No. _____

In The
Supreme Court of the United States

IN THE MATTER OF THE CLAIM OF
DAVID DUNLAP,

Petitioner,

v.

JETBLUE AIRWAYS CORPORATION,

Respondent,

-and-

NEW HAMPSHIRE INSURANCE CO.,

Respondent,

-and-

WORKERS' COMPENSATION BOARD,

Respondent.

On Petition for a Writ of Certiorari to the New York State Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is due process of law guaranteed by the 5th and 14th Amendments to the Constitution of the United States violated by the Board's refusal to hear petitioner's administrative appeal pursuant to Worker's Compensation Law Section 23 owing to an omission from an information block 3/64th of an inch high, so small the brain cannot process it when an alternate source of the same information is listed?

2. Does burdening the right to counsel in civil cases guaranteed by the 5th and 14th Amendments to the United States Constitution to the point that the Board can refuse to entertain a less than perfectly filled out Application for Board Review (form RB 89) notwithstanding lack of prejudice to opposing parties?

3. Is equal protection of the law guaranteed by the 14th Amendment by burdening the exercise of the right to counsel with a requirement that Application for Board Review (RB 89) be completed perfectly?

LIST OF PARTIES

The parties to the proceeding are shown in the caption.

CORPORATE DISCLOSURE STATEMENT

JetBlue Airways Corporation is a publicly traded corporation with its principal place of business in Long Island City NY. Incorporated in Delaware, JetBlue boasts it sprung from its birth in Kennedy Airport to a global presence as a low budget airline. does not appear to be a publicly traded company.

New Hampshire Insurance Co is a publicly traded insurer which is a part of American Insurance Group. (AIG) It operates in New York, NY, U.S.A.

Worker's Compensation Board is an agency of the State of New York. It is a necessary party to all appeals from the Worker's Compensation Board. NY Worker's Compensation Law Section 23.

DIRECTLY RELATED PROCEEDINGS

There are no directly related proceedings.

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OPINIONS BELOW

The February 22, 2024, Order denying Leave to Appeal of the New York State Court of Appeals from the Decision and Order rendered by the Appellate Division, Third Department is reported at *Matter of Dunlap v. JetBlue Airways Corp.,* 2024 NY Slip Op 62799 (2024) and is reproduced as Appendix A.

The Appellate Division, Third Department's Decision and Order on Motion, dated August 17, 2023 is reported at *Matter of Dunlap v. JetBlue Airways Corp.,* 2023 NY Slip Op 72048 (2023) and is reproduced as Appendix B.

The Appellate Division, Third Department's Memorandum and Order dated May 25, 2023 is reported at *Matter of Dunlap v. JetBlue Airways, Corp.,* 216 A.D.3d 1379, 189 N.Y.S.3d 816 (App Div 2023) and is reproduced as Appendix C.

The Decisions of the New York State Worker's Compensation Board dated: February 11, 2022, November 9, 2021, May 12, 2021, February 10, 2021, July 22, 2021, December 15, 2020, November 9, 2020, June 3, 2020 and November 13, 2019 are unreported and are reproduced herein as Appendix D.

JURISDICTION

The jurisdiction of this Court to review the determination of the New York State Court of Appeals and the Appellate Division, Third Department is invoked under 28 U.S.C. Section 2101(c), 28 U.S.C. Section 1257(a), and Rule 13(1) of the Rules of this Court.

STATUTES INVOLVED

Constitution of United States of America 1789

Article IV, *U.S. Constitution*

Section 2.

The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states.

Article VI, *U.S. Constitution*

Clause 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

As Amended

Fifth Amendment, *U.S. Constitution*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to

be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment U.S. Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment, *U.S. Constitution*

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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.

RELEVANT STATUTES[1]

NY Constitution (McKinneys Bk 2)
Article 1 §1
Article 1 §6
Article 1 §11
Article 1 §18

Workers' Compensation (McKinneys Bk 64)
§20. Determination of claims for compensation
§23. Appeals
§23-A. Mistakes Defects Irregularities
§150. Referees

New York Codes, Rules and Regulations
12 NYCRR-NY 300.13
Administrative Review

[1] Set forth in appendix. Supreme Court Rule 14(1)f.

STATEMENT OF THE CASE

Respondent the Worker's Compensation Board refused to consider Petitioner's administrative appeal pursuant to NY Worker's Compensation Law Section 23 from a Worker's Compensation Law Judge's adverse ruling dismissing the claim. The reason for rejecting the administrative appeal was a scrivener's error on the cover sheet (Worker's Compensation Form RB 89). The petitioner had listed Dr. Stripp's testimony but failed to list Dr. Stripp's I.M.E. report, which was virtually identical. Even though the scrivener's error pertained to only one of two issues raised on petitioner's administrative appeal and the employer – carrier's failed to perceive the purported inadequacy and failed to raise the issue much less demonstrate prejudice, the Respondent Worker's Compensation Board mercilessly imposed the extreme punishment.

The authority for the draconian action are "… Board's regulations [which require], an application to the Board for administrative review of a decision by a WCLJ [to] be in the format as prescribed by the Chair, and … [to] be filled out completely … [by] a party represented by counsel …" *Matter of Dunlap v. JetBlue Airways Corp.*, 216 A.D. 3d *supra* at 1380.

Form RB 89 is filled out online. Board instructions[2] require with respect to documents relied be reported in Block 13:

> 13. Hearing Dates, Transcripts, Documents, Exhibits, and Other

[2] *https://www.wcb.ny.gov/content/main/forms/rb89.pdf*

> Evidence. Indicate the hearing date(s) on which the issue(s) was raised before the WCLJ, as well as any other relevant hearing dates. Identify by date and/or document ID number(s), the transcripts, documents, reports, exhibits, and other evidence in the Board's file that are relevant to the issues and grounds being raised for review. If minutes are not transcribed, so indicate.

The information must be entered on the on-line form. The more information entered in block 13 the smaller the type face is output to accommodate the space the form allots. By the time petitioner entered all the documents he intended to rely on, the output type face had been reduced to 3/64 of an inch or point size seven to eight. The miniscule point size utilized in the RB form's block 13 where Mr. Stripps' name appears crams in 14 letters an inch.

It is easy to see (or not see) how the eye of the author of the RB didn't notice that Dr. Stripp's name wasn't listed twice as it might have been. But the author was indeed in good company. Respondent employer likewise failed to notice the miniscule discrepancy.

THE POLICY: COMPLETE COMPLIANCE

The Board's power to refuse to review the merits despite a minor error almost undetectable without a jeweler's loop originated in a provision requiring rule book compliance with the instructions accompanying Form RB 89, a form Board rules (12 NYCRR 300.13[b]) required to be filed with an

administrative appeal from a Workers Compensation Law Judge pursuant to Section 23 of the act.

Under Rule book enforcement, prior to the enactment of Section 23–a filling out a form "completely" was read to mean filling out the form perfectly. *Matter of Lebedeva v. FOJP*, 185 A.D. 3d 1318, 128 N.Y.S.3d 333 (3d Dept. 2020). Rule book enforcement was enforced notwithstanding not only the failure of Respondent to raise the issue in responding to the administrative appeal but also the failure to demonstrate even the ostentation of prejudice. *Matter of Abdiyev v. Eagle Container Corp.*, 181 A.D.3d 1132, 121 N.Y.S.3d 400 (3rd Dept. 2020).

RATIONAL FOR THE POLICY

The rationale for the policy was stated in *Matter of Jones v. Human Resources Admin.,* (174 A.D.3d 1010, 1012 – 1013, 103 N.Y.S.3d 193 [3rd Dept. 2019]):

> [T]he `completeness doctrine' assists the responding party in identifying the exact issues, grounds and evidence used in support of the application in determining the issues and crafting a timely and effective rebuttal. Having a complete application ... also assists the Board in providing timely and effective review of the application ... as it eliminates confusion over which evidence is involved in the application and which issues are preserved for appeal.

EXEMPTION OF PRO SE PARTIES

The policy of complete perfection was enforced only against claimants represented by counsel.

> [T]he Board may deny an application for review where the party seeking review, "other than a claimant who is not represented, does not comply with prescribed formatting, completion and service submission requirements" *Matter of Wauffle v. Chittenden*, 167 AD 3d 1135, 1136, 87 N.Y.S.3d 748 (3rd Dept. 2018)

While a pro se party was not subject to any of the draconian rules, no such leniency was extended to a represented claimant who decided to submit his/her own application for review independent of counsel. *Matter of Jones v. Chedeville, Inc.,* 179 A.D.3d 1272, 117 N.Y.S.3d 336 (3rd Dept. 2020)

SUBSTANTIVE ISSUE GLOSSED OVER

The substantive issue glossed over was far more serious than a minor discrepancy owing to a substandard type face. Potentially, Respondent JetBlue could have been poisoning passengers and crew jetting out of all six major city airports in New York. The action of the Board would seemingly violate good sense before we discuss the Constitution.

IMPACT OF WORKERS COMPENSATION LAW §23-A effective 12/22/21

The state appellate court rejecting petitioner's argument that New Section 23–A (L 2021 ch 718 sec 2 eff December 22, 2021) merely declared the U.S.

Constitutional right (U.S. Constitution XIV) "… to be heard [and to] …develop [a] position on the record" on the issue before the Board (*Matter of Emanatian v. Saratoga Springs Central School District*, 8 A.D. 3d 773, 778 N.Y.S.2d 218 [3rd Dept. 2004]), refused to apply Section 23-a which allowed correction of "any such mistake, omission, defect and/or other irregularity … within twenty days of written notice by the board of such mistake, omission, defect and/or other irregularity … "[I]f a substantial right of either the party … is not prejudiced, such mistake, omission, defect and/or other irregularity shall be disregarded." A system which forfeits a right of property without reasonably adequate notice inherently lacks due process. *Jones v. Flowers*, 547 U.S. 220, 229, 126 S. Ct 1708, 164 L. Ed 415 (2006)

The Appellate Court ruled:

> "This newly-enacted provision, … `appl[ies] to any and all forms … [submitted] subsequent to the effective date'… [Since] Workers' Compensation Law § 23-a [4] …did not go into effect until December 22, 2021 (L 2021, ch 718, §§1-2), this statute does not apply here *Dunlap v. JetBlue*, 216 A.D. 3d *supra* at 1380 fn.

The discrimination against the represented party under Section 23–a persists.

An appeal was taken to the New York State Supreme Court, Appellate Division, Third Department, challenging the constitutionality of the Board's action as a violation of due process. Said appeal was denied on May 25, 2023. See Appendix C.

(4a-9a) A motion was made to New York State Supreme Court Appellate Division: Third Department for re-argument and leave to appeal to the New York State Court of Appeals arguing denial of due process, equal protection and infringement of the right to counsel in civil cases. This motion was denied on August 17, 2023. A motion was made for permission to Appeal to New York State Court of Appeals on the grounds that equal protection, right to counsel and due process were violated by the incongruous priority of a form over public safety as if making a new art out of "Pity[ing] the plumage but forget[ting] the dying bird." Thomas Paine, THE RIGHTS OF MAN, 1791.[3] Said Motion was denied on February 22, 2024. See Attached Appendix A. (1a) The proceedings are now finally dismissed. Petitioner has no further recourse through the courts and boards of the state of New York.

The proceedings are now finally dismissed. Petitioner has no further recourse through the courts and boards of the state of New York.

[3] *https://www.let.rug.nl/usa/documents/1786-1800/thomas-paine-the-rights-of-man/text.php*

REASONS FOR GRANTING THE WRIT

The Fifth Amendment to the U.S. Constitution clearly provides that "no person shall be … deprived of life, liberty or property, without Due Process of Law."

The Fourteenth Amendment to the U.S. Constitution applies the Fifth Amendment guarantee of Due Process to the several 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."

The questions in this case is as follows: Is due process of law guaranteed by the 5th and 14th Amendments to the Constitution of the United States violated by the Board's refusal to hear petitioner's administrative appeal pursuant to Worker's Compensation Law Section 23 owing to an omission from an information block 3/64th of an inch high, so small the brain cannot process it when an alternate source of the same information is listed? Does burdening the right to counsel in civil cases guaranteed by the 5th and 14th Amendments to the United States Constitution to the point that the Board can refuse to entertain a less than perfectly filled out Application for Board Review (form RB 89) notwithstanding lack of prejudice to opposing parties? Is equal protection of the law guaranteed by the 14th Amendment by burdening the exercise of the right to counsel with a requirement that Application for Board Review (RB 89) be completed perfectly?

The Worker's Compensation Board in New York shares with other administrative bodies that clear cut lack of separation of powers between adjudicative, investigative, and enforcement functions. *Withrow v. Larkin*, 421 U.S. 35, 47- 48, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). Different from other agencies where the complaint is initiated by the agency after the agency's investigation and heard before a tribunal appointed by the agency, (*FTC v. Cement Institute*, 333 U.S. 683, 702 – 703, 68 S. Ct. 793, 92 L. Ed. 1010 [1948]; *Schweiker v. McClure*, 456 U.S. 188, 198 – 199, 102 S. Ct. 1665, 72 L. Ed. 2d 1 [1982]) in this context in New York, the agency, more like a judicial tribunal, presides over a dispute between private parties: the claimant asserting recompense for injury and an insurer seeking to avoid payment.

Section 20 of the Worker's Compensation Law provides the mechanism to bring on a hearing:

> The chair or board …upon application of either party, shall order a hearing, … Upon a hearing … either party may present evidence and be represented by counsel. The decision of the board shall be final as to all questions of fact, and, except as provided in section twenty-three of this article, as to all questions of law … [A] hearing or proceeding for the determination of a claim for

> compensation [may be] begun before a referee…[4]

There is no contention of unfairness in proceedings before the Worker's Compensation Law Judge. The constitutional objections revolve around the rejection of the administrative appeal without reaching the merits. The statute uses the term "an application in writing for a modification or rescission or review of such award or decision" (Workers' Compensation Law Sec 23) to describe an administrative appeal to the Board from the decision of the Worker's Compensation Law Judge/Referee.

> §23. Appeals. An award or decision of the board shall be final and conclusive … unless reversed or modified on appeal… Any party may within thirty days after notice of the filing of an award or decision of a referee, file with the board an application in writing for a modification or rescission or review of such award or decision … [The board] shall include in [its] decision a statement of the facts which formed the basis of its action on the issues raised before it … Within thirty days after notice of the decision of the board

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[4] Workers' Compensation Board … refers to the referee as `Workers' Compensation Law Judge' … [B]oth titles appear to be in vogue, … [Referee is] the statutory one (Workers' Compensation Law, § 150). *Matter of LANDGREBE v. Westchester*, 57 N.Y.2d 1, 5fn, 453 N.Y.S.2d 413, 438 N.E.2d 1128 (1982).

> upon such application has been served upon the parties…, an appeal may be taken … to the appellate division of the supreme court, third department, by any party in interest, …

The administrative appeal was rejected because petitioner's cover sheet (Worker's Compensation Form RB89) listed Dr. Stripp's testimony but failed to list Dr Stripp's virtually identical IME report.

The Worker's Compensation Board is a unique administrative body not only in impartially adjudicating a dispute between two private parties, but also for its complete immunity from challenges to its actions founded on state constitutional guarantees. NY Constit Art 1 Sec 18; *Crosby v. Workers' Comp*, 57 N.Y.2d 305, 310, 442 N.E. 2d 1191, 456 N.Y.S.2d 680 (1982). Notwithstanding, the Board's complete immunity from state constitutional guarantees to due process (Art I Sec 6), equal protection (Art I Sec 11), privileges (Art I Sec 1), and counsel (Art I Sec 6), it remains open to "call upon [the court] to determine the federal question whether the act as construed and applied, is repugnant to the restrictions of the [14th] Amendment." *Ward & Gow v. Krinsky*, 259 U.S. 503, 520, 42 S. Ct. 529, 66 L. Ed. 1033 (1922).

The question thus is whether the due process right to be heard embodied in the Fifth and Fourteenth Amendment prohibition against "depriv[ing] any person of life, liberty, or property without Due Process of Law" is violated by a rule which derails a timely administrative appeal for a

picayune violation so small the brain cannot process it?

It lends new meaning to the word irrational to allow a claim to be defeated by a minor error which caused no prejudice. The irrationality is at such a variance with good sense it works a deprivation of due process. Such is consistent with the view taken in the U.S. Supreme Court in *Logan v. Zimmerman Brush Co.*, (455 U.S. 422, 433, 102 S. Ct. 1148, 71 L. Ed 265 [1982]) In *Logan*, Illinois had devised a procedure which permitted an administrative agency's nonfeasance to torpedo the *Logan* grievant's claim regardless of the underlying merits.

> While the legislature may elect not to confer a property interest, . . . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards. …[T]he adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms. *Logan, supra* at 433

Procedures adopted by the state must be administered fairly, (*Cleveland Bd of Ed v. Loudermill*, 470 U.S. 532, 541, 105 S. Ct 1487, 84 L.Ed.2d 494 [1985]), and subject to meaningful safeguard against arbitrary administrative action protecting the individual against the exercise of arbitrary administrative power (*Vitek v. Jones*, 445 U.S. 480, 488-489, 100 S. Ct 1254, 63 L.Ed.2d 552 [1980]) embodied in the Fifth and Fourteenth

Amendment's guarantee of the "fundamental …opportunity to be heard." *Mullane v. Central Hanover Bank*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 Led 865 (1950).

That New York State's conception of due process in compensation cases may been effectively abrogated (NY Consitit Art I Sec 18) as a matter of state constitutional practice does not bind the federal courts which must assay under the Supremacy Clause (U.S. Constit Art VI, Cl 2) whether the procedures conform to due process guaranteed by the 14th Amendment. *Ward & Grow v. Krinsky*, 259 U.S. *supra* 520. The Federal Constitution's well-known due process clause embodied in the 14th Amendment prohibiting the state from "depriv[ng] any person of life, liberty, or property, without due process of law." (U.S. Constitutional Amendment V, XIV) requires adherence to certain "[m]inimum [procedural] requirements … [imposed by] Federal law...[regardless of] the State`s...specificat[ion] of...procedures...it...deem[s] adequate." Logan supra at 432)

"Fairness of procedure is due process in the primary sense...Administrative officers... may [not] disregard the fundamental principles that inhere in due process of law…opportunity to be heard...[is] basic to our system of jurisprudence." Frankfutter J. concurring in *Joint Anti-Fascist Refugee v. McGrath*, 341 U.S. 123, 161-165, 95 L. Ed. 817, 848-850. (1951). In administrative law, this commitment due process requires the state to afford the party "an opportunity to be heard" (*Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S. Ct. 1011, 25 L. Ed. 2d 287 [1970]) and

a "given a meaningful opportunity to present their case." *Mathews v. Eldridg*e 424 U.S. 319, 349, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)

Over petitioner's objection that the practice invoked by the New York Worker's Compensation Board (Appendix D, 12a-19a), in dismissing an administrative appeal for an error so picayune the adversary did not notice it was a deprivation of fundamental fairness, the Appellate Division with indifference to the safety hazard of mass toxic poisoning and to the important right affected confirmed the administrative decision. The Appellate Division (Appendix C, 4a-9a) finding no cause to cure the deprivation of due process, specifically noted the anomaly of the picayune violation of procedure and lack of prejudice finding them unavailing to petitioner. The Board's rule should be enforced even though greater minds in the NY legislature saw the need to reinject the concept of due process into the equation.

A proper approach accommodating due process considerations would be the cost-benefit analysis of *Mathews*. 424 U.S. at 348. In determining "what process is due," the court weighs (1) "the private interest that will be affected by the official action" and (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards" against (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. *supra* at 335.

> "Efficiency…purchased at the cost of fairness… [en]dangers individual[ized] justice…[such] that each individual plaintiff['s] – and defendant's-cause …[is] lost." *Malcolm v. National Gypsum*, 995 F. 2d 346, 350 (2d Cir 1993) *quoting* in part *In Re Brooklyn Navy Yard Asbestos Litig*, 971 F. 2d 831, 893 (2d Cir 1992)

Here the private interest is a right to compensation, a right New York, having put it in its Bill of Rights as a right superior to all others, regards as fundamental. The public interest in favor of allowing the claim to continue is equally apparent. JetBlue could be poisoning the traveling public in all six major cities of the state. The risk of erroneous adjudication is equally apparent for the same reasons. The cost of allowing the appeal is minimal. It may have taken more effort to find the error than to have ignored it and allowed the administrative appeal to proceed.

What is said of due process is equally true with respect to the unconstitutional burden on the exercise of the right to counsel in a civil case. As *Faretta v. California* (422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 [1975]) recognized the right of counsel in civil case was universally recognized at common law. The Sixth Amendment extended this protection to accused criminals. As a fundamental right, its infringement must be justified by more than "a legitimate governmental interest" it must be grounded in "a compelling one." Thomas J concurring in *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); *Craig v. Boren*,

429 U.S. 190, 197 – 198, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976). Dealing with an error so miniscule in size it took more effort to find it than to ignore it, no compelling state interest has been presented.

First said Shakespeare, first do all the lawyers. The Board would try to outdo the Bard of Avon himself. By no measure can equal protection be served by burdening the right to counsel with pettifoggery any more than can efficiency be promoted by encouraging common folk to engage in the folly of self – representation. Efficiency will not be thereby promoted. A pro se party is far more likely to deluge the Board in a blizzard of disorganized material, incomprehensible affected prose attempting legal diction, and venting of spleen at the judge and opposing counsel. Attorneys are more likely to present their point short and sweet and to the point:

> [Pro se] Appellant['s] … written argument in this court … give[s] vent to a wrath … full of contempt … of some of the judges … [as well as] Appellate Courts, opposing counsel, lawyers and …. to some degree, by implication, the legislature of our State. … [Appellate] argument must be based on the record, and [scurrilous] attacks … cannot be permitted *Biggs v. Spader*, 411 Ill. 42, 45, 103 N.E. 2d 104 (1951)

> Said the bard of this democracy, "Either party . . . has a natural right

> to plead his own cause; this right is consistent with safety, therefore it is retained; but the parties may not be able, . . . therefore the civil right of pleading by proxy, that is, by a council, is an appendage to the natural right [of self-representation]…" Thomas Paine on a Bill of Rights, 1777, reprinted in 1 Schwartz 316 quoted in *Faretta v. California*, 422 U.S. *supra* at 830 fn 39.

Unrepresented claimants left free to deluge the Board in a mélange of exhortations of perfidy, complaints of wrongful handling of their case, laced together with half remembered slogans from high school civics and other tidbits of "irrelevant legalisms…," could actualize the nightmare of Justice Stewart dissenting *Bounds v. Smith*, 430 U.S. 817, 837, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977).

Certainly, the cause for dismissal of the administrative appeal was miniscule but the deprivation of right was extreme. Such an extreme case necessitates further attention.

> "[E]xtreme cases are more likely to cross constitutional limits, requiring this Court's intervention and formulation of objective standards. This is particularly true when due process is violated." *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 887 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009) quoted in Robertson, Cassandra Burke, "The Right to

Appeal" (2013). Faculty Publications. 58.[5] 91 NC L Rev 1219, 1223 (2013)

The New York Courts have violated good sense, much less elementary due process. Accordingly, since the case is finally resolved in the state courts and there is no further recourse there, the case is ripe for this Court to determine whether Petitioner/Claimant's federal right to due process have been violated.

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[5] *https://scholarlycommons.law.case.edu/faculty_publications/58*

CONCLUSION

For all of the above stated reasons, the Petition for a Writ of Certiorari should be granted.

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