

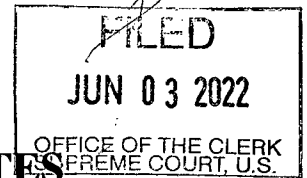
No.

21-8088

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Evelyn Howell Massey, PETITIONER

Pro Se Litigant

vs.

Biola University, Inc., RESPONDENT(S)

Does 1 to 10 Inclusive

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - Ninth Circuit #20-56128

D.W. Nelson, Fernandez, and Silverman, Circuit Judges

From: United States District Court of California

#2:19-CV-09626-CJC-JDE

Cormac J. Carney, District Judge - John D. Early, Magistrate Judge

PETITION FOR WRIT OF CERTIORARI

Petitioner Request To Present Oral Arguments before the U.S. Supreme Court

Petitioner

Evelyn Howell Massey

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Los Angeles, California

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*Pro Se Litigant

Respondent

Biola University, Inc.

FitzGerald, Yap, Kreditor, LLP

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LIST OF PARTIES

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

Biola University, Inc.

*Does 1-10 inclusive all identified as Biola University.

1. **Clark Campbell**, Associate Senior Provost

2. **Pat Pike**, Associate Provost

3. **Clint Arnold**, Dean-Talbot

4. **Aaron Devine**, Assistant Dean-Talbot

5. **Ben Shin**, Professor-Talbot

6. **Clay Jones**, Professor-Talbot

7. **David Rimoldi**, Facilitator-Talbot

8. **Kevin Van Lant**, Professor-Talbot

9. **Walter Russell**, Professor-Talbot

10. **Gregg Geary**, Dean Library/Biola

RELATED CASES

1. Brown v. Board of Education 347 U.S. 483, 493 (1954).
2. Burton v. Wilmington Parking Authority, Inc., 365 U.S. 715 (1960).
3. Tedeschi v. Wagner Coll. 404 N.E. 2d 1302, 134 (NY 1980).
4. Balicock v. New Orleans Baptist Theological Seminary
5. Lexington Theological Seminary, Inc. v. Vance
6. Fussell v. Louisiana Business College, Inc.
7. Fellheimer v. Middlebury Colleges
8. South Dakota v. Dole
9. Goss v. Lopez
10. Duke Law Journal: Procedural Due Process and Campus Disorder.

1 On June 11, 2020, Plaintiff filed the Second Amended Complaint with over
2 50 Exhibits to support the complaint. The Causes of Action are:

- 3 1. Breach of Contract
- 4 2. Federal Title IX Violations
- 5 3. Federal Title VI Violations
- 6 4. U.S. Constitutional 1st Amendment and the Free Speech Provision: Cal.
7 Educ. Code § 94367.

8
9 Thereafter, Defendant filed a Motion to Dismiss and a Motion to Strike. For
10 each motion, Plaintiff filed the Opposition to the Motions.

11
12 On Thursday, August 20, 2020, a Magistrate hearing was conducted to
13 discuss the case. Plaintiff, Defendant's Attorney, and the Judge reviewed the
14 Causes of Action.

15
16 On Friday, August 21, 2020, the Magistrate Judge filed the ruling to Dismiss
17 the Title IX, Title VI, and the U.S. Constitution Amendment Causes of Action with
18 prejudice. Also, the Judge filed the ruling to Dismiss the Breach of Contract and
19 California Free Speech Law **without prejudice.**

20
21 Plaintiff filed objections to the Magistrate Court's Findings and
22 Recommendations for the Title IX, Title VI, U.S. Constitution Amendments, and
23 Breach of Contract Causes of Action.

24
25 For the Opening Brief, Plaintiff will make supportive references to all Causes
26 of Action that are in the Original Complaint, the First Amended Complaint, and
27 also in the Second Amended Complaint, inclusively.
28

INTRODUCTION

NINTH CIRCUIT JUDGES CONFLICTS

Petitioner's (Evelyn Howell Massey) Writ of Certiorari is presented to the United States Supreme Court to address major controversial conflicts between the United States Court of Appeals - Ninth Circuit Judges and the United States Constitution. The opinions and the decisions (of D.W. Nelson, Fernandez, and Silverman - Ninth Circuit Justices) failed to evaluate the facts of Constitutional law and the "Rule of Law" as to how they relate to the Fourteenth Amendment - Due Process Clause and the Equal Protection Clause. Ninth Circuit Justices, Nelson, Fernandez, and Silverman subjective opinions and decision should not supersede Constitutional laws.

Private Entities Unjust Exemptions

Likewise as stated, no private university, private corporation, or any private entity should dominate power over United States citizens, whereby that "power position" would supersede Constitutional Laws. The United States Supreme Court Justices have the jurisdiction and legal authority based on truth, fairness, and justice to address the controversial issues that are unresolved Constitutional violations perpetuated by private universities specifically, Biola University, Inc., and private entities in general. These private corporate entities of higher education are superficially protected by a confutation 42 U.S.C §1983 - Color of State Law - (not being a) "State Actor". These false private actors pretending to be exclusively private universities are given the delusional power and the freedom to subjugate students' Constitutional rights; thereby moving them into a state of permanent emotional and psychological distress without the ability to defend themselves during university disciplinary proceeding.

Thus, as the beneficiary of these private protection laws, Biola University, Inc. is an exemplary representation of a "private" religious corporation dominating

1 the laws of exemptions - but at the same time using public Federal and State
2 government financial resources, using Federal and State government students'
3 loans, using public Federal and State land grant benefits for buildings, using public
4 Federal and State certification standards for vocational licenses, using public State
5 accreditations for graduation degrees, and using Federal and State retirement
6 benefits for employees. All of these aforementioned benefits are provided for Biola
7 University, Inc. to operate. To add insult to injury, Biola University, Inc. as a
8 "private" corporation is free to operate without respect for Constitutional laws, and
9 is not held accountable for any wrongdoing against students.

10 11 **Title IX: Accused Students Not Protected**

12 In concert to respecting Constitutional Laws, this Writ of Certiorari is
13 presented to the United States Supreme Court to address a similar major legal
14 problem involving Title IX grievance procedures (at the University level) for
15 students who are falsely accused of harassment, bullying, and/or sexual misconduct.
16 The fact has been that these accused students have not been protected during
17 disciplinary proceedings, and their overall Constitutional Fourteenth Amendment
18 Civil Rights have been violated by not allowing them to protect themselves under
19 Title IX guidelines. However, if these students are accused of Title IX Complaints,
20 then they should receive Title IX protections to defend themselves.

21 22 **Title VI: Resolved Discrimination**

23 Again, in concert to respecting Constitutional Laws, Title VI is a Federal law
24 and platform to identify, to address, and to resolve racial discrimination practices.

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4 **U.S. Supreme Court Justices Power**

5 **Finally**, first and foremost, as identified in the United States Constitution, the
6 Honorable Supreme Court Justices are the interpreters of the law, charged with
7 ensuring the American citizen with the promise of equal justice under the law. The
8 Constitution is the foundational guide for all National laws. Therefore, due to the
9 fact that the Constitution has been violated in this case, Petitioner request for this
10 Writ of Certiorari be granted and heard before the United States Supreme Court.
11 **Furthermore, Petitioner (Evelyn Howell Massey) requests the opportunity to**
12 **present Oral Arguments before the Supreme Court to support her case.**
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Questions

1. Are students who are attending private universities considered second class citizens since they are not protected by the United States Constitution?
2. Who established the following egregious Constitutional Violation:
“There is no right to be free from the infliction of Constitutional deprivation by private actors - no matter how discriminatory or wrongful?”
3. When does a citizen (after a violation) receive Constitutional Justice?
4. Should the United States Constitution and the Amendments represent, support, and protect all students including those who are attending private universities?
5. Why are there Constitutional exemptions for private universities during student disciplinary proceedings?
6. Why were the accused student Constitutional Rights (No Title IX’s grievance procedures) violated by Biola University?
7. What are the accused student rights under Title IX regulations?
8. What measures should an accused student (under Title IX) take after the accuser’s false allegations?
9. According to Title VI, how is justice to flourish against discrimination when the Judicial system overlooks and ignores the facts and merits of a case?
10. Who are the gatekeepers for Judicial discrimination and Judicial racial bias?

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Other

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2. St. Thomas Aquinas Argument	14
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1 **References in objections*

2 The Supreme Court
3 Fourteenth (14th) Amendment
4 Case Laws: Due Process

	Objections
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3. 1886: Santa Clara County v. Southern Pacific Railroad	35
4. 1896: Plessy v. Ferguson	35
5. 1908: Berea College v. Kentucky	35
6. 1917: Buchanan v. Warley	35
7. 1942: Skinner v. Oklahoma	35
8. 1944: Korematsu v. United States	35
9. 1948: Shelley v. Kraemer	35
10. 1954: Hernandez v. Texas	35
11. 1954: Brown v. Board of Education	36
12. 1962: Baker v. Carr	36
13. 1973: Roe v. Wade	36
14. 2000: Bush v. Gore	36

REQUEST FOR RELIEF AND DAMAGES

WHEREFORE, the Plaintiff requests:

A. Biola University will immediately rescind the Administrative Withdrawal against Plaintiff.

B. Biola University will immediately reinstate Plaintiff to good standing as a graduate student.

C. Biola University will immediately reactivate Plaintiff's Biola student email account.

D. Biola University will provide administrative assistance and counseling for the purpose of reenrollment, and to coordinate courses to finish all requirements for graduation. Moreover, Plaintiff will be the keynote speaker at her graduation.

E. Biola University will provide full and complete tuition cost for the remainder of Plaintiff's Master of Arts Degree in Theology program.

F. Biola University will provide full and complete compensation for Plaintiff's books, school supplies, typist cost, transportation cost, housing cost, meals cost, and all student conferences related to Biola's schedule.

G. Biola University will exempt Plaintiff from all required Spiritual Formation courses, and Biola will approve for Plaintiff to replace Spiritual Formation courses with Theology courses.

H. Biola University will remove the Fall 2015 Spiritual Formation course and the "B-" grade from Plaintiff's Transcript.

1
2 I. Biola University will remove the Spring 2016 Pastoral Care and Counselling
3 Course and the "B-" grade from Plaintiff's Transcript.

4
5 J. Biola University will destroy all hard copies and electronic copies of the
6 discipline proceedings against Plaintiff. Also, Biola will destroy all documents and
7 charges of the Title IX Claim against Plaintiff.

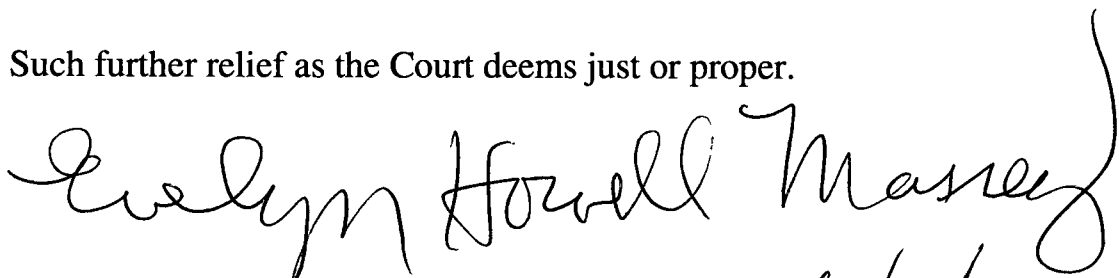
8
9 K. Biola University will cover total cost (full compensation) for an educational trip
10 to Israel including travel cost, hotel cost, meals cost, and basic expenses. This
11 opportunity was denied as a loss trip that was planned for Plaintiff's Spring 2019
12 semester. The Administrative Withdrawal prevented this opportunity.

13
14 L. Biola University will pay Plaintiff \$500,000.00 dollars for the following
15 damages:

- 16 1. Compensatory Damages
17 2. Academic and Future College Admissions Disclosure Damages.
18 3. Career Advancement Damages
19 4. Future Loss Earnings Damages.
20 5. Delayed Graduation Damages.
21 6. Family Sacrifice and Family Material Loss Damages
22 7. Plaintiff's Reputation Damages.
23 8. Cost of Living and Hardship Survival Damages
24 • Case Law: Wolk v. Green, 516 F. Supp. 2d 1121, 1135 (N.D. Cal. 2007).

25 M. All costs of suit necessarily incurred herein as allowed by 42 U.S.C. §1988.

26 N. Such further relief as the Court deems just or proper.

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6/3/2020

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**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**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at Court of Appeals - 9th Circuit; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at District Court/Central District/Western Division; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States Magistrate Court of Appendix C.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 7, 2022. Appendix D.

1 [] No petition for rehearing was timely filed in my case.

2
3 [✓] A timely petition for rehearing was denied by the United States Court of
4 Appeals on the following date: March 29, 2022, and a copy of the order
5 denying rehearing appears at Appendix E.

6
7 [] An extension of time to file the petition for a writ of certiorari was
8 granted to and including N/A (date) on N/A (date) in Application No.
9 A N/A.

10
11 The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional

Freedom Religious Practice

Freedom of Speech

Due Process Rights Violations

Equal Protection Rights Violations

Title IX Act Procedures for the Accused Person

Title VI Act Procedures for the Accused Person

A. U.S. Constitutional Amendments Violations:

1. 14th Amendment Violations:

- a. Due Process Law Violations
- b. Equal Protection Law Violations

2. 1st Amendment Violations:

- a. Freedom of Religious Practice Violations
- b. Freedom of Speech Violations

3. 9th Amendment Violations

- a. All Civil/Human Rights
- b. Rights not listed, not denied

B. Title IX Act Violations:

- 1. Due Process for the Accused Violations
- 2. Procedural required protocol Violations

C. Title VI Act Violations:

- 1. Discrimination based on race...
- 2. Excluded from participation...
- 3. Denied the benefit of...

D. Wrongful Administrative Withdrawal:

- 1. Title IX Act Violations used...
- 2. Title VI Act Violations used...
- 3. U.S. Constitutional Laws Violations... (Due Process, Equal Protection)

Statement Of The Case

The statement of this case is mandated on the legality of Constitutional Law and the rights for all American citizens, including those who are attending a private university. Additionally, inclusive of these Constitutional Rights, are the rights of accused students after Title IX Complaints. Also Constitutional Rights expected that are for students (from acts of discrimination) under Title VI based on racial identity should be corrected.

The central theme to support this Writ of Certiorari is the contradiction between Constitutional Rights for United States citizens and the subjective opinions and decisions of the United States Court of Appeals Ninth Circuit Justices - D.W. Nelson, Fernandez, and Silverman for Case #20-56128. Without any regard for Petitioner's Constitutional Rights (being the Fourteenth Amendment - Due Process Rights and Equal Protection Rights) the Ninth Circuit Justices supported the District Courts Judgement - and the Magistrates Courts Report.

The traditional foundation for these decisions and opinions is grounded in the unjust concept of "private immunity" ignoring Constitutional Laws. Due to these "private protection laws", Biola's exemptions as a private university (not being a state actor) destroys the very foundation of our democracy. Private universities (during disciplinary proceedings) should not be identified with "private status exemptions" when Constitutional Justice and laws are in jeopardy. This process has proven to be a continued travesty for private schools students.

To bring attention to this critical problem, the United States Constitution is the Supreme Law for all citizens. Therefore, the Fourteenth Amendment - Due Process Clause and the Equal Protection Clause should not be denied by any private university, religious entity or corporation public or private. Nevertheless, presently

1 under the bondage of private exemptions, American students who are attending
2 private universities have entered into an emotional and psychological caste system
3 that has captured and bound "Democracy" with the chains of Legislative, Judicial,
4 and Executive hypocrisy.

5
6 To compound these Constitutional violations against Petitioner, Biola
7 University has demonstrated deliberate acts of discrimination (directly and
8 indirectly) by (poor to no) academic service expected from selective professors, and
9 by the lack of fiduciary (Constructive Fraud) timeliness of care required for the
10 success in the University's programs followed by the exclusion of the benefits
11 based on the discriminatory manner Petitioner was treated during the time she
12 attended Biola University. These acts of academic bias and racial bias confirms
13 Biola University is a racist institution, violating the elements of Title VI all due to
14 the fact that Petitioner is a Black American.

15
16 By these experiences at Biola University, Petitioner observed attitudes of
17 "otherness", and she faced a construct of racist ideologies and traditional
18 dehumanizing views from slavery that are exclusively played upon Black
19 Americans. Surprisingly, after attending numerous universities and after
20 participation in many scholarly lectures, Biola University open the door to
21 understanding White Americans' concept of Black Americans. European White
22 Americans do not view Black Americans as Human Beings. They view Black
23 Americans as "things"; things that are akin to animals. The "things" concept of
24 Black Americans is the main societal driving force of the systemic pseudo
25 superiority in the delusional mindset of White Americans. Consequently, being
26 "Things" (and not human beings - created in the image of God) it is very
27 comfortable, easy, and justified to murder Black Americans "At Will" by White
28 Americans without any moral outcry of wrongdoing by the "power elite" or the

1 White Evangelical Religious community. Moreover, the “so called” Bible has been
2 used to maintain this false narrative about Black Americans. The “thing” image of
3 Black Americans is emphasized in every segment of White American culture -
4 especially within the prison slave system - from the judicial slave system - from the
5 law enforcement slave system and from the original enslavement dehumanizing
6 system - all directed to keep Black Americans viewed as “Things” and not as
7 Human Beings. Biola University confirmed this White American universal mantra
8 when Clark Campbell executed the Wrongful Administrative Withdrawal. The
9 message was to put Petitioner in her Black American “Thing” place. The purpose
10 was to destroy Petitioner’s academic and career goals. Everything about White
11 Americans’ behavior is focused on destroying Black Americans. This demagoguery
12 existed during slavery - and it still exist today in America demonstrated by the
13 recent Buffalo, New York Massacre - the cold-blooded slaughter of unarmed Black
14 Americans in a super market by a self-proclaimed White “Supremacist” savage,
15 Payton Gendron, who felt empowered by White American society (groomed from
16 birth) to promote hateful violence against “Things” Black Americans.

17
18 Also, in Charleston, North Carolina Massacre - the cold-blooded slaughter of
19 unarmed Black Americans by a self-proclaimed White “Supremacist” savage,
20 Dylan Roof, who felt empowered by White American society (groomed for birth) to
21 promote hateful violence against “Things” Black Americans.

22
23 What is the final solution to these mass murders and atrocities against Black
24 Americans by savage European White Americans?

25
26 **God is not mock!**
27
28

Voice of a Slave Owner

"I tremble for my country when I reflect that God is just; that His justice cannot sleep forever."

-Thomas Jefferson

European White Americans call themselves followers of the Bible - civilized people - guided by truth and laws, but at the same time they have committed some of the worst atrocities against Black Americans in history. There has been no Biblical excuse for these atrocities. Whatever the outcome, God is the ultimate puppet master, and He will level the playing field because His justice has awoken. America's destiny is soon coming by Divine retribution. Looking at the great civilizations across historical accounts, The Egyptians, The Assyrians, The Babylonians, The Persians, The Grecians, and The Great Roman Empire all have fallen due to the decayed flawed human nature of the men in power. European White Americans have placed themselves on this same historical treadmill to internal destruction. Finally, Black Americans are not things or animals, they are human beings. Moreover, White Americans are not superior beings over Black Americans.

Unfortunately, based on these presuppositions, Biola University perpetuated lies in all of its legal documentations by its attorney, David R. Hunt.

1. Biola lied about Clark Campbell being an independent adjudicator.
2. Biola lied about Pat Pike not knowing about the "No Contact" letter.
3. Biola lied about Clint Arnold's letter "No Contact" order Fall 2016.
4. Biola lied about Aaron Devine's lack of his summary.
5. Biola lied about Kevin Van Lant's illegitimate "No Contact" order.

1 6. Biola lied about Ben Shin, Clay Jones, David Rimoldi, Walter Russell, and
2 Gregg Geary.

3
4 Finally, Biola University, Inc. used all of these aforementioned lies to
5 execute an academic University student lynching.

6
7 Now, the Justices may ask what does all of this dialog have to do with this
8 case?

9
10 Basically, Biola University calls itself a religious corporation. Biola's Vision
11 Statement and its Mission Statement profess the truth, the grace, and the love of
12 Jesus Christ - but at the same time, there is a deep ideology of racist beliefs and
13 hatred toward Black people. Biola's Wrongful Administration Withdrawal is a
14 direct attack because Petitioner is a Black American.

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Statement Of The Case Continue:

**Appellant's Opposition to
United States Court of Appeals
Ninth Circuit**

D.W. Nelson, Fernandez, and Silverman
Ninth Circuit Judges for their opinions and decisions regarding
Fourteenth Amendment
14th Due Process

Constitutional Violations By

Biola University, Inc.

Judges Decisions:

John D. Early
United States Magistrate Judge

Cormac J. Carney
United States District Judge

1 Due Process is a requirement that legal matters be resolved according to established
2 rules and principles, and that individuals be treated fairly. Due process applies to
3 both civil and criminal matters.

4 5 **What are the Elements of Due Process?**

- 6 1. The right to a Hearing –
- 7 2. The right to a Counsel –
- 8 3. The right to cross examine witnesses –
- 9 4. The right to a Written
 - 10 a. Decision
 - 11 b. Based on evidence
 - 12 c. Opportunity to appeal
- 13 5. The right of the accused to confront the accusers.

14 15 **What are Procedural Rights?**

16 Procedural due process refers to the Constitutional requirement that when the
17 federal government acts in such a way that denies a citizen of life, liberty, or
18 property interest. e.g. 1. Must be given notice 2. Must be given opportunity to be
19 heard 3. Must be decided by neutral decision maker.

20 21 **What are Substantial Rights?**

22 Substantial due process is the notion that due process not only protects certain legal
23 procedures, but also protects certain rights unrelated to procedure. (e.g. right to
24 raise one's children as a parent). Parents should have the expectation that their
25 children will be granted Due Process even if they attend a private university.

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1 Are these same students given less justice compared to a population of truly
2 identified criminals facing the Court claiming the right of Due Process under the
3 color of state law – Section 1983?

4 Yes, I object fervently, loudly, and aggressively to this **unjust law**. This
5 **unjust law** is disguised (traditionally) under the contractual theory, the doctrine “in
6 loco parentis”, and the fiduciary relationships.

7 Plaintiff observes that this type of logic does not support private/religious
8 exemptions based on pure common sense.

9 According to an article in the **Duke Law Journal**:

10 “Procedural Due Process and Campus Disorder: A Comparison of
11 Law and Practice” it states:

12
13 Contractual Theory: Duke Law Journal notes:

14 “Unlike the courts, most scholars who have considered the subject agree that the
15 contract theory, as it has been applied, is inappropriate for the student-university
16 relationship.” “...because there is no bargaining – the school (university) dictates
17 the terms of the contract.”

18
19 In Loco Parentis: Duke Law Journal notes:

20 “A major factor contributing to the demise of the doctrine is the Court’s awareness
21 that the theory could not be applied to the thousands of students who have reached
22 their majority” - ... “With regard to student expulsion, it should also be realized
23 that under no circumstances, would parents be allowed to evict their child.”

24
25 Fiduciary Relationship: Duke Law Journal notes:

26 “The student-university relationship should be based on trust rather than contract to
27 settle disputes. The student places a high degree of trust and confidence in the
28 University to educate and perform its duties in a manner benefiting him. In effect,

1 the University as a fiduciary would show that any disciplinary action was both
2 reasonable and necessary and the disciplinary sanctions were imposed only after a
3 fair and just proceeding. Because of the University's fiduciary relationship, it would
4 afford its students at least that degree of procedural protection required by the Due
5 Process Clause of the Fourteenth Amendment."

6 Plaintiff's observations are confirmed! Private and/or religious Universities
7 are feeding off the resources of Federal and State government to support its
8 programs without giving the respect to the government laws of Due Process.

9 The Courts and Legislature must recognize the harm by the Section 1983
10 Color of law. This **unjust law** is not in the best interest of private school students.
11 St. Thomas Aquinas argues that an "**unjust law** is no law at all." In Aquinas' view
12 an unjust law is not a law but yet is also able to be issued as law and imposed as
13 law. For example:

14 ***Just Laws**

- 15 1. A law that is just has the power of "binding in conscience".
- 16 2. A law derived from eternal law inherently morally correct.
- 17 3. A law that is ordained for the common good, proportionally and equally.

18 ***Unjust Laws**

- 19 1. An unjust law lacks these integral qualities.
- 20 2. An unjust law is contrary to the common good.
- 21 3. An unjust law leads to Cupidity and Vainglory

22 Martin Luther King, Jr. during the Revolutionary Civil Rights Movement,
23 proclaimed:

- 24 1. One has the moral responsibility to disobey **unjust laws**.
- 25 2. Any law that uplifts human personality is just. Any law that degrades human
26 personality is unjust.
- 27 3. An unjust law is a code that is out of harmony with moral law.

1 Therefore, Section 1983 Colors of the State is an **Unjust Law**.

2
3 **Private/Religious Actors benefit from public financial resources as follows:**

4 Duke Law Journal

- 5 1. **Federal and State Financial Aid:** Private/Religious Universities receive
6 scholarships, fellowships, student loans, government work-study programs,
7 government research grants, tax exemptions, use of public land and buildings,
8 some – the power of eminent domain, projects underwritten by government
9 loans and government insurance programs. These financial benefits are required
10 (with the understanding) to provide all students – Due Process by U.S.
11 Constitutional Law.
- 12 2. **State Regulation Benefits:** Private and Religious Universities are granted the
13 authority to award degrees. These private actors are subject to state required
14 educational standards.
- 15 3. **Public Function:** They also provide a public function by way of the state's
16 authority to educate a population for key needed public professions.

17
18 The Supreme Court has stated:

19 "Today, education is perhaps the most important function of state and local
20 government."

21
22 Case Law

23 Brown v. Board of Education

24 347 U.S. 483, 493 (1954).

25 4. **Quasi-Public Governmental Powers:**

26 Thus, the private University hold a power vis-a-vis the student which is
27 essentially governmental. This power being, the University may designate its
28

1 student as members of a profession licensed by the state merely by conferring
2 the appropriate degree. (eg. A Teaching Credential)

3 The Indicia Approach of the disciplinary proceedings of private
4 Universities, requires a “sifting and weighing” of factors which concerns the
5 applicability of the Fourteenth Amendment to the private institution...”

6
7 Case Law

8 Burton v. Wilmington Parking Authority, Inc., 365 U.S. 715 (1960).

9
10 It is possible that a court will apply one of these four theories of state action
11 in order to require a private university to grant to its students that degree of
12 procedural protection which the Due Process Clause of the Fourteenth
13 Amendment dictates. Judge J. Skelly Wright has observed:

14 At the outset one may question whether any school or college can ever
15 be so “private” as to escape the reach of the Fourteenth Amendment.
16 In a country dedicated to the creed that education is the only “sure
17 foundation . . . of freedom, without which no republic can maintain
18 itself is strength” institutions of learning are not things of purely
19 private concerns. . . . No one any longer doubts that education is a
20 matter affected with the greatest public interest. And this is true
21 whether it is offered by a public or private institution . . . clearly the
22 administrators of a private college are performing a public function.
23 They do the work of the state, often in place of the state. Does it not
24 follow that they stand in the state’s shoes? And, if so, are they not
25 then agents of the state, subject to the constitutional restraints on
26 governmental action, to the same extent as private persons who
27 govern a company town, or control a policy party . . . or run a city
28 street car and bus service . . . or operate a train terminal?”

1 Similarly, it has been noted that the character of the private university is
2 molded by the governmental influence exerted over it and the governmental
3 power which it exerts over its students.

4
5 References:

6 University of Toledo Law review by: Blake Padget Copyright @ 2018
7

8 Change Is Needed

- 9 1. As such, Courts generally approach academic dismissals with a higher degree
10 of institutional deference than they do disciplinary dismissals. This
11 distinction exists in both the private and public educational contexts.

12 Case Law

13 Tedeschi v. Wagner Coll.

14 404 N.E. 2d 1302, 134 (NY 1980)

- 15 2. Private University's Unfair Disciplinary Proceedings:

16 Case Law

17 A. Balicock v. New Orleans Baptist Theological Seminary:

18 Reason: Withheld a student's degree based on "inappropriate conduct";
19 the school made this decision despite the fact that the Seminary
20 previously told the student he would not be dismissed for the conduct.

21 Arbitrary Reasoning... The School argued that withholding degree and
22 dismissing a student are different punishments, the school could withhold
23 the degree for any reason.

24 Case Law

25 B. Lexington Theological Seminary, Inc. v. Vance:

26 Reason: The Seminary withheld a degree from a student because he was a
27 homosexual.
28

1 C. Case Law

2 Fussell v. Louisiana Business College, Inc.: This College decided to
3 remove a student for “disruptive behavior” despite the fact that no faculty
4 member could articulate the actions (of the student) that were disruptive.

5 D. Case Law

6 Fellheimer v. Middlebury College: The student was arbitrarily charged
7 with rape and “disrespect of persons claims”. The student asked the Dean
8 to explain the “disrespect of persons charge”. The Dean did not do so.
9 Ultimately, the student was found not guilty of the rape charge, but he
10 was found guilty of the “disrespecting persons” claim, and was suspended
11 for a semester. The student did not have any idea as to what he was
12 charged with. Later, the Court overturned the student’s suspension two
13 years later.

14
15 Plaintiff presents these Case Law examples of how students are treated at
16 Private and/or Religious Universities. The disciplinary proceedings are tragic,
17 unfair, arbitrary, capricious, abuse of discretion and operated in bad faith. These
18 cases are (clearly evidence) just a few compared to thousands of students subjected
19 to discrimination, excluded and denied participation in their ultimate educational
20 experiences.

21 Due Process proceedings are necessary to prevent the ongoing egregious
22 disciplinary proceedings by Private and Religious Universities. As the Plaintiff and
23 a citizen of the United States of America, I declare this year 2020 – that the Courts
24 take up its authority as a part of the Checks and Balances System of our great
25 Republic and act to finally put an end to this great injustice.

1
2 **Statement Of The Case Continue:**

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4 **Appellant's Opposition to**
5 **United States Court of Appeals**
6 **Ninth Circuit**

7
8 D.W. Nelson, Fernandez, and Silverman
9 Ninth Circuit Judges
10 Opinions and Decisions regarding
11 Title IX
12 Violations By
13 Biola University, Inc.

14
15
16 **Judges Decisions:**

17 John D. Early
18 United States Magistrate Judge

19
20 Cormac J. Carney
21 United States District Judge
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I. What Are the Elements

Title IX

Receives Federal Funds and other Financial Assistance

U.S. Department of Justice / Department of Education

1. Title IX regulations contain a variety of procedural requirements, the most important of which is the requirement to establish grievance procedures.
2. These grievance procedures are an essential element in ensuring that Title IX and its implementing regulations are complied with in the least contentious manner possible.
3. Sexual harassment is more narrow than previous guidance. It is defined as:

“any unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access.”
4. Colleges can no longer use a “single investigator model” which has one official tasked with investigating, adjudicating, and issuing disciplinary sanctions against the accused.
5. Colleges must train all personnel involved in the Title IX process and publish training materials on their websites.

- 1 6. Training must involve review of the new rule’s definition of sexual
2 harassment and the scope of the application of Title IX to college program’s
3 and activities.
- 4
- 5 7. Training must involve how to conduct a formal or informal process, and
6 how to “serve impartially”, including avoidance of “prejudgment of the
7 facts at issue, conflict of interest, and bias.”
- 8
- 9 8. Colleges are required to have “reasonably” “prompt” periods for carrying
10 out each step in the Title IX complaint process.
- 11
- 12 9. Title IX regulations provides students with the right to written notice of
13 allegations, right to an advocate, and a right to submit, examine, and
14 challenge evidence.
- 15
- 16 10. Title IX regulations provides students with the right to a live hearing
17 including cross-examination.
- 18
- 19 11. Title IX regulations provides students to have the right to an impartial
20 finding based on evidence.
- 21
- 22 12. Title IX regulations provides students – both parties an equal opportunity to
23 appeal the findings.
- 24
- 25
- 26
- 27
- 28

**Biola University's Title IX Violations
Violations Simple Process Steps**

1. Biola University processed a Title IX Bullying, Harassment, Sexual Harassment Complaint against Plaintiff – Appellant November 2018.
2. Biola University confirmed the Title IX Complaint in Clark Campbell's Adjudicator Policy Map and in his Investigator Discipline Report listing numerous fraudulent allegations thereby (based on those allegations) executed the Wrongful Administrative Withdrawal November 2018.
3. Title IX Elements Violations: Clark Campbell's November 2018 Letter
 - A. Clark Campbell was not an "independent adjudicator" as stated on page #1
 - B. Plaintiff did not receive a "No Contact Order" on January 30, 2017 before it was emailed to her on October 2, 2018 from Clark Campbell, one month before the Wrongful Administrative Withdrawal.
 - C. Clark Campbell's January 30, 2017 "No Contact Order". A reason for the order was not stated.
 - D. Clark Campbell was not an independent adjudicator – also – he was the single investigator, he was the single adjudicator, he was the only one which issued the single disciplinary sanction as identified in this November 8, 2018 letter – supported by his Adjudicator Policy Map. Clark Campbell documented and published fraudulent evidence, fraudulent events, fraudulent dates, documents, people, behaviors, sanctions, and the fraudulent Wrongful Administrative Withdrawal.

1
2 E. Plaintiff was wrongly accused of Bullying, Harassment, and Sexual
3 Harassment as Biola University identified in its Title IX documentations.

4
5 F. Plaintiff as the Accused Student, was not notified of the allegations,
6 violations, or consequences for the “No Contact Order”.

7
8 G. Plaintiff was not provided with the right to a live hearing for the Title IX
9 Bullying, Harassment, or Sexual Harassment allegations.

10
11 H. Plaintiff as the accused, was not provided the opportunity to face her
12 accusers as they are identified in Clark Campbell’s Adjudicator Policy Map
13 and in his November, 2018 Investigation Report.

14
15 I. Moreover, Plaintiff was not provided the opportunity to appeal any
16 disciplinary actions by Biola University.

17 All of the aforementioned Title IX required elements were violated by Biola
18 University, Inc. Moreover, the grievance procedures (an essential element) for Title
19 IX was violated – and Harassment – Sexual Harassment allegations are fraudulent.

20
21 4. Plaintiff and Appellant as the accused in a processed Title IX Complaint by
22 Biola University – was used to cover-up Professor Kevin Van Lant’s romantic
23 and sexual advances – chasing Plaintiff like a love sick-sex starved puppy – a
24 “Christian” married man – who executed a “No Contact Order” after Plaintiff
25 rejected his advances in a letter and in three emails. Kevin Van Lant could not
26 handle the rejections from Plaintiff. Yes, Ph.D., Professor Kevin Van Lant is a
27 Dumb-Ass!
28

1 **Violations of the Title IX Rights as the Accused Person. Title VI Rights. Also, Due Process**
2 **Rights Violation**

3 **Case Laws: Title IX Act**

4 **Due Process Issue**

5 **Argument**

6 1. University of Toledo Law review

7 **South Dakota v. Dole**

8 ***Application of Legislation to Private University Students***

9 The lack of rights available to private university students facing discipline stems
10 from the fact that private universities and colleges are not state actors, and as such,
11 they are not bound by the due process clause of the Fourteenth Amendment. The
12 solution to this problem can be found in another part of the constitution, specifically
13 in Congress' Taxing and Spending power. Through the Taxing and Spending
14 clause, Congress has the power to regulate parties who receive federal funding by
15 using spending to encourage certain behavior. Congress' ability to use its spending
16 power to influence receipts of federal funding was first recognized in South Dakota
17 v. Dole. This same principle would be instrumental in creating a disciplinary
18 system that would apply to most private institutions.

19
20
21 **2. Goss v. Lopez**

22 A student's suspension or expulsion from a college or university, regardless of how
23 unfair the proceeding was, can also have a long-lasting effect on the student's
24 future education and employment opportunities. Notably, the Supreme Court
25 voiced this exact concern in 1975. In Goss, the Court acknowledged that charges of
26 misconduct in the disciplinary context "could seriously damage the students'
27 standing with their fellow pupils and their teachers as well as interfere with later
28 opportunities for higher education and employment." Even more alarming is the

1 fact that private students are not awarded due process to prevent such an outcome.
2 The consequences these disciplinary procedures can potentially have are the reason
3 that private students need greater protections.
4

5 ***Right to Notice of the Hearing***

6 The Supreme Court's decision in Goss granted public university students the right
7 to notice of a hearing. Specifically, the Court stated "students facing suspension and
8 the consequent interference with a protected property interest must be given some
9 kind of notice." Without proper notice of an impending disciplinary action, a
10 student cannot adequately prepare for a hearing, which will result in not having
11 their defense heard. Notice of a hearing is not only important to notify a student of
12 an impending hearing, but also to inform the student of the grounds of the charge.
13

14 **3. Fellheimer v. Middlebury College**

15 If a student is unaware of the grounds of the charges, then the student cannot
16 prepare an adequate defense, just as the student in Fellheimer experienced. In
17 Fellheimer, the college did not give the student notice of what actions he took that
18 constituted "disrespect to persons," and because of this he was unable to adequately
19 defend the charge at his disciplinary hearing. Notice of a hearing is an important
20 right that should be guaranteed for private university students.
21

22 ***Right to a Hearing***

23 The right to a hearing is perhaps the most basic and fundamental right proposed,
24 other than notice of the hearing itself. The court in Goss noted that the right to be
25 heard was a right of the highest importance. Private institutions sometimes do not
26 grant a student a hearing, even if required by their own procedures. The right to be
27 heard is a fundamental part of due process. As such, private institutions should be
28 required to grant one. Given the negative effects that suspension or expulsion can

1 have on a student, a hearing is needed so that student has an opportunity to defend
2 the charges against him. Thus, the legislation this Note proposes should allow for a
3 hearing any time the possible punishment includes a suspension or expulsion-this
4 includes a policy where multiple infractions can add up to a suspension or
5 expulsion. These rights should apply to any disciplinary proceeding that carries the
6 possible punishment of suspension or expulsion. Additionally, these procedural
7 safeguard should apply to small offenses, which could cumulatively result in a
8 suspension or expulsion.

9 10 **4. Title IX Regulations:**

11 ***Contrasting the Procedures Required by Title IX***

12 Title IX provides variable and often rigorous demands of investigatory procedure.
13 Similar to Title IX, the proposed legislation granting quasi due process rights to
14 private students would apply to all schools that accept federal financial assistance.
15 Currently, there are approximately 1,700 private institutions of higher education in
16 the United States. These institutions have a combined enrollment of roughly 3.4
17 million students and most of these institutions accept federal funding. Although this
18 new legislation may not affect every single private institution in the country, it
19 would apply to the overwhelming majority, which would protect a large number of
20 students.

21
22 Unfair disciplinary procedures at private colleges present problems similar to a fire.
23 While we can give judges the proper equipment to douse a few flames, it is
24 important to suffocate the fire at its source.

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Statement Of The Case Continue:

**Appellant's Opposition to
United States Court of Appeals
Ninth Circuit**

D.W. Nelson, Fernandez, and Silverman
Ninth Circuit Judges for their opinions and decisions regarding

Title VI
Violations By
Biola University, Inc.

Judges Decisions:
John D. Early
United States Magistrate Judge

Cormac J. Carney
United States District Judge

II. What Are the Elements

Title VI

Receives Federal Funds and Financial Assistance

1. Discrimination on the basis of race, color, or national origin in any program or activity that receives Federal Funds or other Financial Assistance.
2. Programs cannot distinguish among individuals on the basis of race, color, or national origin either directly or indirectly, in the types, quantity, quality, or timelines of program services, aids or benefits that they provide or the manner in which they provide them.
3. This prohibition applies to procedures, criteria, and methods of administration that appear neutral but have a discriminatory effect on individuals because of their race, color, or national origin.

Biola University's Title VI Violations:

Violations As Follows:

Deliberately indifferent to acts of discrimination (directly or indirectly – quality, quantity, timeliness) in services, benefits, and manner they were provided.

Clay Jones

1. Biola University by Clay Jones, Professor (for the Resurrection of Jesus Christ) demonstrated racist discrimination by not providing required student services thereafter he gave Plaintiff a fraudulent failing grade.

2. Biola University by Clay Jones, Professor deliberately (by indifference) ignored Plaintiff's request for assistance for conference time, for project samples and for his review of her final project, thereafter he gave Plaintiff a fraudulent failing grade.
3. Biola University by Clay Jones, Professor (in a Resurrection of Jesus Christ Course) by deliberately indifference presented (off the subject) KKK (Ku Klux Klan) PowerPoints.
4. The Ku Klux Klan is an American delusional, sociopath, and psychopath European White terrorist hate group founded in 1865 – purposed to destroy Black Americans by any means necessary – Lynching was the KKK choice of entertainment even on after Sunday Church service picnic outings. This history is well known not only by Black Americans but also by European White Americans – because these demonic behaviors are still active today in 2022.
5. It is impossible to think that Clay Jones (who selected the KKK PowerPoints) did not know about the KKK history. Clay Jones was deliberately indifferent to the emotional and psychological effects the KKK imaged PowerPoints would have on Plaintiff. Clay Jones is a racist bigot. Clay Jones is an incompetent Professor.
6. Pat Pike, Associate Provost with deliberate indifference, an administrator official who was aware of Clay Jones' racist behavior – she chose to justify his behavior and did nothing.

Ben Shin

1. Biola University by Ben Shin, Professor (for the New Testament Survey Course) demonstrated racist discrimination by direct and indirect deliberately indifferent acts of "Name Calling" placed upon Plaintiff during open public classroom sessions in front of her peers.

- 1 2. Biola University by Ben Shin, Professor would call Plaintiff an
2 "overachiever" on numerous occasions during his lectures. He did not at any
3 time call the European-White students overachievers or the Asian Americans
4 students overachievers.
- 5 3. Biola University by Ben Shin made fraudulent complaints (to Campus Safety
6 and to the Associate Dean) against Plaintiff with statements of
- 7 A. "She think that she can bully me because I am Asian"
8 B. "She called me racist"
9 C. "She told me I was not Christian"
- 10 4. These lies by Biola University (Ben Shin) were expressed to Clark Campbell
11 in the interview documented in Campbell's Adjudicator Policy Map and in
12 his November 2018 investigator letter.
- 13 5. Moreover, these lies were documented, executed, and published after the
14 reconciliation between Ben Shin, Pat Pike, and Plaintiff on 12/2017.

15
16 These acts prove deliberate indifference by Biola University.

**Reasons For Granting
The Petition For
Writ of Certiorari**

1. This Writ of Certiorari presents great controversial issues, contradictions, and judicial conflicts against the Constitution.
2. Even though student citizens are attending private universities, these students should not be denied their Constitutional Civil Rights.
3. Due Process guidelines and elements should not be denied any citizen when they are trying to defend themselves.
4. Equal Protection Rights should not be denied any citizen when they are trying to defend themselves.
5. Private universities, private corporations, and private organizations should not supersede Constitutional laws, amendments or the "Rule of Law".
6. Title IX guidelines and elements that require grievance procedures should provide protections for those students who are falsely accused of harassment and bullying.
7. Title IX elements that require grievance procedures should provide protections for those students who are falsely accused of sexual misconduct.
8. Title IX students who are accused of any allegations by a processed Title IX Complaint - these accused students should not be denied their Constitutional Civil Rights - that would be under Title IX.
9. Title VI racial discrimination elements and guidelines should not be overlooked by Biola University, Inc.
10. Title VI racial discrimination elements and guidelines should not be overlooked or denied by judicial superficial unjust laws.

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1 (What does that mean?) Does that connote... Ms. Gray is “straight out of Compton”
2 “A Baby Mama” or a code term for “Nigger”. Now, “Let’s make it real”.

- 3 1. Judge Cormac J. Carney – straight out of Orange County “European White
4 American” ... it was his first time working with an experienced, competent,
5 and beautiful Black Woman – and he “could not connect”. Moreover, **second**
6 to add insult to injury – he compared his **Public Critics Outcry** to equating
7 his “Street Smart” term to the knee on George Floyd’s neck.
- 8 2. **This sounds like the same playbook** used by Ben Shin calling Appellant an
9 “Overachiever” a student at a major university ... or is it another code word
10 for “Nigger”.
- 11 3. **This sounds like the same playbook** used by Clay Jones – presenting Ku
12 Klux Klan (KKK) PowerPoints knowing a Black American student is in his
13 classroom – is experiencing no support from him – plus this deliberately
14 indifference motivates him to give that student a failing grade in a Bible
15 course. Was Clay Jones’ behavior a code for “Nigger stay in your place”?
- 16 4. **This sounds like the same playbook** used by Kevin Van Lant – thinking
17 Plaintiff was going to be his whore, a traditional image for Black Women.
- 18 5. **This sounds like the same playbook** by Biola University’s Wrongful
19 Administrative Withdrawal; destroy Black people by any means necessary.

1 In conclusion to the Title VI opinions and decisions by D.W. Nelson, Fernandez,
2 and Silverman, Circuit Judges, Plaintiff and Appellant request En Banc Rehearing –
3 extensive evaluation according to all Title VI elements and Constitutional Law.

4
5 The total and complete elements for Title VI regarding deliberately indifferent to
6 known acts of discrimination were **violated and overlooked** by Biola University.

- 7 1. **Overlooked by** – D.W. Nelson, Fernandez, and Silverman, 9th Circuit
8 Judges.
- 9 2. **Overlooked by** – Cormac J. Carney, District Judge
- 10 3. **Overlooked by** – John D. Early, Magistrate Judge

1 Conclusion

2
3 Petitioner's

4 Request For Writ of Certiorari

5 Petitioner Request To Present Oral Arguments

6
7 The petition for a Writ of Certiorari should be granted.

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11 Respectfully Submitted:

12
13 To: Honorable Justices
14 United States Supreme Court

15
16 From: Evelyn Howell Massey, Petitioner
17 Pro Per Litigant

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19
20 Name: Evelyn Howell Massey

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23 Date: June 3, 2022

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