

ORIGINAL

Supreme Court, U.S.
FILED

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No. **21-5208**

In The
Supreme Court of the United States

SAMUEL W. WANI,
Petitioner,

v.

GEORGE FOX UNIVERSITY, *Et al.,*
Respondent.

On Petition for Writ of Certiorari
From the United States Court of Appeals for the Ninth Circuit

Petition for Writ of Certiorari

Samuel W. Wani
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1) Wani's failure to provide expert testimony regarding the standard of care and causation. I did provide expert testimony regarding the standard of care and causation (my doctor's medical records) at the district court.

2) The lower courts abuse of discretion not allowing plaintiff Samuel Wani access to discoverable materials that would change the outcome of the litigation. Access to defendants' emails, A.I.G. Insurance policy, and other perspective defendants (A.I.G. policyholders and owners who are also directly liable) direct violation of plaintiffs right to a fair trial (5th and 14th Amendment) and breach of FRCP 26.

3) Failure of the lower Court to admit plaintiff Samuel Wani's treating doctor's testimony as expert witness testimony to resolve. "As a result of Wani's failure to provide expert testimony regarding the standard of care and causation, there is no genuine issue of material fact as to his claim against Boughton. Boughton is therefore entitled to summary judgment". The same applies to Doctor Croy. Direct violation of Rule 700-706 FRCP26.

4) Failure to state a claim in which relief can be granted. Plaintiff did state a claim, in fact, 5 claims. Personal Injury is a claim in which relief can be granted (accompanied by medical records expert testimony of treating doctors).

5) HIPPA as standard of care (prove of damages = personal Injury as documented) plaintiff is also a HIPPA Expert and an Expert witness healthcare provider (Current certified Fraud, waste and abuse expert, Certified strength and conditioning coach, Healthcare Administration Student at Eastern Washington University, Former First responder Fire-Fighter EMT-B and Former clinical assistant with over 10 years' experience in the medical field). Plaintiff complainant is also an expert testimony under FRCP 701-706.

6) Introduction of the HIPPA Violation (Invasion of privacy) plaintiff stolen medical records by defendants Using plaintiffs PHI 9/4/2015, 9/5/2015/9/08/2015/9/09/2015 to commit medical insurance fraud and healthcare fraud. Notice of a new lawsuit was sent to the same defendants in No. 19-35355 D.C. No. 3:17-cv-01011-YY with the addition of A.I.G. and Staff (6/15/2021), the NCAA might be a joinder as a plaintiff or defendant following F.B.I. Investigation. Bob Ferguson and the State of Washington will be a plaintiff to the upcoming lawsuit pending resolution. Plaintiff Samuel Wani intends to file another lawsuit against the same defendants in No. 19-35355 D.C. No. 3:17-cv-01011-YY, A.I.G. administrators and possibly the NCAA in the U.S. district court of Washington.

PARTIES TO THE PROCEEDINGS

The Petitioner in this case is Mr. Samuel W Wani, whose contact information is Samuel W Wani, 2226 Eastlake Ave East #272, King County, Seattle Washington 98102, Samuelwani@eagles.ewu.edu.

A Respondent in this case is Orthopedic Surgeon Dr. Thomas Croy, MD, whose contact information is Dr. Thomas Croy, MD, 310 Villa R.D. Suit 108, Newberg, Yamhill County, Oregon 97132, 503-538-1405.

A Respondent in this case is Head Football Athletic Trainer Gregg Boughton, whose contact information is Gregg Boughton, 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, Cell: 307-287-4361, gboughton@georgefox.edu.

A Respondent in this case is Defensive Line Head Coach Chris Casey, whose contact information is: Chris Casey, 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, 503-554-2936, ccasey@georgefox.edu.

A Respondent in this case is Defensive Coordinator, Recruiting Coordinator, Defensive Backs, John Bates, whose contact information is John Bates, 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, Telephone Number: 503-554-2936, jbates@georgefox.edu.

A Respondent in this case is Special Teams Coordinator, Linebackers, Equipment Administrator Ian Sanders, whose contact information is 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, 503-554-2936, isanders@georgefox.edu.

A Respondent in this case is Wide Receivers, Video Coordinator, Strength & Conditioning (Speed), Gabe Haberly, whose contact information is Gabe Haberly, 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, 503-554-2941, ghaberly@georgefox.edu.

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“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.”
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A Respondent in this case is Director of Athletics Craig Taylor, whose contact information is Craig Taylor, 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, 503-554-2911, ctaylor@georgefox.edu.

A Respondent in this case is Associate Dean of Students, Director of Residence Life Dave Johnstone, whose contact information is Dave Johnstone, 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, 503-554-2315, djohnsto@georgefox.edu.

A Respondent in this case is Dean of Student Mark Pothoff, whose contact information is Mark Pothoff, 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, 503-554-2313, mpothoff@georgefox.edu.

A Respondent in this case is Sarah Taylor, whose contact information is Sarah Taylor, 414 N. Meridian St., Newberg, Yamhill County, Oregon 97132, 503-554-2313, mpothoff@georgefox.edu.

OPINIONS BELOW

The Court of Appeals for the Ninth Circuit entered judgment on Thursday, April 01, 2021 (App. 1). The Petitioner did timely file a Petition for Rehearing *en banc*, which was denied on Thursday, April 22, 2021 (App. 2).

JURISDICTION

The Court of Appeals for the Ninth Circuit entered judgment on Thursday, April 22, 2021 (App. 2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

"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." *Section One of the 14th Amendment*.

INTRODUCTION

Samuel W. Wani petitions *pro se*, from the district court's judgment in his action alleging federal and State law claims arising out of an injury sustained while attending George Fox University ("GFU") as a student athlete and an incident of cyberbullying.

STATEMENT OF THE CASE

Wani's claims arise out of events between August 20, 2015, when Wani injured his hand during football practice, and November 2016, when Wani had surgery to reconstruct a torn thumb ligament. He alleges that GFU and its staff: (1) denied him adequate medical attention or time off of practice for his injury; and (2) responded inadequately to social media posts by Fix-Gonzalez that Wani learned of on August 27, 2015.

Wani enrolled in GFU for the 2015-16 school year as a transfer student from Washington and moved to Newberg on or about August 11, 2015, four days before football camp started, and about three weeks before classes. ECF #168-1, at 2.3

On August 19, 2015, Wani had what he characterizes as a "life threatening sickle cell related crisis" and "dismissed [him]self from practice." *Id.* When he arrived at practice three hours late, Casey sent him to the treatment room to be evaluated. Head athletic trainer, Boughton, examined Wani and found nothing wrong, at which point he and Wani had an "unpleasant exchange of words." *Id.* see also E.C.F. #151-3, at 1.

Other players had also been missing practice, prompting Casey to issue an edict that players were not to leave practice without approval from him or from one of the head athletic trainers.

The next day, immediately after morning practice, Wani experienced pain and noticed "abnormal major swelling on his left thumb." Boughton found "no deformity," no swelling, and no effusion, and found that it appeared "to be a grade I sprain of the [ulnar collateral ligament]" and planned to "tape the thumb for practice," ice it after practice, and use a "thumb spica splint" the rest of the time. ECF #151-3, at 1. If it was "not better in a week," Boughton planned to refer Wani to Dr. Croy for an x-ray. *Id.*

Wani disagreed with Boughton and insisted that his thumb was fractured. Boughton iced the thumb while Wani was at lunch and taped it with athletic tape for the afternoon practice. ECF #168-1, at 3.

Boughton examined Wani's thumb again each of the next three days. ECF #151-3, at 2. He noted some swelling and continued to recommend taping the thumb during practice and icing it afterward and using a thumb spica brace between practices. *Id.* Wani told Boughton that his thumb was "beyond jammed," and asked to go see a doctor, but Boughton refused to let Wani off of practice to seek medical care. ECF #168-1, at 3.

The morning of Thursday, August 27, 2015, Wani learned that Fix-Gonzalez, a teammate, had posted an altered picture of him on social media comparing Wani's looks to that of a mop, changing Wani's skin color to be much darker and telling a fellow football teammates that he had to make Wani "extra crispy" by giving him some "extra vitamin D." Complaint 9, E.C.F. #1; Johnstone Decl., Ex. C, p. 2, E.C.F. #159. Fix-Gonzalez allegedly posted one or two other altered images of Wani, one that Wani heard other teammates referring to as an "Alice in Wonderland" photo, and the another of Wani as "Libby from Jimmy Neutron." 4 Complaint 9, E.C.F. #1; Johnstone Decl., Ex. A, p. 2 and Ex. E., p. 1, E.C.F. #159. Fix-Gonzalez approached Wani in the parking lot

when Wani was getting ready to leave and told Wani he would take the posts down, but Wani told him to get out of his face and then left for lunch. Johnstone Decl., Ex. C, pp. 2-3, ECF #159.

That afternoon, Wani sent an email to Casey advising him that pictures of him had been posted on Twitter, including one of him as Alice in Wonderland and one portraying him as a mop. Casey Decl., Ex. A, E.C.F. #156. Wani did not identify Fix-Gonzalez by name but told Casey he could not "be in the same room or team with this kind of stuff." *Id.* Casey called Wani that evening, told him that all of the social media posts had been removed, and then arranged to meet with Wani early the following afternoon. *Id.* Johnstone Decl., Ex. C, p. 2, E.C.F. #159.

The following day, Casey held unscheduled meetings with the entire football coaching staff and with the entire football team to discuss GFU's social media policies. Casey Decl. ¶ 16, E.C.F. #156. Casey also met privately with Fix-Gonzalez, and "made sure that he understood the seriousness of Mr. Wani's complaint as a potential violation of George Fox student and team policies." *Id.* ¶ 17. Fix-Gonzalez told Casey that he had already deleted his social media posts the prior day in Wani's presence and attempted to apologize to Wani. *Id.*

Casey then met with Wani, advising him that his investigation confirmed that the posts were apparently done by Fix-Gonzalez alone, on his own time and on his personal Instagram account, and were not part of a widespread pattern of conduct by any other team members. *Id.* Wani advised Casey that he was going to "take some time to get [his] mind straight" and would let Casey know his "final decision" on Monday, August 31, 2015. *Id.*, Ex. A, p. 1.

Wani did not attend football team events for the next couple of days. By Sunday, August 30, 2015, Wani notified Casey that he had decided to "[f]orgive and move on." *Id.* He planned to join the team for practice on September 1 and asked for Fix-Gonzalez's phone number so that they could "shake hands [and] move forward past [their] differences." *Id.* Despite that email, Wani alleges he waited in vain for the coaches in GFU's athletic department to report Fix-Gonzalez's social media posts to GFU's administration, leaving Wani in what he contends was a racially hostile environment at school and on the football team. He later told Johnstone that he went to practice on September 1, 2015, where Fix-Gonzalez shook his hand and told him he was sorry, but that Wani felt "forced to move [on] by . . . Casey." Johnstone Decl., Ex. D., p. 2, E.C.F. #159.

On Wednesday, September 2, 2015, at 2:57 p.m., Wani electronically submitted a form withdrawing from GFU. Jaqua Decl., Ex. C. Shortly thereafter, a friend and mentor to Wani, Mike Bujnowski ("Bujnowski") reported the social media posts by Fix-Gonzalez to Johnstone (GFU's Associate Dean of Students and Director of Residence Life). Complaint, Att. A, at 1-3, E.C.F. #1-1; Johnstone Decl. ¶ 4, E.C.F. #159. Bujnowski followed up with an email addressed to Johnstone at 3:50 p.m., outlining the "three separate racially slurred, altered images of [Wani]," advising that the content of the first post was currently unknown, the second picture was of Wani with a "deeply blackened face," and attaching the third post, consisting of "a sequence of four images with the first three zooming in on [Wani's] face and hair," with the last image in the series being a "rag mop" as the "final transition of [Wani's] face and hair." Johnstone Decl., Ex. A, p. 2, E.C.F. #159. Bujnowski advised Johnstone that the "main

perpetrator," showed no remorse, and instead had stated to Wani that he had "another post ready to go." *Id.*

Johnstone immediately advised other GFU administrators of the report by Bujnowski, including Brad Lau (Vice President of Student Life and Title IX Coordinator), Pothoff (Dean of Community Life and Title IX Deputy Coordinator), and Jenny Elsey (Associate Dean of Intercultural Life). *Id.* ¶ 5. With hours, Johnstone contacted Wani and arranged to meet with him on Friday, September 4, 2015. *Id.* ¶ 6. Johnstone asked Wani to provide him with notes describing what had taken place as well as copies of whatever online material was directed at him. *Id.*, Ex. B.

Late in the afternoon of September 2, 2015, now about two weeks post-injury, Wani sought treatment at Providence Newberg. Sherman Decl., Ex. 2, p. 2, E.C.F. #152 (noting triage at 4:13 p.m. and E.R. departure at 5:21 p.m.). Brian Richard Duncan, M.D., ordered an x-ray of Wani's thumb. Steven E. Zinck, M.D., the radiologist who prepared the x-ray report, concluded that the "bones, joints, and soft tissues are within normal limits for the patient's age." *Id.*, at 4, 6. Dr. Duncan nevertheless diagnosed a closed left thumb fracture and advised Wani to follow up with Dr. Croy in a week. *Id.*, at 2.

On Friday, September 4, 2018, Johnstone conducted an "Investigation Meeting" with Wani, who was accompanied by Bujnowski. Complaint, Att. A at 6-14, ECF #1-1. According to the contemporaneous notes taken by Sarah Taylor, Wani recounted being sent a copy of Fix-Gonzalez's edited photo and learning that it was posted on Instagram.

He also told Johnstone about Fix-Gonzalez approaching him before lunch and

telling he would take the posts down, and about his email to Casey. Wani reported that Casey called him that evening and advised him that Fix-Gonzalez was taking the posts down. Wani also stated that his thumb had been broken on either August 20 or 21st, but that he was not permitted to leave practice to have it examined.

Wani presented Sarah Taylor with a copy of his post-visit summary from Providence Newberg. Wani Decl. 3-4, ECF #171. He told Johnstone and Sarah Taylor he was leaving GFU and planned to move back to Washington by Tuesday, September 8, 2015. Johnstone Decl., Ex. C, p. 6, E.C.F. #159.

On Monday, September 7, 2015, Wani sent a lengthy email to Casey, advising him that Wani had not been at practice because of the poor handling of the situation with Fix-Gonzalez, and due to the unwillingness of GFU football staff to release him from practice to have his thumb examined. Casey Decl., Ex. B, ECF #156. He further advised Casey that he had withdrawn from his classes at GFU but did not mention that he felt the lack of treatment was racially motivated. Casey viewed Wani's complaint as based solely on a difference of medical opinions. *Id.* ¶ 23, Ex. B.

That same day, Boughton learned from Casey that Wani had quit the football team and withdrawn from GFU. Boughton Decl. ¶ 8. Casey also advised Boughton that Wani had complained about the treatment of his thumb injury and been diagnosed with a broken thumb at Providence Newberg. *Id.* ¶ 9.

Boughton knew that Dr. Croy had admitting privileges at Providence and contacted him to get further information. On September 8, 2015, Dr. Croy reviewed the x-ray taken of Wani's hand on September 2, 2015 and concluded that there was no fracture.⁵ Croy Decl., ¶¶ 7-8, E.C.F. #150.

By September 9, 2015, Wani had returned to Washington, intending to re-enroll in Eastern Washington University. Johnstone Decl., Ex. A, p. 3, ECF #159; ECF #168-1, at 12. On September 15, 2015, Wani sought further treatment with Bradley Kuske, D.O., at MultiCare Orthopedics & Sports Medicine in Covington, Washington. ECF #171-1 at 9-12. Dr. Kuske diagnosed closed, nondisplaced fractures of the neck of the first metacarpal bone of the left hand and the proximal phalanx of the left thumb, advised Wani to wear a short arm thumb spica cast for two more weeks, then "wean" to a velcro wrist spica cast. *Id.* at 9.

On September 11, 2015, Johnstone forwarded all the information he had compiled about Wani's complaint to Pothoff. At that time, Johnstone did not interpret Wani's complaint about the response to his thumb injury as alleging any form of racial discrimination by the football coaching staff or athletic training staff. Johnstone Decl., ¶ 10, E.C.F. #159.

On September 18, 2015, Pothoff issued a letter advising Wani of GFU's decision regarding the "cyberbullying" incident involving Fix-Gonzalez. Complaint, Att. A, at 1-3, ECF #1-1. Fix-Gonzalez lost his good standing with GFU and was required to write an apology letter to Wani, engage in cultural sensitivity training, and not post any further "lookalike" pictures on any social media. *Id.* at 1. Pothoff's letter also advised Wani that Boughton had no authority to deny anyone the ability to seek additional medical treatment, and that Boughton had spoken with Dr. Croy "and found out that [Wani] had gone in for an x-ray and that Dr. Croy had reviewed the x-ray and [Wani's] thumb, and also came to the conclusion that it was not broken."6 *Id.*

Wani alleges that GFU and its insurer improperly refused to pay for needed follow-up treatment and surgery related to the injury he sustained at football practice. Wani Decl. 8, E.C.F. #171. On July 1, 2016, Wani was seen by orthopedic surgeon, Grant Lohse, M.D., and diagnosed with left thumb instability with laxity of the ulnar collateral ligament and likely prior rupture. *Id.* at 5. On November 10, 2016, Wani underwent reconstructive surgery of his left thumb. He contends that his thumb has never fully healed or regained the level of function it had prior to the August 20, 2015, injury. E.C.F. #152-7, at 10.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's Decision to deny Petitioner's Appeal without oral arguments, given his pro se status, is contrary to the law, inconsistent with the facts, and lacking a sufficient evidence to support it.

Article VI of the U.S. Constitution makes "the Constitution the Supreme Law of the Land," *Cooper v. Aaron*, 358 U.S. 1, 18 (1958), "which is also the Supreme Law of [Virginia]," *Poindexter v. Greenhow*, 114 U.S. 270, 292 (1885). State law that conflicts with federal law is without effect. *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992).

"An unconstitutional law will be treated by the Courts as null and void," *Board of Liquidation v. McComb*, 92 U.S. 531, 532, 541 (1875), because "the constitution and laws of a State, so far as they are repugnant to the constitution and laws of the United States, are absolutely void" *Cohen v. Virginia*, 19 U.S. 246, 414 (1821) accord *Maybury v. Madison*, 5 US 137, 174, 176 (1803). "In other words, no state can, in respect to any matter, set at naught the paramount provisions of the National Constitution." *Braxton*

v. West Virginia, 208 U.S. 192, 197 (1908).

"It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the [14th] amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. *United States v. Stanley*, 103 U.S. 3, 11-12 (1883).

"No state can, by any tribunal or representative, render nugatory a provision of the supreme law. And if the conclusiveness of a judgment of decree in a court of one State is questioned in a court of another government, Federal or State, it is open, under proper averments, to inquire whether the Court rendering the decree or judgment had jurisdiction to render it." *Old Wayne v. McDonough*, 204 US 8, 15 (1850).

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment, even in the Civil Context at issue here, See, e. g., *Richardson v. Belcher*, 404 U. S. 78, 80-81 (1971); *Richardson v. Perales*, 402 U. S. 389, 401-402 (1971); *Flemming v. Nestor*, 363 U. S. 603, 611 (1960).

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. Thus, where a litigant had the benefit of a full and fair trial in the courts, and his rights are measured, not by laws made to affect him individually, but by general provisions of law applicable to all those in like condition, he is not deprived

of property without due process of law, even if he can be regarded as deprived of his property by an adverse result. See *Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894).

Pro se litigants, as well as those represented by counsel, are entitled to meaningful access to the courts. See *Bounds v. Smith*, 430 U.S. 817, 828 (1977); *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *Ross v. Moffitt*, 417 U.S. 600, 612-15 (1974); *Johnson v. Avery*, 393 U.S. 483, 485 (1969). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. See *Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

Sufficient access to the courts, is a right protected by the Due Process Clause of the Fourteenth Amendment. See *Wolff*, 418 U.S. at 579-80; *Corpus v. Estelle*, 409 F. Supp. 1090, 1097 (S.D. Tex. 1975), *aff'd*, 542 F.2d 573 (5th Cir. 1976); *Potuto, The Right of Prisoner Access: Does Bounds Have Bounds?*, 53 Ind. L.J. 207, 215-19 (1977-78); Note, *Prisoners' Rights- Failure to Provide Adequate Law Libraries Denies Inmates' Right of Access to the Courts*, 26 U. Kan. L. Rev. 636, 643-44 (1978).

Sufficient access to the courts is equally a fundamental right protected by the First Amendment, which guarantees to all persons use of the judicial process to redress alleged grievances. See *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (right to petition Government for redress of grievances); *NAACP v. Button*, 371 U.S. 415, 428-29 (1963)(same), *Bounds v. Smith*, 430 U.S. 817, 825 (1977); *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *Johnson v. Avery*, 393 U.S. 483, 488 (1969).

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due

Process Clause of the Fifth or Fourteenth Amendment, even in the civil context at issue here, See, e. g., *Richardson v. Belcher*, 404 U. S. 78, 80-81 (1971); *Richardson v. Perales*, 402 U. S. 389, 401-402 (1971); *Flemming v. Nestor*, 363 U. S. 603, 611 (1960).

What is due process in a procedure affecting property interests must be determined by taking into account the purposes of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case. *Anderson Nat. Bank v. Lockett*, 321 US 233, 246 (1944).

It is true, of course, that "the fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." *Anderson National Bank v. Lockett*, 321 U. S. 233, 246 (1944).

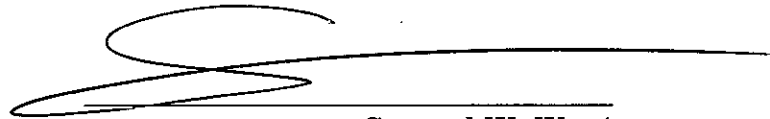
The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Comm. v. McGrath*, 341 U. S. 123, 168 (1951) (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965). See *Grannis v. Ordean*, 234 U. S. 385, 394 (1914); *Fuentes v. Shevin*, 407 U.S. 67, 81, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972). The right to notice and the opportunity to be heard "must be granted at a meaningful time." *Fuentes*, 407 U.S. at 81, 92 S.Ct. at 1994; *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494 (1985).

"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). *See also I.C.C. v. Louisville & Nashville R.R.*, 227 U.S. 88, 93-94 (1913). Where the "evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy," the individual's right to show that it is untrue depends on the rights of confrontation and cross-examination. "This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny." *Greene v. McElroy*, 360 U.S. 474, 496-97 (1959).

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,



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