

No. \_\_\_\_\_

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In The  
**SUPREME COURT OF THE UNITED STATES**

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Brent A. Ristow,  
*Pro se Petitioner,*

v.

Douglas R. Peterson, et al.,  
*Respondents.*

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On Petition for Writ of Certiorari, to the United  
States Court of Appeals for the Eighth Circuit, in  
22-3029.

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Whether state civil administrative agency staff, in prosecuting an application to their agency for a license, are acting in the character of the criminal prosecutor described by this court in *Imbler v. Pachtman*, 424 US 409 (1976), or as civil administrators?

Whether the Opinion of this court in *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963) is effective to the extent that an applicant for a state law license has due process rights in the application?

Whether the bad faith of the defendants can be so poisonous as to convert an expressly declared individual capacity action into an official capacity action?

Whether absolute immunity is available as a defense in an individual capacity action, for the bad faith acts of state civil administrative agency staff that cause the deprivation of a constitutional right, like those described by this court in its Opinion in *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963), of an applicant to the agency?

# TABLE OF CONTENTS

	Petition
	p.
Question Presented .....	i
Table of Authorities .....	v
	Petition
	¶
Petition for Writ of Certiorari .....	1
Opinions Below .....	3-7
Jurisdiction .....	7-13
Constitutional Provisions Involved .....	14
Statement of the Case .....	15
Argument in Support of Petition .....	16-27
Conclusion .....	28-30

Items in the Appendix	Apndx. p.
The Judgment of the District Court, in 21-cv-02405 (SRN/DTS), granting the defendants absolute immunity .....	1
The Judgment of the Court of Appeals for the Eighth Circuit, in 22-3029, affirming the Judgment of the District Court .....	26
The unpublished Opinion of the Court of Appeals for the Eighth Circuit, in 22-3029, concluding that dismissal was proper for the reasons stated in the Judgment of the District Court .....	28
The Order of the Court of Appeals for the Eighth Circuit, in 22-3029, denying Dr. Ristow's petition for rehearing .....	30

## TABLE OF AUTHORITIES

Petition



### United States Supreme Court

<i>Willner v. Committee on Character and Fitness</i> , 373 U.S. 96 (1963) .....	1, 7, 21, 30
<i>Imbler v. Pachtman</i> , 424 U.S. 409 (1976) ..	1, 7, 17, 18, 26, 30
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	14
<i>Mitchell v. Forsyth</i> , 472 U.S. 511 (1985) ...	14
<i>Kentucky v. Graham</i> , 473 U.S. 159 (1985) .	17, 18

### United States Courts of Appeals

<i>Trapp v. Gunn</i> , No. 21-3726, 2022 WL 4137726 (8th Cir. Sept. 13, 2022) .....	4
<i>Powell v. Powell</i> , 80 F.3d 464, 467 (11th Cir. (1996)) .....	4

*United States District Court*

<i>Leekley-Winslow v. Minnesota</i> , Case No. 19-cv-2071 (NEB/HB) 2020, WL 2100856 .	4
---	---

**Minnesota Supreme Court**

<i>LaNave v. Minnesota Supreme Court</i> , 915 F.2d 386, 387 (8th Cir. 1990) .....	5
<i>Jenson v. Olson</i> , 141 N.W.2d 488 (1996) ...	29

**Constitutional Provisions**

U.S. Const. amend. V .....	14
U.S. Const. amend. XIV, § 1 .....	14

**Statutes**

*Federal*

28 U.S.C. § 1254 .....	11, 13
Federal R. App. Pro. 41 .....	8, 9, 10

*State*

Minn. Stat 480.05, Power; Rules .....	22
Minn. Stat. 481.01, Board of Law Examiners .....	22

**Other Sources**

Brief of Professor Brian Peres-Daple and the Law Enforcement action Partnership as Amici Curiae Supporting the Petitioner, USSC Case no. 21-1552 (cert. denied Oct. 31, 2022) .....	2
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## PETITION FOR WRIT OF CERTIORARI

1. Plaintiff-Appellant, Dr. Ristow, humbly petitions here for this Court to issue, under Title 28 of the United States Code, Section § 1254(1), a Writ of Certiorari, to the Eighth Circuit, in case no. 22-3029, and asserts that the judgment of the Court of Appeals there, affirming the grant of absolute immunity in an individual capacity action, for conduct, during an investigation, by a state civil administrative agency, into an application there, the same application found in *Willner*,<sup>1</sup> by the US District Court, should be overturned, and earnestly pleads for this Court to affirm due process rights in applications to state civil agencies by addressing the difficult questions prophesied by this court in footnote 33 of its opinion in *Imbler*<sup>2</sup> and now found before it here: Whether absolute immunity is available as a defense in an individual capacity action, for due process violations, that occur during an investigation, by state civil administrative agency staff, into the application of a private citizen plaintiff?

p. 1

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<sup>1</sup> *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 102 (1963) (“the requirements of procedural due process must be met before a State can exclude a person from practicing law”).

<sup>2</sup> “At some point, and with respect to some decisions, the prosecutor no doubt functions as an administrator rather than as an officer of the court. Drawing a proper line between these functions may present difficult questions.” (*Imbler v. Pachtman*, 424 US 409 (1976)(see footnote 33 therein).



2. Accepting this Petition would allow this Court to clarify the line between official capacity and individual capacity actions, and the conduct subject thereto, as well as the defenses allowed therein, including clarifying the scope and applicability of the absolute immunity defense.<sup>3</sup>

3. Dr. Ristow expressly chose not to contest the denial of his application in order to sue the defendants in their individual capacity.<sup>4, 5</sup> But, the US District Court for the District of Minnesota, in 21-cv-02405, under the oversight of Hon. Susan Richard Nelson, creating the injustice, reasoned that Dr. Ristow was, in reality, '*effectively challenging*' that denial.<sup>6</sup>

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<sup>3</sup> USSC Case no. 21-1552; *see* The Brief of Professor Brian Perez-Daple and the Law Enforcement Action Partnership as Amici Curiae Supporting the Petitioner, and the argument for clarifying the absolute immunity defense in the Eighth Circuit, there.

<sup>4</sup> Complaint (Cmpl.), ¶¶ 2 & 3, First Amended Complaint. (Amnd. Cmpl.), ¶¶ 3 & 4.

<sup>5</sup> Cmpl. ¶ 1, Amnd. Cmpl. ¶ 1, and "who are sued here in their individual and/or personal capacity, and not in their official capacity" there.

<sup>6</sup> Appendix (Apndx.), p. 11, ln. 6, starting with "This is because" there.

4. The District Court supported its reasoning with a case where the plaintiff challenged the constitutionality of the Minnesota statute in federal court,<sup>7</sup> a case where the plaintiff challenged a state court grant of alimony in federal court,<sup>8</sup> and, key to the reasoning, a case where the plaintiff challenged the *suspension* of a - *previously granted* - state license;<sup>9</sup> elements expressly absent from Dr. Ristow's claims, and Dr. Ristow, like the petitioner in *Willner*, was never licensed.<sup>10</sup> The agency can discipline those inside the walls but cannot deny entry in any way that infringes the Constitution.<sup>11</sup>

p. 3

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<sup>7</sup> Apndx., p. 11, and *Leekley-Winslow v. Minnesota*, Case No. 19-cv-2071 (NEB/HB), 2020 WL 2100856 there.

<sup>8</sup> Apndx., p. 11, and *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996) there.

<sup>9</sup> Apndx., p. 11, and *Trapp v. Gunn*, No. 21-3726, 2022 WL 4137726, at \*1 (8th Cir. Sept. 13, 2022) there.

<sup>10</sup> Apndx., p. 6, start of first full ¶.

<sup>11</sup> See footnote 1 above.

5. The District Court, now having read its challenge to a judicial action *into* Dr. Ristow's claims, then cited *LaNave*, a case where the plaintiff, angry over a rule of the state bar, that prevented him from even applying for a license, expressly challenged that rule in federal court,<sup>12</sup> another element absent here, to pull the *Rooker-Feldman* doctrine<sup>13</sup> out of the adversarial proceeding and into the *application phase* of the state licensing process, where Dr. Ristow's claims exist.

6. And, based on this, the District Court then concluded the injustice by stating that, during their *ex parte* defamation of him and state police style investigation into his application,<sup>14</sup> the defendants were really appearing in the character of witnesses,<sup>15</sup> prosecutors,<sup>16</sup> and judges,<sup>17</sup> now pulling *Imbler* into state civil investigations, and, for those reasons, held each were entitled to absolute immunity.

p. 4

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<sup>12</sup> Apndx. p. 10, and *LaNave v. Minnesota Supreme Court*, 915 F.2d 386, 387 (8th Cir. 1990) ( where the plaintiff, a graduate of a non-ABA approved law school, challenged the constitutionality of a rule of the state bar requiring an ABA approved degree to apply to take the licensing exam) there.

<sup>13</sup> Apndx. p. 9, start at "The *Rooker-Feldman* doctrine" there (the doctrine makes absolute immunity available by classifying acts of administrative agencies as 'judicial acts').

<sup>14</sup> See Exhibit N and the Petition for Writ filed in USSC case no. 22-302, *Ristow v. Cunningham* and S.O.C. No. 31 there.

<sup>15</sup> Apndx. p. 2, and 'Amanda Cunningham, a witness.'

<sup>16</sup> Apndx. pp. 19-21, § (ii) McGillic.

<sup>17</sup> Apndx. pp. 14-19, § (i) The Members of the Board.

7. Dr. Ristow appealed this erroneous grant of absolute immunity by arguing that his action is expressly an individual capacity action,<sup>18</sup> that absolute immunity is not a defense available in individual capacity actions,<sup>19</sup> that the District Court grant of absolute immunity is broader than that provided for in *Imbler*,<sup>20</sup> and conflicts with rights in his application described by this Court in *Willner*,<sup>21</sup> and that the acts of the defendants were instead acts of corrupt individuals acting in bad faith to discriminate against Dr. Ristow, a man accused of abuse during the height of the “metoo” movement.<sup>22</sup> But these assertions found deaf ears and closed doors at the Eighth Circuit, in 22-3029, with the Court of Appeals affirming the judgment of the District Court on February 15, 2023,<sup>23</sup> and denying Dr. Ristow’s Petition for Rehearing on March 23, 2023, without comment.<sup>24</sup>

p. 5

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<sup>18</sup> Appeal Brief, ¶32; Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Dismiss (Excluding Cunningham; “Memorandum”), p. 4-7 (*see* Intro, and Capacity).

<sup>19</sup> Appeal Brief, ¶32; Memorandum, p. 8-17 (*see* Sovereign Immunity, and Absolute Immunity).

<sup>20</sup> Appeal Brief, p. 33-34; Memorandum, p. 12, ‘In *Imbler*’ to p. 13, end of 2nd full ¶.

<sup>21</sup> Appeal Brief, ¶32; Memorandum, p. 25, start at “In *Willner*.”

<sup>22</sup> Cmpl., ¶¶ 13 & 18; Amnd. Cmpl., ¶15 & 23; Appeal Brief, ¶¶ 10-16; Memorandum, p. 36, start at ‘It is as if’ there; Plaintiff’s Memorandum Opposing Defendant Cunningham’s Motion to Dismiss (“Memorandum Opposing Cunningham”), ¶¶26-30.

<sup>23</sup> Apndx. pp. 26-29.

<sup>24</sup> Apndx. p 30.

8. On March 30, 2023 the Eighth Circuit then issued a Formal Mandate under Fed. R. App. Pro. 41(a), in 22-3029, and in which it cited the Court's opinion and judgment of February 15, 2023.

9. On June 20, 2023 Dr. Ristow then filed a motion under Fed. R. App. Pro. 41(d) in the Eighth Circuit asking the Court of Appeals to stay the March 30, 2023 Mandate, to pursue a petition here.

10. The Committee Comment to the 1998 Amendment to Fed. R. App. Pro. 41 makes clear that the act of filing a motion under 41(d) acts to stay a 41(a) mandate, a status left unchanged by the rule's 2018 Amendment.

11. Under 28 U.S.C § 1254 this Court has jurisdiction over Cases in the United States Courts of Appeals.

12. On June 20, 2023, subsequent to filing his 41(d) motion, Dr. Ristow filed this Petition, with notice provided to the lower courts the same day.

13. Because Dr. Ristow's 41(d) motion has stayed the March 30, 2023 mandate, and, as of this filing, an order has not issued therefrom, this case, as of the filing of this Petition, remains in the Court of Appeals for the Eighth Circuit, following judgment by that court, and therefore this Court has 28 U.S.C. § 1254(1) jurisdiction over this appeal.

14. The standard of review here is *de novo*,<sup>25</sup> during which this Court considers Dr. Ristow's accusations, those of due process and equal protection violations under the 5<sup>th</sup> and 14<sup>th</sup> amendments to our Constitution,<sup>26</sup> and those accusations against which the defendants stand behind the shield of absolute immunity, as being true.<sup>27</sup>

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<sup>25</sup> *Mathews v. Eldridge*, 424 U.S. 319 (1976).

<sup>26</sup> Cmpl., and Counts 1-10 there, & Amnd. Cmpl., and Counts 1-11 there.

<sup>27</sup> *Mitchell v. Forsyth*, 472 U.S. 511 (1985).

15. In October of 2021 Dr. Ristow, Plaintiff-Appellant and Petitioner here, publicly brought suit against the Defendants, Respondents here, as individuals<sup>28</sup>, alleging that:

After Dr. Ristow ended their relationship, in the *Spring of 2017*,<sup>29</sup> and then, in the *Summer of 2017*, asked her to stop harassing him,<sup>30</sup> in the *Fall of 2017* Ms. Cunningham, viewing Dr. Ristow from the position of the scorned lover and seeing him as someone she wanted to harm,<sup>31</sup> acted to make the initial contact with the Minnesota Board of Law Examiners to ask them for help in suing Dr. Ristow over a non-existent loan agreement;<sup>32</sup>

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<sup>28</sup> Cmpl., ¶1, and Amnd. Cmpl., ¶1, and “individual and/or personal capacity” there.

<sup>29</sup> Cmpl., ¶ 13; Amnd. Cmpl., ¶ 15; Memorandum Opposing Cunningham, ¶ 7; Appeal Brief, SOC no. 1.

<sup>30</sup> Cmpl., ¶ 13; Amnd. Cmpl., ¶ 15; Memorandum Opposing Cunningham, ¶ 8; Appeal Brief, SOC no. 2.

<sup>31</sup> Cmpl., ¶ 13, and Amnd. Cmpl., ¶ 15 and “harass me” there; Memorandum Opposing Cunningham ¶¶27 & 28; Appeal Brief, SOC no. 14, and “Brent messes with the wrong girl ;)” there.

<sup>32</sup> Exhibit M, see the Judgment in 19WS-CO-19-829, a civil action by Ms. Cunningham against Dr. Ristow, and “there was no agreement” there.

Subsequent to her *Fall 2017* contact, in the *Winter of 2017* Dr. Ristow submitted an application to the agency,<sup>33</sup> and later notified the agency that Ms. Cunningham was harassing him,<sup>34</sup> and that he believed Ms. Cunningham may attempt to interfere with his application to the agency;<sup>35</sup>

In the *Spring of 2018* the agency notified Dr. Ristow that he had passed the licensing exam,<sup>36</sup> but that his application would remain pending while the agency conducted an investigation into his character;<sup>37</sup>

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<sup>33</sup> Cmpl., ¶7, and Amnd. Cmpl., ¶8.

<sup>34</sup> Cmpl., ¶13, and Amnd. Cmpl., ¶15.

<sup>35</sup> *Id.*

<sup>36</sup> Cmpl., ¶14, and Amnd. Cmpl., ¶16.

<sup>37</sup> Cmpl., ¶14, and Amnd. Cmpl., ¶16, and “the investigation is ongoing” there.



In the *Fall of 2018*, Ms. Erin Wacker, the agency investigator, communicated with Ms. Cunningham, as part of the investigation, via phone and email;<sup>38</sup> and that, during those communications, Ms. Wacker expressed, to Ms. Cunningham, an intent to conceal, from Dr. Ristow,<sup>39</sup> any comments Ms. Cunningham submitted to the agency, for use there in determining Dr. Ristow's character;<sup>40</sup>

In the *Fall of 2018*, a year after her *Fall 2017* contact and after failing, despite multiple attempts, to sue Dr. Ristow, Ms. Cunningham acted to submit to the agency an affidavit;<sup>41</sup> and that, the affidavit contained new false and defamatory statements about Dr. Ristow, including that Dr. Ristow had now allegedly abused Ms. Cunningham;<sup>42</sup>

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<sup>38</sup> Cmpl., ¶¶17, 18 & 21, and Amnd. Cmpl., ¶¶19, 20 & 23; Exhibit E.

<sup>39</sup> Cmpl., ¶21, and Amnd. Cmpl., ¶23, and Exhibit E, p. 6-11, and Ms. Wacker email of 10 Oct. 2018, 10:55 am and "If he ends up having access to your affidavit" there where Dr. Ristow asserts the word "if" indicates an intent to act in bad faith.

<sup>40</sup> Cmpl., ¶18, and Amnd. Cmpl., ¶20, and Exhibit E, p. 7 (internal agency page no. 1247) the Oct. 14 email of Ms. Wacker and "please send me .. any information ... you believe would be helpful in our character and fitness investigation" there.

<sup>41</sup> Cmpl., ¶ 21; Amnd. Cmpl., ¶23.

<sup>42</sup> *Id.*

Dr. Ristow further alleged that, Ms. Cunningham hoped her false and defamatory accusations of abuse would cause agency staff to look unfavorably upon Dr. Ristow, as a man accused of abuse during the height of the “me too” movement;<sup>43</sup> and that, at the time of making the accusations, Ms. Cunningham communicated this hope to others;<sup>44</sup>

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<sup>43</sup> See footnote 22 above.

<sup>44</sup> *Id.*

In the *Fall of 2018*, Ms. Erin Wacker received the affidavit from Ms. Cunningham<sup>45</sup> and then acted to send the affidavit to Ms. Carol Martens,<sup>46</sup> the individual serving as agency paralegal, absent any notice of the affidavit to Dr. Ristow and absent any response, to the defamatory accusations therein, from Dr. Ristow,<sup>47</sup> for inclusion in Dr. Ristow's application file;<sup>48</sup> and that, by acting to do so Ms. Wacker manifested her intent to conceal by failing to execute a process,<sup>49</sup> that the process was available to her,<sup>50</sup> and that execution of the process was required by due process protections, specifically those demands of notice and opportunity,<sup>51</sup>

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<sup>45</sup> Cmpl., ¶21, and Amnd. Cmpl., ¶23.

<sup>46</sup> Cmpl., ¶21, and Amnd. Cmpl., ¶23, and the Friday October 12, 2018, 10:44 am email from Ms. Wacker to Ms. Martens there (agency page no. 1243).

<sup>47</sup> Apndx., p. 4, and "The Board did not inform Ristow about these accusations" there.

<sup>48</sup> Cmpl., ¶21, and Amnd. Cmpl., ¶23, *see* the top of agency page no. 1242 and "Created: by Carol" there.

<sup>49</sup> Apndx., p. 4, and "The Board did not inform Ristow about these accusations" there.

<sup>50</sup> Cmpl., ¶16, and Amnd. Cmpl., ¶18.

<sup>51</sup> *See* footnote 1 above.

That, Ms. Martens, the individual serving as agency paralegal, received the affidavit from Ms. Wacker<sup>52</sup> and then acted to insert the affidavit into Dr. Ristow's application file,<sup>53</sup> absent any notice of the affidavit to Dr. Ristow and absent any response, to the defamatory accusations therein, from Dr. Ristow;<sup>54</sup> and that, by acting to do so Ms. Martens furthered the concealment of the affidavit by failing to execute a process,<sup>55</sup> that the process was available to her,<sup>56</sup> and that execution of the process was required by due process protections, specifically those demands of notice and opportunity;<sup>57</sup>

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<sup>52</sup> Cmpl., ¶21, and Amnd. Cmpl., ¶23, and the Friday October 12, 2018, 10:44 am email from Ms. Wacker to Ms. Martens there (agency page no. 1243).

<sup>53</sup> Cmpl., ¶21; Amnd. Cmpl., ¶23; and *see* Exhibit E and the top of agency page no. 1242 and "Created: by Carol" there.

<sup>54</sup> Apndx., p. 4, and "The Board did not inform Ristow about these accusations" there.

<sup>55</sup> *Id.*

<sup>56</sup> Cmpl., ¶16, and Amnd. Cmpl., ¶18.

<sup>57</sup> *See* footnote 1 above.

That, Ms. Natasha Karns, the individual charged with making an initial recommendation to the agency regarding an applicant's character, received Dr. Ristow's application file from Ms. Martens and then acted,<sup>58</sup> absent any notice of the affidavit to Dr. Ristow and absent any response, to the defamatory accusations therein, from Dr. Ristow,<sup>59</sup> to declare to the agency that she believed Dr. Ristow was an abuser and should not be granted a license;<sup>60</sup> and that, by acting to do so Ms. Karns furthered the concealment of the affidavit by failing to execute a process,<sup>61</sup> that the process was available to her,<sup>62</sup> and that execution of the process was required by due process protections, specifically those demands of notice and opportunity;<sup>63</sup>

p. 14

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<sup>58</sup> Exhibit G, prepared and signed by Ms. Karns.

<sup>59</sup> Apndx., p. 4, and "The Board did not inform Ristow about these accusations" there.

<sup>60</sup> Cmpl., ¶35 and Amnd. Cmpl., ¶37, and see "is thus relevant" there; Exhibit G and agency Page 9, and, at least, no.s 2, 3, 4, 6, and 9 (and see Exhibit A, agency p. 14, no. 13 there and "aggressive, intimidating, bullying behavior" there; and Exhibit J, calling Ms. Cunningham to testify about her affidavit in the administrative appeal.

<sup>61</sup> Apndx., p. 4, and "The Board did not inform Ristow about these accusations."

<sup>62</sup> Cmpl., ¶16, and Amnd. Cmpl., ¶18.

<sup>63</sup> See footnote 1 above.

That, Messrs. Peterson, Boyd, Hoyos, Koneck, Kuppe, and Wong, and Mses. Monahan, Prince, and Thein, the individuals charged by the agency with affirming the recommendations of Ms. Karns, received Dr. Ristow's file from Ms. Karns along with her recommendation, and acted, on the recommendation of Ms. McGillic, to adopt Ms. Karns's recommendation and to deny Dr. Ristow's application to the agency,<sup>64</sup> absent any notice of the affidavit to Dr. Ristow and absent any response, to the defamatory accusations therein, from Dr. Ristow;<sup>65</sup> and that by acting to so they furthered the concealment of the affidavit by failing to execute a process,<sup>66</sup> that the process was available to them,<sup>67</sup> and that execution of the process was required by due process protections, specifically those demands of notice and opportunity;<sup>68</sup>

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<sup>64</sup> Cmpl., ¶ 41; Amnd. Cmpl., ¶45; Exhibit A (the second determination).

<sup>65</sup> Apndx., p. 4, and "The Board did not inform Ristow about these accusations" there.

<sup>66</sup> *Id.*

<sup>67</sup> Cmpl., ¶16, and Amnd. Cmpl., ¶18.

<sup>68</sup> See footnote 1 above.

And that, by acting to do so, the defendants have acted, as individuals and collectively, to violate Dr. Ristow's liberty interests embodied in his application,<sup>69</sup> by acting to defame him and by acting, based on his gender, as man accused of abuse during the height of the "metoo" movement,<sup>70</sup> to deny him his right to confront those false and defamatory accusations,<sup>71</sup> prior to having them used against him in his application;<sup>72, 73</sup>

And, in response, the defendants all moved to dismiss Dr. Ristow's claims, alleging that:

They were entitled to be absolutely immune to those claims.<sup>74</sup>

p. 16

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<sup>69</sup> See footnote 1 above.

<sup>70</sup> See footnote 22 above.

<sup>71</sup> Apndx., p. 4, and "The Board did not inform Ristow about these accusations" there.

<sup>72</sup> See footnote 1 above.

<sup>73</sup> Cmpl., ¶ 35, and Amnd. Cmpl., ¶37, and "relevant" there, in light of Exhibit J and "Ms. Cunningham will testify about ... a notarized affidavit" there; support for the position that her defamation of Dr. Ristow was material to the denial of his application.

<sup>74</sup> Apndx., p. 8, para. starting with "In response," and "First, they allege that the court lacks subject-matter jurisdiction over the claims under the *Rooker-Feldman* doctrine" there.

16. The District Court misstated the law when it read a judicial challenge *into* Dr. Ristow's claims.

17. Civil actions in the official capacity are those where the state or agency is named as a defendant, an agency official is named as a defendant by title, or where an act of the agency is challenged.<sup>75</sup> In official capacity actions the plaintiff is seeking prospective relief,<sup>76</sup> commonly in the form of an injunction. In official capacity actions, because the acts of a sovereign, a state, are at issue, typically through an administrative agency of the state, absolute immunity is available as a defense.<sup>77</sup>

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<sup>75</sup> *Kentucky v. Graham*, 473 U.S. 159, 163-168 (1985)(*cited at* Memorandum p. 6).

<sup>76</sup> *Id.*, @ 165 there.

<sup>77</sup> *Id.*, @ 167 there (*citing Imbler v. Pachtman*, 424 U.S. 409 (1976)).



18. Civil actions in the individual capacity are those where the defendants are named as individuals only, the state or administrative agency is *not* a named party, and the plaintiff is seeking only retrospective relief in the form of money damages.<sup>78</sup> In individual capacity actions, because the plaintiff is challenging the acts of the individual only, that they acted in bad faith to violate an interest protected by the Constitution,<sup>79, 80, 81</sup> qualified immunity, the opportunity to explain the reasonableness of their conduct, to a jury, is available as the defense.<sup>82</sup>

19. The individual capacity action is the tool the people use to weed the garden of good government; it is the tool we use to remove corruption to create the space for those who, in good faith, tend to the garden of government, for the good of the people, to flourish.

p. 18

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<sup>78</sup> *Kentucky v. Graham*, 473 U.S. 159, 163-168 (1985), *cited at* Memorandum p. 6.

<sup>79</sup> *Id.*, @ 166 (“to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right.”)

<sup>80</sup> The § 1983 element, ‘acting under color of law,’ is satisfied for Ms. Cunningham as she has declared immunity and that she submitted the affidavit under the rules of the agency (*see* Exhibit N, p. 6, and “Defendant is immune from civil liability [by way of] Rules 13B and 4H(2) of the Minnesota Rules for Admission to the Bar” there, indicating she acted under those Rules.

<sup>81</sup> Memorandum Opposing Cunningham, p. 24, entire page.

<sup>82</sup> *Kentucky v. Graham*, 473 U.S. 159, the bottom of p. 166 onto p. 167 (1985)(*citing Imbler*, 424 U.S. 409 (1976)).

20. Dr. Ristow expressly sacrificed any judicial challenge to the agency denial in order to expressly punish the corrupt individual by declaring an individual capacity action in the most clear terms as possible.<sup>83</sup> If this is not an individual capacity action then what is?

21. And, the District Court grant of absolute immunity conflicts with Dr. Ristow's due process rights as described by this court in its opinion in *Willner*.<sup>84</sup> Petitioner wonders: If this court has assured Dr. Ristow due process rights in his application, then may a United States District Court, *effectively*, take those rights away with absolute immunity? Dr. Ristow asserts the District Court may not, and that this is just one of the difficult questions prophesied by this court in footnote 33 of its opinion in *Imbler* discussed above.

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<sup>83</sup> Complaint (Cmpl.), ¶¶1-3; Amnd. Cmpl., ¶¶1-4.

<sup>84</sup> See footnote 1 above.

22. But, an answer may be found in the statutes granting the agencies their authority. The agency here is a creation of state statutes which describe its authority as that 'commensurate with the usages and principles of the law,'<sup>85, 86</sup> which would seem, to Dr. Ristow, to include the Constitution, the 5th and 14th amendments thereto, the due process rights therein, and the interpretation of those rights in applications to state bars described by this court in its opinion in *Willner*.<sup>87</sup>

23. Another question raised may include, whether the defendants, while prosecuting Dr. Ristow's application, as one might an application to the PTO or FDA, are acting as a criminal prosecutor would, advocating to punish criminal conduct, or whether they are acting as administrators would to assure a uniform access to a market?

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<sup>85</sup> Minn. Stat. 480.05, Power; Rules, "the supreme court shall have all the authority ... agreeable to the usages and principles of law."

<sup>86</sup> Minn. Stat. 481.01, Board of Law Examiners, "the board shall be charged with the administration of the rules."

<sup>87</sup> See footnote 1 above.

24. Dr. Ristow asserts that the defendants were acting as administrators charged with providing uniform access to the legal market in Minnesota, and that absolute immunity in such a situation would allow too much space for the weed of bad faith and corruption to spread, and should not, therefore, be available to the defendant administrator for bad faith acts in properly asserted individual capacity § 1983 and corresponding § 1985 actions.

25. Following Ms. Cunningham's defamation of Dr. Ristow, all the agency defendant's had to do to create an argument for notice and opportunity was to ask Dr. Ristow about her affidavit through his application portal, through which they asked Dr. Ristow 125 other such clarifying questions.<sup>88</sup> The absence of any such communication,<sup>89</sup> shines brightly on the defendant's bad faith and bias.

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<sup>88</sup> Cmpl., ¶8 and Amnd. Cmpl., ¶10, and "all communication" there; Cmpl., ¶16, and Amnd. Cmpl., ¶18 and "125 clarifying questions" there; and Apndx., p. 4, Judgment of the District Court, and "The Board did not inform Ristow about these accusations" there.

<sup>89</sup> Apndx., p. 4, and "The Board did not inform Ristow about these accusations" there.

26. Because Dr. Ristow asserts the District Court erred in reading a challenge to a judicial act into Dr. Ristow's claims, he does not believe he needs to reach the character under which the defendants appeared during their conduct subject of this action. But, Dr. Ristow stands ready to brief that an email between two individuals does not constitute appearing in the character of a 'witness,' as that term is understood in the context of a judicial or quasi-judicial proceeding and described by this court in *Imbler*,<sup>90</sup> and that the prosecutor and judge positions of the District Court fail for similar reasons as well.<sup>91, 92</sup>

p. 22

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<sup>90</sup> *Imbler v. Pachtman*, 424 U.S. 409, 439-440 (1976)(Ms. Cunningham's defamation of Dr. Ristow was not confronted before the denial; *in light of* Apndx., p. 4, and "The Board did not inform Ristow about these accusations" there).

<sup>91</sup> Ms. McGillic was not acting against "parties litigant," as that term is understood in the context of a judicial or quasi-judicial proceeding, when she advised co-defendants to conceal the defamation of Dr. Ristow from him in violation of his rights (*see* footnote 1 above).

<sup>92</sup> Agency staff were not acting on "parties litigant," as that term is understood in the context of a judicial or quasi-judicial proceeding, in administratively processing the application of Dr. Ritow and acted to conceal the defamation of Dr. Ristow from him, and then use it against him.

27. Any response from the defendant's is likely to include an argument that Dr. Ristow did have an opportunity to confront the subject matter of Ms. Cunningham's salaciously defamatory affidavit, during her testimony at a later administrative appeal. But, this argument is a read hearing as Dr. Ristow was entitled to confront Ms. Cunningham's false and defamatory statements prior to having them used against him, a lack of notice and opportunity that was initially raised prior to that same administrative appeal,<sup>93</sup> and an issue that, because the die has been cast, cannot be cured on appeal.

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<sup>93</sup> Cmpl., ¶¶ 31 & 32; Amnd. Cmpl., ¶¶ 33 & 34.

28. Had Dr. Ristow wanted to file an official capacity action he would have named “Director, Ms. Emily J. Eschweiler,” Director of the Minnesota Board of Law Examiners, and someone with whom Dr. Ristow is familiar,<sup>94</sup> as a defendant, but he did not. Should this Court not wish to grant certiorari, in the alternative, Dr. Ristow asks this court to grant leave to amend his pleadings to name Ms. Eschweiler as a defendant and thereby include the agency and more clearly state his gender discrimination claim, that of Ms. Cunningham, a scorned lover, seeking to harm her ex by falsely accusing him of abuse and agency staff acting on those false accusations to discriminate against him, a man accused of abuse during the height of the “metoo” movement.

29. Should this Court be so kind as to grant certiorari here, Petitioner asks that it consider the denial of certiorari in USSC case no. 22-302, *Ristow v. Cunningham*, Dr. Ristow’s state law claim of defamation for which absolute immunity was granted in conflict with the state common law described by the Minnesota Supreme Court in *Jenson v. Olson*.<sup>95</sup>

p. 24

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<sup>94</sup> Ms. Eschweiler and Dr. Ristow graduated high school together and shared a personal relationship.

<sup>95</sup> Exhibit N, and see the Petition for Writ in USSC case no. 22-302, *Ristow v. Cunningham*, start p. 19 and “Argument” to p. 21, and “phase of the process” there.

30. And so Dr. Ristow most earnestly Petitions here for this Court to issue, under Title 28 of the United States Code, Section § 1254(1), a Writ of Certiorari to the Eighth Circuit and asserts that the judgment of the Court of Appeals there, in case no. 22-3029, affirming the District Court grant of absolute immunity in an individual capacity action, should be overturned, and that this Court should hold that absolute immunity is not available as a defense in an individual capacity action, that recites a valid § 1983 claim, for bad faith conduct during an investigation, by state civil administrative agency staff, into the application of a private citizen plaintiff, and remanded for proceeding consistent therewith.



And,

I, Petitioner, Brent Alan Ristow, of 1027 Ottawa Avenue, West Saint Paul, Minnesota, 651-260-0970, brentristow@brightonashford.com declare, under the penalty of perjury, that the foregoing is true and correct.

Respectfully,



Brent A. Ristow

Executed on: 7/11/23

In the County of: Dakota

In the State of: Minn.