No.

IN THE SUPREME COURT OF THE UNITED STATES

S.O., PETITIONER,

v.

UNIVERSITY OF TEXAS AT AUSTIN PRESIDENT JAY HARTZELL, et al., RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a college degree is a protected property interest that can only be revoked through judicial proceedings rather than through the unilateral actions of university officials.

LIST OF PARTIES

Pursuant to Rule 14(b)(i) of the Rules of the Supreme Court of the United States, the following is a complete list of the parties in the trial court, as well as the names and addresses of their trial and appellate counsel:

Parties to the Trial Court's Orders Under Review:

S. O.	*Plaintiff/Petitioner*
Jay Hartzell	*President of University of Texas at Austin* *Defendant*
Paul L. Foster	*Chairman and Member of Board of Regents for University of Texas at Austin* *Defendant*
Jeffrey D. Hildebrand	*Vice Chairman and Member of Board of Regents for University of Texas at Austin* *Defendant*
R. Steven Hicks	*Vice Chairman and Member of Board of Regents for University of Texas at Austin* *Defendant*

Alex Cranberg	*Member of Board of Regents for University of Texas at Austin* *Defendant*
Brenda Pejovich	*Member of Board of Regents for University of Texas at Austin* *Defendant*
David J. Beck	*Member of Board of Regents for University of Texas at Austin* *Defendant*
Ernest Aliseda	*Member of Board of Regents for University of Texas at Austin* *Defendant*
Sara Martinez Tucker	*Member of Board of Regents for University of Texas at Austin* *Defendant*
Wallace L. Hall Jr.	*Member of Board of Regents for University of Texas at Austin* *Defendant*

Sonica Reagins Lilly	Dean of Students, *Sr. Associate Vice-President for Student Affairs of the University of Texas at Austin* *Defendant*
Vincent Shelby Stanfield	*Registrar for University of Texas at Austin* *Defendant*
Jeana Lungwitz	*Clinical Professor and Faculty Member of University of Texas at Austin* *Defendant*

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Appellants/Defendants

LIST OF RELATED PROCEEDINGS

Pursuant to Rule 14(b)(iii) of the Rules of the Supreme Court of the United States, the following is a complete list of related proceedings pending in any state or federal court:

S.O. v. Univ. of Texas at Austin President Gregory Fenves, et al., No. D-1-GN-16-000517, 419th Judicial District Court, Travis County, Texas.

Univ. of Texas at Austin President Jay Hartzell, et al., v. S.O., No. 03-19-00131-CV, Texas Court of Appeals, Third District, at Austin.

K.E. v. Texas State University, et al., No. 15-0116, 22nd Judicial District Court, Hays County, Texas.

Texas State Univ. President Denise M. Trauth, et al., v. K.E., No. 03-19-00212-CV, Texas Court of Appeals, Third District, at Austin.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page**

Statutes:

Miscellaneous:

IN THE SUPREME COURT OF THE UNITED STATES

S.O., PETITIONER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

Petitioner, S.O., by and through undersigned counsel, respectfully petitions for a writ of certiorari to review the judgment of the Texas Supreme Court.

OPINIONS BELOW

The opinion of the Texas Supreme Court (App., *infra*, 1a-63a) is reported at 672 S.W.3d 304. The opinion of the court of appeals (App., *infra*, 64a-93a) is reported at 613 S.W.3d 244.

JURISDICTION

The judgment of the Texas Supreme Court was entered on March 31, 2023. A petition for rehearing was denied on September 1, 2023 (App., *infra*, 97a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT

S.O. enrolled in The University of Texas in 2003 as a graduate student working toward a Ph.D. in chemistry. Her dissertation research involved efforts to develop multistep synthetic routes to natural products including lundurine products. S.O. presented and successfully defended her dissertation, and in May 2008 the University conferred on S.O. a Ph.D.

In 2012, S.O.'s graduate advisor, Professor Stephen Martin, brought a complaint against her for academic misconduct relating to some of the data reported in her dissertation. After an investigation, the committee determined that S.O.'s dissertation had been improperly rewarded and should be revoked. In February 2014, S.O. was informed of the decision to revoke her degree and immediately filed suit, alleging that the University's actions violated her constitutional rights and seeking a temporary restraining order to prevent any disciplinary action against her. The University filed a plea to the jurisdiction, which was granted by the trial court. The court of appeals affirmed. *[S.O.] v. Univ. of Texas. at*

Austin, No. 03-14-00299-CV, 2015 Tex. App. LEXIS 9839, 2015 WL 5666200, at *5 (Tex.App. – Austin Sept. 23, 2015, no pet.).

After a disciplinary hearing was rescheduled for March 4, 2016, S.O. filed suit against several University officials for declaratory and injunctive relief. S.O. sought declarations that the officials in question are not authorized to revoke a degree and that the University's governing disciplinary procedures do not satisfy due process.

The disciplinary hearing was rescheduled several times but ultimately never commenced. As a result, in October 2016 the trial court granted the University officials' plea to the jurisdiction on the ground that S.O.'s claims were not ripe for review. The court of appeals reversed in part, holding that a justiciable controversy exists with respect to S.O.'s claim for a declaratory judgment that the University officials are acting ultra vires because they lack authority to revoke her degree. *S.O. v. Fenves*, No. 03-16-00726-CV, 2017 Tex. App. LEXIS 5424, 2017 WL 2628072, at *4 (Tex. App.—Austin June 15, 2017, no pet.).

On remand, S.O. filed and amended petition seeking declarations that University officials lack express or implied authority to revoke a former student's degree. University officials responded with a second plea to the jurisdiction, arguing that they have implied authority to revoke a diploma that a student obtains in violation of their institutional rules as long as they are afforded adequate due process. The

officials contended that S.O.'s other claims were barred by sovereign immunity.

The trial court denied the plea to the jurisdiction "as to [S.O.'s] ultra vires claim regarding whether [the officials] are acting without authority to revoke a degree" but granted the plea as to all other claims for relief. The trial court also granted S.O.'s motion for summary judgment as to the requests for a declaratory judgment that the officials lack express and implied authority to revoke her degree.

As in 20-0812, the same divided court of appeals affirmed, holding that S.O. asserted a cognizable ultra vires claim against the University officials—specifically, that they acted without legal authority by instituting an internal proceeding to decide whether to revoke her degree—that is not barred by sovereign immunity. 613 S.W.3d 244, 256 (Tex. App.—Austin 2020). Examining the statutes governing The University of Texas System, the court of appeals held that they neither expressly nor impliedly authorize revocation of a student's degree after it has been conferred. *Id.* at 253-56.

The court of appeals also rejected the University officials' contention that the ultra vires claims are not ripe unless and until S.O.'s degree is revoked. *Id.* at 256-58. The dissent opined that the System's Board of Regents "has the authority to revoke a former student's degree for academic dishonesty so long as, as relevant here, it affords due process under the United States Constitution and due

course of law under the Texas Constitution." *Id.* at 260-61 (Kelly, J., dissenting).

The University officials then sought review from the Texas Supreme Court. After briefing by the parties and oral argument, the court concluded that the University has statutory authority to revoke the degree of a former student for engaging in academic misconduct while a student at the University. *Univ. of Tex. v. S.O.,* 672 S.W.3d 304, 320 (Tex. 2023). For this reason, Petitioner now seeks certiorari with this Court.

REASONS FOR GRANTING THE PETITION

A. The Texas Supreme Court has decided an important question of federal law that has not been but should be settled by this Court. The claims in this case squarely implicate the Fifth Amendment's Due Process Clause. The lower court, albeit the highest court in the state, is but a state court. This case demands pronouncement from the nation's highest court. For this reason, certiorari is now being sought from this Honorable Court.

At the heart of this case is the Due Process Clause of the Fifth Amendment to the United States Constitution, and whether it permits a former's student's degree to be revoked by way of a university disciplinary proceeding and the limited process that it affords. The Texas Supreme Court has concluded that such is permissible.

Inherent in any due process analysis is the "process" that is actually given by those seeking to take property from another. In this case, no process was given until Petitioner filed suit against the university.

Because a former student has a protected liberty and property interest in her degree once conferred, the only available avenue for a state university to rescind that degree is to bring suit in a court of competent jurisdiction. A university surely does not retain infinite plenary power over a student after the degree is conferred.

While a student is enrolled at a state university, the university has broad power to compel the student to conform her behavior to university-mandated guidelines and can even dictate specific aspects of the student's life. But a state university certainly should not be permitted to summon a graduate of the university back to the university's halls and compel the graduate to comply with a university mandate that the university only later believes the graduate failed to satisfy while she was a student.

As Justice Blacklock points out in his dissent, a university loses its authority over students the moment the degree is issued, the date printed on the graduate's diploma. *Dissenting Op.* at 2. Indeed, the new rule announced in the Texas Supreme Court's opinion presents the very real risk of ushering in a new era of degree revocations based on a perpetually evolving understanding of what constitutes

prohibited conduct by a university student. Under the opinion's new rule, which imposes no temporal restrictions on when a state university may exercise this authority, a graduate of a state university now lives with the perpetual uncertainty that she may be called back to her alma mater to defend even decades-old conduct.

As Justice Blacklock recognized in his dissent, the only on-point authority in Texas, as cited to by Petitioner is an Attorney General Opinion. Tex. Att'y Gen. Op. No. M-466 (1969). The dissent correctly points out that the Attorney General Opinion stands for the proposition that "…a state university wishing to rescind a graduate's degree must do what any other regretful grantor of property must do to rescind the grant. It must ask a court to require the property's return." *Dissent Op.* at 4. Justice Blacklock stated further, "A party seeking rescission of someone else's property is quite obviously not managing its own internal affairs. It is seeking to manage the affairs of the party resisting its claims, and for this it typically needs the judicial power of a court." *Id.* Petitioner submits to the Court that this is the correct view, the Texas Supreme Court's erroneous conclusions notwithstanding.

It is also the case that the lower court's majority opinion relied almost entirely on precedent from other jurisdictions. *See Doe v. Salisbury Univ.*, 107 F. Supp. 3d 481, 492 (D. Md. 2015); *Goodreau v. Rector & Visitors of Univ. of Va.*, 116 F. Supp. 2d 694, 703 (W.D. Va. 2000); *Brown v. State ex rel. State Bd. of Higher Educ.*, 2006 ND 60, 711 N.W.2d 194, 198

(N.D. 2006); *Hand v. Matchett*, 957 F.2d 791, 794 (10th Cir. 1992); *Crook v. Baker*, 813 F.2d 88, 91-92 (6th Cir. 1987); *Faulkner v. Univ. of Tenn.*, 1994 Tenn. App. LEXIS 651, 1994 WL 642765, at *5 (Tenn. Ct. App. Nov. 16, 1994). *Court's Op.* at 22-24.

This only further emphasizes the need for this Court's pronouncement on this very important and critical issue. As the dissent correctly noted, all of the cases mentioned above have as their underpinning one particular case, *Waliga v. Bd. of Trs. of Kent State Univ.*, 22 Ohio St. 3d 55 488 N.E.2d 850 (Ohio 1986). However, "…the 1986 Ohio case does not engage deeply with the nature of college degrees or the character of a graduate's property right in a degree." *Dissenting Op.* at 3. It is also the case that the *Waliga* decision relied upon an English case from 1723. *King v. Cambridge Univ. (Bentley's Case)* (1723) 92 Eng. Rep. 818; 2 Ld. Raym. 1334; 8 Mod. Rep. (Select Cases) 148.

However, *Bentley's Case* doesn't stand for the proposition that the lower court thinks it does. Justice Blacklock's dissent does an excellent job of analyzing what *Bentley's Case* stands for, and what it does not. "*Bentley's Case* bears on the matter at hand in at least three important ways. First, the King's Bench treated Bentley's degree as 'a freehold and a dignity'—in other words, a species of property belonging to Bentley, which could not be taken from him without judicial process." *Dissenting Op.* at 18-19 (citing to *Bentley's Case*, at 819). The dissent continues by making clear that the only reason it was held that Cambridge had the power to revoke a degree, was

because unlike the university officials in our case, Cambridge was given specific judicial authority by both the Crown and Parliament. *Id.* at 19.

Lastly, the dissent found the only reason Cambridge was actually able to revoke the degree, was based on jurisdictional grounds. The decisive fact was that Bentley lived within the physical limits of Cambridge as a resident scholar. Absent this fact, even with the authority vested in Cambridge to revoke a degree, it would not have had personal jurisdiction over Bentley and his degree. *Id.* at 20-21. Despite what the lower court would have us believe, *Bentley's Case* provides zero support for the claim that a university may exercise authority over graduates with no other connection to the university. As the dissent concluded, "…quite the opposite. *Bentley's Case* indicates that even a university granted broad judicial power within its boundaries—a power modern state universities lack—did not traditionally have authority to adjudicate the legal rights of graduates in the outside world." *Id.* at 21.

The majority opinion concludes that a student's liberty and property interests in her degree are not relevant to whether a state university has the statutory authority to revoke a degree in the first instance. As the opinion summarizes, "In sum, whether a former student has a constitutionally protected interest in her degree is relevant not to the existence of a university's statutory authority to revoke that degree but to whether the student was presented sufficient notice and opportunity to be heard before that authority was exercised." *Opinion* at 18.

But a student's liberty and property interest in her degree are paramount to determining whether a state university may unilaterally take the degree from her in a university-dictated proceeding. It is precisely because a student has a protected property and liberty interest in her degree that a university cannot take that degree from her in a process outside the protections afforded to litigants in the judicial system.

While a university's efforts to revoke a graduate's degree certainly invoke reputational concerns, there is something much larger at stake: the graduate's liberty and property interest in her degree, which she has acquired through years of personal effort and performance combined with tuition payments or other consideration. As a result, the Court's jurisprudence on the due process protections required in a university proceeding related to a *current student* should have no bearing on the protections afforded to a university *graduate*.

In sum, a university graduate has a property and liberty interest in her degree. These unique interests implicate due process and considerations that are entirely separate and distinct from those discussed in this Court's student discipline jurisprudence. Like any proceeding implicating an individual's property and liberty interests, a state university must pursue degree revocation in a court of competent jurisdiction – not in a university-created and university-run quasi-judicial proceeding.

B. This Court should grant certiorari as the question presented is recurring and exceptionally important. Additionally, the decision of the lower court will have an impact whose effects will be deleterious and widespread to individuals nationwide who find themselves defending against unlawful actions by state universities.

Universities are state agencies whose authority is granted by the legislature and limited by the plain words of the controlling statutes. Adding words to a statute to give an "implied" right would give more power to universities that the legislature had intended. This is exactly what the Texas Supreme Court did in Petitioner's case. What the lower court did, and what Respondent's argued for, is unfettered power to revoke degrees awarded any time in the past. In essence, allowing university disciplinary committees to retain jurisdiction over former students indefinitely.

The Texas Supreme Court erred in its analysis and took a rather flawed approach to the entire matter, merely siding with the impermissible power grab of another state agency. The court created authority, to be bestowed on public universities, from nothing more than whole cloth and fallacious reasoning.

University disciplinary proceedings are widely considered, and rightly so, to be "kangaroo courts." Individuals defending against charges have precious few rights, often not even a right to have an attorney

present or have access to discovery. As for the Rules of Evidence, that's a foreign concept.

For instance, if universities are granted authority to revoke degrees (as the Texas Supreme Court recently did) and to retain jurisdiction over alumni, then universities will become even more of a political battleground as activists and interest groups seek to limit public speech and punish unpopular individuals by attacking their academic credentials.

These dangers are policy considerations that should be weighed by legislators – not by judges – in determining whether universities should receive the additional authority that the Texas Supreme Court has seen fit to grant in this case. The court of appeals was right to keep a lid on this box until the legislature decided otherwise. The Texas Supreme Court erred in concluding that this authority exists where it clearly does not.

The fact that universities commonly deny basis procedural safeguards to current students in disciplinary proceedings is well documented. Universities should not be given even more power to revoke the property rights of *former* students. That's precisely what the lower state court did when it read "implied" authority into a statute despite the fact that legislators declined to provide it in the first instance. To do so was in error, baseless, and in need of correction from this Court.

Universities have been found to routinely deny basic procedural protections to current students and

faculty that people generally associate with fundamental fairness in hearings. A study in 1980 revealed that of the 58 institutions surveyed, "36 percent did not allow cross-examination, 55 percent did not guarantee an impartial factfinder, 60 percent did not guarantee students the right to confront their accusers, and 91 percent did not require witnesses to testify." Edward J. Golden, *Procedural Due Process for Students at Public Colleges and Universities*, 11 J.L. & EDUC. 337 (1982).

The situation has only gotten worse since the time of that study. Universities are now using disciplinary proceedings to unpopular speech and adjudicate allegations of misconduct, academic and otherwise, with hearing panels composed of students and faculty who are trained to reach a university's preferred outcome. The lack of process for those who stand accused just makes it all the easier for university committees to reach the desired finding of misconduct.

More importantly, the history of substandard process at universities across the country is relevant to whether the judicial branch should read an implied right into law to allow universities even greater discretion to punish not only students, but former students who have already received their degrees and moved on with their careers. The university officials want to characterize this only as an "academic" matter so that it can obtain a rubber stamp on its predetermined outcome, but that is precisely why the lack of procedural safeguards should be considered in determining whether courts should read an "implied"

right of universities to revoke degrees into a statute where it otherwise doesn't exist.

By granting certiorari, this Court can review the Texas Supreme Court's tremendous grant of power its decision has given to universities and the kangaroo courts utilized by them to deprive former students of their most prized and valuable asset, their college degree. Allowing the lower court's decision to stand sets a dangerous precedent capable of repetition and abuse throughout this nation.

A university education is virtually now a requirement for many, if not most, careers in almost every field of occupation. Because universities hold this position of power, these institutions hold enormous influence over the direction of American culture and politics. The Foundation for Individual Rights in Education ("FIRE") has documented at least 426 incidents of universities targeting faculty members for political reasons over the past six years. German, K.T. & Stevens, S.T., *Scholars Under Fire; The targeting of scholars for ideological reasons from 2015 to present.* The Foundation for Individual Rights in Education (2021), https://www.thefire.org/research/publications/miscellaneous-publications/scholars-under-fire/.

Petitioner has a constitutionally protected property and liberty interest in a degree which may not be taken from an individual without due process of law in a court of competent jurisdiction. *See, e.g., Goss v. Lopez,* 419 U.S. 565, 574-75 (1975); *Dixon v. Alabama State Board of Education,* 294 F.2d 150, 157

(5th Cir. 1961); *University of Tex. Med. Sch. at Houston v. Than,* 901 S.W.2d 926, 930 (Tex.1995) (recognizing constitutionally protected property and liberty interest in a degree).

The Texas Supreme Court has decided an important question of federal law that has not been but should be settled by this Court. This Court should grant certiorari as the question presented is recurring, exceptionally important, and will affect not only Petitioner but countless others who are similarly situated. It places these individuals in a position of being subject to having their hard-earned degrees and livelihoods stripped from them on the whim of university officials long after they've graduated and left their college days behind.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant this Petition for Certiorari to review the judgment of the Texas Supreme Court.

Respectfully submitted,

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