Supreme Court, U.S.
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23-1317

No. 23-5081

In The
SUPREME COURT OF THE UNITED STATES

In Re :

JEAN DUFORT BAPTICHON,
Petitioner,

V.

THE UNITED STATES DEPARTMENT OF EDUCATION ET AL,
Respondents

On Petition for Writ of Certiorari
to the United States Court of Appeals for the
DC Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This writ certainly raises the questions of Personal jurisdiction versus forum non conveniens, venue, transfer and sovereign immunity In Piper Aircraft Co. v. Reyno this Court sets forth the modern- day test for forum non-conveniens analysis in federal courts. The test asks whether a court can dismiss the lawsuit in favor of another forum, and if such forum exists, then courts should weigh a variety of private and public interest factors to determine whether the case should be dismissed. Forum non conveniens says that an appropriate forum, even though competent under the law- may divest itself of jurisdiction if, for the conveniens of the litigants, the witnesses, or the public, it appears that the action should proceed in another forum where the action might originally have been brought, here, the Western District Court of Michigan.

1. The first question presented is whether the district court made clear error in dismissing the complaint for want or lack of personal jurisdiction rather than because of forum non conveniens or venue for this matter, because, in the case at bar, the Western District Court of Michigan does have both personal and subject matter jurisdictions. Fed. R. Civ. P. §§ 1331, 1332 (a)(1)

It is a settle rule of this Court that when an American party sues another American party in federal court, at least one thing is certain, so long as some court in the United States has jurisdiction (personal and subject matter) over the case, the case will be heard. Here, the federal question element is met. The

matter in controversy exceeds the sum or value of the jurisdictional amount and the petitioner and respondents are citizens of different states. Hence, the federal court has jurisdiction (personal and subject matter). Therefore, it is clear error that the district courts dismissed the complaint for personal jurisdiction rather than because of forum non conveniens or improper venue. It is thus fair to say that if federal court 1 has jurisdiction, (personal and subject matter), it would be improper for federal court 2 to dismiss the case for personal jurisdiction when federal court 1 has personal jurisdiction. This is where the forum non-conveniens doctrine, improper venue and transfer provisions come into play. Hence the dismissal for lack of personal jurisdiction was improper because the Michigan Western District Court as the actus forum does have jurisdiction (personal and subject matter).

2. The second question presented is whether on principles governing federal courts, the Supreme Court should exercise its jurisdiction on certiorari where, as here, the judgment in the Western Michigan Ingham County Circuit Court obtained through proven fraudulent and unethical means by the respondent law school caused direct, specific, and concrete injury to the student petitioning for review, (App. 1f Bill of Complaint), as well as to the co-respondent/defendant federal agency, here, the Department of Education and requisites of controversy were met.

3. The third question presented is whether on principles governing federal courts there exists an available alternative forum for the action as adequate relief cannot be obtained in any other form

or from any other state or federal court because of the initial unethically hence fraudulently obtained judgment in the Ingham County Circuit Court, App 1f, which lead to all the following corrupted federal courts judgments, which on principles of federal laws, the Supreme Court should declare void ab-initio, because it was obtained in violation of petitioner's Fundamental Constitutional Rights to Freedom of Speech, 1st Amendment , 4th . 5th and 14th Amendments, to Equal Protection, Due Process (procedural and substantive), the Code for Judicial Conduct, as well as Rule 60 of the Federal Rules of Civil Procedures.

4. The fourth question presented is whether respondent law school, as a private entity, performs a traditional, exclusive public function, i.e. educating or training lawyers and future judges for both federal, state, and local courts, qualifies as a state actor in this limited circumstance and hence is subject to constitutional liability.

RELATED PROCEEDINGS

Baptichon v. The Thomas M. Cooley Law School
Western District of Michigan
Case No.1:09-cv-562 .....Decided 11/02/2004,
10/13/2009.

Baptichon v. The Thomas M. Cooley Law School
Western District of Michigan
Case No. 5:03-cv-176 .....Decided 05/03/2004.

Baptichon v. The Thomas M. Cooley Law School
Western District of Michigan

The 30th Judicial Circuit Court of Ingham County,
File No 03-1784-CZ.....Decided 11/17/2004.

Baptichon v. U.S. Dept. of Education
No 20-CV-2400, WL 6565126, at1
(E.D.N. Y.....Decided 11/09/2020.

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PETITION FOR A WRIT OF CERTIORARI

Jean Dufort Baptichon petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

ORDERS BELOW

The order of the Court of Appeals, App. 1a, is filed on March 11, 2024. The memorandum order of the District Court, App. 1b, is filed on March 17, 2023.

JURISDICTION

On April `18, 2024, this Court has extended the time to file this petition for a writ of certiorari to or before June 18, 2024. This Petition is timely filed on June 17, 2024. Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(1). PROVISIONS INVOLVED The First Amendment to the United States Constitution, applies to the States through the Fourteenth Amendment, provides that "Congress shall make no law*** abridging the freedom of speech," and the Equal Protection Clause of the Fourteenth Amendment, "nor deny to any person within its jurisdiction the equal protection of the laws," and the Code of Judicial Conduct of the United States Conference on Ethics as well as Fed. R. Civ. P 60 (b).

PROCEDURAL BACKGROUND

The judgment of the district court was entered on March 17,2023. The plaintiff filed a motion to reconsider the district court's decision of March 17, 2023, on April 24, 2023, and a notice of appeal on April 10,

2023. The case was docketed in the Court of Appeals on April 13, 2023, (D.C. Cir., No. 23-5081). Petitioner filed a petition for a rehearing en banc in the Court of Appeals for the District of Columbia Circuit 28 U.S.C. 2101(e).

The petition was denied March 11, 2024. (See also Order of December 28, 2023, wherein the Court Ordered that "the motion to dismiss filed by Respondent Thomas M. Cooley Law School should be denied," and then ruled contrary to said. See Orders of January 11, 2024, and March 11, 2024. App. 1a., App 1b.

STATEMENT

This petition certainly raises very important questions of Personal jurisdiction versus forum non conveniens, venue and transfer issues that are at the forefront of litigation and that is confusing to the lower federal courts who, despite having jurisdiction in the case, most often, as in this case, enjoy dismissing plaintiff's case for lack of personal jurisdiction because defendants always plead this affirmative defense, rather than dismissing for forum non-conveniens or improper venue or even transfer Sua sponte under §1404 to the actus forum.

This Court in Gulf Oil v. Gilbert 330 US 501 - 1947 recognized that it was confronted for the first time with the need to craft a federal rule for "investing courts with a discretion to change the place of trial." While many states had crafted a forum non conveniens rule, federal courts had not. The Court then identified a series of factors it considered relevant in determining when forum two (F2), here, the Western District Court of Michigan where the lawsuit was originally filed, should defer to F1, here, the petitioner's choice of forum, even though F2 had jurisdiction to hear the case.

The factors courts should consider are (1) whether all defendants are subject to the jurisdiction of F2 according to the law of F2; (2) whether F2 provides a meaningful remedy; (3) whether the plaintiff will be treated fairly in F2; (4) whether all plaintiffs have practical access to the courts of F2; (5) whether F2 provides procedural due process; and (6) whether F2 is a stable forum.

In Gulf Oil Corp, a Virginia warehouse owner sued a Pennsylvania delivery company over the Pennsylvania company's negligence in making a delivery to the Virginia plaintiff's warehouse. Although Gilbert, the plaintiff, might have sued in Virginia (the place of the harmful event), like the petitioner in this case could have sued in F2 or the Western District of Michigan, the place of the harmful events, he instead decided to file suit in New York, like petitioner decided to file suit in the D.C Circuit, where Gulf Oil, the defendant, was qualified to do business and had a registered agent for service of process, as distinguished from this case where the respondent law school has no business or agent for service of process in the petitioner's forum of choice, but has meaningful contacts with the forum related to the student petitioner's unpaid and unreimbursed alleged student loans brokered in the forum on behalf of the student petitioner by the respondent law school in connection with .respondent Department of Education (DOE)(government agency). As in the landmark Supreme Court decision in Piper Aircraft Co. v. Reyno, 454 U.S. 235, (1981) and this case, the facts of Gulf Oil suggest forum shopping by the plaintiff. Rather than suing in Pennsylvania (Gulf Oil's place of incorporation), a state that might have a clearer interest in regulating the affairs of businesses incorporated there, Gilbert sued in New York, where he believed the law would be most favorable to him. Although Gulf Oil was qualified to do business in New York, the forum had no other immediate connection to the case or clear interest in regulating the wrongdoer's behavior or protecting the alleged victim's interest. Like Pennsylvania, Michigan in this case might have had an interest in regulating the behavior of its corporation, here the respondent law school, while

New York a chosen forum like Virginia might have wanted to protect the interest of the New York victim in this case. App. 1f.

In 1948, just one year after the Supreme Court's ruling in Gulf Oil, Congress passed an omnibus bill overhauling the judicial code, which governs the judiciary and judicial procedure. As a part of that overhaul, Congress enacted a venue-transfer statute, 28 U.S.C. § 1404(a). Although § 1404 largely codified the common law, it - contained one significant difference which relates to the process by which cases move from F1 to F2.

Perhaps vindicating Justice Black's dissenting view in Gulf Oil, Congress was more lenient towards plaintiffs who had filed their cases in federal court by allowing the cases to be transferred without the risks inherent in dismissal. In analyzing § 1404(a) in a 1964 decision, Dow Chemical Co. v. Alfaro,786 S.W.2d 674 (Tex. 1990) the Court concluded that the statute "should be regarded as a federal judicial housekeeping measure, dealing with the placement of litigation in the federal courts and generally intended . . . simply to authorize a change of courtrooms." Similarly, the scant legislative history of § 1406(a) indicates that when venue is improper, it should be used to transfer, not to dismiss cases as the lower courts did in this case, for lack of personal jurisdiction, despite having jurisdiction (personal and subject matter) in federal F2.

Where that state court issued judgment in this case when petitioner/plaintiff's fundamental constitutional rights had been violated under principles governing

the federal court, the Supreme Court could exercise its jurisdiction on certiorari where, as in this case, the judgments of the State Circuit Court of the Western District of Michigan (F2s), which were evidently unethically, hence fraudulently obtained by the respondent law school, (App 1i and App 1j) caused direct, specific, and concrete injury to the student petitioning for review, and requisites of case or controversy were met.

This Court should be able to use the fact that the petitioner previously availed himself of the Michigan State Western District Court (F2s) in this related litigation as evidence that the petitioner will not be treated fairly in F2. That said, the fact that petitioner has availed himself of F2 in the related litigations should not create a per se assumption that F2 is available. This consideration is relevant only to factor three of the factors set out by this Court. Other considerations, such as the nature of the relief sought in the more recent litigation, should be evaluated as well. In addition, the mere fact that the petitioner has been a party in F2 against the respondents in the past should be sufficient to create a presumption that this factor has been satisfied. Such a presumption is made only because the litigation in F2 is related to the prior litigation in the Eastern District of New York, which Sua Sponte transferred the case to the Western District Court of Michigan, Southern Division (App 1i) and the D.C. Circuit (F1), which dismissed the same case for lack of personal jurisdiction (App 1a).

In sum, factor three calls on this Court to find out whether the petitioner will be treated fairly in F2 by looking at three considerations: (1) whether the peti-

tioner will face political, social, or racial persecution in that forum; (2) whether there is corruption in the judiciary of F2; and (3) whether petitioner's complaints about the fairness of F2 are offset (or potentially bolstered) by past litigation by petitioner in that forum. In contrast to the seven considerations this Court should weigh in deciding whether a meaningful remedy exists in F2, one controversial issue this Court should include in her analysis is whether punitive damages are available in F2. As numerous circuit and district courts have held, where the law of F2 does not allow punitive damages, the forum nevertheless may still be deemed available so long as some form of remedy or redress is available to compensate the petitioner/plaintiff for his injuries.

The first consideration for this factor is whether the petitioner might face political, social, or racial persecution in F2 if forced to travel there to litigate the case. A second consideration that bears upon the treatment of the petitioner/plaintiff involves corruption in the judiciary of F2. The particular concern with corruption is that the respondents/defendants may be able to buy or coerce a favorable outcome in F2. The Second Circuit, though not couching corruption as a matter of "unfairness," has said that the "widespread corruption in [F2's] courts" must be so severe that F2 "is characterized by a complete absence of due process or an inability of the forum, F2, to provide substantial justice to the parties, as it appears effectively in this case." As an example of the widespread corruption in F2 state court, which allowed a judge who is a defendant in a case to preside over the same case in which the judge is a defendant, how much more corrupt must a judgment by this judge be to be characterized as a

complete absence of due process and or an inability of the F2 courts to provide substantial justice to the petitioner in this case? Courts that have considered corruption in F2's courts have held that general allegations of corruption are not enough to find that F2 is not available, as distinguished from this case wherein the allegations are fact-specific allegations corroborated by evidence in the records in F2s' courts as well. App 1i. App.1j.

As to whether an available alternative forum exists, this Court in Piper stated the first step is to find out whether all of the defendants who appear before the court would be amenable to jurisdiction in F2. Courts frequently articulate this consideration as a question of whether the defendant is amenable to service of process or some similar variant.

As the Court in Piper noted: "[o]rdinarily, th[e] requirement [that an available alternative forum "AAF" exists] will be satisfied when the defendant is 'amenable to process' in the other jurisdiction." Remarkably, some courts treat this factor as the only requirement in determining whether an alternative forum exists. These courts are mistaken; while jurisdiction is an element of basic justice, it is not the only element.

The Supreme Court in Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981) instructed that courts should consider as one factor in the test for an available alternative forum (AAF) whether "the remedy provided by the alternative forum, here the "Western District Court of Michigan or F2, forum" is so clearly inadequate or unsatisfactory that it is no remedy at all." This occurs, for example, "where the alternative forum does not

permit litigation of the subject matter of the dispute." To understand the Piper instruction, courts need to know what concerns would cause the alternative forum, here F2 forum to be deemed sufficiently inadequate or unsatisfactory so as to constitute no remedy at all. As the survey of circuit law discussed above indicates, lower courts have had difficulty interpreting Piper's test; the test needs to be further refined so that it can be more uniformly and accurately applied.

In thinking about what constitutes an alternative forum, when there is personal jurisdiction in a federal court, any test must start by considering a basic question: alternative to what? Of course, in an American forum non conveniens analysis in federal court, the answer is an American federal district court. What then are the features of an American federal district court that provide the lowest common denominator of acceptable justice in an alternative forum? This Petition suggests that these features include the following: jurisdiction, meaningful remedy, fair treatment of parties, access to the courts, procedural due process, and stability of the forum. If these are the factors that an American court expects of itself, then it stands to reason that any alternative forum should provide the same features.

With those expectations in mind, this Petition proposes a six-factor test for determining whether an alternative forum is available. Each factor, like the entire analysis for forum non conveniens, should be evaluated with the burden of persuasion on the party moving for the forum non conveniens, here, for personal jurisdiction dismissal. The factors this Court should consider are: (1) whether all defendants are

subject to the jurisdiction of F2 according to the law of F2; (2) whether F2 provides a meaningful remedy; (3) whether the petitioner/plaintiff will be treated fairly in F2; (4) whether the petitioner/plaintiff has practical access to the courts of F2; (5) whether F2 provides procedural due process; and (6) whether F2 is a stable forum. If the court hearing the forum non conveniens motion, here the personal jurisdiction, determines that any one of the six factors is not true for F2, then it should find the alternative forum unavailable.

Here, element 1 is met because all defendants in this case are subject to the jurisdiction of F2 according to the Law of F2. However, element 2 is not met because F2 does not provide a meaningful remedy. It is likely that petitioner plaintiff will not be treated fairly in F2, given the history of abuse of process in F2 state court. The petitioner has no practical access to the courts of F2 and F2 does not provide procedural due process and substantial due process, hence unavailable as an alternative forum.

As to whether the respondent law school as a private entity is a state actor, the respondent law school, as a private entity, performs a traditional, exclusive public function, i.e. educating or training lawyers and future judges for both federal, state, and local courts. In Manhattan Cmty. Access Corp. v. Halleck, 139 S. Ct. 1921, 1928 (2019). The question presented is whether a private entity like the respondent law school qualifies as a state actor in this limited circumstance and hence is subject to constitutional liability.

The function of training lawyers and judges has traditionally and exclusively been performed by the

government. Halleck, id. at 1928-1929. Hence, any private entity accredited and authorized to perform such function can qualify as a state actor, which by analogy is that the government outsourced its constitutional obligations to the private entity, here the respondent law school.

REASON FOR GRANTING THE PETITION

The decision below is flatly inconsistent with the evidentiary facts of the case and the lower court's own opinion and order of December 28, 2023, conflicted with the order of January 11, 2024 from the Court of Appeals of the D.C. Circuit, dismissing the case for personal jurisdiction and the New York Eastern District Court transferring same case to the forum conveniens or the proper venue, here, the Western District Court of Michigan, instead of dismissing the complaint for personal jurisdiction, which would not be the proper procedure in this case.

This petition provides a vehicle both to resolve the complaint and to provide broader guidance on the First Amendment issue of filing a complaint against your law school while attending the school, which retaliated simply by not recusing herself from correcting the student 's final exam despite student's objection as a litigating party, and hence, insured the student's failure, hence, the apparent wrongful academic dismissal of plaintiff student/petitioner from the law school, which brings this case before this Court.

This petition provides a vehicle both to resolve the complaint and to provide broader guidance on the Fourteenth Amendment issue of filing a preliminary

injunction in State Court together with a complaint against your law school while attending the school, which, together with the State Court, had a duty to afford the litigating student all his rights to due process, both procedural and substantive, and the State Court to afford the litigating student with all his or her rights to equal protection of the law under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, which defendants violated in this case.

Finally, the questions presented are important and this case presents an ideal vehicle for them. Because the case was dismissed for lack of personal jurisdiction and not on the merits, there are issues of factual disputes still to be resolved, for example, the issue of student unpaid federal educational loan, which resulted from the respondents' violations and unlawful actions, and either question would be outcome determinative if answered in Petitioner's favor. The second Circuit's decision to transfer the same case was procedurally correct but conflicted with D.C. Circuit Court's decision to dismiss same for lack of personal jurisdiction.

LEGAL STANDARDS

The function of the Supreme Court is, therefore, to resolve conflicts of opinion on federal questions that have arisen among lower courts, to pass upon questions of wide import under the Constitution, laws, and treaties of the United States, which are the very questions presented in the petitioner's original bill of complaint. App. 1e.

One of the mains goals of the U.S. legal system is

to treat everyone with fairness and equality. Unfortunately, several factors can impact this goal, resulting in a less-than-fair situation. One of these scenarios can involve a biased or unfair judge, as the petitioner avers to have been treated unfairly in both the Michigan State and District Courtrooms.

Definition of a judge: a judge is synonymous to a person empowered to make decisions that determine a point of issue. Similarly, the respondent law school who is empowered to correct law students' final legal examination papers is making decisions that determines the issue of whether a student is dismissed academically, is also synonymous to a U.S. judge making decisions that determine a point of issue, such as to whether the court has jurisdiction to hear and rule on the merit of a case.

ETHICAL STANDARDS OF A JUDGE AND A LAW SCHOOL AS A JUDGE

Judges, like the respondent law school, are meant to be held to extremely high ethical standards. Any qualified judge or law school is expected to remain unbiased and neutral in the courtroom or in the law examination correction of students' final law examination. Failure to meet these standards can result in severe consequences not only for the individuals, here the petitioner, involved in the case in controversy, but also for the judge himself or herself, here the respondent law school as the judge, and in this case, it resulted in severe consequences to the student petitioner who was subjected to those abuses of processes and deprivation of constitutional rights by said state court., which let its judge presided over a case in which

the judge is also a defendant. What then is expected?

It's important to examine the standards every judge or law school is expected to uphold. According to United States Conference on Judicial Conduct, there are three main elements to the expected behavior and ethical benchmarks of a judge, hence of a law school in the process of correcting a law student's final law examinations.

> Respect for Law. A judge or law school should respect and comply with the law and should always act in a manner that promotes public confidence in the integrity and impartiality of the judiciary and avoid all appearance of impropriety and conflicts of personal interest.

This petition provides a vehicle both to resolve the complaint and to provide broader guidance on the First Amendment issue of filing a complaint against your law school while attending the school.

> Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

In addition to those standards, understanding the definition of "bias" (or unfair) gives a clear picture of how certain actions can call into question whether a

judge, here the respondent law school, is or is not upholding his or her expected standards. A definition for bias reads:

> "Inclination; bent; prepossession: a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which. does not leave the mind perfectly open to conviction."

The petitioner, then and now, contended and avers respectively that the respondent law school, as the defending judge and litigant in the Michigan State Ingham County and the Western District, not to be so blunt, but it is so apparent, has betrayed all the above ethical standards in a way that shows clear unfairness and bias, that warrants the Supreme Court to grant petitioner's petition for a Writ of Certiorari, for the foregoing reasons:

> 1. Respondent Law School was the defendant in a complaint action, and enjoined by a preliminary injunction that was granted by a state judge after a hearing, and as a party with a financial interest in the action, Respondent Law School presided as a judge over the action wherein she is a litigant herself and corrected the very subject matter of the injunction and complaint, which the respondent law school was defended, that is, the academic dismissal of the petitioner student, by improperly correcting the petitioner then plaintiff's final law examinations, over the objection of the petitioner then student plaintiff.

The respondent law school as a defending judge and litigating party in the same action has acted in

an unfair way, when it was possible and necessary for her to recuse his or herself from correcting petitioner's then plaintiff, her legal opponent's final law school papers because certain elements were involved and are still involved in this controversy. These elements are outlined in 28 U.S. Code § 455. A small section of the Code that details situations in which a judge, here, the respondent law school, should recuse him or herself goes as such:

> *"(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy; (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person..."*

Three of these situations, elements 1, 3, 4, apply here, and the respondent law school, as a defending

judge who is also a litigant in the same action did not execute the recusal herself voluntarily which, she should have done as the petitioner then plaintiff had formally so requested based on grounds of unfairness or bias and based on violations of both Substantial and Procedural Due Processes of the United States Constitution, Laws and Treaties in the case in controversy.

The petitioner's complaint is not only based on unethical behavior that encompass a wide range of infringements including violations of the code of conduct (also outlined above) or simply behaving in an inappropriate manner during the injunction, but it also encompasses a wide range of violations of the United States Constitutional Rights Guaranteed by the 1st, 4th, 5th, and 14th Amendments, notwithstanding state contract and tort laws violations.

The petitioner's appeals are made based on the fact that the judge at the state and federal district court levels arrived at the decision due to prejudice, incorrect use of the law, or incorrect or ignored evidence, which warranted the overturn of the original decision or sending the case back down to the lower court and order the judge to rehear it to correct the initially clear error in judgement which was and is to the detriment of both respondent government agency and the petitioner student who rightfully disclaims the uncollectible educational loan at issue throughout this litigation.

As outlined above, without being redundant, the respondent law school was a party defendant in an injunctive action and a complaint at the state court level, the injunction's lawful objective was to prevent the

respondent law school from "unlawfully academically dismissing" (emphasis added) petitioner student, then enjoining plaintiff, from the law school. The respondent law school therefore had a financial conflict of interest that was clear and apparent in the case in controversy, and that meets the elements in the Code and therefore a duty to recuse herself from correcting plaintiff student/petitioner's final law exams to avoid the appearance of impropriety, and that warrants the Supreme Court to grant certiorari.

In respondent law school's failure not to recuse his or herself from judging the petitioner student's final law examination papers despite her very apparent -financial conflict of interest and the petitioner's request for the respondent to so recuse herself, the appearance of impropriety was manifested in fact and became impropriety by the respondent law school who violated the Code of the United States Conference on Judicial Conduct and a wide range of Constitutional Laws and Treaties of the United States, while there existed many alternatives to avoid such impropriety by the respondent law school by intentionally failing to assign such law examinations correction to a qualified uninterested legal authority such as the injunction issuing state court or the Michigan Law School, which failure is a violation of the student litigant's rights, and thereby presumptively voided all voidable state, and federal decisions subsequently obtained by respondent law school to the detriment of the petitioner student as well as of the co-respondent Government agency, as a result of those violations.

Respondent Department of Education argues that petitioner's claim must be dismissed for lack of subject

matter jurisdiction, personal jurisdiction and because Respondent Dept. of Education has sovereign immunity. The petitioner agrees that the Eleventh Amendment to the United States Constitution provides that "[T]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State." State Emps. Bargaining Agent Coal. V. F.3d 71, 95 (2d Cir. 2007) (citing U.S. Const. amend. XI. The Eleventh Amendment bars federal courts from exercising subject matter jurisdiction over claims against states absent their consent to such a suit or an expressed statutory waiver of immunity. See Brown v. New York, 975 F. Supp. 2d 209, 221 (N.D.N.Y. 2013) (citing Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89. 92-100 (1984). Although the plaintiff generally bears the burden of proven subject matter jurisdiction, the entity claiming sovereign immunity bears the burden of proving such immunity.

As to the issue of dismissal because of the respondent government agency's Sovereign Immunities defense, Ex parte Young 209 U.S. 123 (1908) established an exception to the government' sovereign immunity in federal actions where an individual brings an action seeking injunctive relief against a government official for an ongoing violation of law or the Constitution, as in this case. See 209 U.S. 123, 160 (1908). The Ex parte doctrine provides a limited exception to the general principle of sovereign immunity that allows this suit for an injunctive relief challenging the constitutionality of the government official's actions in enforcing state law under the theory that such a suit is not one against the State, and therefore not barred by the Eleventh Amendment." Ford v. Reynolds, 316

F.3d 351, 354—55 (2d Cir. 2003). Under this doctrine, the plaintiff may bring a claim against a state official in his or her official capacity, notwithstanding the Eleventh Amendment, when as in this case the petitioner plaintiff (1) alleges an ongoing violation of federal law; and seeks relief properly characterized as prospective.1 In re Deposit Ins. Agency, 482 F.3d 612 (2d Cir. 2007).

In the case at bar, this Court must consider whether the violations of federal law alleged in the petitioner's bill of complaint (App. 1e.) are ongoing and amount to continuous violations of petitioner/plaintiff's constitutional rights, as they are. and they do in this case It is settled in this Court that Ex parte Young allows federal courts to entertain suits against state officials in their official capacity where a plaintiff seeks injunctive or declaratory relief, as in this case. While declaratory judgments form part of the injunctive relief that Ex Parte Young allows for, such relief will not satisfy the second prong of Ex parte Young analysis when it would serve to declare only past actions in violation of federal law." Brown, 975 F. Supp. 2d at 235 (citing Tigrett v. Cooper, 855 F. Supp. 2d 733, 744 (W. D Tenn. 2012)), unlike this case, in which the federal constitutional violations of petitioner's rights are continuous.

The respondents in this case meets elements (1),

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1 While retrospective relief is "measured in terms of monetary loss resulting from a past breach of a legal duty on the part of the respondents' officials," prospective relief includes injunctive relief that bar a state actor from engaging in certain unconstitutional acts or abates ongoing constitutional violations as well as the payment of state funds "as a necessary consequence of compliance in the future with a substantive federal question determination." Brown 975 F Supp.2d at 222-23 (citing Edelman v. Jordan, 415 U.S. 651, 668 (1974))

(3) and (4) of the Code Where he/she has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy; (4) He/she knows that he/she, individually or as a fiduciary, or his/her spouse or minor child residing in his/her household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; Yet despite these conflicting position respondent law school did not so recuse herself from correcting petitioner student's final law exam, even though respondent law school was financially conflicted.

Issuance by this Court of this writ, as authorized by 28 U. S. C. § 1651(a), will aid the Court's appellate jurisdiction, because this disturbing behavior by such an entity as the respondent law school, and exceptional circumstances warrant the exercise of the Court's discretionary powers, and because adequate relief cannot be obtained in any form or from any other court in Michigan State which is the place of occurrence where jurisdiction lies for state law questions. This petition is seeking a writ authorized by 28 U. S. C. § 1651(a), §1254(1), and was prepared in all respects as required by Rules 33 and 34 of this Court.

CONCLUSION

This petition for a writ of certiorari should be granted.

Dated: 05/01/2024

Respectfully submitted,
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