23-6537

No.

In the Supreme Court of the United States

ORIGINAL

GREGORY STESHENKO,
Petitioner,
v.

DE ANZA COLLEGE *et al.*
Respondents.

On Petition For Writ of Certiorari To The Supreme Court Of the State of California

PETITION FOR WRIT OF CERTIORARI

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Petitioner
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Petitioner, *in Propria Persona*

QUESTIONS PRESENTED

1. Whether permission of discrimination in public education against the protected classes, ostensibly justified by business necessity, violated the constitutional equal protection clauses?

2. Whether an outsourcing of the college courses to the external commercial entities absolves a public college from liability for discrimination against the protected classes practiced by these external entities?

3. Whether the court correctly held that the public colleges have no obligations under the operation of law to their students, even if the statutes and regulations impose these obligations?

4. Whether the court correctly held that the public colleges have no contractual obligations to their students, even if the express contract exists?

5. Whether the court correctly held that the ministerial employees of the public colleges could arbitrarily invalidate the state regulations and the discretionary decisions of the college boards?

6. Whether the court's invalidation of the described in this petition constitutional provisions, statutes and state regulations serves public interest?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of

all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

(a) Gregory Steshenko, Petitioner and Plaintiff;

(b) De Anza College, Patricia Buchner, Anita Muthyala-Kandula, Lorrie Ranck, Respondents and Defendants.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below. The denial of review by the highest state court appears at Appendix C to the petition and is unpublished.

JURISDICTION

This appeal originates from the November 1, 2023 denial by the California Supreme Court of review of the unpublished decision of the state appellate court. A copy of that denial appears at Appendix C. No petition for rehearing is accepted by the California Supreme Court. The United States Supreme Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Civil Rights Act – Equal Protection

Civil Rights Act of 1866, Presently Enacted As U.S. Code, Title 42, Chapter 21, Subchapter I, Section 1981

"(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all

laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

[...]

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law."

The Fourteenth Amendment to the U.S. Constitution

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Constitution, Article IV, Section 2, Clause 1 (The Privileges and Immunities Clause)

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

B. California Law

California Constitution, Article IX, § 6

"The Public School System shall include all [...] state colleges, established in accordance with law and, in addition, the school districts [...]. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System."]

California Constitution, Article IX, § 8

"[N]o public money shall ever be appropriated for the support of any school not under the exclusive control of the officers of the public schools [..]."

California Education Code, Title 3, § 66292

"(a) The governing board of a community college district shall have the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on age [...]."

California Education Code, Title 3, § 66700

"The California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges."

California Education Code, Title 3, §§ 70900-88933

California Community College system is established and the discretionary decision-makers within the system are defined.

California Education Code, Title 3, § 70901

The Board of Governors of the California Community Colleges has the full discretionary power limited only by the statutes and establishes the minimum set of standards for the community colleges.

California Education Code, Title 3, § 70902

The limited by the statutes and minimum standards discretionary power are delegated to the governing boards of the community colleges.

California Government Code, Title 2, GOV § 11135

"No person in the State of California shall, on the basis of [...] age [...] be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state."

California Government Code, Title 2, § 12940 ("FEHA")

It is illegal "for an employer, because of [...] age [...] to refuse to select the person for a training program leading to employment, or to bar or to discharge the person [...] from a training program leading to employment," where "age" is defined as above 40 y.o. by California Government Code, Title 2, § 12926.

C. California State Regulations

California Code of Regulations, Title 5 ("5 CCR"), § 51006

"[...U]nless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to section 55003 of division 6 of title 5 of the California Code of Regulations."

California Code of Regulations, Title 5, § 55002

The pre- and corequisites for a course are shaped by the curriculum committee and published in the course outline of record ("Outline"); the course is to be taught by a qualified instructor in accordance with the Outline.

California Code of Regulations, Title 5, § 55003

The pre- and corequisites are established by the governing board of the community college through a process conducted by the curriculum committee; a course for which the requisites are established is taught in exact accordance with its Outline.

California Code of Regulations, Title 5, §§ 58102 and 58104

A clear description of each course must be published in the Catalog, where "the availability of the course to all qualified students must [...] be affirmed."

California Code of Regulations, Title 5, § 58106

"[...A]ll courses shall be open to enrollment by any student who has been admitted to the college [...and met] prerequisites and corequisites [...]."

California Code of Regulations, Title 5, § 58108

"(j) Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

(k) Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites that are not expressly authorized in this chapter or in state law as barriers to enrollment in or the successful completion of a class."

STATEMENT OF THE CASE

A. Factual Background

Petitioner, a long-term unemployed electrical engineer of the protected age, enrolled into De Anza College ("De Anza"), a California community

college[1], for professional retraining into a medical laboratory technician ("MLT"). The County of Santa Cruz financially sponsored him. Contrary to California Constitution, statutes and regulations, De Anza outsourced a part of its MLT program to the commercial entities not related to the public system of education and lost control over it. Contrary to statutes and regulations, the ministerial college officials established a practice, according to which students had to seek permission from the commercial entities for enrollment into the outsourced college courses. The students were selected for enrollment through the job interviews at the commercial entities. The selection was arbitrary, but, in general, students were evaluated on their age and ability to bring through their labor the maximum profit to the commercial entities. Respondents sent petitioner to three job interviews, at which the employees of the commercial entities stated to petitioner that his age is unacceptable for training. Accordingly, respondents denied petitioner enrollment into the outsourced courses required for his graduation. Because of it, petitioner lost the county's sponsorship and his ability to graduate, to get a professional license and to re-enter the workforce. He remains unemployed and unemployable.

B. Relevant Procedural Background

[1] An arm of the State of California

The case was prejudiced by the severe ethical violations. A trial court judge, who has a relationship with defendants, selected this case for transfer to him. The judge disclosed that relationship only after the judgment. Petitioner learned about the relationship from mass media and repeatedly filed petitions for the judge's disqualification. The judge refused to step down. Then, he capriciously announced that he would not allow petitioner to conduct any discovery and set up the case for a fast-track trial, expecting petitioner to fail without evience. Petitioner was able to obtain the necessary for trial evidence from alternative sources. When the judge found out about it, he cancelled the trial and, contrary to law and evidence, granted respondents' motion for summary judgment. On appeal, the case went to a small state appellate court where the judge's wife, who also has a relationship with defendants[2], is sitting as an Associate Justice[3]. The appeal

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[2] This case has a collateral involvement of Judge Socrates Manoukian's and Justice Patricia Bamattre-Manoukian's fallen son who, as these judges believe, was well served by respondents. Petitioner's attempts to disqualify Judge Manoukuian because of the judge's strong emotional and social relationship with respondents were met with fervent hostility from the entire Manoukian family. The Acting Presiding Justice Bamattre-Manoukian imparted that hostility to the appellate panel, with the members of which she works and socializes on a daily basis.

[3] Judge Manoukian is subordinated to the California Sixth District Court of Appeal, in which his wife Bamattre-Manoukian is sitting as the Acting Presiding Justice. Bamattre-Manoukian's assurances that she does not influence consideration of her husband's cases are not credible. Numerous litigants alleged that she does, and the court's actions on Manoukian's cases are always extraordinarily favorable to him.

was decided contrary to law and evidence by her friends and colleagues, who communicated with her on this case and who at the hearing treated petitioner with unprovoked intense hatred. Thus, petitioner was denied due process.

C. Legal Discussion

1. The Court Permitted Discrimination Against The Protected Classes

a. The Court Ruled That Outsourcing Of The Core Business Averts Liability For Discrimination

The opinion (Attachment 1) holds that by outsourcing of its core business to the third parties, respondents avoided any liability for overt discrimination perpetrated by these third parties. That theory could be extended to any situation in which discrimination is possible. For example, if an employer outsources its human resources ("HR") department to a discriminating third party, then, according to the court, the employer is not liable because it did not commit the discriminatory acts against its employee, and the third-party HR is not liable because the discriminated against person is not its employee. In other words, according to the court, outsourcing quashes liability and legalizes discrimination.

Petitioner contends that by the act of outsourcing of its core functions, the employer creates actual agency, for which it is liable under California Civil Code, § 2330.

The age discrimination cause of action alleges violation of the following three anti-discrimination state statutes.

b. California Government Code, § 12940 ("FEHA[4]")

FEHA forbids age discrimination of trainees in programs leading to employment irrespective of the source of the program funding. The court circumvented that prohibition by ruling that FEHA is overbroad. The opinion on pp. 15-16 "narrows" it as follows:

(1) Upon graduation, the employment must be immediate, without any intermediate steps, such as licensure;

(2) Upon graduation, the employment must be with the employer who conducted the training program.

No authority supporting these interpretations of the anti-discriminatory statute is given[5] or exists. No meaningful explanation is provided. The usual legislative intent is to read the language of the anti-discriminatory statutes in the broadest possible terms. See *Rogers v. EEOC*, 454 F.2d 234, 4 EPD §7597 (5th Cir. 1971.) Permission of illegal discrimination in training because

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[4] The Fair Employment and Housing Act.

[5] In *Reno v. Baird,* cited on p. 15 of the opinion, the court held that the individual supervisors are liable under FEHA, as the principle of agency applies. *Burks v. Kaiser Foundation,* also cited there, finds for the disabled plaintiff who was forced into arbitration. Both cases do not support the opinion's reasoning.

the future employment requires licensure[6] clearly has no basis in law and serves no public interest. Binding of a trainee to a particular employer is a revival of indentured servitude prohibited by the Thirteenth Amendment to the U.S. Constitution. It is also against California Labor Code § 2922, which establishes "at-will" as the default form of employment in California[7].

c. California Government Code, § 11135

Section 11135 prohibits age discrimination in any program that is state-administered or state-funded. The opinion attempts to evade that law through a conclusory remark on p. 12 about lack "of any right of control by the [College] District [of the commercial entities to which it outsourced the college courses], whether direct, indirect, or through an agency relationship [...]." Here, the opinion effectively admits that respondents flagrantly violated the California Constitution, Article IX, §§ 6 and 8 forbidding outsourcing of public education and loss of control over it. The opinion legalizes that violation and thus arbitrarily invalidates the foregoing constitutional provisions. In any event, respondents always were able to

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[6] The opinion on p. 16 claims that licensure is significant because its achievement "does not ensure employment." Under the uncertain business conditions, nothing "ensure[s] employment," and a guarantee of employment is not a requirement of FEHA. No "regulatory scheme" mentioned in the opinion, p. 16, authorizes illegal discrimination or any other unlawful act by an MLT program or its "affiliates."

[7] A trainee is not obligated to renounce his right to seek better employment conditions, in order to avoid illegal discrimination at a training program.

terminate outsourcing and thus to exercise their control over the commercial entities.

Teaching the students is the core business of respondents. By its outsourcing, they created actual agency, for which they are liable (see discussion, *supra*).

The opinion on p. 22 claims that an anti-discrimination corrective action pursuant to Section 11135[8] would be contrary to "established educational requirements" and "would jeopardize the MLT program's eligibility to train MLT students[...]." Thus, tolerance of discrimination is justified by the alleged business necessity. In fact, the purported "established educational requirements" necessitating discrimination against the protected classes do not exist, and, even if existed, would be illegal.

d. California Education Code, § 66292

Section 66292 places responsibility for ensuring freedom from age discrimination upon the governing board of a community college district. A private enforcement action seeking damages is authorized.

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[8] A discussion of the Rehabilitation Act of 1973 and Americans with Disabilities Act in opinion on pp. 21, is fully irrelevant to the subject matter of this litigation. Respondents unlawfully (see discussion, *infra*) established job interviews with commercial entities as a method of selection (discrimination) of students in enrollment into the college courses, hence, they intended to discriminate. Enrollment is solely based upon completion of prerequisites. See discussion, *infra*. Thus, any other enrollment discrimination is illegal.

In its rejection of the *respondeat superior* responsibility under Section 66292, the opinion on p. 19 refers to *Donovan v. Poway Unified School District*, 167 Cal. App. 4th 567 (Cal. Ct. App. 2008), which considered the student-on-student sexual orientation harassment acts forbidden by California Education Code, Title 1, § 220. The opinion on p. 19 relies on a superficial similarity between Sections 220 and 66292. However, Section 220 ties the receipt of public funding to its prohibition of sex discrimination. Only the person who receives public funds is liable under the funding-based Section 220 and Title IX of the Education Amendments of 1972. There is no vicarious liability for the acts of the non-publically-funded persons.

On the other hand, Section 66292 prohibits age discrimination specifically by the community colleges. Similar to FEHA, Section 66292 is not funding-based, hence the liability rests with the college. If the college delegates its functions to a third-party entity, thus creating agency, then the college is vicariously liable for the acts of its agents.

The factual background of the cases is also drastically different. In *Donovan*, the school did not delegate to the offending students the power to discriminate against the gay students. In the instant case, the college delegated its prerogative to regulate enrollment into the community college courses to the commercial entities and permitted them to arbitrarily discriminate against students. Thus, the respondents are liable in *respondeat*

superior. By the very language of Section 66292, the claim in the opinion on pp. 22-23 that respondents are powerless to correct discrimination means that they abdicated their statutory responsibilities and thus are liable.

The opinion on p. 17 substitutes *respondeat superior* liability with the scantly relevant issue of "deliberate indifference" ruled upon by *Donovan*. In *Donovan*, no agency was created and the chief controversy was over whether the school administration was adequately notified about the harassment and took the proper actions. Here, it is incontrovertible that respondents were adequately notified and failed to take any corrective action.

2. The Court Baselessly Legalized Respondents' Unlawful Practices, And Invalidated The Laws And Regulations Establishing Respondents' Obligations Under The Operation Of Law, As Well As Their Contractual Obligations

a. The Court Elevated Respondents' Illegal Practices To The Status Of Legal Policies

The opinion endorsed respondents' outsourcing[9] of the community college courses to the external commercial entities and loss of control over them. This directly contravenes Cal. Constitution, Article IX, § 6 ["[t]he Public School System shall include all [...] state colleges, established in accordance with law and, in addition, the school districts [...]. No school or college or any other

[9] Respondents fraudulently received from the state funds for the outsourced courses. For that purpose, they appointed a non-teaching faculty member as a fictitious "instructor of record." In fact, the students were "instructed" by the random personnel of the external commercial entities.

part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System."] and Cal. Constitution, Article IX, § 8 ["no public money shall ever be appropriated for the support of any school not under the exclusive control of the officers of the public schools [..]."].

The opinion on p. 12 absolves the college from liability for any action taken against students by the external commercial entities because in their contracts with the college they declare each other "independent contractors[10]." The contractual declaration is inconsequential because the "independent contractor" status is determined by the fact finder considering the actual relationship of the parties and not by a declaration in their contract. A principal cannot outsource its core business to an "independent contractor." The core business outsourcing scheme is called actual agency, which is easily controlled by its revocation.

[10] The college is also declared in those contracts an "independent contractor" to the external commercial entities. The services purportedly provided by the college are omitted.

The commercial entities used the outsourced college courses for labor exploitation of students in the fields not taught in the college[11]. The court held that this practice, violating federal and state labor laws, is legal.

The opinion states that respondents, who are the mere ministerial actors, are entitled to establish their own basic rules and act as they deem fit, without regards to the discretionary authorities. That holding manifestly contravenes California Education Code, §§ 70901 [the Board of Governors has the full discretionary power limited only by the statutes and establishes the minimum set of standards for the community colleges.]; 70902 [the limited by the statutes and minimum standards discretionary power are delegated to the governing boards of the community colleges.]; 66700 ["[t]he California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges."]; and 70900-88933 [establishing California Community College system and defining the

[11] One of those fields is phlebotomy that is not taught by the MLT program. Students are accepted into the program only after they obtain the state phlebotomy license. Then, the licensed students are forced to work full time without pay for half a year as phlebotomists at the external commercial entities, as a condition for passing the college courses. The court approved that wage theft scheme.

discretionary decision-makers within the system.]. In effect, the opinion invalidates the entire California Community College system and enables the ministerial actors to make arbitrary discretionary decisions, amounting to anarchy in the community colleges.

Respondents established an illegal discriminatory scheme, under which they sent students to the job interviews with the external commercial entities and permitted enrollment into the college courses only to those selected by the external entities. The criteria of selection were arbitrary and conducive to discrimination against the protected classes.

The opinion states that petitioner had to participate in that scheme: to attend the job interviews with the external commercial entities and to obtain their permission for his enrollment. That holding is patently against 5 CCR §§ 58108 ["(j) Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district. (k) Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites that are not expressly authorized in this chapter or in state law as barriers to enrollment in or the successful completion of a class."]; 51006 ["[...] unless specifically exempted by statute or regulation, every course, course section, or class,

reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to section 55003 of division 6 of title 5 of the California Code of Regulations."]; 58106 ["all courses shall be open to enrollment by any student who has been admitted to the college" and met the pre- and corequisites.].

The court opined that respondents were entitled to establish arbitrary enrollment requisites. This contravenes 5 CCR §§ 55002 [the pre- and corequisites for a course are set up by the curriculum committee and published in the course outline of record ("Outline"); the course is to be taught by a qualified instructor in accordance with the Outline.]; 55003 [pre- and corequisites are established by the governing board of the community college through a process conducted by the curriculum committee; a course for which the requisites are established is taught in exact accordance with its Outline]; 5 CCR §§ 58102 and 58104 [a clear description of each course must be published in the Catalog, where "the availability of the course to all qualified students must [...] be affirmed."].

Respondents knew that their practices are illegal. Therefore, they published them only in the written by them "student handbook," which they surreptitiously distributed amongst the already enrolled students. The court

accepted that arbitrary, contravening the law document as the source of the valid college policies.

Respondents' practices are contrary to the college catalog, which on its face states that this is the contract between the college and its students. The court arbitrarily refused to consider that contract[12]. See opinion, p. 27.

b. Respondents Breached Their Obligations

Pursuant to 5 CCR §§ 51006, 58106 and provisions of the college catalog, upon successful completion of the required prerequisites, respondents were obligated to permit petitioner's enrollment into the college courses required for graduation. As per 5 CCR § 58108, petitioner did not have to attend job interviews and to seek approval of his enrollment from the external commercial entities. According to 5 CCR §§ 55002 and 55003, petitioner did not have to provide gratuitous service work to the external commercial entities as a condition for his enrollment, and the courses had to be taught by the qualified college instructors in exact accordance with their description in

[12] The court contrived that petitioner pleaded in his complaint only an implied contract, therefore, the express contract in the College Catalog should not be considered. Even if it was true, which it was not, the express contract is a part (subset) of the implied contract. Moreover, the court nonsensically misstated petitioner's pleading as alleging that respondents obligation was to unconditionally graduate respondent, while in reality petitioner pleaded respondents' obligation to provide to him the required for graduation courses. The court's task was to deliver the case in favor of the well connected with the Manoukian family respondents, and all possible perversions of law and fact were employed for that purpose.

the Outlines. This was a minimum set of respondents' obligations, which they breached in its entirety.

3. Equal Protection Question

The court capriciously legalized discrimination against the protected classes and invalidated obligations of the officials of the California Community College system under the operation of law and under the contract. By doing so, the court violated the principle of equal protection established by the U.S. Constitution, Article IV, Section 2, Clause 1; the Fourteenth Amendment to the U.S. Constitution; and 42 U.S.C. § 1981.

REASONS FOR GRANTING THE WRIT

There is a constitutional question: violation of the constitutional Equal Protection clauses. By permission of discrimination against the protected classes, the court is dismantling decades of social progress in this country. Moreover, the court suggests the mechanism for avoiding discrimination liability: outsource your core business to a discriminating third party, declare each other an "independent contractor," then assert that you did not discriminate, while the third party disclaims liability because the discriminated against people have no official employment or training relationship with it. Capricious invalidation of laws and regulations is suggestive of not a civilized state, but of an unstable backward dictatorship. Introduction of anarchy into the government, where ministerial public

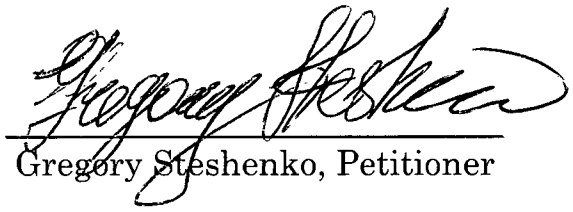
officials are free to act as they please, undermines the very foundations of this nation. A blatant violation of ethical obligations and naked nepotism demonstrated in this case are highly corrosive to the American courts, bringing them into public disrepute and destroying the perceived advantages of the socio-political system of this country.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: January 20, 2024

Respectfully submitted,



Gregory Steshenko, Petitioner