experts agreed with our main conclusion. Shepherd University did not object my above testimony. See Level three hearing transcripts Volume I (10/4/2018) Page 210 line 21 to Page 211 line 2. See Exhibit A and Exhibit E (Mengyang Li CV, also in Exhibit B document 5 inside).**

38. Shepherd University ignored the publication expectation for tenure stated in the 2/16/2012 employment letter of Jordan Mader, ignored the publication requirement stated in Dean Colleen Nolan's 4/1/2016 and 5/7/2017 letters to Jordan Mader, and awarded Jordan Mader tenure and promotion to Associate Professor in 2018. Jordan Mader is white, under 40. Jordan Mader is one of my major harasser. See Exhibit F.
39. Shepherd University ignored the publication expectation for tenure stated in the employment letter of Jacquelyn Cole, ignored the publication requirement stated in Dean Colleen Nolan's letter to Jacquelyn Cole, and awarded Jacquelyn Cole tenure and promotion to Associate Professor in March 2019. Jacquelyn Cole is white. She is a Millennial (was under 40?). **Jacquelyn Cole is also one of my harasser.** I am seeking from Shepherd University the documents of Jacquelyn Cole.
40. In contrast, Shepherd University imposed a publication requirement contradict to my employment letter (contract, see Exhibit B document 10) on me, imposed a publication requirement in Dean Nolan's 4/16/2015 letter contradict to my employment letter (contract, see Exhibit B

**document 10) and contradict to the Faculty Handbook (Exhibit B document 8, Exhibit C document 16) on me, and denied my applications for promotion in 2017 and 2018. I am Asian, from China. I was above 55.**

41. In the Level one hearing, Promotion & Tenure Committee Chair Robert Warburton admitted for pointing at me and shouting with very loud and stern voice “Sit down!” twice in his office right before my application arrived at his Committee. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGES 5-6.
42. **Under oath, on 12/1/2017 in Level one hearing, Promotion & Tenure Committee Chair Robert Warburton (promoted to Acting Dean in July 2017, to Dean in July 2019) falsely testified twice that I pointed at him during the meeting that he pointed at me and shouted “Sit down!” twice. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGE 38.**
43. **Under oath, in the Level three hearing (October 4-5, 2018), Robert Warburton testified that I did not point at him during our meeting in his office that he pointed at me and shouted “Sit down!” twice, and corrected his false testimony under oath on 12/1/2017. (See Level three hearing transcripts Volume II (10/5/2018) Page 496**

Line 12, Page 497 Lines 2-3, Page 498 Lines 5-8). See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 1).

44. In the Level one hearing, Promotion & Tenure Committee Chair Robert Warburton admitted that he typed the sentence "**The items in your portfolio, associated with honors and awards and publications prior to your tenure and promotion to Associate Professor are deemed inadmissible**" in the Committee recommendation letter for my application for promotion. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGE 8.
45. In the Level one hearing, Promotion & Tenure Committee Chair Robert Warburton admitted that he did not write the sentence "**The items in your portfolio, associated with honors and awards and publications prior to your tenure and promotion to Associate Professor are deemed inadmissible**" in the Committee recommendation letters for any other person's application for promotion. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGE 32.
46. In the Level one hearing, Robert Warburton admitted that he dismissed my research presentation speech at the American Chemical Society National Meeting peer recognition of scholarly work and peer-reviewed published

abstracts during Associate Professor, and wrote “**No notable scholarly work or other professional growth since promotion to Associate Professor that could be objectively substantiated by external peer-reviewed publication could be found**” in the Committee recommendation letter for my application for promotion. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGES 32-33.

47. In the Level one hearing, Robert Warburton admitted that he did not dismiss anyone else’s research presentation peer recognition of scholarly work or peer-reviewed published abstracts during Associate Professor, and he did not write “**No notable scholarly work or other professional growth since promotion to Associate Professor that could be objectively substantiated by external peer-reviewed publication could be found**” in the Committee recommendation letter for anyone else’s application for promotion. See Exhibit N Level one hearings transcripts: 12/1/2017 PAGES 32-33.
48. **Under oath on 10/18/2018, I testified the following Items 49-70.** See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony).
49. **Under oath, in the Level three hearing (October 4-5, 2018), Department Chair Dan**

**DiLella made the false testimony denying saying “Nobody saw these [incidents]. Some people just do not like each other” after my October 2016 reporting to him the incidents with Dr. Jordan Mader. See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 2). See Level three hearing transcripts Volume II (10/5/2018) Page 630 lines 7 – Page 631 line 17.**

- 50. Under oath, in the Level three hearing (October 4-5, 2018), Department Chair Dan DiLella made a dubious testimony that he did not notice Dr. Jordan Mader for years usually passing me in the hallway with cold face like not knowing me. (Total 6 fulltime faculty in the department. I am the only minority. Our offices, classrooms and labs are on the same floor.) See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 2). See Level three hearing transcripts Volume II (10/5/2018) Page 633 line 13 – Page 635 line 24.**
- 51. In the Level three hearing (October 4-5, 2018), Department Chair DiLella testified that after my October 2017 meeting with him reporting my incidents with Dr. Mader, Chair DiLella soon had a meeting with Dr. Mader and warned Jordan Mader to be cautious as I might bring her into the grievance. See Exhibit G (Mengyang Li Level Three Hearing**

10/18/2018 Written Testimony Page 2). See Level three hearing transcripts Volume II (10/5/2018) Page 631 line 18 – Page 633 line 6.

52. **Under oath, in the Level three hearing (October 4-5, 2018), Department Chair Dan DiLella made a dubious testimony that he did not pay attention if Jordan Mader's behavior towards me changed or not after his October/November 2017 warning Jordan Mader to be cautious and that I might bring Jordan Mader into the grievance.** See Level three hearing transcripts Volume II (10/5/2018) Page 633 lines 7-12. Department Chair DiLella further dubiously testified that these things are of **low importance in his mind.** See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 2). See Level three hearing transcripts Volume II (10/5/2018) Page 633 line 13 – Page 635 line 24.
53. **Under oath, in the Level three hearing (October 4-5, 2018), Associate Professor Jordan Mader made the false testimony that the incident of her not looking at me during my visiting her office happened near her beginning at Shepherd (near 2012), and she has been greeting me the way I asked ever since then (ever since near the beginning of her employment at Shepherd in 2012).** See Exhibit G (Mengyang

Li Level Three Hearing 10/18/2018 Written Testimony Page 3). See Level three hearing transcripts Volume I (10/4/2018) Page 349 line 12 – Page 350 line 17.

**54. Under oath, in the Level three hearing, I testified that the not looking at me incidents in Dr. Mader's office happened near Spring 2017, not near 2012.** See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 3).

**55. Under oath, in the Level three hearing on 10/18/2018, I testified:**

For three years, from Fall 2014, after my relationship with Dr. Sher Hendrickson-Lambert (a female biology professor at Shepherd University, a close friend of Dr. Jordan Mader, a friend of Chair Dan DiLella and Dean Robert Warburton) changed from warm to cold in Summer 2014, up to October 2017, Dr. Jordan Mader usually passed through me in the hallway with cold face like not knowing me. Dr. Mader's not looking at me in her office incidents, and the moving my lecture notes to a stool near the classroom door incident all happened near Spring 2017, within these three years. See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 3).

**56. Under oath, in the Level three hearing (October 4-5, 2018), Associate Professor**

**Jordan Mader made a dubious testimony that she does not remember Chair Dan DiLella's October/November 2017 meeting with her about my complaining of incidents with her. See Level three hearing transcripts Volume I (10/4/2018) Page 353 line 21 – Page 354 line 19, Page 354 line 20 – Page 356 line 8. Chair DiLella testified that in that meeting he warned Dr. Mader to be cautious as I might bring her into the grievance. See Level three hearing transcripts Volume II (10/5/2018) Page 631 line 18 – Page 633 line 6. See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 3).**

57. Under oath on 10/18/2018, I testify that I did notice that Dr. Jordan Mader's behavior toward me changed for the better after Department Chair DiLella's meeting with her in October/November 2017 warning her to be cautious. See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 3).
58. **In the 12/1/2017 hearing, Mengyang Li asked Jordan Mader: "Did you commonly just when you see me go straight, like straight faced that called like not recognize me, just going through?" (Exhibit N 12/1/2017 level one hearing transcript Page 47).**

59. Under oath on 12/1/2017, Jordan Mader made the false testimony "Not to my recollection, no, I have continued to greet you with hello and good morning or good afternoon." (Exhibit N 12/1/2017 level one hearing transcript Page 47). See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 3).

60. In the 12/1/2017 hearing, Mengyang Li asked Jordan Mader: "When you see another member of the chemistry department, there are six members, do you often give him/her a cold face and the, looks like you not see him or her? In the hallway." (Exhibit N 12/1/2017 level one hearing transcript Page 49)

61. Under oath Jordan Mader answered (false testimonies underlined by Mengyang Li): "Are there times that I don't stop and chat with everyone on my way somewhere? Absolutely. Do I greet all members of my department and all of my colleagues in the College of Natural Sciences and Mathematics and students that I see, in general, with a smile and a hello or a hey or what's up? Yes, I am generally considered to be one of the friendlier professors in our College and the students know that, they often stop me in the hallway, they'll call to me when I walk past a room, and I always stop and make time for them unless I

absolutely have to be somewhere. I have continued to say hello or good morning or good afternoon to you when I see you in the hallway because that is how you told me I should address you. I don't believe that I have done it in any colder or warmer fashion than I have addressed any other person." (Exhibit N 12/1/2017 level one hearing transcript Page 49). See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 4).

62. In the 12/1/2017 hearing, Mengyang Li asked Jordan Mader: "Dr. Mader, did you put another colleague's lecture notes on a stool near the door after, in time before, after his/her class, before your, before your class?" (Exhibit N 12/1/2017 level one hearing transcript Page 48)
63. Jordan Mader answered: "There's no way for me to answer that because no one else has left their lecture notes on the table." (Exhibit N 12/1/2017 level one hearing transcript Page 48)
64. In the 12/1/2017 hearing, Mengyang Li described finding his lecture notes was moved to a stool near the door of the classroom well before Dr. Mader's class time: "In spring 2017, you had classes after my classes in Snyder Hall 337. One day as usual, I erased the board after my class, went to wash

my hand, then come back to pick my lecture notes, folder, manila folder. I found my notes folder was moved to the, from the lecture table, I have a lecture table center, to the table edge, well before, you Dr. Mader, well before Dr. Mader's class time, before your class time. Dr. Mader was at the, in the classroom front. After that, I usually put my notes folder at the side of the table before going to wash my hands after erasing the board of my classroom. I always try to erase my board for every teacher after me. Later one day, in spring 2017, I completed the lecture and erased the board to leave a clean board for Dr. Mader, as I always do. Then I went to wash my hands and came back to pick my notes on the lecture table. I found my lecture notes on the stool near the door, well before Dr. Mader's class time. " (Exhibit N 12/1/2017 level one hearing transcript Page 40)

65. **Then Mengyang Li asked Jordan Mader:**  
**"My question is, Dr. Mader did you move my lecture notes?"** (Exhibit N 12/1/2017 level one hearing transcript Page 41)
66. **Under oath Jordan Mader answered (dubious testimonies underlined by Mengyang Li):** "Do I specifically remember an incidence when I moved your notes, no. Do I remember that you would leave your lecture notes on the table when I was getting ready to stat class? Yes. You did it three days a week for

an entire semester. I don't recall ever moving them. If I did, and I don't believe that I did, maybe it was so that you could retrieve them easier because I was starting class on time. I do remember that you would come in at maybe 10:09 or 10:10 right as I was about to start class and I was worried that it would be distracting to the students. I feel like that's a he said, she said thing because we don't have a timeline of anyone coming and going, so I can't definitively say that I did or did not move it because you are asking me for something that could have happened anytime in the last six months, almost a year ago at this point, so I don't" (Exhibit N 12/1/2017 level one hearing transcript Page 42). See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Pages 4-5).

67. Under oath, in the October 4-5, 2018 Level three hearing, Lecturer Kyle Hassler made a false testimony that she did not speak with anybody prior to her removing all the safety goggles from the General Chemistry Lab, resulting in zero safety goggles left in my General Chemistry Lab classes on both 1/16/2018 and 1/18/2018 (right after the 1/12/2018 Level One grievance denial decision), with nobody

**communicating to me before my classes, twice causing my about 20 students not able to start the lab class. See Level three hearing transcripts Volume I (10/4/2018) Page 21 lines 9-19. See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 5).**

**68. Both Department Chair Dan DiLella and Assistant Professor Jacquelyn Cole testified in the October 4-5, 2018 Level three hearing: Shortly after the 12/1/2017 Level One grievance hearing, Assistant Professor Cole and Lecturer Hassler spoke with Department Chair DiLella about removing safety goggles from my General Chemistry Lab, prior to Lecturer Hassler's removing all the safety goggles from my General Chemistry Lab. See Level three hearing transcripts Volume I (10/4/2018) Page 258 line 12 – Page 264 line 19. See Level three hearing transcripts Volume II (10/5/2018) Page 615 lines 3-18. See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 5).**

**69. Multiple people testified that no any other lab had all safety goggles removed. See Level three hearing transcripts Volume I (10/4/2018) Page 272 line 24 – Page 273 line 4.**

**70. Under oath, in the October 4-5, 2018 Level three hearing, Jacquelyn Cole admitted**

**multiple attempts to force multiple choice only exams on me during multiple department meeting.** See Level three hearing transcripts Volume I (10/4/2018) Page 276 line 9 – Page 286 line 15. **Jacquelyn Cole also admitted that she took photos of my lab lecture writings without my knowledge or permission first and shared these photos with her students without my knowledge or permission first. She has been unapologetic about it.** See Level three hearing transcripts Volume I (10/4/2018) Page 287 line 1 – Page 292 line 13. See Exhibit G (Mengyang Li Level Three Hearing 10/18/2018 Written Testimony Page 5).

71. **The 2<sup>nd</sup> denying my application for promotion on 4/23/2018 and all related discrimination and harassment, described in my “Additional Statement of Level Three Grievance” (in Exhibit C. Filed 2018-0654-SU Level Three Grievance), have not been heard in the Levels 1-3 hearings yet.**
72. **With the 9/25/2018 Motion of Shepherd University, on 9/26/2018, Administrative Law Judge Joshua Fraenkel ordered to split filed Grievance 2018-0654-SU into two Grievances, and put the 2<sup>nd</sup> denying my application for promotion on 4/23/2018 and all related discrimination and harassment into a newly created Grievance 2018-1475-SU,**

**and put the 1<sup>st</sup> denying my promotion and all other discrimination and harassment into the Grievance 2018-0654-SU. See attached Exhibit H, Orders.**

73. The Administrative Law Judge Joshua Fraenkel issued a Dismissal Order of Grievance 2018-0654-SU on January 29, 2019 based on untimely filing, and refused to rule on the merits of the case. See attached Exhibit H, Orders.
74. On March 18, 2019 I filed an Appeal of the Dismissal Order at the Kanawha County Circuit Court (Case No. 19-AA-22), and I asked that the Court reverse the dismissal of Grievance 2018-0654-SU, send the case back for a decision on the merits.
75. On 3/13/2019 Shepherd University made Motion to dismiss my Grievance 2018-1475-SU (created by the Grievance Board Order on 9/26/2018) based on untimely filing.
76. On 3/18/2019 Shepherd University General Counsel Alan Perdue unilaterally scheduled Grievance 2018-1475-SU level one hearing on 3/20/2019.
77. I went to the 3/20/2019 hearing unilaterally scheduled by General Counsel Alan Perdue.
78. In the 3/20/2019 hearing, against the Grievance Board Order issued by Administrative Law Judge Fraenkel on September 26, 2018, **General Counsel Alan Perdue asked Chief**

**Administrator Marie DeWalt not to hear any Discrimination claim.** I am waiting for the 3/20/2019 Grievance 2018-1475-SU level one hearing transcript.

79. In the 3/20/2019 hearing, against the Grievance Board Order issued by Administrative Law Judge Fraenkel on September 26, 2018, **Chief Administrator Marie DeWalt ruled not to hear any Discrimination claim.**
80. In the 3/20/2018 hearing, I stated: The essence of the matter is Age Discrimination. I cannot testify when all discrimination is ruled out from the hearing.
81. I did not testify in the 3/20/2019 hearing.
82. On 4/25/2019, Shepherd University President Mary Hendrix adopted Marie DeWalt's findings as her own, and issued Grievance 2018-1475-SU Level One Decision to deny the grievance on the basis of untimeliness. See Exhibit I, Grievance 2018-1475-SU Level One Decisions.
83. On April 23, 2019, Chief Administrative Law Judge Billie Thacker Catlett issued Order denying Shepherd University's Motion to dismiss Grievance 2018-1475-SU on the basis of untimeliness. See Exhibit J, Order Denying Motion to Dismiss Grievance 2018-1475-SU.
84. **After the Dismissal Order of my Grievance 2018-0654-SU on 1/29/2019, harassers were emboldened, more discrimination and harassment occurred.**

85. In April 2, 2019 department meeting, without discussing with me first, Chair Dan DiLella announced that the department will require professor and each his/her research student to make a poster as a graduation requirement.
86. I suggested to encourage but not to require making a poster.
87. Chair DiLella answered “required”, “there is no choice here”.
88. Except me, all supported Chair DiLella’s new requirement.
89. I raised voice arguing that we reasonably required each student writing a research paper and a defense, requiring more format conformation leaves less time for creativity and may leads to mediocrity.
90. Lecturer Kyle Hassler pointed at me and commanded “Lower your voice!” twice.
91. The meeting was recorded.
92. On 4/11/2019 Kyle Hassler filed Internal Grievance with Dean Robert Warburton against me. See Exhibit K, Hassler Internal Grievance Against Li.
93. I requested another administrator other than Dean Warburton to handle Internal Grievance Hassler v Li.
94. Warburton refused. On May 24, 2019 Warburton directed me:
  1. Comply with directions from department Chair [DiLella], from

now on, regarding tone of voice in meetings, and

2. To fully limit your direct contact with Dr. Hassler, outside of group meetings, to email. “

95. Kyle Hassler, Dan DiLella and Robert Warburton all have been my harassers.

96. On April 23-24, 2019, Shepherd Director Jason Best, Provost Scott Beard, VP Pamela Stevens and General Counsel Alan Perdue insulted Mengyang Li and Mohammadreza Ghahremani in emails. See Exhibit L.

97. Both Mengyang Li and Mohammadreza Ghahremani are minority faculty members.

98. On 4/24/2019 and on 5/3/2019 Department Chair Dan DiLella and Acting Dean Robert Warburton retaliated/discriminated against me in the evaluation process.

99. On 4/1/2019 I found that:  
My Summer 2019 classes seats were all set by Chair DiLella at 20;  
Jacquelyn Cole's Summer classes seats were all set by Chair DiLella at 12;  
Jordan Mader's Summer 2019 classes seats were all set by Chair DiLella at 12.  
See Exhibit M.

100. I was 57. Jordan Mader was under 40. Jacquelyn Cole is a Millennial (was under 40?).

101. In the past 10 years summers, I typically taught classes of near 20 students but was paid the same as classes of 5 students.
102. In the past 10 years summers, Shepherd University received total approximately \$500,000 tuition and fees from my summer teaching, outside of the University budget.
103. In the past 10 years summers, I received **total** summer salary less than \$88,000.
104. A detailed analysis of the injustice of the violation of published binding promotion policy is in Exhibit O.
105. The facts of discrimination, harassment, and retaliation associated with the 2<sup>nd</sup> denying my application for promotion on 4/23/2018 described in my "**Additional Statement of Level Three Grievance**" (in Exhibit C. Filed 2018-0654-SU Level Three Grievance).
106. Both Department Chair Dan DiLella (also Promotion & Tenure Committee Member) and Acting Dean Robert Warburton (Promotion and Tenure Committee Chair 2012-2017, promoted to Dean today July 1, 2019) **concealed** their recommendations (11/15/2017, 1/30/2018), the Committee's recommendation (1/15/2018) and the Department's votes (11/15/2017, two votes total, Dan DiLella and Robert Warburton) from me, in violation of the promotion procedural

requirements (**Exhibit C Additional Statement of Level Three Grievance**).

107. When I confronted Chair DiLella about revealing his recommendation on 2/26/2018, Department Chair DiLella replied "You will see all the [recommendation] letters after the president made the decision" and at first refused to reveal his recommendation letter to me (**Exhibit C Additional Statement of Level Three Grievance**).

108. Department Chair Dan DiLella wrongfully wrote in his 11/15/2017 recommendation concealed from me "*Dr. Li has also listed presentations at scientific meetings as 'juried performances'. Dr. Li has provided the definitions of the words 'juried' and 'performances' to support the claim that the presentations meet the definition of juried performances. I am not sure of the correct definition for a juried performance, but I have never heard the term used to describe a scientific presentation. As far as I know, at Shepherd University juried performances refer to performances in the arts.*" (Exhibit C Document 19).

109. I have **NOT** listed presentations at scientific meetings as "juried performances", **NOR** have provided the definition of "performances". I **have**

listed PRESENTATIONS at scientific meetings as "juried EXHIBITIONS of scholarly work" (language in the Faculty Handbook). I provided to Chair DiLella the dictionary definitions:

1. **Juried:**  
having the contents selected for exhibition by a jury.
2. **EXHIBITION:** an act or instance of exhibiting, a public showing.
3. **EXHIBIT:** to PRESENT, to show publicly.

**(Exhibit C Additional Statement of Level Three Grievance).**

110. Right after Committee Chair Nicholas Martin and Acting Dean Robert Warburton also revealed their recommendations to me on 2/27/2018 (I did not ask or confront them about revealing their recommendations), both Committee Chair Nicholas Martin and Acting Dean Robert Warburton harassed me, including Acting Dean Warburton's written harassment alleging my "uncivil and intimidating", "frequent agitations", "individualized threats of lawsuits", and "berate or harass" without himself nor any supervisor come to me to investigate the facts

(2/28/2018, 3/2/2018) (**Exhibit C Additional Statement of Level Three Grievance**).

111. Without any authorization, Department Chair DiLella, Committee Chair Martin, Acting Dean Warburton and Acting Provost Scott Beard took away from me the published and binding option juried EXHIBITIONS of scholarly work during Associate Professor to satisfy the minimum qualification [in their 11/15/2017, 1/15/2018, 1/30/2018, and 4/17/2018 (Acting Provost) recommendation letters, Exhibit C Documents 19-21, 14, 15], to disqualify me for promotion (**Exhibit C Additional Statement of Level Three Grievance**).
112. President Mary Hendrix **neglected her duty** to make a decision on my 2<sup>nd</sup> promotion application shown in her May 2, 2018 letter (Board Policy 19 and Faculty Handbook stated “Promotion and tenure of faculty are the prerogatives of the President, who will base his or her decision primarily upon the guidelines and the recommendation(s) of the Provost...”) (Exhibit C Documents 17, 16).
113. On April 23, 2018 Acting Provost Scott Beard **made unauthorized decision** (violating the published binding Board Policy) denying my 2<sup>nd</sup> application for promotion (Exhibit C Documents 14, 16).

114. At the 3/20/2019 Grievance 2018-1475-SU level one hearing, Shepherd University Provost Scott Beard admitted that my presentations at the American Chemical Society National Meeting and at the West Virginia Academy of Science Meetings during Associate Professor are **juried EXHIBITIONS of scholarly work**. This admission shows that Acting Provost Scott Beard's 4/23/2018 decision denying my 2<sup>nd</sup> application for promotion violated the published promotion policy minimum qualifications Items c and e. I am waiting for the transcripts of the 3/20/2019 Grievance 2018-1475-SU level one hearing.

115. In late August 2019 at the beginning of Fall semester 2019, I just learned that Shepherd University Chemistry Department hired Visiting Assistant Professor Samuel David when Professor David showed up at work. I was not informed by anybody about the hiring, I did not have any information of the hiring until Professor Samuel David showed up at work. I had been teaching in the Department in all summer 2019. Recently I found that Cole, DiLella, Warburton and Provost Beard made the hiring decision.

116. Most recently, on October 29, 2019 I learned that Jacquelyn Cole was approved by Provost Beard as the Chair of the Department

of Chemistry. On September 17, 2019, Robert Warburton, Dan DiLella and Jacquelyn Cole elected Jacquelyn Cole as nominee for Department Chair. Robert Warburton, Dan DiLella and Jacquelyn Cole are all my major discriminators/ harassers. Robert Warburton was promoted from Acting Dean to Dean on July 1, 2019. Jacquelyn Cole is white, and a millennial (was under 40?). I was not promoted to Department Chair. I am East Asian. I was 57.

117. I had a personal relationship with Dr. Sher Hendrickson-Lambert, a Caucasian female professor (A close friend of Jordan Mader, and a friend of Dan DiLella and Robert Warburton). The personal relationship is not physical. We had only one meal (a lunch) together. The personal relationship changed from warm to cold in summer 2014 in consideration of my children.

118. From fall 2014 to May 2019 five white members of the total 6 people Department discriminated/harassed me.

119. I suffered severe professional, financial and emotional damages from the continuous Age, Race, National Origin discriminations, harassments and reprisal for filing a complaint/grievance, from fall 2014 to the signing of this Amended Complaint.

RELIEF (WV Jefferson County Circuit Court No. CC-19-2019-C-102)

The plaintiff requests that this Honorable Court make Shepherd University

1. Right the wrong of denying my promotion, an illegal practice of Age discrimination;
2. Stop the Age, Race and National origin discrimination and retaliation and harassment I have been experiencing for years;
3. Change the hostile work environment I have been experiencing for years;
4. Take personnel disciplinary actions on the perpetrators of discrimination and harassment;
5. And Compensate the severe professional, financial and emotional damages that I suffered from the continuous Age, Race and National Origin discriminations, harassments and reprisal for filing a complaint/grievance, from fall 2014 to the Day of Justice.

## REASONS FOR GRANTING THE WRIT

It is a practice of Age Discrimination in deeming an old scientist (Petitioner)'s very significant scientific contributions prior to his changing career at an old age to teaching (including a publication in journal *Nature* that significantly advanced Langmuir's 1917 work of a Chemistry Nobel Prize (awarded in 1932),<sup>8</sup> and a publication in journal *Science*<sup>9</sup>) as "inadmissible" in evaluating the old scientist for his later application for promotion to Professor rank and denying his promotion solely for this on-paper-reason.

It is understandable for an old individual, who made very significant contributions in scientific research earlier and changed to teaching in his/her later career at an old age, to restart at a low rank at a teaching university, since the person still needs professional growth in teaching and since the institution is a teaching university, even if the individual's professional growth in scientific research before arriving at the teaching university already surpassed the standard of the Professor rank at the teaching university. The individual already paid a

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<sup>8</sup> M. Y. Li, A. A. Acero, Z. Huang and S. A. Rice, Formation of an ordered Langmuir monolayer by a non-polar chain molecule, *Nature* **367**, 151-153 (1994).

<sup>9</sup> E. B. Flom, M. Y. Li, A. Acero, N. Maskil and S. A. Rice, In-plane structure of the liquid-vapor interface of an alloy: a grazing incidence X-ray diffraction study of Bi:Ga, *Science* **260**, 332-335 (1993).

heavy professional and financial price by restarting at a low rank in his/her later career and his/her older age.

It is not rare for honest hard working scientists suffering from abuses and unfair exploitations by some people in power in academia or by unfair tradition.

**Administrative branch WVPEGB dismissed my claims of denying my first promotion in 2017 on the basis of passing the 15-day Statutes of Limitation. Without a judicial branch hearing of facts, wrongfully denying my first promotion in 2017 deprived my rightfully earned income property; Age, Race and National Origin discriminations violated equal protection of law (The US Constitution 14<sup>th</sup> Amendment Section 1).**

#### **TIMELINESS OF THIS PETITION**

The West Virginia Supreme Court of Appeals Decision was filed on June 23, 2021 (Appendix A). The US Supreme Court July 19, 2021 Order provides 150 days to file petitions for writs of certiorari from the date of the lower court judgment for the cases of which the lower court judgment was made prior to July 19, 2021. The 150<sup>th</sup> day from June 23, 2021 is Saturday November 20, 2021. So the Petition for Writs of Certiorari filing deadline is actually Monday

November 22, 2021. This Petition for Writs of Certiorari was sent by FedEx on November 20, 2021 and was filed timely.

On November 24, 2021 the US Supreme Court Clerk Office granted 60 days from 11/24/2021 for my Petition for Writs of Certiorari to comply with Rule 33.1. The 60<sup>th</sup> day from 11/24/2021 is Sunday 1/23/2022. The actual deadline is Monday 1/24/2022. This rule complying Petition for Writ is postmarked on or before January 24, 2022, so is filed timely.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Mengyang Li*

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Date: *January 23, 2022*