22-928

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROGER SWARTZ ON BEHALF OF HIMSELF, ROGER SWARTZ ON BEHALF OF HIS SON A.S., ROGER SWARTZ ON BEHALF OF HIS DAUGHTER E.A.S. A 5-YEAR-OLD CHILD,

Plaintiffs-Petitioners

-v.-

Amy Gutmann, The Board Of Trustees At The University Of Pennsylvania, Scott Diamond, Penn Professor And Co-Founder Of Reaction Biology Corp., The Board Of Trustees At Princeton University, Abigail Doyle, Formerly Professor At Princeton Univ., Diane Carrera, David Macmillan, Professor At Princeton University, Robert Hartman, Employee at Reaction Biology Corp., Haiching Ma, Robert Hartman, Conrad Howitz, Kurumi Horiuchi.

Defendants-Respondents

PETITION FOR A WRIT OF CERTIORARI

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the 3rd Circuit

Roger Swartz, on behalf of himself & on behalf of his minor son A.S. & 5-year-old daughter E.A.S.
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Appeal from the December 15, 2022, *Per Curiam* Opinion of Circuit Judges Greenaway, Jr., Porter and Nygaard of The United States Court of Appeals for the Third Circuit entirely affirming the District Court's Opinion from the Memorandum-Decision and Order and Judgment of The United States District Court for the Eastern District of Pennsylvania to Dismiss this suit with prejudice by Judge Edwardo Rubreno entered on March 23, 2022, and Action No. 22-1568.

QUESTIONS PRESENTED

1. When effectively unrestricted research funding—requiring nothing more than a yearly progress update—by the state enables a party such as a University Professor to enjoy open-ended activities and privileged freedom to determine how to spend the vast majority of their time during working hours on what premise could that make them, or their acts to undermine the constitution rights of another treated as one carried out by a state actor?

2. Would demonstrating that unrestricted state funding led to significant increases in power—as defined by their ability to influence others to act—enabling one or more university professors to damage another by violating their constitutional rights who then filed a complaint against the Professor[s] "contain[ing] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face"—demonstrate that

such a professor is engendered with power that permits them to engage in unlawful activities as a state actor because it shows that their conduct is otherwise chargeable to the state and because the deprivation is caused by the exercise of some right or privilege created by the State?

3. If a complaint provides "enough fact to raise a reasonable expectation that discovery will reveal evidence" related to constitutional violations against the plaintiff-petitioner[s] what is the threshold requirement necessary to demonstrate that unrestricted state funding provided to a University Professor was the sole enabler of them violating the constitutional rights of another?

4. If a University President leverages powers derived by the university from state funding and their unusually high salary is enabled by state funding does that support that alleged abuses of constitutional rights by the University President due to leveraging such state funding derived powers effectively make them a state actor?

5. On what basis can a Judge decide from paper pleadings alone that a claim of equitable tolling does or does not meet a standard "that some extraordinary circumstance stood in his way" to filing the claim. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)?

6. Would fear for the well-being of oneself and one's child that had to be sent to another country to live with grandparents due to harms sustained by the acts of defendants-respondents serve as sufficient grounds to support "that some extraordinary circumstance stood in his way" to filing the claim. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

7. What is the threshold for sustained damage combined with fear of suffering additional damages for bringing a complaint forward against defendants-respondents necessary to meet the equitable tolling requirement "that some extraordinary circumstance stood in his way" to filing the claim. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

8. Can a Judge[s] lawfully make a decision to proactively unseal a court document containing Health Information of a child 25 years into the future or does that citizen have the right to keep such documents sealed into Perpetuity?

9. Can multiple Frauds taking place for 9-years under the continuing violations theory increase the level of Scienter attached to that Fraud such that a new tort liability can manifest after Scienter passes some threshold?

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JURISDICTIONAL STATEMENT

The Opinion of The United States Court of Appeals for the Third Circuit to entirely affirm the District Court's Opinion Memorandum and Decision to Dismiss this suit with prejudice was entered on December 15th, 2022. This Petition for a Writ of Certiorari is timely filed within 90 days (28 U.S.C. § 2101(c), by March 15th, 2023, of the Circuit Court's Opinion

STATUTORY BACKGROUND AND STATEMENT OF THE CASE RELATED TO ALL DEFENDANTS-RESPONDENTS BEING CONSIDERED AS STATE ACTORS

This case arises out of abuses of power committed by University Professors, Abigail Doyle, David MacMillan and Scott Diamond, University Officials The criminal Amy Gutmann and their Aiders and Abettors the criminal and rapist Robert Hartman, Konrad Howitz, Kurumi Horiuchi, Haiching Ma and Diane Carrera—that may be treated as equivalent principals of the crimes they committed and damages they brought onto Plaintiffs-Petitioners—collectively

whose acts intentionally brought a totality of damages to Roger Swartz, his family, his children, his marriage, his career, his ability to access gainful employment, his ability to access adequate healthcare and can be effectively be categorized as a modern day assassination attempt on a family.

These abuses of power were 100% attributable to the funds these professor defendants-respondents and their affiliated University defendants-respondents received from the federal government to conduct basic research. **That is, it would have been impossible for these individuals to have had had the influence to cause the harm them caused had they nor their university never received federal funding to fund their basic research projects.** That federal funding not only covers the cost of equipment and supplies, it pays part of the university professor's salary, pays the cost of renting and operating the laboratory research facility, even depreciation of the laboratory facility and it pays the cost for the professor to attend conferences including their flight, room and board, conference fees and entertainment. These research funds are given to the Professor to conduct research in the manner they propose. The freedom to explore is effectively self-determined since the state does not put restrictions on the research. The federal government requires nothing more than an annual update on the research progress. Thus, these Professors and Universities are not "contractors performing services for the government" see *Rendell-Baker v. Kohn*, 457 U.S. at 842-843 (1982). These Professors and Universities own the research, the patents derived from their

research and furthermore there is no deliverable to the government nor the public. They report to no one.

Furthermore, these research funds position the Professor to increase their own influence and enable them to attain a perception of power that enables the University Professor to have influence over others to potentially—if they choose to—violate the constitutional rights and basic rights of others. These federal research grants create mini-magisterial domains because the University Professor especially once they achieve tenure has to answer to no one. Further, like any other small self-governing country—e.g. the University Professor and members of their research laboratory—they form tight allies with University research labs alike. Additionally, the University itself generally has its own police force.

What often results are Petoria like sovereigns—with substantial diplomatic immunities from the rule of national law—compliments of the Federal Research funds.

These professors and high-level administrators are positioned to bring untold harm to others especially constitutional harms because the power they have gained from the state from their own research funds combined with the power their entire university and colleagues has gained from federally research grants allows these professors to break laws in a way that is uncommon and resembles that of a disease when the laws are broken.

The Professor having attained funds from the federal government is effectively viewed by the university as their own jurisdiction, their own self-governing body. This equates to significant amounts of power since there is really no one that tells there Professors how to do their job, no corrective actions for wrongdoings, and little time obligations during working hours.

Many University Professors may have a reputation as hard working giving off the impression that they do not decide how they spend their time. Although, this is a common misconception. The University Professors seeks to increase their power, influence and accomplishments and thus works hard for their own benefit—to build their own name—and the state funds these activities by proving research grants. Effectively, the Professor could be viewed by the University as a source of funds and advertising rather than an expense as a result of their receiving funds from the government. Consequently, rather than be viewed as an employee that the University can direct, the funded Professor is viewed like a customer that can place demands on the University. This role reversal between the University-employer and professor-employee is 100% attributable to research funding provided by the federal government.

As a direct result of receiving funding from the government to conduct basic research many of these professors are released from obligations to teach multiple classes, where often the university will only require them to teach a single class each semester. These benefits from the receipt of government funding consequently enables the University

Professor to have a privileged freedom to determine how they spend their time during working hours. It also provides the means for them to increase their influence with many corporations and Professors at different universities. Further, it enables them to raise investment funds and start companies that would otherwise be very difficult to start—All a direct consequence of receiving federal funding to conduct their research. In a sense these University Professors "walk around like they own the place" at their respective universities as a result of federal funding of their research. The government has given the University Professor an amount of power that rivals a billionaire, compliments of state funding. Just think, a billionaire managing a company has to answer to investors, customers and regulators. Thus, there is at least some check and balance. This is not the case for a University Professor that receives significant federal funds to conduct research. That professor has no customers, no regulators, and no investors; the university and even students answers to them solely because of the federal funding they receive for their research.

What the federal government has literally created is as a sovereign entity with almost no check and balance whatsoever. Thus, any of their actions interfering with the constitutional rights of another must be treated as the action of a state actor based on the *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S. Ct. 2744, 73 L.Ed.2d 482 (1982) two-part test.

The power a high-ranking University official derives from the collective federal research funds its school's

faculty receives is even more significant. As an example, Amy Gutmann when she was University President at Penn, and possibly even now, could leverage any one of the research grants Penn Professors received from the federal government, the inventions that resulted from the research funded by the federal government, the research facilities effectively funded by federal research grants that can be used for partnering with corporations to conduct corporate research and she can leverage the influence of another professor that receives state funds for research. Consequently, Amy Gutmann derived much power from the state funding of research at Penn. That funding amounted to generally more than 25% of Penn's non-hospital practice total operating budget. Considering what government stimulus did for the country including people's ability to spend, corporate profits and corporate valuations during the COVID pandemic it is easy to understand the impact, power and influence Amy Gutmann derives from federal research grants given to Penn and their professors that amount to more than 25% of a Penn's operating budget. That funding includes both direct costs and for indirect cost recovery (ICR). According to the Penn 2021 Operating Budget

> "Indirect costs represent a significant portion of the overall cost of conducting laboratory investigations at large, research-oriented universities and include infrastructure, utilities, maintenance, library, and **administrative expenses,**

> **both central[1] and school-based**. ICR on University grants helps offset these expenses and is a key source of unrestricted revenue. The University's federal ICR rate for FY2021 will be 62.0%"

Quite clearly a sizable portion of Gutmann's then Salary is paid through indirect cost recovery (ICR) that is paid for by research grants from the federal government. This is a matter of fact see https://nexus.od.nih.gov/all/2015/09/11/all-about-indirect-costs/ also see https://www.youtube.com/watch?v=1XvVibv2opQ. Penn received $884.7 million in federal research funds—71% of their total research award portfolio funds received—in 2020 where $339 million (or 62% of direct costs) was allocated for indirect cost recovery. Looking back into 2010 Penn's research award portfolio was 82% funded by federal research funds where Penn professors received more than $745 million in federal research funds. Furthermore, according to the Penn Center for Innovation Penn had 746 executed commercial agreements in 2021, was issued 142 patents, filed 734 patent applications, and raised $815 million for start-up companies. All these activities can be traced back to a single source: Federal Government research grants and there is never any deliverable to the government or the public.

Furthermore, Amy Gutmann then could have easily arranged for a patent—resulting from research

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[1]Central administrative expenses encompasses Amy Gutmann's salary being paid in part by Federal Research Grants.

funded by the state—to be licensed to a particular entity at a discounted price or as part of an exclusive licensing agreement—in such a way that there is a financial concession by Penn—in exchange for that entity violating the rights of a particular person; or in exchange for that company giving business to Reaction Biology Corporation, a company that offers mainly commodity like scientific services, fueling their growth; or alternatively they could have engaged in a partnership to conduct research for the corporation in such a way that it is disproportionately favorable for that corporation with less meaningful benefit—if any benefit at all—for Penn. And Gutmann derives nearly the entirety of her power from the federal research grants that Penn receives since those grants are the primary source of the power and influence Penn has. Gutmann borrows that influence to propel her own agenda and she must be considered a state actor for purposes of actions she has taken that would have been probabilistically impossible had Penn not received federal research funds at all.

STATEMENT OF THE CASE RELATED TO EQUITABLE TOLLING

Section I of the 14th Amendment states:

> "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."

(U.S. Const. Amend. XIV, § 1). Plaintiffs-Petitioners suffered a multitude of severe harms from the collective actions of defendants-respondents making it impossible to file this complaint sooner without compromising A.S. and E.A.S. Through, a separate experience of "pursuing his rights diligently" Roger Swartz recognized his capacity to effectively represent himself and his children in this proceeding allowed him by filing this complaint with the U.S. District Court to no longer live under the fear of himself, A.S. and E.A.S. as well as E.S. suffering additional damages for bringing a complaint against defendants-respondents after having his 14th and 13th Amendment rights denied to him, his career ruined and subject to multiple counts of fraud by his former doctoral advisor Abigail Doyle, his Family terribly damaged in modern day terms that is his "home was figuratively [2] burnt down by defendants[-respondents]" his wife subjected to a sham employment opportunity by Reaction Biology Corporation as the platform to be employment raped by Robert Hartman and Conrad Howitz through chain of command direction of Amy Gutmann-compelled by Abigail Doyle, where Scott Diamond, Kurumi Horiuchi and Haiching Ma all either state actors or aiding and abetting state actors and thus may be treated as Principals or the equivalent of State Actors for any act that they aided and abetted.

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[2] This is an instant where the figurative term carriers far more consequences and damages than the literal term as a home is a material thing.

See, *e.g.*, *Petro-Tech, Inc. v. W. Co. of N. Am.*, at 1357, (3d Cir. 1987). Where after having his family, career and source of income suffer a totality of damages was left with no choice by to send his son A.S., then 2-years-old, to live in another country and continent with his grandparents for 16 months (October 2012 to February 2014) primarily out of fear to best preserve A.S.'s well-being from the actions of specific defendants-respondents especially Amy Gutmann and Abigail Doyle.

It was the active learning of the law through a separate mater that Roger Swartz came to realize that he had the capacity to put together the present proceeding where he could also liberate himself from the fear of him, his children A.S. and E.A.S. a 5-year old child and E.S. from suffering further damages from the actions of defendants-respondents where beyond an "extraordinary circumstance stood in his way" (*Pace v. DiGuglielmo*, 544 U.S. 408, at 418 (2005)) from bringing this proceeding to court sooner.

Roger Swartz contends that it was impossible for him to file this complaint sooner than he did in September 2021 since he lived under an extraordinary fear for the well-being of his children A.S. and E.A.S. who was born in 2017. Roger Swartz had learned quickly from 2010 to 2012 and beyond that defendants-respondents ability to bring harm to him significantly exceeded the reach of the Princeton University campus. The extent to which Roger Swartz was undermined and his then wife E.S. was employment raped made abundantly clear in 2011 that

> "neither his place of employment, school enrolled in, nor source of income nor geographic location had any bearing on the reach of defendants-respondents"

(3d. Cir. Dkt. No., 61 pp. 19) ability to bring harm to him and his family by meddling into his and E.S.'s employment activities and really every aspect of their lives. It was abundantly clear in 2011 through 2020 that had Roger Swartz found council for this suit including for himself and for A.S. and E.A.S. "with absolute certainty defendants-respondents w[ould] illegally meddle into the affairs of such council and likely compel them to purposely undermine their case. Thus, finding council for himself nor A.S. and E.A.S. [wa]s not an option for Roger Swartz" (see *Petition for a Writ of Certiorari* Case No. 22-173) Thus, it was only possible that Roger Swartz could bring this case forward when he felt that his abilities as an attorney enabled him to fully execute every aspect of this case—realizing this during late March 2021. This realization of his ability to completely execute this proceeding was due to Roger Swartz pursuing his rights in a separate legal matter thereby satisfying the "extraordinary circumstance test" and simultaneously the "pursuing his rights diligently" test see *Pace v. DiGuglielmo*, 544 U.S. 408, (2005). (Also see, *e.g.*, *infra.* pp. 41-42).

RELEVANT STATUATORY PROVISIONS

U.S. Const. Amend. XIII, § 1
(See, *e.g.*, *infra.* Appendix D pp. 27a)

U.S. Const. Amend. XIV, § 1
(See, *e.g.*, *supra.* pp. 8)

18 U.S.C. § 1341 - Frauds and Swindles – Provides the Relevant Part:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both."

42 U.S.C. § 1983 - Civil Action for Deprivation of Rights – Provides in the Partially Relevant Part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress"

Racketeer Inspired Corrupt Organizations (RICO) 18 U.S.C. § 1961

(See, *e.g.*, *infra.* Appendix C pp. 26a)

18 U.S.C. § 1590 - Trafficking With Respect To Peonage, Slavery, Involuntary Servitude, Or Forced Labor - as a Criminal RICO Predicate Act – Provides in the Relevant Part:

"(a)Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both."

Chapter 77 of U.S.C. Title 18 as a Criminal RICO Predicate Act by the above 18 U.S.C. § 1590 caption.

18 U.S.C. § 241 Conspiracy Against Rights - As A Criminal RICO Predicate Act – Provides in the Partially Relevant Part:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> They shall be fined under this title or imprisoned not more than ten years, or both"

18 U.S.C. § 1343 - Fraud by Wire, Radio, or Television – Provides in the Partially Relevant Part:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in

interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both."

18 U.S.C. § 666 - Theft or Bribery Concerning Programs Receiving Federal Funds – Provides in the Relevant Part:

"(a) Whoever, if the circumstance described in subsection (b) of this section exists—

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—
(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or

> series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or
>
> (2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;
>
> shall be fined under this title, imprisoned not more than 10 years, or both."

Intentional Infliction of Emotional Distress

> "The tort of intentional infliction of emotional distress (IIED) occurs when one acts abominably or outrageously with intent to cause another to suffer severe emotional distress, such as issuing the threat of future harm."

Intentional Infliction of Emotional Distress *prima facie* claim in Pennsylvania (See, *e.g.*, *Manley v. Fitzgerald, at 1241,* 997 A.2d 1235 (Pa. Commw. Ct. 2010))

> "a prima facie claim, Plaintiff must plead facts demonstrating that (1) a person who by extreme and outrageous conduct (2)

intentionally or recklessly caused (3) severe emotional distress to another"

FACTUAL BACKGROUND

COMPREHENSIVE CASE INTRODUCTION

Defendants-respondents undermined well-being and most fundamental rights of Roger Swartz and E.S. where some defendants-respondents including Amy Gutmann broke an untold number of laws where the totality of damages that defendants-respondents brought onto Roger Swartz and E.S. resulted in their children A.S. and E.A.S. being affected (Also see Sealed Causes of Action E.D. Pa. Dkt. No. 11 and Sealed Motion for Reconsideration 3d. Cir. Dkt. No. 13) (See, e.g., *supra.* pp. 1-2, 8-11) and because both their parents Roger Swartz and E.S. had sustained damages brought onto them by specific defendants-respondents in a way that makes things like of arson of one's home—that is

> "Here the conduct of Reaction Biology Corporation defendants fits seamlessly under the Restatement provision definition cited by *Petro-Tech, Inc. v. W. Co. of N. Am.*, (3d Cir. 1987) and all of their supporting caselaw that is internally cited. Looking closely at *Smith v. Thompson* (Ct. App. 1982) that held an employer liable for encouraging employee to burn down Plaintiff's house we see a great deal of parallelism that is

> figuratively speaking Reaction Biology Corporation defendants though aiding and abetting via chain of command from University of Pennsylvania defendants"... Amy Gutmann and Scott Diamond where Amy Gutmann was compelled by her daughter defendant-respondent Abigail Doyle ..."had done far worse than burn down Plaintiffs' homes they actually burned down part of Plaintiffs' lives. Being that there was no physically injury Plaintiffs[-Petitioners] would substantially preferred having their home literally burnt down rather that figuratively.

(E.D. Pa. Dkt. No. 50 pp. 30)—look like a parking ticket in comparison to the things that these specific defendants-respondents did through premeditated and chain of command efforts that undermined every major aspect of the life of Roger Swartz and E.S. Plaintiffs-Petitioners stated many times throughout out their filings that when "both parents of child are undermined, the damage caused on the child far exceeds the damage of the sum of the two parents separately sustaining that harm."[3] (E.D. Pa. Dkt. No. 1 pp. 9 ¶ 21)

The laws broken by specific defendants-respondents are extensive: Amy Gutmann through chain of command to Scott Diamond while being compelled by

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[3] Consider the difference between one eye vs. both eyes being damaged.

her daughter Abigail Doyle violated the rights of Roger Swartz and E.S. breaking many laws including their 14th Amendment Rights, 18 U.S.C. § 241 Conspiracy Against Rights, curtailed Roger Swartz's 13th Amendment Rights subjecting him to involuntary servitude violating of Criminal RICO by 18 U.S.C. § 1590 as a predicate act, civil RICO and also Chapter 77 of U.S.C. Title 18. Abigail Doyle also compelled Gutmann to break 18 U.S.C. § 1343 and 18 U.S.C. § 666(a)(1)(A). (See, *e.g*, E.D. Pa. Dkts. No. 56 pp. 38 and No. 1 pp. 45-50).

Furthermore, Abigail Doyle committed three counts of Fraud against Roger Swartz including First,

> "Abigail Doyle led Roger Swartz on into thinking that he could earn a PhD thereby causing Roger Swartz to exert extensive time and effort in a manner that is not sustainable. Although, through her ill intent Abigail Doyle undermined this effort not on the basis of job performance"... ..."where Abigail Doyle defrauded Roger Swartz out of completing work at a specific intensity when she had no intention to support his completion of his PhD. Additionally, Abigail Doyle sought to bring career harm to Roger Swartz by leading him down a path that led him to think he had a fair chance to obtain a PhD when she had no intention of supporting it"... while ..."placing unusually disproportionate demands on him led

> Roger Swartz to exert efforts that outstripped other lab members"

(*Id.* at ¶ 49) Where "These demands forced Roger to work 100 hours a week or more or about 30 hours per week more than other Doyle group members" (*Id.* at pp. 59 ¶ 80) that were all initially same year graduate students. Second, during the PhD candidacy exam writing period

> "Abigail Doyle attempted to create a sort of fraud and misrepresentation"... ..."in that she instructed Roger Swartz to report the purpose of his research was something that it was not as a means to undermine him. Writing in the "Specific Aims" section that the purpose of one's research is to accomplish or investigate something already done with no new science incorporated was a clear ground for one to both have the graduate student's credibility questioned but also to lose the authorship rights of their work. That is it was a basis to be failed on one's general exam a point that was made quite clear to graduate students not to conduct research that is a repeat of already completed research. Although, one cannot avoid partially overlapping with the research of others in the field the "Specific Aims" section allowed a graduate student to explain the uniqueness of their research and what specifically they were trying to

> accomplish to demonstrate the originality of one's research. Roger Swartz wrote the actual reason of his research in the "Specific Aims" section of his thesis" (see Dkt. No. 1 pp. 17-18 ¶¶ 28).
>
> Plaintiff Roger Swartz not carrying out this fraud resulted in a negative consequence on Roger Swartz being push[ed] out of his research program and could also be viewed as an additional fraud if not part of the same fraud since Doyle punished Roger Swartz for not committing the fraud rather than for a legitimate reason."

(quoting E.D. Pa. Dkt. No. 56 pp. 19). Abigail Doyle likely developed a motive to steal the research credit from Roger Swartz and simply give it to another lab member. Why would she do that? Well initially she received an order from Diane Carrera the right-hand person to David MacMillan. But later Abigail Doyle saw that Roger Swartz had made significant research breakthroughs in the lab and that his work over a period of 12 months comprised several publications. Finally, after no longer being a member of Abigail Doyle's lab

> "Roger Swartz requested Abigail Doyle write him a letter of recommendation for employment opportunities Abigail Doyle verbally told Roger Swartz she would only support him to work in a lab

> restricting him from other opportunities[4] as she attempted to subject Roger to involuntary servitude violating his 13th Amendment Rights"

(quoting E.D. Pa. Dkt. No. 1 pp. 41 ¶ 51). Additionally, when Roger Swartz mentioned his interest in non-laboratory work

> "Abigail Doyle essentially[5] told Roger Swartz that he could try to apply and interview for other employment opportunities, but they would not result in an actual job." (Dkt. No 1 pp. 44 ¶¶ 52) and additionally "Abigail Doyle essentially stated to Roger Swartz that she would only present him in a light to get specific types clearly implying that she would portray him in a different light to prevent him from obtaining another type of job." (Dkt. No 1 pp. 44 ¶¶ 52)."

(quoting E.D. Pa. Dkt. No. 56 pp. 18) Unquestionably, the use of essentially here is one where there was no other possible conclusion. Or in other words it was a 1 + 1 = 2 conclusion.

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[4] To the extent that an opportunity required Abigail Doyle to be a reference, encompass virtually every employment opportunity.
[5] Roger Swartz's inquiry into nonlaboratory-based roles was met with as close to an exact comment from Abigail Doyle as possible stating "you could try but it would be unlikely to result in a job".

ABIGAIL DOYLE'S 9-YEAR DURATION OF FRAUD INVOLVED A LEVEL OF SCIENTER THAT SEVERELY BROUGHT DAMAGES ONTO ROGER SWARTZ AND AFFECTED HIS DEPENDENT CHILDREN.

The Early Summer Start at Princeton University's Doctoral Program in Chemistry

Roger Swartz initially joined the lab of David MacMillan at Princeton University as a PhD student as part of an early summer 2008 start. While meeting and exceeding the 9am – 11pm, with 2-hour evening break laboratory schedule in MacMillan's lab Roger also needed to prepare for placement exams scheduled at the beginning of September. Thus, Roger made a first then second request to take 2 additional hours out of the lab schedule for 4 weeks to solely prepare for 4 different rather extensive placement exams. David MacMillan agreed and asked Roger to leave the lab the following week but only after completing his project. Upon completing the project 3½ months later MacMillan told Roger to leave the lab that day. While making his way to the main entrance of the building with his things post-doctoral associate Mark Scott said to Roger that he'd better go MacMillan's office and beg him, literally beg, him to take him back. The post-doctoral associate explained to Roger there would be trouble if he did not go to David MacMillan and literally beg him for another chance. It was a very clear threat as to Roger Swartz's well-being Mark Scott was making on David MacMillan's behalf. As if Roger would be required to engage in types of begging behaviors that are

equivalent to having their career and in turn their well-being spared figuratively speaking. This was not 100% surprising. A few months earlier during the summer of 2008 Tristram Lambert now professor at Cornell University was invited to a MacMillan Group bar-bee-cue where Tristram was asked to give a speech a significant portion of the speech, greater than half, focused on how David MacMillan did not like a graduate student and appeared to single handedly dismantle the well-being of this individual, their career and the opportunities available to them. Fifth year graduate student Diana Carrera then considered a kind of right-hand person to David MacMillan was the only other individual MacMillan asked to give a speech at the bar-bee-cue. Roger Swartz chose not to beg MacMillan.

Abigail Doyle's Three Counts of Fraud and Doyle's Extensive Undermining of Roger Swartz

Over time in communicating with another faculty Roger Swartz joined the lab or Abigail Doyle who was then a first-year faculty member in the chemistry department. Sometime thereafter less than a month after Roger Swartz started in Doyle's lab Diane Carrera then the so called "right hand person" to David MacMillan went somewhere with Abigail in their coats possibly for a lunch or coffee for a little more than an hour. Immediately following Abigail Doyle's lunch with Diane Carrera there was an animosity from Abigail towards Roger Swartz. As if their working relationship went from friendly that morning to Abigail functioning in such a way to be

very difficult to communicate and work with that afternoon forward. It immediately became quite clear that Abigail was violating employment laws by creating unusually different standards for students that are supposed to be considered at the same level.

Abigail Doyle committed three counts of Fraud against Roger Swartz. (See, *e.g.*, *supra.* pp. 19-23).

Amy Gutmann's Undermining the Entire Family of Roger Swartz including Ordering the Rape of E.S. the wife of Roger Swartz when his son A.S. was 1 year old.

After leaving Princeton in June 2010 Roger Swartz enrolled in the PhD program in Materials Engineering at his alma mater Drexel University. Although, it quickly became apparent that the situation at Princeton found its way into the graduate program at Drexel University. This ultimately caused Roger Swartz to have to leave Drexel after 9 months when his son A.S. was then 3 months old.

Consequently, Roger Swartz started a test-prep business with the idea that he could try and support his family without having to rely on references that would try and force him into suppressive roles. Although, it became apparent with time that about 50% of the persons hiring Roger for test-prep were done so by the influence of Amy Gutmann, University of Pennsylvania and in some instances Princeton University Department of Chemistry.

Amy Gutmann—compelled in part by her daughter Abigail Doyle—through chain of command ordered Scott Diamond to have Reaction Biology Corporation undermine the family of Roger Swartz. Amy Gutmann spurs this by Scott Diamond having Reaction Biology Corporation create a bogus project where E.S. was hired to work on that bogus project. Haiching Ma hired E.S. where the bogus project served as the means for Kurumi Horiuchi to abuse E.S. while Robert Hartman sexually harassed E.S. and committed employment rape on E.S. This employment rape was misrepresented by the District Court Judge Eduardo Robreno as sexual harassment (See, *e.g.* E.A. Pa. Dkt. No. 70, pp. 5) when in fact it was rape where rape has a single definition. Additionally, Conrad Howitz committed employment rape on E.S. Or in other words:

> "By giving E.S. a project that was fundamentally flawed and unsuitable in nature it impaired E.S.'s ability to make progress this allowed her to harassed by her supervisor Kurumi Horiuchi and this acted to threaten the employment of E.S. cause her to give into sexual harassment and employment rape. Kurumi Horiuchi would verbally abuse E.S. and threaten her on her performance followed by repeated verbal sexual harassment by Robert Hartman. Thus, E.S. was being sexually harassed when her job was at threat thus placing E.S. in a very vulnerable position because she felt as if

> she had limited recourse because her performance was already in question." ...due to the bogus project assigned to her... "**This led to a form of employment rape on E.S. in a process that she felt her ability to provide for her**" **...then one year old... "child A.S. depended on.** At about the same time Roger Swartz who then worked as a tutor saw a dramatic decrease in demand from existing customers resulting in earnings losses while at the same time also having some customers act in unfavorable ways towards him. All these so to speak suddenly unfavorable customers had links to University of Pennsylvania or Princeton University. That is they had parents or grandparents that were either employed by these institutions"

(quoting E.D. Pa. Dkt. No. 1 ¶ 60). In the weeks leading up to the employment rape of E.S. by Robert Hartman, Roger Swartz saw a dramatic loss in income because it became clear and apparat that

many of Roger Swartz's customers were planted[6] by Amy Gutmann and other defendant(s)-respondent(s).

THE TOTALITY OF DAMAGES SUSTAINED FROM THE ACTIONS OF SPECIFIC DEFENDANTS-RESPONDENTS BROUGHT DEVELOPMENTAL HARM TO A.S. AND E.A.S. THE CHILDREN OF ROGER SWARTZ.

THIS HARM TO BOTH CHILDREN OF ROGER SWARTZ WAS LED BY THE CRIMINAL AMY GUTMANN COMPELLED BY HER DAUGHTER ABIGAIL DOYLE AND CARRIED OUT IN PART BY THE CRIMINAL AND RAPIST ROBERT HARTMAN.

THESE CRIMINALS AMY GUTMANN AND ROBERT HARTMAN ARE GUILTY OF SERIOUS CRIMES SIMILAR TO PREMEDITATED MURDER IN ROGER SWARTZ'S OPINION.

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[6]After the time of the employment rape of E.S. there was an extensive number of **Shock the Conscience** comments made by customers to Roger Swartz, experiences planted by Amy Gutmann (See, *e.g.*, P.A. Ed. Dkt. No. 13 pp. 21-25 **Emphasis Added**) Additionally, because of their timing and relation to the whole of the events also were significantly shocking to the conscience. "[T]he measure of what is conscience-shocking is no calibrated yard stick," *Lewis*, 523 U.S. at 847, 118 S.Ct. 1708, and "[d]eliberate indifference that shocks in one environment may"... ..."be so [much more] patently egregious in another." *Id.* at 850" (Citing, *United Artists Theatre Cir., Inc. v. Twp. of Warrington, PA*, 316 F.3d 392 at 399 (3d Cir. 2003))" The context is critical.

IN OTHER WORDS, THE CRIMINAL AMY GUTMANN AND THE CRIMINAL AND RAPIST ROBERT HARTMAN EACH DESERVE THE PENALTY THAT FITS THEIR CRIME.

IN THE OLD DAYS AMY GUTMANN WOULD HAVE BEEN SUBJECTED TO JUDICIAL DUEL WITH HER ADIER AND ABETTOR THE CRIMINAL AND RAPIST ROBERT HARTMAN FIGHTING AS HER STAND-IN[7].

A GUILTY VERDICT WOULD CARRY AN UNPARDONABLE SENTENCE OF DEATH FOR AMY GUTMANN THOUGH MEANS—DETERMINED BY PLAINTIFFS-PETITIONERS[8]—DESCRIBED AND DEEMED ACCEPTABLE IN THE BIBLE OF HER ANCESTRAL RELIGION, JUDIASM. FURTHER GUTMANN WOULD FORFEIT 95% OF HER ASSETS.

A GUILTY VERDICT FOR ROBERT HARTMAN WOULD CARRY THE SAME SENTENCE OF DEATH AS AMY GUTMANN GIVEN THEIR COMMON RELIGION.

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[7] The demon Amy Gutmann must be smitten. It is not only appropriate but proper that the criminal and rapist Robert Hartman fight on behalf of Amy Gutmann, the person that tasked him to employment rape E.S. The fate of Gutmann and Hartman must be tied.

[8] That seems only fair.

"These damages sustained to Roger Swartz and E.S. from defendants-respondents have brought potential developmental harm to A.S. and E.A.S. This developmental harm could soon become irreversible if A.S. and E.A.S. are not awarded damages." (quoting E.D. Pa. Dkt. No. 1 ¶ 88). "[W]hen both parents of a child are undermined, the damage caused on the child far exceeds the damage of the sum of the two parents separately sustaining that harm." (E.D. Pa. Dkt. No. 13 pp. 18 citing E.D. Pa. Dkt. No. 1 pp. 9 ¶ 21). Or stated differently "When both parents of E.A.S. are undermined E.A.S. is even further undermined far greater than the sum of each parent being undermined separately." (E.D. Pa. Dkt. No. 1 ¶ 3) The same can be said of A.S. (*Id.* at ¶ 4).

> "[B]ecause of the inextricable link between a child and parent and that child's need for their parents to have equal rights to others in society, their parents need to not have their efforts undermined by others especially illegally with ill intent, their parents need for a preservation of their 14th Amendment Rights of liberty and in turn property because of the codependence of liberty and property."... ...Additionally... ..."events such as employment rape that act to undermine the long-term well-being of the parent while also tending to undermine the career preparation of the parent that serves as the parent's means to earn a living. That career preparation is substantially harmed and undermined

when the person is hired for a role because of that career preparation and is then subjected to a sham project, harassing events and employment rape. Further, such career harm can take a long-term toll on the individual until they feel they have gotten some justice from the unlawful activities. When any of these human rights, liberties and protective laws are compromised any child of such parent also suffers because a child's wellbeing is linked to the wellbeing of the parent"... ..."because of a child's dependence on their parents for a sense of security and sense of well-being." (*Id.* at ¶ 96).

"Although, by undermining E.S. Robert Hartman also undermined the children A.S. and later E.A.S. born some years later that depend on E.S. to feel that she has had a fair shot in society, that she felt she was treated with dignity and respected in a humane way. Robert Hartman undermined all these rights of E.S. and in turn the children of E.S. suffered a developmental blow." (*Id.* at ¶ 85).

AMY GUTMANN'S ABUSE OF POWERS AT THE UNIVERSITY OF PENNSYLVANIA SUPPORTS THAT SHE USED PENN'S RESOURCES AS GUTMANN'S PERSONAL FIEFDOM.

To bring the damage she did onto Plaintiffs-Petitioners Gutmann would need to use an excessive number of Penn resources. She abused her position as Penn's Principal Administrator and leveraged University resources towards her own malicious intent in bringing a totality of savage destruction on Plaintiffs-Petitioners family and life. In doing so Gutmann broke countless laws (see *e.g. supra*, pp. 18-19 and *infra*, pp. 32-36) with the abuse of Penn resources including Penn faculty and staff, Penn technology, Penn facilities, Penn students, Penn's money for Gutmann's own malicious intent. Quite apparent Gutmann treated Penn resources—substantially funded by Federal Research funds—and Penn employees as Gutmann's personal fiefdom. This has raised the question to Plaintiffs-Petitioners that if a guilty verdict is reached to what extent can Penn alumni legally recover their $billions in donations to Penn's endowment after Gutmann became a criminal. A criminal leading a fundraising campaign for a university they are the principal administrator of makes such raised funds illegitimate. Thus, when Penn Alumni recover their charitable donations back from Penn what recourse will Plaintiffs-Petitioners have to recover awarded damages when Penn go into bankruptcy?

PROCEEDINGS BELOW

Complaint Filed in the U.S. District Court of the Eastern District of Pennsylvania.

Roger Swartz on Behalf of Himself, Roger Swartz on

behalf of A.S., Roger Swartz on behalf of E.A.S. commenced this complaint on September 30, 2021 for $260 Million in Damages for harm brought to his marriage, career, life, liberties, ability to acquire property and children by specific defendants-respondents. Plaintiffs-Petitioners had suffered an extensive amount of damages where numerous laws were broken by defendants-respondents in bringing damages against Plaintiffs-Petitioners including "20 U.S.C. § 2501; 20 U.S.C. § 1221–1; 13th Amendment as it relates to involuntary servitude, 14th Amendment as it relates to a deprivation of life, liberty and property,"... ..."18 U.S.C. § 1341; 18 U.S.C. § 1030; 18 U.S.C. § 1039; 18 U.S.C. § 1038; 42 U.S.C. § 1983; 18 U.S.C. § 241; 28 U.S.C. § 1332; 29 CFR Subtitles A and B;" (quoting E.D. Pa. Dkt. No. 1 ¶ 20) and Sealed Federal Laws (See, *e.g.*, E.D. Pa. sealed Dkt. No. 11). Additionally, violations against Plaintiffs-Petitioners included RICO 18 U.S.C. §§ 1961–1968 based on 18 U.S.C. § 1590 as a predicate act by Doyle and Gutmann and Diamond with Hartman, Howitz, Horiuchi and Ma aiding and abetting (E.D. Pa. Dkt. Nos. 50 pp. 21-24, 56 pp. 19-22, 37 and 67 pp. 10-11), 18 U.S.C. § 2 as a predicate act and based on civil RICO (see E.D. Pa. Dkt. No. 56 pp. 35-36), Chapter 77 of U.S.C. Title 18 as a predicate act (see E.D. Pa. Dkt. Nos. 50 pp. 21-22, 56 pp. 19-22, 38 and 67 pp. 10-11), Doyle Compelling Gutmann to undermined Plaintiffs-Petitioners under 18 U.S.C. § 241 Conspiracy Against Rights (see E.D. Pa. Dkt. No. 56 pp. 36-37), Similarly, Gutmann ordering Diamond to undermine Plaintiffs-Petitioners is a Violation of 18 U.S.C. § 241 Conspiracy Against Rights (*Id.*). Similarly, Diamond ordering Reaction Biology

Corporation Defendants-respondents including Conrad Howitz, Robert Hartman, Kurumi Horiuchi and Haiching Ma to arrange the employment rape of E.S. and thereby causing an intentional infliction of emotional distress on Roger Swartz is a Violation of 18 U.S.C. § 241 (*Id.*), Abigail Doyle compelling Gutmann to bring harm to Plaintiffs-Petitioners in such a way so as to curtail Roger Swartz's 13th Amendment Rights subjecting him to involuntary servitude is a violation of Criminal RICO based on 18 U.S.C. § 1590 and also Chapter 77 of U.S.C. Title 18 and also civil RICO based on *Petro-Tech, Inc. v. W. Co,* 824 F.2d at 1356, Doyle further compelled Gutmann to undermine Plaintiffs-Petitioners to break 18 U.S.C. § 1343 and 18 U.S.C. §§ 666(a)(1)(A) (see E.D. Pa. Dkt. Nos. 56 pp. 38 and 1 ¶¶ 55-61). Carrera compelling Doyle to bring harm to Roger Swartz can be classified as a violation of Criminal RICO based on 18 U.S.C. § 1951 (see, E.D. Pa. Dkt. No. 56, pp. 20-21) and Furthermore MacMillan (see E.D. Pa. Dkt. Nos. 1 ¶¶ 103-104 and 56 pps. 20-22, 40-41) who compelled Carrera (see E.D. Pa. Dkt. Nos. 1 ¶¶ 78-81 and 56 pps. 20-22, 39-40) to act against Roger Swartz can be classified as Civil RICO based on *Petro-Tech, Inc. v. W. Co. of N. Am.*, (3d Cir. 1987).

Following a series of Motions to and replies by each group of defendants-respondents (E.D. Pa. Dkt. Nos. 10-1, 18 and 18-1; 47-1, 55 and 55-1; and, 51-1, 64 and 64-1) and a series of Oppositions and replies (E.D. Pa. Dkt. Nos. 13 and 26; 50 and 63; and 56 and 67 respectively) to defendant-respondents' motions by Plaintiffs-Petitioners the severely biased District Court Judge Eduardo Robreno was in complete

support of defendants-respondents, presented facts in a distorted light favoring defendants-respondents, provided a superficial analysis of the case ignoring essential details allowing for an easy dismissal, used inappropriate and nonapplicable caselaw to determine that Penn and Princeton University defendants-respondents are not State Actors so that it could determine that Plaintiffs-Petitioners could not pursue a claim under 42 U.S.C. § 1983 for a Constitutional Violation committed against Plaintiffs-Petitioners, (*see* 3d. Cir. Dkt. No. 24) where the District Court dismissed the complaint in entirety with prejudice.

Appeal to the United States Courts of Appeals for the Third Circuit.

The notice of appeal was filed on March 28, 2022. Certificate of Service Filed on April 1 2022. On April 1, 2022 the 3rd Circuit Court sue Sponte issued a Decision and Order (3d. Cir. Dkt. No. 3) to require that Roger Swartz's minor children be represented by counsel for claims Roger Swartz brings on his children's behalf. Plaintiffs-Petitioners Principal Brief (3d. Cir. Dkt. No. 24) was timely filed on May 9, 2022. Plaintiffs-Petitioners Reply Brief (3d. Cir. Dkt. No. 61) was filed on July 27, 2022.

On December 15, 2022 the 3rd Circuit Court affirmed the District Court's Opinion to dismiss this case with prejudice. Shockingly without hearing any arguments the Circuit Court Determines that the reasons provided—including that "Roger Swartz feared for the well-being of his children" (Principal

Brief pp. 41-42) which the circuit court does not acknowledge as a reason in its opinion—related to equitable tolling did not warrant equitable relief. Where the Circuit Court simply avoids discussing that "Roger Swartz feared for the well-being of his children" (*Id.*). Furthermore, the Circuit Court wholly ignores the details behind Plaintiffs-Petitioners State Actor argument including ignoring the *Lugar* two-part test and rather tacitly equates state funding for basic research as the equivalent of the University or the Professor performing a public contract: They do this by citing *Rendell-Baker v. Kohn*, 457 U.S. 830, 102 S. Ct. (1982). A public contract where there is no deliverable to the public and where the University and Professor are the sole financial beneficiaries of any results from such research. The circuit court's ineptitude regarding their state actor opinion is illuminated when comparing it to their state actor analysis 40 years earlier in *Krynicky v. Univ. of Pittsburgh*, 742 F.2d 94 (3d Cir. 1984). Had the circuit court received reasonable guidance from its earlier decision it would have found defendants-respondents to be state actors. Generally, the carelessness of the court's opinion undermines the Judicial System.

Further, the Circuit court undermines the healthcare privacy rights of A.S. when the court orders that a sealed Motion for Reconsideration (3d. Cir. Dkt. No. 13) and respective exhibits and addendum (3d. Cir. Dkt. Nos. 15-1 through 15-6 and No. 20) to be unsealed in 25 years. A.S. has a right to keep his healthcare information private in perpetuity.

Plaintiffs-Petitioners have been left with the impression that these circuit Judges have weakened[9] the American Citizenry. They certainly have denied them legitimate due process of the law.

REASONS TO GRANT CERTIORARI

DEFENDANTS-RESPONDENTS ARE STATE ACTORS—INCLUDING AMY GUTMANN, ABIGAIL DOYLE, DAVID MACMILLAN AND SCOTT DIAMOND OR AIDED AND ABETTED—INCLUDING HAICHING MA, ROBERT HARTMAN, CONRAD HOWITZ AND KURUMI HORIUCHI STATE ACTORS AND THUS MAY BE TREATED AS STATE ACTORS.

Where

> "One who has aided and abetted the commission of two predicate offenses is guilty of those offenses. *Standefer v. United States*, 447 U.S. 10, 100 S.Ct. 1999, 64 L.Ed.2d 689 (1980); *United States v. Provenzano*, 334 F.2d 678, 691 (3d Cir.1964); *United States v. Kegler*, 724 F.2d 190, 201 (D.C.Cir.1984) ("[a]n individual can be indicted as a principal for commission of a substantive crime and convicted by proof showing him to be

[9] These Judge has effectively undermined the very fabric of what it means to be a citizen of a country because the legal mechanism to protect constitutional rights have been illegally meddled upon.

> an aider and abettor"). The doctrine of aiding and abetting is simply one way that an individual can violate the substantive criminal laws. See 18 U.S.C. § 2 ("[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal"); *Kegler*, 724 F.2d at 200"

(Citing *Petro-Tech, Inc. v. W. Co. of N. Am.*, at 1357 (3d Cir. 1987)). These State Actors and equivalent principals via aiding and abetting collectively caused a severe deprivation of Plaintiffs-Petitioners' basic rights. (See, *e.g.*, *supra.* pp. 8-10, 17-18, 25-32).

> "[O]ur opinion in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 102 S.Ct. 2744, 2753, 73 L.Ed.2d 482 (1982), in which we held that the deprivation of a federal right may be attributed to the State if it resulted from a state-created rule and the party charged with the deprivation can fairly be said to a state actor."

(quoting, *Nat'l Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 109 S. Ct. 454, at 190*, 102 L.Ed.2d 469 (1988)). In *Lugar*, the Supreme Court stated

> "Conduct allegedly causing the deprivation of a constitutional right protected against infringement by a

> State must be fairly attributable to the State. In determining the question of "fair attribution," (a) the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by it or by a person for whom it is responsible, and (b) the party charged with the deprivation must be a person who may fairly be said to be a state actor, either because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State."

(*Lugar*, 457 U.S. at 923 (1982)). The first requirement of fair attribution that the deprivation of rights brought onto Roger Swartz and E.S. and in turn their children was due to a right or privilege created by the State is clearly supported. **(see, *e.g.*, *supra* pp. 1-8).**

That is the state gives federal research funds to defendants-respondents to conduct basic research, releasing them from obligations to teach multiple classes, providing them with privileged freedom to determine how they spend 70-80% of their time during working hours where the professors and their Universities own the resulting patents and there is no deliverable to the government nor the public—they are not "contractors performing services for the government" see *Rendell-Baker v. Kohn*, 457 U.S. at 842-843 (1982). Furthermore, these federal research funds supplement the Professors income enable these

Professors to engage in lavish lifestyles such as attending conferences, staying in nice hotel rooms, eating nice meals, enjoying expensive entertainment, working to bolster their reputation and increase their influence with powerful corporate entities and executives all while recognizing that these defendant-respondent professors answer to no one. Thus, the federal research funds have created mini-magisterial domains or self-governing bodies with diplomatic immunities enabling them to violate the constitutional rights of another and no check and balance whatsoever there by enabling the exercise of a privilege that is attributable to the State. The second question of whether the defendants-respondents are

> "fairly be said to be a state actor, either because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State."

(quoting, *Lugar*, 457 U.S. at 923, (1982)) is also clearly conduct that is otherwise chargeable to the State. (See, *e.g.*, 3d. Cir. Dkt. No. 24 pp. 45-47 and pp. 8-10) (See, *e.g.*, *supra.* pp. 1-8, 31-32 they patently apply here).

The conduct is clearly chargeable to the state because it would have been probabilistically impossible defendants-respondents of them to have had this level of influence without state funding of their research or University where no deliverable is due to the

government or public, where any invention is the property of the university and professor. Through this funding relationship the state is more or less declaring that such professors are Petoria like mini magisterial domains or self-governing bodies. Government funding is simply a way of saying that the state is giving unrestricted aid to a self-governing domain.

The state has provided these Professors with an invisible mantle akin to the antithesis of *The Emperor's New Clothes.* Indeed defendants-respondents are "clothed with the mantle of the" federal government but far beyond the reaches of the federal government.

The third Circuit's own decision history that accounted for *Lugar* supports that they should have considered defendants-respondents state actors (see *Krynicky v. Univ. of Pittsburgh*, 742 F.2d 94 (3d Cir. 1984).

PLAINTIFFS-PETITIONERS HAVE DEMONSTRATED THAT EQUITABLE TOLLING SHOULD BE PERMITTED AS EXTRAORDINARY CIRCUMSTANCES PREVENTED THIS PROCEEDING FROM BEING FILED SOONER.

Plaintiffs-Petitioners describe at length herein (see, *e.g.*, *supra* pp. 1-2, 8-11, 17-19, 25-32) and in numerous filings (E.D. Pa. Dkts. No. 13, pp. 15, No. 26 pp. 10, No. 50 pp. 20, No. 56 pp. 5-7, 16-17, No. 63

pp. 14-16, No. 67 pp. 20-22, 31-32; 3d. Cir. Dkt. No. 24 pp. 41-42) the extraordinary events that stood in the way of bringing this case to court sooner. Through, a series of events that took place for years Plaintiffs-Petitioners were horribly undermined in every major aspect of life (See, e.g., E.D. Pa. Dkts. No. 1 and No. 13 pp. 5).

Where defendants-respondents brought "damages are of a severe enough nature and the Plaintiffs-Petitioners has reason to believe that they could suffer additional damages from defendants-respondents for taking any action that could be reason enough for that person not to bring an action forward." (*Id.* at 14). Roger Swartz feared for the well-being of his children. Plaintiffs-Petitioners have proof "that they have been pursuing their rights diligently in other capacities." (*Id.* at 5-10, 24-26).

THE RIGHT TO KEEP A DOCUMENT CONTAINING HEALTH INFORMATION OF A MINOR SEALED PERMANENTLY MUST REST WITH THE MINOR AND THEIR PARENTAL GUARDIANS.

Roger Swartz's minor children have a right to keep any sealed court document that contains their health information as indefinitely sealed and a circuit court should have no right to order that they be unsealed in 25 years. The decision for whether or not to unseal such documents must remain with the minors' parents and then shift to the referenced minor upon reaching adulthood.

Public disclosure of Roger Swartz's minor children health information compromises them by exposing them to the potential ill will of those who may not share their best interests even if that disclosure takes place only during their adulthood. The circuit court provides no justification for why such documents should become unsealed. Furthermore, the court acknowledges that the documents "contain highly sensitive and personal information about Swartz's minor children". (3d. Cir. Dkt. No. 86 pp. 8-9) Additionally, Plaintiffs-Petitioners filed a redacted version[10] (3d. Cir. Dkt. No. 16) of the sealed "Motion for Review" (3d. Cir. Dkt. No. 13). Although, the exhibits (3d. Cir. Dkt. Nos. 15-1 to 15-6) and addendum (3d. Cir. Dkt. No. 20) were not redactable as they offer no value if redacted.

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[10] A redacted version was filed because Plaintiffs-Petitioners felt there was value in providing that version to the public.

ABIGAIL DOYLE'S EXTENT OF SCIENTER OVER 9 YEAR'S AND THE DAMAGE THAT RESULTED FROM HER 9-YEAR DURATION OF FRAUD IS CUMULATIVE AND EXPONENTIALLY INCREASING AND THE DAMAGE HAS BEEN IMPOSSIBLE TO FORECAST.

It has been impossible to remotely forecast the damages that Plaintiffs-Petitioners sustained from Abigail Doyle's 9-year duration of fraud with respect to limiting her reference to laboratory jobs when Roger Swartz explained to Abigail Doyle that he viewed such jobs carried out by those without a PhD as "not sustainable to him and that he could not subject himself to such inhumane treatment" (see E.D. PA. Dkt. No. 1 pp. 42). Although, Doyle's malice was without bound she maintained her position for 9-years up to the last phone conversation with her that took place on March 26, 2019 even after she saw that Roger Swartz could not find suitable employment for 9 years.

When Fraud reaches a level of Scienter that causes new damages to accrue that were impossible to forecast—since Roger Swartz did not discover Abigail Doyle's extent of Scienter until later long after—when the original fraud took place to what extent does that constitute a new form of Fraud where the clock for the statute of limitations begins to run upon the discovery of Doyle's deliberately reckless scienter?

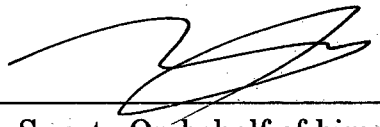
Here Plaintiffs-Petitioners argue that Doyle's 9-year duration of Fraud should be considered a new form of Fraud under the Discovery Rule. Not only was this Fraud singular but the "scienter requirement may be satisfied by a showing of deliberate recklessness." (see *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 131 S. Ct. 1309 at 1313, 179 L. Ed. 2d 398 (2011)). Doyle saw that Plaintiffs-Petitioners were suffering from her maintaining her position of Fraud and continued to maintain it that more than clearly Doyle had a "culpable mental state" a "vicious will" (see *Ruan v. United States*, 213 L. Ed. 2d 706, 142 S. Ct. 2370 (2022)). Certainly, Doyle's fraud is a unique form of fraud but "definitions of fraud are of set purpose left general and flexible, and thereto courts match their astuteness against the versatile inventions of fraud-doers." (*Stonemets v. Head*, 248 Mo. 243, 154 S.W. 108 (1913))

Doyle blocking me from employment opportunities has recently put my health in severe compromise and prevented me from accessing adequate healthcare. It is possible that I might die from health problems in the next 2 years due to receiving inadequate healthcare and medicines for medical issues.

CONCLUSION

This Petition for a Writ of Certiorari should be granted.

Respectfully Submitted on March 15, 2023



3/15/2023

Roger Swartz On behalf of himself, Roger Swartz on behalf of his son A.S., Roger Swartz on behalf of his daughter E.A.S. a 5-year-old child.