

No. 17-1576

In the Supreme Court of the United States

ALFONSO IGNACIO VIGGERS,
Petitioner,

v.

AL-AZHAR F. PACHA, *et al.*,
Respondents.

*On Petition for Writ of Certiorari
to the Court of Appeals of Michigan*

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Has Petitioner shown any compelling reason for this Court to review the state intermediate appellate court's grant of summary disposition on his employment-related defamation and wrongful termination claims, where Petitioner raised no federal claim in the proceedings below?

PARTIES TO THE PROCEEDINGS

Petitioner is Alfonso Ignacio Viggers San Mamés and Respondents are Al-Azhar Pacha and ALPAC, Inc.

**RULE 29.6 CORPORATE
DISCLOSURE STATEMENT**

Respondent ALPAC, Inc. is a Michigan domestic for-profit corporation. ALPAC does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

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**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

OPINIONS BELOW

The Petition seeks review of the decision of the Michigan Court of Appeals, which is the highest state court that ruled on the merits of Petitioner's state court claims. That decision is included in Petitioner's Appendix, at pages 2a-14a. The Michigan Supreme Court denied Petitioner's application for leave to appeal, and as such, did not rule on the merits. [Petitioner's Appx., p. 1a]

JURISDICTIONAL STATEMENT

The Petition appears to rely on 28 U.S.C. § 1257(a) as the basis for this Court's jurisdiction to review the decision of the Michigan Court Appeals, which affirmed summary disposition of Petitioner's defamation and wrongful termination claims. Because the record does not demonstrate that Petitioner presented the state courts with a claim under a federal statute or the federal constitution, the jurisdictional requirements of § 1257 have not been met.

INTRODUCTION

Petitioner Alfonso Ignacio Viggers, disgruntled because he lost his position with Respondent ALPAC after he told his supervisor, Al-Azhar Pacha, to help him obtain a green card, or suffer "what goes around comes around," sought redress in Michigan state court, arguing that he had been defamed and wrongfully terminated in violation of Michigan law. Viggers represented himself. Following discovery, Viggers filed several dispositive motions, which were denied.

Judgment instead was entered for ALPAC and Mr. Pacha. Viggers disagreed with this result and appealed to the Michigan Court of Appeals. On *de novo* review, that court determined that no genuine issue of material fact remained, and as a result, Viggers was unable to prove his claims. Viggers again disagreed with this result, and sought leave to appeal to the Michigan Supreme Court. Leave was denied. Viggers still disagreed, and so now asks this Court to grant certiorari to review and reverse the Michigan Court of Appeals' decision on his defamation and wrongful termination claims. Viggers argues, for the first time and without elaboration or significant legal analysis, that the decisions of the Michigan courts violated his rights under the federal Ninth Amendment and the Fourteenth Amendment Equal Protection Clause. Viggers does not claim that the statutes under which he sought to recover were invalid under the U.S. Constitution; he simply claims that the Michigan courts did not interpret them properly, because if they had done so, he would have prevailed. Viggers raised no federal question below, and even now, does not present a valid federal question regarding the constitutional validity of Michigan law. This is simply a state court dispute, applying state court laws and decisions. Supreme Court review is neither warranted nor justified, and so Viggers' petition for writ of certiorari should be denied.

**COUNTER-STATEMENT OF MATERIAL
FACTS AND PROCEEDINGS**

Summary of Material Facts

Respondent ALPAC, Inc. (“ALPAC”) is a technology company based in Ann Arbor, Michigan. Respondent Al-Azhar Pacha is the founder and President of ALPAC. ALPAC holds contracts with various clients to provide them with information technology services and staff. [Defendants’ Opposition to 4/13/16 Motion for Partial Summary Disposition, Ex. 1]

Petitioner Alfonso Viggers (“Viggers”) is a citizen of Mexico and Spain. From 2007-2012, and 2013-2016, Viggers was employed by Respondents, assigned to the University of Michigan and working under a TN Visa paid for by Respondents. Eventually, Viggers asked ALPAC to sponsor him for a green card, so that he could become a permanent resident of the United States. ALPAC, at its own expense, began that process. Around the same time, unknown to ALPAC, the University of Michigan decided to make the position held by Viggers a permanent (rather than a contract) position, and asked Viggers if he would be interested. Viggers was interested, but was concerned about the timing of the switch because the University would not agree to sponsor him for a green card, but only a TN visa. [Id., Exs. 2, 4-5]

ALPAC soon learned from the University that it would no longer need ALPAC to provide a contract employee for the position (regardless of whether Viggers or another was hired for the position). ALPAC agreed to release Viggers from his non-compete and related agreements, so that he could apply for the

position. Viggers, however, tried to delay the process, so that he could receive the ALPAC-sponsored and paid-for green card before accepting the University position. [Id., Ex. 2]

In December 2014, Viggers was formally offered and accepted the permanent position at the University. [Id., Ex. 6] The University began to gather information needed from Viggers for an H-1B visa application. [Id., Ex. 2]

ALPAC's green card application for Viggers was then about six months from completion. Deciding whether to proceed, Mr. Pacha asked Viggers if he had accepted the permanent position with the University (which would obviate ALPAC's need to continue with the process). Viggers was evasive, telling Mr. Pacha that "no contract has been signed with the client." When pressed, though, Viggers admitted "yes, verbally." [Id., Ex.11] Mr. Pacha consulted his immigration attorney, and was told that, if Viggers no longer intended to work for ALPAC, it could be deemed misrepresentation or fraud for ALPAC to continue to sponsor him for a green card. When Mr. Pacha conveyed this information to Viggers, Viggers said he was not going to resign from ALPAC, but would continue to work for the company. [Id.] At the same time, though, Viggers told the University that he would be working for it as an employee. [Id., Ex. 2]

In early June 2015, Viggers insisted to Mr. Pacha that ALPAC resume the green card process because his labor certification was to expire soon. Viggers then wrote to Mr. Pacha on June 20, 2015, stating that he would not decline the University's job offer until ALPAC first submitted his green card application.

Viggers wrote, “I can understand you don’t care about my Green Card. However, for you it should be a matter of being practical and thinking in terms of cash flows—those from the invoices I generate—, rather than procuring some kind of revenge. If you’re up for making this work, then that will be great; if not, what goes around comes around.” [Id., Ex. 16]

On June 25, 2015, Mr. Pacha emailed Viggers that, based on the advice of ALPAC’s immigration attorney, ALPAC could not process his green card without written proof from Viggers and the University that Viggers had declined the University’s employment offer. Mr. Pacha explained that he was simply attempting to follow the law. Viggers responded that ALPAC’s immigration attorney was wrong about the law, and stated that he had “merely secur[ed] employment” (while restating that he had in fact accepted employment elsewhere) and that he had not submitted a letter of resignation to ALPAC. Mr. Pacha responded to this email on June 29, describing the numerous events that, in Mr. Pacha’s view, evidenced Viggers’ intent to work for the University of Michigan. [Id., Ex. 17] Because ALPAC’s attorney had stated that knowledge of Viggers’ intent to work elsewhere could expose ALPAC to a fraud charge, Mr. Pacha decided not to continue the green card process.

Viggers continued to claim that no fraud existed because he was “merely securing employment,” rather than deciding to work elsewhere, and that he could not renege on the University’s offer without a guarantee of a green card from ALPAC. [Id., Ex. 18] Mr. Pacha responded with an email on June 30, saying, “Let me begin by saying that ALPAC has nothing against you,

your success or your employment choices. ALPAC always has and always will continue to wish you successes in all your endeavors. ALPAC has no hard feelings nor any animosity against you whatsoever. Neither is ALPAC preventing you from joining the client employment.” Mr. Pacha closed by reiterating that, given Viggers’ clear intention to work for the University of Michigan, ALPAC simply could not continue processing his green card. [Id.] Viggers responded to Mr. Pacha’s email on July 1 by attempting to refute the statements in Mr. Pacha’s email, and by repeating the threat from his June 20 email: “As I told you recently, what goes around comes around.” [Id.]

Viggers’ duties at the University of Michigan provided him with access to, among other things, the University’s IT infrastructure, servers, databases, programs and applications. Given this sensitive information and the context in which Viggers made the statement “what goes around comes around” on June 20 and again on July 1, Mr. Pacha was concerned that Viggers might take steps to negatively impact ALPAC’s business with the University of Michigan. As a result, after careful consideration, Mr. Pacha decided to terminate Viggers’ employment with ALPAC. [Id., Ex. 1]

Mr. Pacha then asked to meet with Viggers’ supervisors and a Human Resources representative at the University, to let them know that Viggers would no longer be reporting to work, and to ensure that the timing of Viggers’ departure would not negatively impact any projects he was working on for the University. In an email, Mr. Pacha explained that he

was ending Viggers' green card process on the advice of his attorney and that Viggers was not pleased and, "as a result of which we have received direct threats from him." [Id., Ex. 19] The following day, Mr. Pacha met with these University officials. In response to the question as to why he was letting Viggers go, Mr. Pacha said that, based on Viggers' emails, he was afraid that Viggers might do something to negatively impact ALPAC's business with the University. The University employees did not ask to see the emails, and Mr. Pacha did not volunteer them. [Id., Ex. 1]

On July 30, 2015, Mr. Pacha met with Viggers to advise him that his employment with ALPAC was ending. Mr. Pacha cited the statements Viggers had made in his June and July emails and specifically mentioned Viggers' phrase "what goes around comes around." [Id., Ex. 2] That same day, the University wrote to Viggers telling him that "[a]fter receiving additional information that no longer makes you a viable candidate for employment at the University of Michigan, we have re-evaluated our contingent offer of employment, and decided not to pursue sponsorship of your H 1B Visa, which renders you ineligible for employment." [Id., Ex. 22]

Procedural Background

Viggers filed a 93-paragraph, seven-count Complaint against Mr. Pacha and ALPAC in the Washtenaw County, Michigan Circuit Court on November 24, 2015. Viggers' *pro se* Complaint asserted the following state law claims: Wrongful Termination in Violation of Public Policy (Count I), Defamation (Count II), Tortious Interference with a Business Relation or Expectancy (Count III), violation of various

criminal statutes (Counts IV, V and VI), and Moral Turpitude (Count VII). The Complaint alleged exclusively state law claims. It made no claim at all that ALPAC or Mr. Pacha had violated any federal law. It also did not challenge the validity of the state laws on which the Complaint was based, under either the Michigan or U.S. Constitution. [Id., Ex. 25]

On March 16, 2016, Viggers filed a Motion for Partial Summary Disposition under Michigan Court Rule (M.C.R.) 2.116(C)(10) as to Counts II (Defamation) and III (Tortious Interference with Business Relation or Expectancy), which was opposed by Respondents. On June 15, 2016, the trial court denied Viggers' Motion, instead granting summary disposition to ALPAC and Mr. Pacha under Michigan Court Rule (M.C.R. 2.116(I)), dismissing both of these claims in their entirety with prejudice.

On July 27, 2016, Viggers filed a second Motion for Partial Summary Disposition under M.C.R. 2.116(C)(10), on his remaining claims of Wrongful Termination (Count I), violation of various criminal statutes (Counts IV through VI) and Moral Turpitude (Count VII), which Respondents also opposed. On August 17, 2016, the trial court denied Viggers' Motion, granted summary disposition to Respondents and dismissed Counts I, IV, V, VI and VII in their entirety with prejudice. [Petitioner's Appx., pp. 15a-16a]

One week later, Viggers filed a Claim of Appeal in the Michigan Court of Appeals with respect to the dismissal of his claims for Wrongful Termination (Count I), Defamation (Count II) and Tortious Interference (Count III). Viggers' Brief included these Questions Presented:

- I. Was it improper for the lower court to deny plaintiff's motions for partial summary disposition, to deny that defendant's statements were unjustifiably defamatory, to uphold defendant's claim of qualified privilege, to deny a finding of malice, and to deprive plaintiff of the entitlement to *-inter alia-* his reputation and good name?
- II. Did the lower court err in denying that defendant wrongfully terminated plaintiff and in violation of public policy?

After extensive briefing (Viggers submitted 15 Letters of Supplemental Authority), the Court of Appeals heard oral argument on August 2, 2107, and issued its unpublished, per curiam decision on August 15, 2017, affirming the trial court's dismissal of Viggers' suit. [Petitioner's Appx., pp. 2a-14a]

The Court of Appeals, reviewing the dismissal of Viggers' claims *de novo*, found that Mr. Pacha's communications with the University officials were subject to a qualified privilege, because they were made in good faith and for a proper purpose. The court also concluded that Viggers had not offered proof of actual malice, because Mr. Pacha's interpretation of Viggers' repeated statements that "what goes around, comes around" was reasonable in the context of Viggers' "obvious dissatisfaction with the green card process." [Id. at 8a-9a] For similar reasons, the court affirmed dismissal of Viggers' claim for tortious interference with a business relationship. [Id. at 10a-11a]

Finally, the court upheld dismissal of Viggers' wrongful termination claims, because he was an at-will

employee, and failed to show that Mr. Pacha had violated Michigan Compiled Laws (M.C.L.) § 750.351, when he asked that Viggers decline the University's employment offer before ALPAC resumed Viggers' green card process. That criminal statute prohibits an employer from requiring an employee to provide consideration in order to remain employed; even if Mr. Pacha did require that Viggers decline the University's offer as a prerequisite to going forward with the green card process, Viggers was not required to do anything to remain employed by ALPAC. As such, the Court found that Viggers had not shown that he was discharged in violation of public policy. [Id. at 11a-12a] In a footnote, the Court noted that, even if ALPAC had violated the statute, Viggers had failed to exhaust his exclusive remedy under the Wages and Fringe Benefits Act, M.C.L. §§ 408.471 *et seq.*

Notably, nothing in the Court of Appeals' decision suggests that the Court considered or relied on any federal constitutional challenge to the validity of the state law underpinning Viggers' claims.

On September 18, 2017, Viggers sought leave to appeal the Court of Appeals' decision to the Michigan Supreme Court. The Questions Presented contained in Viggers' Application were:

- I. Did the lower courts abuse their discretion by (1) granting a qualified privilege where a defamer employer has a conflict of interest involving the defamed person; (2) stretching the qualified privilege to an extent that contravenes the moral obligations upon which the privilege is premised; and

(3) ignoring the evidence of defendant's actual malice?

II. Did the lower courts err by (1) purporting that the WFBA *requires* an exhaustion of administrative remedies; and (2) denying that defendant's termination of plaintiff violates a public policy exception of the at-will employment doctrine?

The Michigan Supreme Court denied Viggers' application on March 5, 2018. [Petitioner's Appx., p. 1a]

REASONS FOR DENYING THE PETITION

I. This Court Has No Jurisdiction to Review Petitioner's State Court Defamation and Wrongful Termination Claims Because Petitioner Failed to Raise Any Federal Claim in the State Court Proceedings, Depriving the State Courts Of the Opportunity to Decide that Claim

Supreme Court authority to review decisions from state courts derives from 28 U.S.C. § 1257(a), which states that "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States." This Court has long stated that § 1257 and its predecessors, including § 25 of the Judiciary Act of 1789, provide the Court with no jurisdiction unless a federal question has been both raised and decided in the state court. *Crowell v. Randell*, 10 Pet. 368, 391, 9

L.Ed. 458 (1836) (“If both of these requirements do not appear on the record, the appellate jurisdiction fails.”) See also *Illinois v. Gates*, 462 U.S. 213, 217-18 (1983).

In addition to the limitations imposed by the jurisdictional statute itself, this Court has identified practical reasons for its disinclination to review state court decisions in which a federal question is raised for the first time before this Court. “Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Even though States are not free to avoid constitutional issues on inadequate state grounds, *O’Connor v. Ohio*, 385 U.S. 92, 87 S. Ct. 252, 17 L. Ed. 2d 189 (1966), they should be given the first opportunity to consider them.” *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969). See also *Webb v. Webb*, 451 U.S. 493, 495-97 (1981).

In *Webb*, in which the petitioner argued that the Georgia courts failed to give full faith and credit to a Florida child custody order, as required by Art. IV, § 1 of the U.S. Constitution, the Supreme Court dismissed the writ of certiorari because it appeared that the petitioner had not raised the federal constitutional challenge in the state court proceedings. In so doing, the Court reiterated the policy reasons for the requirements of § 1257 and the Court’s requirement that a federal challenge to a state statute be presented

first to the state court: the development of a proper record; the desirability of allowing state courts to exercise their authority to construe state statutes; and the possible articulation by the state courts of independent and adequate state grounds. 451 U.S. at 500-01. The Court concluded that, “at the minimum . . . there should be no doubt from the record that a claim under a *federal* statute or the *Federal* constitution was presented in the state courts and that those courts were apprised of the nature and substance of the federal claim at the time and in the manner required by the state law.” *Id.* at 501 (Emphasis in original).

These strictures have been applied to deny review in a wide range of cases. In *Cardinale*, where the petitioner was convicted of murder based in part on the admission into evidence of his entire confession (under a state law mandating that confessions be admitted in their entirety), the writ of certiorari was dismissed when the Court learned that the petitioner first argued that the state statute violated the U.S. Constitution in his petition for certiorari. 394 U.S. at 439.

In *Howell v. Mississippi*, 543 U.S. 440, 444 (2005), where the petitioner argued that his death sentence for murder should be overturned because one of the jury instructions violated the U.S. Constitution and Supreme Court precedent, the writ of certiorari was dismissed because the petitioner had not properly presented that federal claim in the state courts.

In *Adams v. Robertson*, 520 U.S. 83, 86-88 (1997), challenging a state court rule permitting approval of a class action settlement without giving putative class members the chance to opt out of the class, the writ of certiorari was dismissed as improvidently granted

because the petitioners failed to carry their burden of establishing that a federal constitutional issue was properly presented to the state court.

In *Lynch v. People of New York*, 293 U.S. 52, 54 (1934), challenging a New York statute requiring the petitioner to pay tax on rental income earned from property located in Ohio, the Court dismissed the writ of certiorari because it was not evident that the state courts had based their decisions on the constitutional argument raised by the petitioner.

Consistent with this precedent, the writ of certiorari should be denied, because, based on the record, it is without dispute that Petitioner did not present any federal claim in his state court proceedings. Petitioner's December 2015 state court lawsuit sought recovery under three Michigan statutes: M.C.L. §§ 408.471-489 (Payment of Wages & Fringe Benefits Act); M.C.L. §§ 423.451-452 (Disclosure of Employee Information) and M.C.L. § 600.2911 (Libel/Slander). He also claimed entitlement to civil damages based on several Michigan criminal statutes, and under the Michigan common law tort of intentional interference with business relations. Petitioner's Complaint alleged no violation of any constitutional provision, state or federal.

In August 2016, Petitioner filed a document in the state trial court entitled "Supplement to Motion for Partial Summary Disposition." In that filing, Petitioner demanded that the trial court judge order Respondent Al-Azhar Pacha to sign an affidavit prepared by Petitioner, in essence admitting defamation. Petitioner further demanded that Mr. Pacha be ordered to serve the signed affidavit on the Court, Petitioner and all persons to whom Mr. Pacha made the allegedly

defamatory statement.¹ In his Supplemental filing, Petitioner included this statement: “The State Constitution reads in its Article I § 23 that ‘certain rights shall not be construed to deny or disparage others retained by the people.’ Neither at-will employment nor a qualified privilege denies Plaintiff’s right to his reputation and his good name.” While Petitioner’s argument is opaque, he may have been arguing that he had a constitutional right, based on state law, to his reputation and good name. He did not develop this argument, however, and cited no case law in support.

Petitioner again referred to this provision of the Michigan constitution at the hearing on his Motion for Partial Summary Disposition, on August 17, 2016, arguing that the constitution did not exempt employers from the constitutional right not to be disparaged. [Respondents’ Appx., p. 6a] Petitioner then went on to clarify that he was not referring to the U.S. Constitution:

If Defendant doesn’t want to meet his moral obligation to amend his tortious statements then something has to give, But the Court shall not be covering up a Defendant by means – by claims that it does not have the authority. *Now the – when I mention Constitution, I don’t mean the federal Constitution, I mean the State Constitution.*

[Respondent’s Appx., p. 7a](Emphasis supplied)

¹ The affidavit that Petitioner prepared for Mr. Pacha to sign is included in Petitioner’s Appendix, pp. 22a-23a.

During this hearing, Petitioner again offered no legal analysis or support for his claim of protection under the Michigan constitution. It is clear from this record, however, that Petitioner was not challenging the validity of any Michigan statute based on the U.S. Constitution.

In appealing (again, *pro se*) the trial court's dismissal of his claims to the Michigan Court of Appeals, Petitioner continued to cite only provisions of the Michigan Constitution, and even then, superficially. At page 31 of his Brief on Appeal, he again seemingly argued that Article I § 23 of the Michigan Constitution, which states that certain rights shall not be construed to disparage other rights retained by the people, provides no exception for at-will employment or qualified privilege. On page 32, Petitioner referred to Article I § 2 of the Michigan Constitution to support his contention that the trial court had ignored his right to equal protection. He cited no case law in support, and did not identify how he had been treated differently than others by Respondents. Petitioner made similar, perfunctory references to the Michigan Constitution on pages 22 and 23 of his Application for Leave to Appeal to the Michigan Supreme Court. No reference to or argument concerning the U.S. Constitution appears in that Application. Based on the submissions in the state court, and the transcript of Petitioner's motion hearing, it is evident that Petitioner raised no federal claim below. Absent such a federal question raised and considered by the state courts, this Court has no jurisdiction to review the decisions below, and the petition should be denied.

Furthermore, Petitioner's failure to include his constitutional arguments in his questions presented on appeal meant that they were not properly preserved for appeal. *Busch v. Holmes*, 256 Mich. App. 4, 12, 662 N.W. 2d (Mich. Ct. App. 2003); M.C.R. 7.212(C)(5). Similarly, Petitioner's cursory handling of his state constitutional argument was insufficient under Michigan law. *Mitcham v. Detroit*, 355 Mich. 182, 203, 94 N.W. 2d 388 (Mich. Sup. Ct. 1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to either sustain or reflect his position.") Thus, even if Petitioner's reference to claimed violations of the Michigan constitution could somehow be construed as a claim that certain Michigan statutes were invalid under federal law, Petitioner failed to properly raise the issue in Michigan appellate courts. In *Beck v. Washington*, 369 U.S. 541, 553 (1962), this Court declined to consider a federal equal protection issue because the petitioner failed to present that argument to the Washington Supreme Court in the manner required by that court's rules and procedures. The same result should occur here: the petition should be denied.

This result is not changed by Petitioner's contention that he did raise a federal question below, because the language of the two provisions of the Michigan constitution that he did cite in the state court are similar to the Ninth and Fourteenth Amendments to the U.S. Constitution. [Petition at 2] Arguing that a state statute violates the state constitution is simply

not the same as arguing that a state statute is invalid under the U.S. Constitution. State constitutional provisions are subject to interpretation and application by that state's courts, and those interpretations may differ from interpretations of federal constitutional provisions. As this Court held in *Webb, supra*, a petitioner must demonstrate that, based on the record, there is no doubt that a claim under a federal statute or the federal constitution was presented in the state court. There is no such evidence in the record here, and so the petition should be denied.

II. That States May Differ in Interpretation and Application of Individual State Defamation Statutes Does Not Present a Conflict Among Courts Justifying This Court's Review

Petitioner also claims that certiorari should be granted because "the decisions by the Michigan courts in the instant case are in conflict with decisions issued by this Court and by the courts of last resort of various jurisdictions, including Michigan." [Petition, p. 2] Petitioner does not, however, identify any U.S. Supreme Court case interpreting the Michigan statutes he relied upon in the state court proceedings that conflicts with the Michigan Court of Appeals' decision in Petitioner's case. Additionally, S. Ct. R. 10, which describes the considerations underlying the Court's certiorari decisions, refers only to conflicts in which "a state court . . . has decided an important federal question in a way that conflicts with decisions of this Court." As established above, the Michigan Court of Appeals did not decide any federal question, important or otherwise, in Petitioner's case. Furthermore, conflicts among state courts, interpreting their own

specific state laws, provide no cause for this Court to intervene, absent an important federal question.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: June 21, 2018

APPENDIX

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APPENDIX

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF WASHTENAW**

File No. 15-1193-CZ

[August 17, 2016]

ALFONSO IGNACIO VIGGERS,)
)
 Plaintiff,)
)
 v.)
)
 AL-AZHAR F. PACHA (ALPAC, INC.),)
 AND DOE DEFENDANTS,)
)
 Defendants.)
)

**HEARING ON PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY DISPOSITION**

Wednesday, August 17, 2016 - Ann Arbor, Michigan
Before The Honorable Carol Kuhnke

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THE COURT: I have no authority to order someone to swear to something under oath.

THE PLAINTIFF: Then --

THE COURT: I can tell -- I can make someone swear to tell the truth. I can't tell him then what he has to say.

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THE PLAINTIFF: And then I ask the Court to impose some remedy because my reputation is disparaged and Michigan statute 445.903 addresses the unfair and deceptive methods, acts, or practices. And among the items that it addresses is that disparaging the reputation of another, in this case me, by false and misleading statements of fact. And the three employees of the University who testified at deposition are very consistent about what Defendant said on July 22nd of 2015. So now Defendant -- I mean that is University's side. At Defendant's deposition he claimed that he does not recall making those statements of fact. But then there's a need for clarification and like I said qualified privilege does not deny my right to my reputation and to my good name. So it's -- it has to be either or. Defendant cannot have

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it both ways. This is why I'm -- I am requesting that Defendant be compelled to produce and serve that affidavit.

Now as for the authority that Your Honor mentions then his is contradictory because on --

THE COURT: What?

THE PLAINTIFF: Contradictory.

THE COURT: Contradictory? Uh-huh.

THE PLAINTIFF: -- because on January 20th of this year this Court, and specifically Your Honor, ordered me to sign a sworn document and I didn't know the contents what all ensue from that document. And

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by contract Defendant knows very clear the contents of the affidavit that he's being asked to sign --

THE COURT: I ordered you to sign a document giving permission to USCIS, correct?

THE PLAINTIFF: Yes, Your Honor.

THE COURT: To turn over your file.

THE PLAINTIFF: That's correct.

THE COURT: I ordered you to give someone permission to turn things over.

THE PLAINTIFF: And I didn't -- right, I agree, and I didn't know what contents will be there, what contents were involved.

THE COURT: That's different from swearing to

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the truth of matters that are contained in an affidavit.

THE PLAINTIFF: Well, if the Court insists that it does not have the authority, I still ask the Court to do something to re-address my reputation because it is not fair to continue giving Defendant the opportunity to go around with those statements and -- where the Court and I will not be able to monitor Defendant and whatever he's going to say to perspective employers. I need a protection, in this case the affidavit, so that if a perspective employer asks me for -- if he wants to ask for references to Defendant, I can tell to my perspective employer, "Yes, you can -- you may ask for references, but please be aware that there's this declaration by Defendant so take whatever he says -- take his statements -- Defendant's statements with a grain of

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salt.” I need a protection. And the Court has not been helpful to help me restore the reputation that others maliciously have hurt. But I need my reputation. Michigan acknowledges the right to the reputation in several statutes, and this has been over a year and I am -- things are still the same.

Now Defendants --

THE COURT: I think you misapprehend how protective the State of Michigan is to employers.

THE PLAINTIFF: The Constitution -- the Article of the Constitution that I mentioned makes no exception --

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exemption of employers. It states that the rights should not be construed to disparage or deny the rights of others.

Now -- and I insist -- I -- it's not that I am trying to re-litigate matters, but Defendants' staunch reluctance --

THE COURT: The State loves insurance companies and it loves employers and it loves oil companies and it loves anybody who's powerful. Okay? And it doesn't say that anywhere in our Constitution. But if you're not in those groups, they you just kind of have to try and stay away -- stay out of the way. I hate to tell you that, Mr. Viggers.

THE PLAINTIFF: Well, Your Honor, I am not -- it's not that I am trying to re-litigate matters, but if the Defendant is staunchly reluctant to produce that affidavit then that's another showing of malice, and the

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Court shall rectify. If Defendant doesn't want to meet his moral obligation to amend his tortious statements then something has to give. But the Court shall not be covering up a Defendant by means -- by claims that it does not have the authority.

Now the -- when I mention Constitution, I don't mean the federal Constitution, I mean the State Constitution.

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THE COURT: Well, and I won't apologize for the State on that. I would never wish I had the authority to tell anybody that they had to swear under oath to anything. Ever.

THE PLAINTIFF: Now how -- in that case, how will the Court re-address the damage to my reputation? Because the Court has read the emails. There's no threat in the emails. I never said to Defendant that I will use my position at the University to negatively impact and that -- impact his business with the University and that is a serious accusation that any public official should understand. It --

THE COURT: There has been no finding by me or a jury that you did not earn any damage to your reputation, Mr. Viggers. That finding has not been made.

THE PLAINTIFF: Um --

THE COURT: It hasn't been found the other way either. But you made a statement and I will say recklessly and probably in anger and it had an affect on Mr. Pacha. Al-Pacha (sic)?

THE PLAINTIFF: Yes.

MS. GATTI: Yes, uh-huh.

THE PLAINTIFF: But still in the deposition of Mr. Ronald Loveless, he testified that Defendant's statements were the only reason why my prospective

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employer (sic) was withdrawn. So I have proof that there was an injury to my reputation. That implies -- I mean the withdrawal --

THE COURT: I'm not saying that there isn't an injury to you reputation. What I'm saying is there's -- it has not been established that you didn't earn that. In other words, it might have been your fault.

THE PLAINTIFF: My fault in which -- why or -- how is it my fault Defendants' statements that depart from what I actually wrote? There's no justification for that gap. As -- been even as the Court wants to look at Defendants' statements there is too much of a gap to justify him not to sign the declaration.

THE COURT: What I will say is that you had two employers who for quite a period of time, and I use the word employer loosely, not necessarily in the legal sense, but two entities with whom you worked for some period of time that being the University and Mr. Al-Pacha who respected your work and who did things evidently in -- above and beyond to try to help you and to further your pursuit of citizenship and selflessly evidently in the instance of Mr. Al-Pacha who was willing to allow you to go to work essentially in competition with him, releasing you from a non-

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complete agreement so that you could leave his employ,
go to the University of Michigan and take over

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a job that he used to make money on, and now you were going to be doing that job for the University of Michigan and not make him any money at all. And somehow that situation got turned around so that you were not going to work for the University of Michigan, and Mr. Al-Pacha didn't want you back, and neither one of them would support your Visa, and I don't put the blame on your stepmother. You made a threat or you made a comment to -- I took that back, don't shake your head at me. You made a comment to Mr. Al-Pacha that caused him to withdraw his support of you.

THE PLAINTIFF: He had withdrawn the support much earlier and the email from -- my email from June 20th of 2015 attests that he was already disengaged from genuine intentions to help.

THE COURT: Okay. This conversation is more of a conversation than an argument and there are other folks who are waiting to be heard. Is there anything more that you'd like to say on your motion? And I'll say right now I'm denying your request for an affidavit. I have no authority nor any desire to order Mr. Al-Pacha to -- no, Mr. Pacha, it's not Al-Pacha -- I have no desire to order Mr. Pacha to sign an affidavit nor do I have the authority to do that.

THE PLAINTIFF: How is he going to clarify the

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wrongful statements of fact? He did not cast --

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THE COURT: That's not up to me.

THE PLAINTIFF: -- that as opinion.

THE COURT: It's not up to me.

THE PLAINTIFF: I strongly disagree with Your Honor. I think that -- I think that --

THE COURT: That's fine.

THE PLAINTIFF: -- the Court has a responsibility to help me re-address the -- to help me make Defendant re-address his tortious statements.

THE COURT: I disagree.

THE PLAINTIFF: Michigan should have more consideration of a person's right to his reputation.

MS. GATTI: Your Honor, I know that you have people waiting, can I just address really briefly a couple of points?

THE COURT: Briefly, please.

MS. GATTI: Just a couple of points. First of all, I just reiterate my request for summary judgment on the remaining counts of the complaint 1, 4, 5, 6, and 7. Nothing I've heard or that the Court has been presented with today refutes any of the arguments I made in my response to his motion. We've really heard a re-litigation of his defamation and tortious interferences claims, which have already been dismissed. So I would

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just reiterate my request for summary judgment on all of those claims.

And I just want to make the point that that Cork v Applebee's case is completely on point, and the fact is if you look at his complaint, which is Exhibit 11 to my brief, you know he sued under that statute and the Cork v Applebee's case says when you sue under that statute, it is, you know, your exclusive remedy is under that provision of the Wages and Fringe Benefits Act. That's all I wanted to say. Thank you.

THE COURT: For the reasons stated by the Defendant and because and this is specially with relation to Count 1 because Plaintiff was an at-will employee, I'm denying Plaintiff's Motion for Summary Disposition, and granting summary disposition in favor of the Defendant.

Ms. Gatti, would you submit an order and indicated that it's a final order which closes the case?

MS. GATTI: Your Honor, just one thing. What about the remaining counts?

THE COURT: That -- well, I'm granting it on all counts --

MS. GATTI: Oh, okay.

THE COURT: -- but I was specifying that with respect to Count 1 in addition to the points that you have made -- so for the reasons stated by the Defendant and

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also on Count 1 the additional reason that Mr. Viggers was an at-will employee such that wrongful termination would not be available to him as a remedy I'm granting summary disposition to the Defendant.

MS. GATTI: Okay, as to all claims, correct?

THE COURT: As to all claims, yes.

MS. GATTI: Okay. Thank you, Your Honor. I have an order to present. May I do that?

THE COURT: You may. I signed the order.

(At 4:21 p.m., proceedings concluded.)