No. 21-8026 ORIGINAL

In the Supreme Court of the United States

WILLIAM F. KAETZ — *Petitioner*

vs.

EDUCATIONAL CREDIT MANAGEMENT CORP
EXPERIAN
TRANSUNION
EQUIFAX INC
— *Respondents*

On Petition for A Writ of Certiorari To
To the United States Court of Appeals
for the Third Circuit Case No. 20-2592

PETITION FOR WRIT OF CERTIORARI

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Pro se Petitioner

QUESTION

Is the statute 11 U.S.C. §523(a)(8) void for vagueness therefore unconstitutional?

LIST OF PARTIES

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

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The order of the United States Court of Appeals appears at Appendix PA-1 to PA-2. The opinion of the United States District Court appears at Appendix PA-3 to PA-8. The order of the United States

Court of Appeals denying Petition for Rehearing appears at PA-9 to PA-10. The District Court order and opinion denying my reconsideration motion appears at PA-11 to PA-16. The District Court order dismissing the case appears at PA-17 to PA-18. The District Court opinion dismissing the case appears at PA-19 to PA-31.

JURISDICTION

The date on which the United States Court of Appeals decided my case was 4/04/2022. A copy of that order and opinion appears at Petitioner's Appendix, PA-1 to PA-2. The date on which the United States District Court decided my case was 9/30/2019. A copy of that order appears at Appendix PA-17 to PA-18. A petition for rehearing was timely filed in my case. A timely petition for rehearing was denied by the United States Court of Appeals on 5/20/2022. The order denying rehearing appears at Appendix PA-9 to PA-10. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Amendment I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right

of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution Amendment XIV

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.

STATEMENT OF THE CASE

I sued the defendants for illegal debt collection and illegal credit reporting and contempt of a bankruptcy court order. I was deemed indigent in my bankruptcy case several times. I was prose in the bankruptcy case, I fought tooth and nail to get it done. After I received

discharge from all debts, the defendants came after me and started collection on $13,000 student loans for 5 years and took away my "fresh start". They claimed I was required by law to do an adversary proceeding to get an undue hardship determination and go through undue hardship tests. All these things are not written in the bankruptcy statutes and rules.

The statute 11 U.S.C. §523(a)(8) only states:

> "unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents".

There is no direction to do an adversary proceeding to get an undue hardship determination and go through undue hardship tests. Bankruptcy Rule 7001(6) only list what an adversary proceeding can be used for and states "a proceeding to determine the dischargeability of a debt". The word "debt" is not the same as "undue hardship". An "undue hardship determination" is not the same as "determine the dischargeability of a debt". The words "undue hardship determination" in the bankruptcy statutes and rules do not exist. Requirements upon debtors claimed by the respondents do not exist in the statutes or rules.

11 U.S.C. §523(a)(8) is Unconstitutional for being Void for Vagueness

The language of the statute written by legislators, 11 U.S.C. §523 (a)(8) says:

> 11 U.S. Code § 523 - Exceptions to discharge
>
> (a) "A discharge under 727, 1141, 1192, 1228(a), 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt...
>
> (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
>
> (A) (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
>
> (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
>
> (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

How I understand the statute, there is a condition, a requirement, that the exception from discharge must not impose undue hardship, therefore there is a presumption of discharge for an indigent person like me and a requirement upon the creditors not to impose undue hardship.

There is no language or direction to a requirement upon debtors to do anything.

There's no adversary proceeding requirement or undue hardship determination or undue hardship test requirement, or how to do it, or who must do it and when to do it. There is no more to the statute.

There is no language or direction to another statute or rule or court case. There is a presumption for discharge if collecting the debt imposes undue hardship, that would be me, an indigent person.

However, there is disputed non-binding obiter dicta being added and read into the statute used by the defendants and the lower courts, and this Court that says the opposite.

There are obiter dicta from two Supreme Court cases that are misapplied as "stare decisis" authority for bankruptcy and student loans: *United Student Aids Funds Inc.,* v. *Francisco J. Espinosa*, 559 U.S. 260 (2010), and *Tenn. Student Assistant Corp.* v. *Hood*, 541 U.S. 440 (U.S. May 17, 2004).

The *Hood* case, the subject matter of the case was 11th Amendment State Immunity. The *Espinosa* case, the subject matter of the case was Fed. R. Civ. P. Rule 60 motions.

In the *Hood* and *Espinosa* cases obiter dicta about student loans and bankruptcy existed and were read into the language of 11 U.S.C. §523(a)(8) and bankruptcy rules that are not in the bankruptcy statutes and rules.

The obiter dicta were not part of the holdings and not part of the subject matter of the *Hood* and *Espinosa* cases, they are classic obiter dicta and not legally binding. I have been disputing the obiter dicta.

A side comment in the Rule 60 *Espinosa* case, footnote 13, was incorrectly used as binding stare decisis, and read into the statute, the disputed obiter dicta in the footnote says:

> "This is essential to preserve the distinction between Congress' treatment of student loan debts in §523(a)(8) and debts listed elsewhere in §523. Section 523(a)(8) renders student loan debt presumptively nondischargeable "unless" a determination of undue hardship is made. In contrast, the debts listed in §523(c), which include certain debts obtained by fraud or "willful and malicious injury by the debtor," §523(a)(6), are presumptively dischargeable "unless" the creditor requests a hearing to determine the debt's dischargeability. The Court of Appeals' approach would subject student loan debt to the same rules as the debts specified in §523(c), notwithstanding the evident differences in the statutory framework for discharging the two types of debt."

I challenged the courts' obiter dicta above, specifically the quote: "Section 523(a)(8) renders student loan debt presumptively

nondischargeable "unless" a determination of undue hardship is made." I claimed that it is not binding on my case and is one of the same points I presented for decision in my case. I argued the presumption of non-dischargeability was rebutted by my indigence that was determined by the bankruptcy court; my undue hardship was determined, and undue hardship is being imposed in violation of the statute. I argued the statute has a presumption of discharge. I argued the student loan was accredited through misrepresentations and the educational benefit was unsustainable, it lost its acreditability to be a student loan under 11 U.S.C. §523(a)(8) it was fraud.

In the State Immunity *Hood* case, the obiter dicta used is:

> "unless debtor affirmatively secures a hardship determination, the discharge order will not include a student loan debt. Norton § 47:52 at 47-137 to 47-138."

This is not from congress, it is not from the text of the statute, it is from a textbook "3 W. Norton Bankruptcy Law and Practice". It may be from old, rescinded laws, but still, it is content and viewpoint discrimination from the authors of the Norton Book, it is not law from legislation and it certainly not in the statutory language of 11 U.S.C. §523(a)(8) or the bankruptcy rules.

It is content and viewpoint discrimination in the form of obiter dicta that the lower courts and this Court used to read language into the statute that is not there that discriminates debtors of student loans. And it is a usurpation of legislative power to make law.

I have been arguing the very same points the obiter dicta have been controlling. What the courts claim in obiter dicta that is non-binding and disputed, is not in the statute or court rules. This conflicts with the U.S. Supreme Court's maxim of law in *Cohens* v. *Virginia*, 19 U.S. 264, 399 5 L Ed 257 (1821) at Page 399 to 400, that held:

> "It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, buy ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

Congress did not include an undue hardship determination requirement; it is not in the statute or court rules. In Bankruptcy Rule 7001 the word "debt" is not equivalent to "undue hardship", how can the courts say a "determination of a debt" is equal to an "undue hardship

determination". It is arbitrary and is a demonstrably erroneous interpretation of law, an abuse of discretion.

This court has read language into the statute that is not there with obiter dicta, the lower 3rd circuit court claimed:

> "Section 523(a)(8) renders student loan debt presumptively nondischargeable 'unless' a determination of undue hardship is made." *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 277 n.13 (2010).
>
> "the Bankruptcy Rules require a party seeking to determine the dischargeability of a student loan debt to commence an adversary proceeding by serving a summons and complaint on affected creditors." *Espinosa*, 559 U.S. at 268–69.
>
> See Fed. R. Bankr. P. 7001(6) (providing that adversary proceedings include "a proceeding to determine the dischargeability of a debt")
>
> Fed. R. Bankr. P. 7001, Adv. Committee Notes (stating the rules govern procedural aspects of litigation involving matters referred to in Rule 7001); see also *Tennessee Student Assistance Corp.* v. *Hood,* 541 U.S. 440, 451-52 (2004) (discussing the filing of an adversary proceeding under the Bankruptcy Rules to discharge student loan debt).
>
> Even if an undue hardship determination could have been made in Kaetz's bankruptcy case outside of an adversary proceeding, a finding of indigence is not the same as an undue hardship determination under § 538(a)(8). See *In re Faish*, 72 F.3d 298, 306 (3d Cir. 1995) (holding bankruptcy courts within the Third Circuit must apply the undue hardship test in *Brunner* v. *New York State Higher Educational Services Corporation*, 831 F.2d 395 (2d Cir. 1987) (per curiam)); see also *Hood*, 541 U.S. at 450 ("Unless

the debtor affirmatively secures a hardship determination, the discharge order will not include a student loan debt.").

These claims above are not in the statute or court rules, they are from obiter dicta that no one would find in the language of the statute or court rules. Reading the statute 11 U.S.C. §523(a)(8) and rules as it is written, is void of all the above claims. There is nothing in the bankruptcy statute 11 U.S.C. §523(a)(8) or rules guiding a debtor of student loans to rule 7001 adversary proceedings or to undue hardship determinations or to undue hardship tests.

Lest any doubt remains, *Lamie* v. *United States Trustee* should settle the matter. There this Court refused to "read an absent word into [a] statue" despite "an apparent legislative drafting error" that "renders the statute" awkward, and even ungrammatical", 540 U.S. 526, 530-38, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004). "With a plain, non-absurd meaning in view, we need not proceed in this way" this Court said, noting their longstanding "unwillingness to soften the import of congress chosen words even if we believe the words lead to a harsh outcome" Id at 538. As in my case now before this court, the respondents and the lower courts should not have read an absent word into 11 U.S.C. §523(a)(8) or rule 7001.

The way "we read statutes today" ... "that [the] legislature says... what it means and means...what it says"" *Henson* v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725, 198 L. Ed. 2d 177 (2017) ... (Quoting *Dodd* v. *United States*, 545 U.S. 353, 357, 125 S. Ct. 2478, 162 L. Ed. 2d 343 (2005). "In other words, [a]s Justice Kagan recently stated, "we are all textualist now."

These court-made laws, language read into the statute, constitute discriminatory enforcement of 11 U.S.C. §523(a)(8) with the use of obiter dicta that is not in the statute or rules, this was done because the statute itself is void for vagueness and that opened the door for abuse of student loan debtors with arbitrary and discriminatory law enforcement and with content and viewpoint discrimination.

This Court's Holdings Supports 11 U.S.C. §523(A)(8) Being Unconstitutional for Being Void for Vagueness

I am challenging the constitutionality of 11 U.S.C. §523(a)(8) and claim it is unconstitutional for being void-for-vagueness, it fails to provide adequate notice of its scope and sufficient guidelines for its application and is being seriously arbitrarily discriminatorily enforced against debtors.

There is a succession of this Court's holdings that support my claim: "The Constitutional ban on vague laws is intended to invalidate statutory enactments which fail to provide adequate notice of their scope and sufficient guidelines for their application." *Parachristou* v. *City of Jacksonville*, 405 U.S. 156, 162 – 63, 31 L. Ed 2d 110 92 S. Ct. 839 (1975). "The Supreme Court has long held that overly vague laws are unconstitutional under the due process clause of the fifth and fourteenth amendments." See e.g. *Connally* v. *Gen. Const. Co.* 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed 332 (1926) "succinctly, "[i]n our constitutional order, a vague law is no law at all"", *United States* v. *Davis*, 139 S. Ct. 2319 2323, 204 L. Ed. 2d 757 (2019). The void for vagueness doctrine "guarantees that ordinary people have fair notice of the conduct a statute proscribes [and] guards against arbitrary or discriminatory law enforcement by insisting that the statute provide standards to govern the actions of police officers, prosecutors, juries, and judges". *Session* v. *Dimaya*, 138 S. Ct. 1204 at 1212 "[T]he void-for-vagueness doctrine is applicable to civil as well as criminal laws." *Giaccio* v. *Pennsylvania* 382 U.S. 399, 402 15 L. Ed. 2d 447, 86 S. Ct. 518 (1966). "... the degree of vagueness tolerated under the constitution,

however, will depend in part on the nature of the enactment, and the determination of vagueness must be made in light of the contextual background of the particular law, with a firm understanding of its purpose. *Village of Hoffman Estates* v. *Flipside Hoffman Estates*, 455 U.S. 489, 498, 71 L. Ed 2d 362, 102 S. Ct. 1186 (1982); (from *Leonen* v. *Johns – Manville Corp.*, 717 F. Supp. 272 (D.N.J. July 5 1989). "A statute is thus void for vagueness only if it wholly ... is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" *Johnson* v. *United States*, 576 U.S. 591, 629 (2015).

Incorporating all the above, the Statute 11 U.S.C. §523(a)(8) is an overly vague law and is unconstitutional under the due process clause of the 5th Amendment and 14th Amendment, it is no law at all. It fails to provide adequate notice of its scope and sufficient guidelines for its application and is so standardless that it authorizes or encourages seriously discriminatory enforcement of court-made law from obiter dicta that conflicts with *Gamble* v. *United States*, 139 S. Ct. 1960 (U.S. June 17, 2019) Justice Thomas explained:

> "When faced with a demonstrably erroneous precedent, my rule is simple: we should not follow it. This view ... follows directly from the Constitution Supremacy over other sources of law – including our own precedents.

> That the Constitution outranks other sources of law is inherent in its nature, ... The Constitution's Supremacy is also reflected in its requirement that all judicial officers, executive officers, congressmen and state legislators take an oath to "support this Constitution", Art. VI, cl. 3, see also Art. II, § I, cl, 8..."
>
> "I am aware of no legislative reason why a court may privilege a demonstrably erroneous interpretation of the Constitution over the Constitution itself" ... "the same principle applies when interpreting statutes and other sources of law; if a prior decision demonstrably erred in interpreting such a law, federal judges should exercise the judicial power – not perpetuated a usurpation of legislative power – and correct the error. A contrary rule would permit judges to "substitute their own pleasure" for the law...."

Pursuant to S. Ct. Justice Thomas in *Gamble* federal courts should fix demonstrably erroneous interpretations of law, not perpetrate a usurpation of power – not make law – and adhere to the Constitution. Reading words into the bankruptcy statutes and rules using disputed non-binding obiter dicta is a demonstrably erroneous interpretation of law, a perpetration of usurpation of power, it is unconstitutional, it is an absurd result, it is an abuse of discretion, and this court is obligated to correct it, not just for me, for the nation.

The Absurd and Discriminatory Outcome of the Vagueness of Statute 11 U.S.C. §523(A)(8)

Statute 11 U.S.C. §523(a)(8) fails to provide a person of ordinary intelligence fair notice of what is prohibited, and is so standardless that it authorizes and encourages seriously discriminatory enforcement as evidenced in the disputed non-binding obiter dicta used to add content and viewpoints to the statute discriminating debtors of student loans that led to subjecting debtors of student loans to alleged adversary hearing requirements and required undue hardship determinations and tests that are nowhere to be found in the bankruptcy code, and the debt became automatically excluded from discharge without assessing the credibility of the educational institutions' credibility and sustainability of the educational benefit, allowing educational institutions to commit fraud and making the student pay for it. Although a loan may have been accredited to start a government guaranteed loan, many do not hold that status for long, therefore become not a debt under 11 U.S.C. §523(a)(8) and unsustainable to pay the loan back at no fault of the debtor. The creditor has automatic exemption due to the disputed obiter dicta, they can commit fraud and discriminate the debtor, as in my case. This fraud and discrimination originate from the vagueness of 11 U.S.C.

§523(a)(8) and the disputed non-binding obiter court dicta used as law to correct Congress's error. The courts have been making law reading language into the law using the discriminating disputed non-binding obiter court dicta that is content and viewpoint discriminations against student loan debtors to validate the statute and control the debate about student loans and bankruptcy, and that conflicts with all the Supreme Court Cases quoted herein and the Constitution itself, the 1st, 5th, and 14th Amendments.

Conflict with the 1st Amendment with Content and Viewpoint Discriminations

The District court and this court's panel decision overlooked the void-for-vagueness of 11 U.S.C. § 523 (a)(8) and read language into the statutes and rules to avoid the issue, and doing so, added content and viewpoint discriminations, the disputed non-binding obiter dicta from the *Hood* and *Espinosa* cases, to suppress the void-for-vagueness of 11 U.S.C. § 523 (a)(8) argument and chill this legal argument from being argued, these actions are in conflict with the 1st Amendment.

It is established in *Turner Broadcasting Sys., Inc,* v. *FCC* 512 U.S. 622, 641 (1994) Content-based restrictions "are subject to the 'most exacting scrutiny,' ... because they 'pose the inherent risk that the

Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion.'" Id. (quoting *Turner Broadcasting,* 512 U.S. At 641-642). Viewpoint discrimination is "[w]hen the government targets not subject matter, but particular views taken by speakers on a subject." Id. (quoting *Rosenberger* v. *Rector & Visitors of Univ. of Va.* 515 U.S. 819, 829 (1995) "Viewpoint discrimination is thus an egregious form of content discrimination." Id. (quoting *Rosenberger,* 515 U.S. at 829). "The government must abstain from regulating speech [the Constitution] when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." Id. (quoting *Rosenberger,* 515 U.S. At 829). 'Viewpoint discrimination' is forbidden." Id. (citing *Rosenberger,* 515 U.S. at 830-831). In a concurring opinion, Justice Kennedy stated that "[t]he First Amendment [the Constitution] guards against laws 'targeted at specific subject matter,' [a] form of speech [the Constitution] suppression known as content-based discrimination." Id. at 1765-1766 (Kennedy, J., concurring) (quoting *Reed v. Town of Gilbert,* 576 U.S. 155. 169 (2015,) "This category includes a subtype of laws that go further, aimed at the

suppression of 'particular views ... on a subject.'" Id. (Kennedy, J., concurring) (quoting *Rosenberger,* 515 U.S. at 829) (alteration in original). "A law found to discriminate based on viewpoint is an 'egregious form of content discrimination,' which is 'presumptively Unconstitutional.'" Id. (Kennedy, J., concurring) (quoting *Rosenberger,* 515 U.S. At 829-830). "A law found to discriminate based on viewpoint is an 'egregious form of content discrimination,' which is 'presumptively Unconstitutional.'" Id. at 1766 (Kennedy, J., concurring) (quoting *Rosenberger,* 515 U.S. at 829-830). Therefore,"[t]he Court's finding of viewpoint bias end[s] the matter." *Iancu* v. *Brunetti.* 139 S. Ct. 2294. 2302 (2019)

The language read into the statute 11 U.S.C. §523(a)(8) is content and viewpoint bias, and that should end this matter of using the disputed non-binding obiter dicta to save statute 11 U.S.C. §523(a)(8) from being void-for-vagueness, it is unconstitutional. This is an abuse of discretion and a good cause to grant this Petition.

RELIEF

Petitioner prays this Court find 11 U.S.C. §523(a)(8) unconstitutional for being void for vagueness.

CONCLUSION

The petition for a writ of certiorari should be granted or a summary reversal as an alternative remedy.

CERTIFICATION

I, William F. Kaetz, plaintiff/appellant, with my signature below, swear under penalty of perjury all statements herein are true.

Respectfully Submitted...

Date: 5/24/2022 By: William F. Kaetz

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