Supreme Court, U.S.
FILED
MAY 12 2023
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Case No. 22A995

In The
Supreme Court of the United States

Jason Zangara

APPLICANT

V.

National Board of Medical Examiners (NBME)

RESPONDANT

EMERGENCY APPLICATION FOR WRIT OF INJUNCTION

To the Honorable Samuel Alito, Justice of the United States Supreme Court and Circuit Justice for the Third Circuit

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Statement

This matter is brought before this court on an emergent basis as Plaintiff has been experiencing harm by the day to ask for assistance with forcing Defendants to score their exams properly in a non discriminatory manner. There is no demand for any money and Plaintiff has not requested anything that could be interpreted as giving him an unfair advantage over others.

Defendants have denied the allegations stating they are doing exactly as Plaintiff wants them to do, but refuse to actually settle the matter on those terms, despite an open settlement offer. Instead of hiring the first lawyer they could find, as any would have an advantage over a pro se Plaintiff , they have turned to a New York City law firm Perkins Coie, who handled all the election challenges on behalf of President Biden, is council of record for the Democratic National Committee along with being council of record for President Obama, Hillary Clinton and John Kerry along with practically every Democratic legislator

They have essentially mobilized an entire military with nuclear capabilities to knock a bee hive out of a tree. It does not take this kind of firm to win a against a leaning disabled individual who is representing himself in a lawsuit. Therefore despite their claims, there must be more to this matter then "meets the eye"

Introduction

Plaintiff brings an extraordinary issue before this court as despite filing the correct paperwork for a Preliminary Injunction pursuant to Rule 65, the courts have not taken him seriously and have ignored multiple applications. This has taken place at both the District and the Appeals court as his original application for an Order to show Cause with a Temporary Restraining Order was filed in March of 2022 with his Complaint, but never given to a judge.

Plaintiff again applied in September 2022 Defendants answered and the matter was fully briefed, but as of the date of the filing of a Notice of Appeal to the Third Circuit on March 3, 2023 **almost one year later there was no ruling on either of the motions.** Plaintiff filed a motion for and Injunction & Expedited Appeal from the Third Circuit, but despite specifically stating it was an emergent motion for an Injunction, **it took an additional two months before the Third Circuit issued a summary order** dismissing the motion, ignoring Plaintiffs application citing only one of the two reasons Plaintiff filed the appeal.

As of now, Plaintiff does not have, **after 14 months** a **legitimate** Injunction and is experience irreparable harm by the day not only by Defendants but also multiplied by the courts refusal to properly issue an Injunction. He cannot comprehend how he's using the same procedure utilized by the courts resulting in highly publicized applications that appear all over the news of the parties getting results practically overnight from the judiciary such as: Election Matters, President Trumps Immigration Orders, President Biden's Student Loan Cancelation, Vaccine

Mandate Challenges from religious groups in New York City, Abortion Drugs from the Food & Drug Administration & Alvin Bragg dodging Subpoenas from the House Oversight Committee.

Plaintiff understands Rule 65 and its purpose to be the courts "9-1-1 System", essentially a way for litigants to get information in front of a judge quickly to get assistance in a limited time frame. Here, the information despite Plaintiffs efforts is not making its way through the system properly. The analogy is someone calling 9-1-1 to report a fire, but the dispatcher either doesn't take the call seriously and dispatch the fire department or the fire department receives the call but chooses not to respond.

In this matter, this procedure should be more like the one imposed by law enforcement -when someone actually dials 9-1-1 the police are immediately dispatched to that location even if the caller picks up on the callback and states "I dialed accidently". As they are aware, there could be a multitude of issues going on that the person who dialed isn't the person who answers when the dispatcher calls back.

What kind of country would we live in if, in the case of domestic violence a wife being beaten gets away long enough to dial 9-1-1, but the husband gets her away from the phone and tells the police "everything is ok" when they call back? This is exactly why police are mandated to actually show up when 9-1-1 is dialed, regardless of being told "everything is ok" on the callback.

Plaintiffs applications should have immediately been presented to the judges as they were specifically identified for that purpose. Even if the applications and the original TRO were denied, they should have been denied that day.

There are much more serious issues here then just Plaintiffs application because the question is: "How many others has this happened to before?" There was a serious flaw in the system in the District Court and the Third Circuit having really nothing to do with the merits of this case. Plaintiff believes that this should **never** happen again especially with the courts "emergency system" and is asking the highest court in the country to make sure it **never** happens again to any litigant or attorney in any courthouse anywhere.

Plaintiff therefore brings both the questions relating to the merits of his case, but most importantly, the questions related to the breakdown of the system during the course of this litigation. He therefore brings the order from the Third Circuit and the following questions to this court for review.

Questions Presented

1. Should an Appeals court require an actual order denying an Injunction to invoke jurisdiction pursuant to 28 U.S.C. § 1292(a)(1) or does the District Court's refusal to rule on the motion amount to a denial invoking it?

2. Since it appears that that the public is entitled to safe, regulated Healthcare under the 14th Amendment and other previsions to the US Constitution, do Defendants discriminatory testing policies jeopardize that right, having the potential to create unqualified physicians, warrant expedited judiciary review under the "Public Interest" requirement of the issuance of an Injunction?

3. Does a delay in Medical Education constituent "Irreparable Harm" under the prerequisites for the issuance of an Injunction in an ADA claim, impeding the process of creating more qualified physicians to serve the "Public Interest" further the necessity for prompt judicial review?

To the Honorable Samuel Alito, Associate Justice of the Supreme Court and Circuit Justice for the Third Circuit:

History of the Matter

This matter originally arouse as a exam scoring dispute between Plaintiff a third year medical student and the Defendants, The National Board of Medical Examiners. Instead of arguing the merits of the case here, Plaintiff chooses to separate this application brief from his application for a Preliminary Injunction from the District Court for the District of New Jersey. The rational is, as he believes this court needs to see what he did and filed in the lower courts to make their determination as to the disposition of this case. He also must ensure that this court clearly sees the reason and rational for this application. Therefore he has included the following and request this court make its determination based on these attachments and their contents:

- Original application filed on March 18, 2022 attached "Exhibit A"
- Second Application filed on September 26, 2022 attached "Exhibit B"
- Notice of Appeal & supporting documents filed on March 3, 2023 attached "Exhibit C"
- Order of Third Circuit filed May 9., 2023 attached "Exhibit D"

The order from the Third Circuit references an order to amend Plaintiffs Compliant. He had requested to amend his compliant in September of 2022 It was filed and served, Defendants never filed any response and the court never raised any issue. Plaintiff then filed his second application for an Injunction (Exhibit B), Defendants responded, Plaintiff replied and the parties assumed the motion was

being decided. The court then kept pushing off the return date for months in the system.

Plaintiff assumed the court was writing an opinion for his application, and waited again, but then was surprised by an order from a Magistrate judge that he had to file a motion and amend his compliant in March of 2023,**six months after he submitted his amended complaint**. He immediately Appealed on both grounds because his second emergent application (Exhibit B) filed almost 6 months prior, was now, again ignored by the court and his original application (Exhibit A) almost one year later.

Plaintiff specifically appealed on both of these grounds, detailing this in the notice of appeal, brief and even moved to hear the appeal on the original record so the Appeals Court could see all these delays (Exhibit C). He then was awaiting the disposition of the appeal assuming that after **two additional months**, the court was conducting a thorough analyses and writing its opinion. Then on May 9, 2023, he received an order dismissing the appeal and motion for an injunction (Exhibit D).

What Plaintiff Is Asking This Court To Do

Pursuant to Supreme Court Rules 20, 22, and 23, and 28 U.S.C. § 1651, Applicant ("Plaintiff") respectfully request an immediate, emergency writ of injunction to prevent the Defendants, The National Board of Medical Examiners *from grading all of their examinations (Comprehensive Basic Science Exam, Comprehensive Clinical Science Exam, Shelf or Subject Examinations United States Medical Licensing Examinations "USMLE" Steps 1, 2, &3) in a discriminatory*

manner, deciding passing or failing on the test takers own merit, not based solely on the test takers comparison to others that have taken the examination prior, norm or comparison group.

Plaintiff also asks the Court to consider this Application as a petition for certiorari & grant certiorari on the questions presented as addressing them will prevent similar misfortunes from happening to litigants or their attorneys in the future.

Jurisdiction

This Court has jurisdiction under 28 U.S.C.§ 1254(1) and 28 U.S.C. § 1651(a) to address this matter.

Constitution & Applicable Provisions Involved

The Americans with Disabilities Act 42 U.S.C. 12101 et seq., The Fourteenth Amendment to the United States Constitution, The Controlled Substances Act (CSA or Act), 84 Stat. 1242, 21 U.S.C. § 801 et seq. and 28 U.S.C. § 1292(a)(1)

Questions

I. Should an Appeals court require an actual order denying an Injunction to invoke jurisdiction pursuant to 28 U.S.C. § 1292(a)(1) or does the District Court's refusal to rule on the motion amount to a denial invoking it?

In this matter, Plaintiff applied twice to the District Court of New Jersey for emergent relief and this was ignored by the court. He then filed an appeal based on the failure of the court to act. The Third Circuit However dismissed Plaintiffs appeal and denied his request form an Injunction because he didn't have a written order. The appeals court should have accepted the failure to act as a denial of the application and acted accordingly (See 11 C. Wright A. Miller

Federal Practice and Procedure § 2962 at 614 (1973) ("when a court declines to make a formal ruling on a motion for a preliminary injunction, its refusal to issue a separate order will be treated as equivalent to the denial of a preliminary injunction and will be appealable."))

Plaintiff therefore requests this court decide if a litigant needs an actual order o appeal an injunction or the failure to rule on the motion is adequate enough to invoke jurisdiction.

II. Since it appears that that the public is entitled to safe, regulated Healthcare under the 14th Amendment and other previsions to the US Constitution, do Defendants discriminatory testing policies jeopardize that right, having the potential to create unqualified physicians, warrant expedited judiciary review under the "Public Interest" requirement of the issuance of an Injunction?

The next question presented deserves some explanation as it is not written anyway directly, therefore Plaintiff presents it to this court for the first time. The purpose is, that since in addition to the discrimination, the public also has an interest in this case. For that reason alone, Plaintiff believes the appeals court should have given this case immediate attention by issuing a ruling on his motion for an injunction. He will explain in detail below.

The preservation of and care of a human life is a subject of great public concern and importance that has been addressed by the courts. As much as a concern it might be however, its importance is not detailed directly in the Constitution. There comes a time however that there is an obligation of the judiciary to reinforce the intentions of our founding fathers and apply what they had written to today's society. This is done by using the "clues" left behind and the

"logic" of what they were thinking when they actually wrote things such as the Constitution.

In the case of the Fourteenth Amendment the phrase "depriving persons of life, liberty" although only five words could have multiple meanings. To address this the judiciary has been tasked to figure out the meaning of these words and has indicated that these words apply to the field of healthcare and medicine. They have ruled that they protect the "rights" of individuals both in the civil and criminal context See, e.g., Winston v. Lee, 470 U. S. 753, 766–767 (1985) (forced surgery); Rochin v. California, 342 U. S. 165, 166, 173–174 (1952) (forced stomach pumping); Washington v. Harper, 494 U. S. 210, 229, 236 (1990) (forced administration of antipsychotic drugs); Skinner v. Oklahoma ex rel. Williamson, 316 U. S. 535 (1942)(the right not to be sterilized without consent); Winston v. Lee, 470 U. S. 753 (1985) (the right in certain circumstances not to undergo involuntary surgery, forced administration of drugs, or other substantially similar procedures, also Washington v. Harper, 494 U. S. 210 (1990), Rochin v. California, 342 U. S. 165 (1952))

The courts also have decided that rights afforded by the Constitution extend to the patients choice and medical care. See Cruzan v. Missouri Department of Health, 497 U.S. 261 (1990) (constitutional right to refuse medical treatment that sustains life), Washington v. Glucksberg, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997) (No right to physician assisted suicide under the Due Process Clause). When the judiciary is faced with an issue relating to healthcare not easily interpreted from the Constitution however, they must employ a different approach

deciding if the subject is "deeply rooted in this Nation's history and tradition". As detailed by Justice Alito in Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 597 U.S., 213 L. Ed. 2d 545 (2022):

> "The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of Roe and Casey now chiefly rely—the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." Washington v. Glucksberg, 521 U. S. 702, 721 (1997) (internal quotation marks omitted)."

The practice of medicine has been regulated all the way back to ancient times beginning with the "Code of Hammurabi (circa BC 1740)"which governed all aspects of physicians and surgeons[1]. In addition to this, Hippocrates (circa BC 460-360) of Greek antiquity, and Galen (AD 130-200), also established clinical guidelines and regulations for practice, many of which endure today[2] This regulation proceeded through the Medieval period, the Renaissance expanding through Europe & worldwide and ending up here in the United States in the Colonial period. In 1649, Medical licensure and regulation officially began with Massachusetts determining that Physicians and Surgeons are prohibited from treating "without the advice and consent of such as are skillful in the same art" and in 1772 New Jersey was the first colony to require examination requirements for Physicians[3]

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[1] Violato, C. A Brief History of the Regulation of Medical Practice: Hammurabi to the National Board of Medical Examiners (2016)
[2] Violato, C. A Brief History of the Regulation of Medical Practice: Hammurabi to the National Board of Medical Examiners (2016)
[3] Violato, C. A Brief History of the Regulation of Medical Practice: Hammurabi to the National Board of Medical Examiners (2016)

As time went on, more examinations were requirements for licensure, **but the government used medical societies** to administer them (See Federation of State Medical Boards, Medical Licensure Prior to 1900 "With the establishment of the first medical school (Pennsylvania 1765) and governmental use of a medical society to examine those seeking to practice medicine (New Jersey, 1766), the seeds of a major conflict were planted."[4] This conflict continued through the 1900's with Congress stepping up and beginning to regulate the practice of medicine by creating and using legislation such as The Narcotic Drug Act of December 17, 1914, c. 1, 38 Stat. 785, § 1.

This act was challenged for its Constitutional basis in the United States Supreme Court in 1919 and it was held that it was in fact Constitutional in United States v. Doremus, 249 U.S. 86 (1919) (requiring "dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician" also requiring "physicians registered under the act in the course of professional practice only, provided the physicians keep certain records for official inspection")

The following year, the Supreme Court held the Act accountable to a physician who was dispensing Opium, but the court took it further then just "drug trafficking" and related his actions to, and suggested regulation of a standard of care in Jin Fuey Moy v. United States, 254 U.S. 189 (1920):

> "The evidence shows that defendant was a practicing physician in Pittsburgh, registered under the act so as to be allowed to dispense or distribute opium

[4] http://centennial.fsmb.org/medical-licensure-prior-1900.html

> and its derivatives without a written order in official form,.....he made a superficial physical examination, in others, none at all; his prescriptions called for large quantities of morphine -- 8 to 16 drams at a time -- to be used "as directed," while the directions left the recipient free to use the drug virtually as he pleased. His charges were not according to the usual practice of medical men, but according to the amount of the drug prescribed"

Finally in 1975 the Supreme Court finally confirmed the governments regulation of the practice of medicine itself using the Controlled Substances Act (CSA or Act), 84 Stat. 1242, 21 U.S.C. § 801 *et seq.,* which was the predecessor of the CSA in United States v. Moore, 423 U.S. 122 (1975) ("We reverse, and hold that registered physicians can be prosecuted under § 841 when their activities fall outside the usual course of professional practice"). Court also recognized and applied the same standard ("Physicians who stepped outside the bounds of professional practice could be prosecuted under the Harrison Act (Narcotics) of 1914, 38 Stat. 785, the predecessor of the CSA. In *Jin Fey Moy v. United States,* 254 U. S. 189 (1920), the Court affirmed the conviction of a physician on facts remarkably similar to those before us (*e.g.,* no adequate physical examination,") citing United States v. Moore, 423 U.S. 122 (1975)

As explained specifically in Moore the court detailed well beyond medication regulation and established the precedent that physicians could be held liable from departing from the standard of care:

> "When a patient entered the office, he was given only the most perfunctory examination. Typically this included a request to see the patient's needle marks (which in more than one instance were simulated) and an unsupervised urinalysis (the results of which were regularly ignored). A prescription was then written for the amount requested by the patient. On return visits -- for which appointments were never scheduled -- no physical examination was performed and the patient again received a prescription for

> whatever quantity he requested. Accurate records were not kept, and in some cases the quantity prescribed was not recorded. There was no supervision of the administration of the drug. Dr. Moore's instructions consisted entirely of a label on the drugs reading: "Take as directed for detoxification."" United States v. Moore, 423 U.S. 122 (1975)

Following this in 1978, all states including New Jersey ended their own medical licensing examinations and "The Federation Licensing Exam or the National Boards become the standard"[5] In 1992 The current examination, the United States Medical Licensing Exam (USMLE) was administered by Defendants for the first time replacing this standard[6]. In addition to testing, "students who have earned a medical degree are required to undergo further postgraduate supervised clinical training. In the United States and Canada this is called residency, also called a house officer or senior house officer in the United Kingdom and several Commonwealth countries. Depending on the medical specialty and jurisdiction, residency can be 1 to 6 years in duration."[7] **These residency positions are created and paid for by Congress** using a portion of the funding for the program and the other portion to pay a salary to the resident themselves[8]

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[5] Violato, C. A Brief History of the Regulation of Medical Practice: Hammurabi to the National Board of Medical Examiners (2016)

[6] Violato, C. A Brief History of the Regulation of Medical Practice: Hammurabi to the National Board of Medical Examiners (2016)

[7] Violato, C. A Brief History of the Regulation of Medical Practice: Hammurabi to the National Board of Medical Examiners (2016)

[8] Medical Resident: An individual who has completed medical school and is in training to become a licensed physician. Residents generally train in a specialty for three to five years (although some specialties require a preliminary year of general medical training before specialty training commences). Obtaining a medical residency is competitive; medical students in their final year apply to residency programs in a particular location and specialty. Medical residents are paid a salary during residency, but this salary is generally a fraction of what they will earn after completing their residency. citing Heisler, E. J., Panangala, S. V., Mendez, B. H., Villagrana, M. A., & Mitchell, A. (2018). Federal Support for Graduate Medical Education: An Overview. CRS Report R44376, Version 9. Updated. Congressional Research Service.

Now, as the states no longer controlled licensing examinations and congress establishes regulations for physicians, pays for their training along with a salary during that training, the courts have found everything from refusal of medical treatment to the standard of care to liability all within previsions of the United States Constitution. See e.g. Winston v. Lee, 470 U. S. 753, 766–767 (1985); Rochin v. California, 342 U. S. 165, 166, 173–174 (1952); Washington v. Harper, 494 U. S. 210, 229, 236 (1990); Skinner v. Oklahoma ex rel. Williamson, 316 U. S. 535 (1942); Washington v. Harper, 494 U. S. 210 (1990), Rochin v. California, 342 U. S. 165 (1952)); United States v. Moore, 423 U.S. 122 (1975); Jin Fuey Moy v. United States, 254 U.S. 189 (1920) Cruzan v. Missouri Department of Health, 497 U.S. 261 (1990); Washington v. Glucksberg, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997)

"We begin, as we do in all due process cases, by examining our Nation's history, legal traditions, and practices. See, e.g., Casey, 505 U. S., at 849-850; Cruzan, 497 U. S., at 269-279; Moore v. East Cleveland, 431 U.S. 494, 503 (1977) (plurality opinion) (noting importance of "careful `respect for the teachings of history'")" Washington v. Glucksberg, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997). That examination as detailed prior, shows that It is abundantly clear that the forefathers of this country intended for the United States Government to provide safe and regulated medical care, including licensing and testing to obtain that license, for all of the citizens it protects. Therefore all aspects of the Defendants, the National Board of Medical Examiners administering licensing

examinations are subject to judicial scrutiny and legislative accountability to protect the public.

Therefore the court should have recognized the importance and implications of this case, totally independent of Plaintiffs litigation, ruling promptly in this matter.

III. Does a delay in Medical Education constituent "Irreparable Harm" under the prerequisites for the issuance of an Injunction in an ADA claim, impeding the process of creating more qualified physicians to serve the "Public Interest" further the necessity for prompt judicial review?

Another reason the court should have ruled on Plaintiffs application is the "Irreparable Harm" Plaintiff is experiencing each day that he cannot continue his medical education. This harm affects not only him, but the public as well and this type of behavior by Defendants (which they have been sued multiple times for See Ramsay v. Nat'l Bd. of Med. Examiners, 968 F.3d 251, 256 (3d Cir. 2020) cert. denied, 141 S. Ct. 1517, 209 L. Ed. 2d 255 (2021); Doe v. National Bd. of Med. Exam'rs, 199 F.3d 146, 154-155 (3d Cir. 1999); Katz v. Nat'l Bd. of Med. Exam'rs, 751 F. App'x 231 (3d Cir. 2018); Powell v. National Bd. of Medical Examiners , 364 F.3d 79 (2d Cir. 2004); Jenkins v. Nat'l Bd. of Med. Exam'rs, No. 08-5371, 2009 U.S. App. LEXIS 2660 (6th Cir. Feb. 11, 2009); Gonzales v. National Bd. of Medical Examiners, 225 F.3d 620 (6th Cir. 2000); Biank v. Nat'l Bd. of Med. Examiners, 130 F. Supp. 2d 986, 988 (N.D. Ill. 2000) ; Currier v. National Board of Medical Examiners, 965 N.E.2d 829, 462 Mass. 1 (2012) ; Gonzalez v. National Bd. of Medical Examiners, 60 F. Supp. 2d 703 (E.D. Mich. 1999); Wright v. NBME,

2021WL 5028463, *9 (D. Colo. 2021); Black v. Nat'l Bd. of Med. Examiners, 281 F. Supp. 3d 1247, 1249-50 (S.D. Fla. 2017); Berger v. Nat'l Bd. of Med. Exam'rs, No. 1:19-cv-99, 2019 U.S. Dist. LEXIS 145666 (S.D. Ohio Aug. 27, 2019); Price v. National Bd. of Medical Examiners, 966 F. Supp. 419 (S.D.W. Va. 1997); Rush v. National Board of Medical Examiners, 268 F. Supp.2d 673 (N.D. Tex. 2003); Scheibe v. Nat'l Bd. of Med. Examiners, Civ. A. No. 05-180, 2005 WL 1114497, at *3 (W.D. Wis. May 10, 2005)) effects not only Plaintiff, but other medical students who are not treated fairly by Defendants.

The result of Defendants actions is that they impede the creation of qualified physicians when they prevent individuals from completing their training and taking they exams which affects the public. In addition to this individuals such as Plaintiff are affected because they cannot pursue their chosen profession because they are held up by defendants repetitive discriminatory practices See Ramsay v. National Board of Medical Examiners, 968 F.3d 251, 263 (3d Cir. 2020) See also Rush v. National Board of Medical Examiners, 268 F. Supp.2d 673 (N.D. Tex. 2003) (Delay in medical education and pursuing career as a physician caused by Defendants examinations constituted irreparable harm) They were also recently sued in New York District Court in Sampson v. National Board of Medical Examiners, No. 2:2022cv05120 (E.D.N.Y. 2022) and the court emphasized this point as explained in the courts opinion:

> Because Sampson cannot proceed to his final year of medical school until he passes Step 1, any further delay pending a trial on the merits would continue to deprive Sampson of his opportunity to pursue his medical training. Berger v. Nat'l Bd. of Med. Exam'rs, No. 19-CV-99, 2019 WL 4040576, at *28 (S.D.

Ohio Aug. 27, 2019) (finding that "a delay in taking the Step 2 CK exam pending the resolution of this lawsuit would deprive [plaintiff] of the opportunity to practice his chosen profession of medicine"); Doe v. Samuel Merritt Univ., 921 F. Supp. 2d 958, 964 (N.D. Cal. 2013) (medical student was likely to suffer irreparable harm by inability to participate in clinical rotations and earn medical degree while lawsuit was pending, delaying her professional career); Bonnette v. D.C. Ct. of Appeals, 796 F. Supp. 2d 164, 186–87 (D.D.C. 2011) ("Because [plaintiff] cannot practice law until she successfully passes the D.C. Bar Examination, any delay in taking the MBE deprives her of time to practice her chosen profession."); Jones v. Nat'l Conf. of Bar Exam'rs, 801 F. Supp. 2d 270, 286–87 (D. Vt. 2011) ("[W]hile Plaintiff is losing opportunities to take the MPRE, there is no countervailing benefit she obtains through the passage of time. Indeed, the passage of time is likely to exacerbate her harm as it may delay completion of her law school education and may delay her entry into her chosen professional field.")

This court has not decided if a delay in education meets the requirements for the "irreparable harm" portion of an application for an Injunction. Plaintiff asks for the sake of the individual immediately affected by Defendants actions such as himself and for the sake of the public for this court to decide this question.

Legal Argument

A Circuit Justice may issue an injunction when there is a "significant possibility" that the Court would take the case on appeal and reverse, and where "there is a likelihood that irreparable injury will result if relief is not granted." Am. Trucking Ass'ns, Inc. v. Gray, 483 U.S. 1306, 1308 (1987) (Blackmun, J., in chambers). In this matter, it is clear that under the circumstances presented the court would reverse the lower courts as irreparable harm has and will occur to Plaintiff as a result of Defendants actions and the lowers courts inaction. Here, "plausible arguments exist for reversing the decision below and there is at least a

fair prospect that a majority of the Court may vote to do so." See California v. American Stores Co., 492 U.S. 1301, 1306 (1989) (O'Connor, J., in chambers).

When Plaintiff filed his appeal, Defendants **did not** file a motion to dismiss the appeal, **did not** file a response when served with a motion to expedite the appeal and **did not** oppose his motion for an Injunction as proven by the docket entries. This taken into account with the harm to Plaintiff and the interest of the public in his case should be considered by the court as they "explore the relative harms to Applicant and respondent, as well as the interests of the public at large." Bellotti v. Latino Pol. Action Comm., 463 U.S. 1319, 1320 (1983) (Brennan, J., in chambers)

Conclusion

Concluding based upon the information presented in this application, Plaintiff requests this court act accordingly.

Dated: 5/12/2022

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