No. ____________________

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE PATRICIA M. CONNER, PRO SE PETITIONER

vs.

UNITED STATES DEPARTMENT OF EDUCATION AND
EDUCATIONAL MANAGEMENT CORPORATION
________________________ RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PATRICIA M. CONNER

(Your Name)

26775 PEBBLEVIEW, APT. #102

(Address)

SOUTHFIELD, MICHIGAN 48034

(City, State, Zip Code)

313,220.6988

(Phone Number)

QUESTION(S) PRESENTED

1. Are United States District and United States Court of Appeals, in each Circuit, deciding an important question of federal law "undue hardship" using the same criteria as determined "under the guidelines of 11 U.S.C. § 523(a)(8)(A)(i), (ii) and (B), EXCEPTIONS TO DISCHARGE, Title 11 – Bankruptcy or should conformity be decided by the United States Supreme Court?

§ 523. Exceptions to discharge
(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
(8) unless excepting such debt from dis- charge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any pro- gram funded in whole or in part by a governmental unit or nonprofit institution; or
(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

2. Did the United States Department of Education and Educational Credit Management Corporation, an agency/fiduciary of the United States Department of Education, receive an unfair advantage in student loan discharge litigation in a United States Court?

3. Were the constitutional rights and 28 U.S.C. § 1654 upheld for Pro Se litigant or were they violated during adversary proceeding for student loan discharge?

4. Did the United States lower courts (Bankruptcy Court Eastern District of Michigan, District Court and Court of Appeals for the Sixth Circuit) the Assistant Attorney General and Corporation abuse the doctrine of sovereign immunity in this case in which action adverse to the interests of this Petitioner is taken under an unconstitutional statute or one alleged to be so? (per Justice Felix Frankfurter In *Keifer & Keifer v. RFC)*

A. Has the unconstitutional Brunner Test become an alleged statue?

B. Is the Brunner Test analyzed the same in cases where the United States Department of Education, Educational Credit Management and other financial institutions are the defendants?

5. Did this case involve injury to this Petitioner because the officials of the United States Bankruptcy Court Eastern District of Michigan, U. S District Court and Court of Appeal for the Sixth Circuit sanction judicial proceedings that exceeded statutory authority, or sanction such a departure by a lower court, as to call for an exercise of this Court's supervisory power? (per Justice Felix Frankfurter)

A. Did the lower courts exceed statutory authority, Rule 7004. Process; Service of Summons, Complaint, (b)(8) and dismiss default previously entered by the bankruptcy clerk?

B. Should the Supreme Court rule in favor of the Petitioner as in United Student Aid Funds v. Espinosa, No. 08-1134, for failure of the defendants to timely respond to Petitioner's summons and complaint (Justice Thomas wrote, as they do not "provide a license for litigants to sleep on their rights,") and for the lower court judges not following procedures contemplated by the law.

C. Did the Bankruptcy Court and U. S. District Court err when it failed to sanction attorneys for not complying with a court order?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] 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:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or, [X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or, [X] is unpublished.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

The opinion of the ______________________________ court appears at Appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 27, 2017.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 29, 2017 __________, and a copy of the order denying rehearing appears at Appendix A____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including __________ (date) on __________ (date) in Application No. A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1), Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92 and Section 13 of the Judiciary Act of 1789, 1 Stat. 73.

[ ] For cases from state courts:

The date on which the highest state court decided my case was __________.
A copy of that decision appears at Appendix ____.

[ ] A timely petition for rehearing was thereafter denied on the following date: , and a __________ copy of the order denying rehearing appears at Appendix ____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including __________ (date) on __________ (date) in Application No. A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution for the United States – We the People

Bill of Rights

U.S. Const. Article I (Amendment 1 – Freedom of Expression and Religion)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances,

Article I Section 8, clause 4 – Naturalization and Bankruptcies

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States

U.S. Const. Article III, § 1 & 2

Article III, Section 2, Clause 1, Cases and Controversies; Grants of Jurisdiction

The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls;=to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party;; -to Controversies between two or more States; - between a State and Citizens of another State;- between Citizens of different States, between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const, Article XI

Article XI (Amendment 11 – Suits Against States)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or be Citizens or Subjects of any Foreign State.

U.S. Const. Article XIV

Article XIV (Amendment 14 – Rights Guaranteed: Privileges and Immunities of Citizenship Due Process, and Equal Protection) Clause 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Petitioner began her post-secondary education at Wayne State University in the Summer of 1970. She eventually earned a Bachelor of Science in Business Administration June 20, 1978, after paying for the Cost of Attendance from wages earned. Upon graduation, she accepted employment in the financial and utility industry and, also endeavored non-profit employment and entrepreneurship. Her longest period of employment was with the public-school system. She first worked on call as a substitute teacher. However, she was laid off annually as a substitute and even after obtaining her teaching certification, in 2005, the Petitioner was laid off and forced to get various educational degrees/endorsements to maintain employment. The Petitioner's employer was also having financial difficulties; therefore, raises were frozen. The public-school district was forced to operate under a financial manager and ironically one of the financial managers appointed over the 6 -7-year period was the Petitioner's Bankruptcy Judge, Steven W. Rhodes. His assignment with the school district and his assignment with the City of Detroit, as a financial manager, resulted in the Petitioner's bankruptcy case being reassigned to Judge Marci B. McIvor.

Through the years, Petitioner sought to find stable employment and increase her income by using an employment agency and by applying for job advancement. *Krieger v. Educ. Credit Mgmt. Corp. (In re Krieger),* 713 F.3d 882 (7th Cir. 2013) Yet, Petitioner did not advance because of the U. S. economy, the U. S. involvement in wars and various civil rights discrimination issues (gender and race). *NBER Working Paper No. 19 Issued in July 2013.* The most dramatic negative affect on the U, S. economy include:

- 1973 Vietnam War ends with the U. S. pulling out in 1973
- 1990 Operation Desert Storm/Operation Desert Shield; Iraq invades Kuwait leading to 1991 Gulf War
- 1993 World Trade Center bombing

- 1995-1996 Intervention in Bosnia and Herzegovina
- 2001 September 11, 2001 Terrorist Attacks on the World Trade Center and the Pentagon invasion of Afghanistan Operation K "Enduring Freedom"
- 2001 Invasion of Afghanistan
- 2007 (December) to June 2009 Recession

Authors of The National Bureau of Economic Recovery (NBER), Working Paper 11565, http://www.nber.org/papers/w11565.pdf. and Working Paper 17951, http://www.nber.org/papers/w17951 found large and persistent impacts of wars on trade, national income, and global economic welfare. "We find that the impacts of the Great Recession are not uniform across demographic groups and have been felt most strongly for men, black and Hispanic workers, youth, and low education workers." ..."While the pattern of labor market effects across subgroups in the 2007-9 recession appear similar to that in the two recessions of the early 1980's, it did have a somewhat greater effect on women's employment –".

In 1991, the negative affect of the Gulf War lead to her separation from employment as a utility worker and at the age of 39, the Petitioner decided to return to graduate school to make herself more marketable for income opportunities. Her first student loans were two FFEL Stafford Subsidized loans totaling $5,826 that originated on 10/09/1992. From 1992 – 2006, much of her Cost of attending a University was funded by the United States Department of Education FFEL Stafford loans detailed below. The loans are currently serviced by a Transitional Guaranty Agency, Educational Credit Management Corporation (ECMC).

Total Borrowed	Established	Interest Rate (%)	Type/Servicer	Default Status	Principal as of 2/7/2015	Interest as of 2/7/2015
620	05/11/2006		FFEL Stafford Unsubsidized/ ECMC	Default unresolved 9/12/2008	863	84
8,722	08/29/2005		FFEL Stafford Unsubsidized/ ECMC	Default unresolved 9/12/2008	12,148	1,184

3,741	05/04/2005		FFEL Stafford Unsubsidized/ ECMC	Default unresolved 9/12/2008	5,210	508
14,759	09/02/2004		FFEL Stafford Unsubsidized/ ECMC	Default unresolved 9/12/2008	20,556	2,004
5,480	01/24/1996		FFEL Stafford Subsidized/ ECMC	Default unresolved 7/11/2008	8,011	1,030
773	09/20/1994		FFEL Stafford Unsubsidized/ ECMC	Default unresolved 7/11/2008	701	90
4,487	09/20/1994		FFEL Stafford Subsidized/ ECMC	Default unresolved 7/11/2008	4,066	523
6,367	09/29/1993		FFEL Stafford Subsidized/ ECMC	Default unresolved 7/11/2008	10,943	1,408
4,409	08/26/1993		FFEL Supplemental Loan (SLS)/ ECMC	Default unresolved 7/25/2008	15,743	2,131
2,107	06/10/1993		FFEL Supplemental Loan (SLS)/ ECMC	Default unresolved 7/25/2008	7,704	1,043
1,133	05/26/1993		FFEL Stafford Subsidized/ ECMC	Default unresolved 7/11/2008	1,947	250
2,038	01/28/1993		FFEL Stafford Subsidized/ ECMC	Default unresolved 7/11/2008	3,503	451
5,826	10/09/1992		FFEL Stafford Subsidized/ ECMC	Default unresolved 7/11/2008	7,441	957
$60,462			**ALL FFEL Loans/ ECMC**		**$98,836**	**$11,663**

The following loans were also accepted directly from the U. S. Department of Education and the loans are serviced by Debt Management and Collections System (DCS).

Totaled Borrowed	**Date Established**	**Interest Rate**	**Loan Type/ Servicer**	**Default**	**Principal as of 2/7/2015**	**Interest as of 2/7/2015**
18,500	08/29/2003	2.36%	Direct Stafford	6/04/2010	24,172	4,416

			Unsubsidized/ DMCS			
7,088	08/28/2002	2.36%	Direct Stafford Subsidized/ DMCS	6/04/2010	6,085	1,111
11,575	08/28/2002	2.36%	Direct Stafford Unsubsidized/ DMCS	6/04/2010	15,543	2,839
7,971	01/04/2001	2.36%	Direct Stafford Unsubsidized DMCS	6/04/2010	6,445	1,178
8,500	01/04/2001	2.36%	Direct Stafford Subsidized DMCS	6/04/2010	$5,281	965
8,500	01/08/2000	2.36%	Direct Stafford Subsidized DMCS	6/04/2010	10,593	1,938
4,169	07/01/1999	2.36%	Direct Stafford Unsubsidized DMCS	6/04/2010	6,767	1,238
1,876	07/01/1999	2.36%	Direct Stafford Subsidized DMCS	6/04/2010	2,338	829
3,288	05/15/1999	2.36%	Direct Stafford Subsidized DMCS	6/04/2010	4,098	750
3,336	09/11/1998	2.36%	Direct Stafford Subsidized DMCS	6/04/2010	4,157	761
8,500	10/08/1997	3.16%	Direct Stafford Subsidized DMCS	6/04/2010	10,900	2,706
4,000	05/17/1997	3.16%	Direct Stafford Unsubsidized DMCS	6/04/2010	6,809	1,691
8,500	11/01/1996	3.16%	Direct Stafford Subsidized DMCS	6/04/2010	10,900	2,706

$92,203			**<u>ALL</u> Direct Stafford/ DMCS**		**$114,088**	**$23,128**

Petitioner also borrowed four Federal Perkins Loans totaling $8,000. The loans originated through Wayne State University on 10/11/2004 and were paid in full by 06/01/2010. The interest rate designated to be paid on the Perkins loans was 5%.

1. Are United States District and United States Court of Appeals, in each Circuit, deciding an important question of federal law "undue hardship" using the same criteria as determined "under the guidelines of 11 U.S.C. § 523(a)(8)(A)(i), (ii) and (B)?

The United States Bankruptcy Code, 11 U.S.C. 523(a)(8) sets aside a reason for discharging a debtor and the debtor's dependents student loans to avoid "Undue Hardship". Yet the Bankruptcy Courts, District Courts and Circuit Courts have not been able to agree upon the factors that constitute "Undue Hardship", One reason for the inability to obtain consensus is because the courts apply different test to decide if a debtor's loan payments will cause undue hardship: (1) totality of the circumstances and (2) Brunner test which mandates that a debtor meets the requirements of three of three specific requirements. In addition to the various-different test, U. S. Courts differ in what the debtor needs to demonstrate to consider the loan payments "Undue Hardship": (1) illness (2) disability, (3) a lack of usable job skills (4) the existence of a large family/dependents, (5) total incapacity. certainty of hopelessness, future hardship.

Petitioner's situation meets the eligibility for "undue hardship" under both criteria even though there is no single deciding factor. One must consider all the facts, the context, and conclude from the whole picture that student loan repayment would not allow the Petitioner and her dependent to maintain a "minimum" standard of living and the payments would impose "undue hardship". Petitioner as described by Bankruptcy Judge, McIvor, "not living an extravagant lifestyle" (McIvor's Case Analysis, page 14 line 19). Anything that defendant endeavor to appear as a lavish lifestyle is only expended to satisfy medical restrictions and medical recommendations. (See *Loan Monitor Is Accused of Ruthless Tactics on Student Debt*, by Natalie Kitroeff.) Dependent daughter's medical transportation expense, 2 – 3 times per week is solely funded by the Petitioner.

Brunner Test #1: Inability to Maintain Minimum Standard of Living

The FFEL Stafford and Direct Stafford Loans defaulted During Wage Garnishment, Rehabilitation and Employer's Budgeting Practices. Prior to the 2007 recession, Petitioner lost the opportunity to continuously earn full time wages as a substitute teacher because she was injured on the job in 2005. She requested a Family Medical Leave (FMLA) and returned to work in the Fall of 2005. The leave was also necessary to take care of her ailing mother who died in November 2005. Her brother subsequently required caregiving as he struggled with cancer until March (2008); and, her sister followed with care giving needs passing away in October 2011.

One year after the 2007-2009 Recession Petitioner's Direct Stafford loans defaulted 6/04/2010 and wage garnishment (AWG) began 3/14/2011 at a rate of 15%. Petitioner advocated to rehabilitate; and, at the completion of the FFEL Stafford Rehabilitation Program, MGA doubled the payment amount requested of Petitioner from $350, from 05/01/2009 to 10/08/2010, to $647.05 thereafter. The new payment demand was in direct conflict to 34 CFR § 682.405(b) and 34 CFR § 685.211 (f)- Reasonable and Affordable Loan Rehabilitation Agreement. The situation for Petitioner was certainly "hopeless".

Additionally, the Petitioner's employer, under the direction of an emergency manager, was also taking 10% of Petitioner's earning to support the school district's budget. Petitioner's employer deducted $250 bi-weekly from Petitioner's pay from 02/26/2010 to 07/01/2011. At the same time, MGA deducted AWG bi weekly ranging from $164.24 - $469.75 from Petitioner's pay from 3/14/2011 to 1/17/2012. Chapter 13 Bankruptcy proceedings began 1/17/2012 and resulted in an approved transfer to Chapter 7 Bankruptcy after Petitioner attempted to recover from a second-severe work injury.

DOE direct loan defaulted while Petitioner was rehabilitating her FFEL loans. Note that Petitioner's address, as previous indicated was not changed during the Rehabilitation Agreement negotiations; therefore, the Direct Stafford Loan default notice was not received by Petitioner. 34.CFR 682.205 – provides outline disclosure requirements for lenders and additional references are made in 20 U.S.C. § 428, 1998 Amendments to the Higher Education Act of 1965. The address wasn't changed by the U.S. Department of Education until 08/19/2011.

The Department of Education loans defaulted resulting from a system failure within the Department of Education data base (Patrick J. Howard, Assistant Inspector General for Audit, December 13, 2012, Audit Services section of the United States Department of Education, Office of Inspector General memorandum to James W. Runcie, Chief Operating Officer Federal Student Aid) outlines the incident. Evidence was presented to Judge McIvor showing that the Petitioner, along with over 190,000 other debtors, were not notified of their loan status. Therefore, the loans went into default, without notice, while repaying the FFEL loans, and Petitioner suffered unnecessary interest and penalties.

The Petitioner reported adjusted gross income for 2010 as $45,421; however, 25% of Petitioner's income was being diverted for government payments and additional bi-weekly amounts for an employer loan. Recognizing this, Petitioner again tried to increase her income to make loan payments even though Petitioner's adjusted gross income for 2011 was reported as $49,438. The income amount appears prosperous; however, the IRS tax report does not reflect the expenses and financial consequences of negative credit reports due to unemployment and defaulted debts. Petitioner's reduced pay continued into 2012; yet, IRS reported adjusted gross income of $41,289. The report also does not reflect a three-month medical leave for a severe work injuring occurring at the end of 2011 (See Defendants Exhibits BB, CC, and DD.) that occurred without disability insurance resulting in late rent and other late payment fees,

Brunner Test #2: Additional circumstances Exist and is Likely to Persist

Petitioner's severe and chronic medical condition continued and resulted in early disability/retirement February 2017. Petitioner's income was drastically reduced following Petitioner's disability/retirement and the subsidy income Petitioner received was discontinued June 2017. While income decreased, medical and other expenses increased. Petitioner's dependent daughter also has multiple medical problems that negatively affects income.

Petitioner's medical history was submitted to both the Bankruptcy Judge and the U.S. District Judge, under seal, and the history includes severe work injuries in 2005 and 2011 and medical visits that average 3 times per week. Additionally, Petitioner's dependent will remain a dependent for subsequent years and her educational "cost of attendance" is increasing. There will be ongoing educational cost through age 21, when Petitioner's daughter will be eligible to complete a Free Application for Federal Student Aid (FASFA) as an independent student. Until that time Petitioner will need to find ways to fund her dependent's education or the dependent will either be forced to receive government student loans or disability government assistance.

Petitioner suffers from additional teenage-dependent expenses. For example, Petitioner's auto insurance increased from $419.73 to $648.69 because Petitioner's dependent is identified as a teen driver; yet, Petitioner's dependent must drive multiple times per week for medical care. Additional auto insurance expenses are projected by Petitioner's insurance agent based on Michigan auto insurance laws. Petitioner's Medicare enrollment, February 2017, will increase auto insurance premiums unless there is some way to maintain coordinated medical benefits.

Petitioner 's credit score is a major factor in the additional circumstances. Petitioner's credit score is negatively affected by the student loan debt and default; the credit score is used to determine auto insurance premiums, interest rates on needed credit (auto loans, rental and other housing) and employment. If Petitioner was not disabled, her credit score would prevent her from obtaining employment that would pay her enough money to meet the "minimum" standard of living and pay her student loans. The summary of the situation is that Petitioner's salary as a teacher was not sufficient in her single parent home; yet, since Petitioner suffered work injuries, her employer was the only employer likely to grant FMLA.

Finally, the bankruptcy courts included income of $343 per month calculated as an average income from tax refunds. It was evident that the refund amounts will not continue because of the dependent's age and the non-existence of other factors that qualified Petitioner for the reported tax refund. Petitioner was no longer eligible for Credit for Child and Dependent Care Expenses, Earned Income Tax Credit (EITC) and other credits. A more comprehensive look at Petitioner's post-bankruptcy status is needed to understand Petitioner's finances if student loans are not discharged. *Brondson v. Educ. Credit Mgmt. Corp. (In re Brondson)*, 435 B.R. 791, 798 (1st Cir. 2010) (quoting *Hicks v. Educ. Credit Mgmt.. Corp. (In re Hicks*), 331 B.R. 18, 31 (*Bankr. D.* Mass. 2005).

Brunner Test #3: Debtor has Made Good Faith Efforts to Repay Student Loans

Misconception #1: Loan Consolidation/Income Contingent Repayments/Income Based Repayments/Loan Forgiveness. 34 C.F.R. § 685.209(a)(2), 34 C.F.R. § 685.209(c)(4)(iv) 34 C.F.R. § 685.209(c)(5), Defendant's Exhibit AAA shows that the Petitioner requested loan consolidation 1/5/1999 and 8/13/2008. In 1999, the variable interest rate was quoted from 7% to 8%. The interest rate on Petitioner's loans without consolidation was 2.31%. Therefore, consolidation would not have been a good financial decision either years. An important fact is that consolidation constitutes a new loan and borrower must agree on the consolidated amount. Petitioner did not agree on the consolidated amount because the United States Department of Education made an error. A December 13, 2012 memo to James W. Runcie, Chief Operating Officer, Federal Student Aid from Patrick J. Howard, Assistant Inspector General for Audit outlined the errors in a Final Alert Memorandum, Control Number ED-OIG/L02M0008. The Debt Management Collection System 2 failed to accept transfer of defaulted student loans from Federal Student Aid (FSA) loan servicers. As a "result borrowers are unable to take steps to revoke their loans from default status." FSA's Federal Managers' Financial Integrity Act of 1982.

By 2010, H.R. 4872 – Health Care and Education Reconciliation Act of 2010 made it possible for the U. S. government to exclude Petitioner's Federal Family Education Loans (FFEL) from certain types of Income Payment Programs. To add to the confusion, the bankruptcy judge, Judge Marci B. McIvor, ordered application to an income based plan solely to confirm the repayment amount. The Judge did not understand that the payment amount found in her Factual Background represent a payment of $267.63 for <u>only half</u> of the student loans (DOE loans only). The Income Based Repayment (IBR) amount did not include the FFEL Stafford Loans that were not eligible for the IBR plan after the Health Care and Education Reconciliation Act of 2010. Petitioner's loan payments would have been twice the amount and over the estimated $417.42 Judge McIvor indicated was available for loan payments. Please note that the estimated $417.42 did not take into account auto loan installment payments needed to commute to work and earn the estimated income Judge McIvor used. (See the Order, page 14)

Teacher Loan Forgiveness Program, § 682.216 – Teacher Loan Forgiveness Program: forgives up to $17,500 (non-taxable) to highly qualified special education teachers. Yet, Petitioner consistently informed Judge McIvor that Petitioner was not eligible for the program.

> § 682.216 Teacher loan forgiveness program
> (a) General. (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. **<u>The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998</u>**.

Petitioner's first loans as outline on page 5 of this document were two FFEL Stafford Subsidized loans totaling $5,826 that originated on 10/09/1992. The balance was still outstanding 10/01/1998 disqualifying Petitioner from program participation.

Further, § 685.209 REPAYEE plan may seem like a viable option; however, first this borrower must consolidate to benefit from participation. The consolidation interest rate is capped at 6% vs. the 2.36 interest rate that currently applies. Repayment determinations that create "undue hardship" will soon default again and certainly within 25 years when a 65 years old or older person is required to submit an income and expense statement as an annual reports to ensure that repayment requirements are humane. The repayment plan:

> Provide that, for each year a borrower is in the REPAYE plan, the borrower's monthly payment amount is recalculated based on income and family size information provided by the borrower. If a process becomes available in the future that allows borrowers to give consent for the Department of Education (the Department) to access their income and family size information from the Internal Revenue Service (IRS) or another Federal source, the regulations will allow use of such a process for recalculating a borrower's monthly payment amount... For a borrower who has at least one loan received to pay for graduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 25 years of qualifying payments.... Provide that, if the borrower does not provide the income information needed to recalculate the monthly repayment amount, the borrower is removed from the REPAYE plan and placed in an alternative repayment plan.

The Petitioner's age was 61 when the adversary proceeding was filed. The results of the calculation for annual reporting would have the borrower reporting at the age of 86 before calculations cease with a forgiveness charge off. Each year, and sometimes mid-year the Petitioner would need to gather medical expenses and other extra ordinary expenses to submit to the Department for special consideration regarding adjustments to loan payments. As the Petitioner ages the process will become increasingly more difficult. *Denittis v. Educ. Credit Mgmt. Corp. (In re Denittis)*, 362 B.R. 57, 64 (*Bankr. D. Mass. 2007*); *Furrow v. U.S. Dep't of Educ. (In re Furrow)*, No. 03-22740-DRD, 2004 WL 2238536, at *3 (*Bankr. W.D. Mo.* Sept. 28, 2004); *Johnson v. Educ. Credit Mgmt. Corp. (In re Johnson)*, 299 B.R. 676, 682 (*Bankr. M.D. Ga.* 2003). Allowing the Department of Education's ICRP to replace an undue hardship inquiry results in courts "effectively disenfranchise[ing] themselves" in favor of the Department of Education. *Michael & Phelps*, at 104.

When the loans become eligible for "cancellation" it is a taxable event. if the debtor is solvent at the time of cancellation, he or she will have to pay taxes on that amount of the loan cancelled. *Lee v. Regions Bank Student Loans (In re Lee)*, 352 B.R. 91, 93 (B.A.P. 8th Cir. 2006); *Arroyo v. U.S. Dep't of Educ. (In re Arroyo)*, 470

B.R. 18, 31 (Bankr. D. Mass. 2012). Another consequence of relief under the ICRP is the accumulation of interest throughout the twenty-five-year repayment period; this accumulated interest will be included in the amount "cancelled." 34 C.F.R. § 685.209(c)(5).

Finally, it would cost the U.S. Government more to receive and process the annual reports and request for payment adjustments than the U.S. Government would receive in repayment. A court should consider the costs and benefits of ICRP relief to each individual debtor in conducting an undue hardship determination. *Brooks v. Educ. Credit Mgmt. Corp., (In re Brooks)*, 406 B.R. 383, 393 (*Bankr. D. Minn. 2009*). If a debtor shows no signs of financial improvement, the ICRP will not offer any benefits and does not indicate there is a reasonable likelihood of repayment. *Stevenson*, at 595–96. In such a case, the ICRP should not preclude a discharge. Id.

The guarantee agencies are the only winners in this situation because they receive litigation fees, collection fees and other compensation which accounts for their ruthless pursuits. The way the REPAYEE plans work is that if the borrower defaults on the repayment plan the borrower again becomes eligible for garnishment, repossessions etc. eliminating any opportunity for a "fresh start". Alston, 297 B.R. at 417 (citing Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)). As the bankruptcy court explained in Alston, "retention of a ten-year-old debt for another twenty-five years with the speculative hope that the debtor's financial circumstances will improve runs counter to this legislative principle." 297 B.R. at 418. Thus, courts must remember that an undue hardship determination is meant to facilitate the objective of the fresh start. According the ICRP factor applies too much weight as a factor in the undue hardship analysis and prevents section 523(a)(8) from serving its intended purpose.

<u>Misconception #2: Loan Payments Never Paid.</u> The greatest misconception throughout the

Petitioner's adversary proceedings is that Petitioner never repaid her student loans or attempted to repay her student loans. Case introduction (pages 5 – 8 of this writ) indicates that Petitioner's Federal Perkins Loans were totally repaid. Additionally, Petitioner made monthly rehabilitation payments of $350 during a ten-month period, the repayment total was $6,500 on the FFEL Stafford loans. The repayments were made while still enrolled in school. Even though Petitioner was eligible for and received approved Deferment/forbearance prior to repayment. If it is unclear if repayment satisfies the Brunner Test, doubts to be resolved in the debtor's favor. See *Bellco First Fed. Credit Union v. Kaspar (In re Kaspar)*, 125 F.3d 1358, 1361 (10th Cir.1997); *In re Soileau*, 488 F.3d 302, 312 (5th Cir. 2007). Yet, in Roth v. Educ. Credit Mgmt. Corp. (In re Roth), 490 B.R. 908 (9th Cir. 2012) the payment discussed here were considered sufficient for Brunner Prong 3.

> In contrast, she made no full or even partial voluntary payments despite being able to do so in select years. However, this deficiency is mitigated somewhat by her good faith belief in other years that the FFELP Loans were being paid through garnishments and tax offsets.

Most of the misconceptions in the Petitioner's case derived from the ruthless tactics of the Department of Education agent, ECMC. See Ruthless Tactics, Natalie Kitroeff, January 1, 2014. In documents presented to court (Brief, Post Brief, etc.) The courts allowed ECMC attorney o paraphrase Petitioner's testimony and the testimony of Petitioner's witnesses.

2. Did the U. S. Department of Education and Educational Credit Management Corporation, an agency/fiduciary of the U. S. Department of Education, receive an unfair advantage in student loan discharge litigation in a U. S. Court?

Adversary Proceedings did not begin until December 2011. The lender of record, at the time of bankruptcy filing, for the FFEL Stafford Loans was HomeBanc N.A. and the loans were serviced by Nelnet. The U, S. Department of Education (DOE) loans were serviced by Debt Management and Collection Systems.

On 1/15/14, the Clerk notified parties of a scheduling conference set for 2/4/14. Shortly after, the clerk notified that at the 2/4/2014 hearing the Judge will consider and act upon the following: 19-Motion to Intervene as Party Defendant Filed by Defendant Educational Credit Management Corporation, Matthew Dawson, with 5 Exhibits: #1 Exhibit A: Loan History #2 Exhibit B: Correspondence #3 Exhibit C: Aalabdulrasul v. ACS, et al. l#4 Exhibit D: Srinivasan v. Sallie Mae #5 Proposed Order. (Filed 1/15/14) 26- Motion to Substitute Educational Credit Management Corporation for Defendant Homebanc N.A. Filed by Defendant Educational Management Corporation, Matthew Dawson, with 5 Exhibits. #1 Exhibit A: NSLDS Report #2 Exhibit B: Transaction History Report #3 Exhibit C: Correspondence #4 Exhibit D: Aalabdulrasul v. ACS #5 Exhibit E: Srinivasan v. Sallie Mae, Inc. (Filed 1/24/14)
44 – Motion to Set Aside Clerk's Entry of Default (Dkt. #38) as to Michigan Guaranty Agency and Homebanc, N.A. Filed by Defendant Educational Credit Management Corporation, Matthew Dawson. The with 9 Exhibits: #1 Exhibit A: NSLDS Report #2 Exhibit B: Aalabdulrasul v. ACS #3 Exhibit C: Srinivasan v. Sallie Mae #4 Exhibit D: Correspondence #5 Exhibit E: Transfer History #6 Exhibit F: Molly lMaid v. O'Daniel #7 Exhibit G: GE Commercal v. Binyan Michigan #8 Exhibit H: Brothers Gas and Food v. Catlin Specialty #9 Proposed Order).

However, the defendant litigator, Matthew Dawson, never filed an appearance with the Bankruptcy court and Dawson dominate the discussion in the court room while this pro se Petitioner was silenced by the Judge. When Dawson was finished talking the Judge ruled without giving the pro se Petitioner an opportunity to rebut. Subsequently, the litigation began, and Judge Marci McIvor, changed the caption on the case deleting defendants. Additional exceptions to rules and statutes continued and are outlined in the questions that follow.

3. Were the constitutional rights and 28 U.S.C. § 1654 upheld for Pro Se litigant or were they violated during adversary proceeding for student loan discharge?

Petitioner's ability to litigate as a pro se litigant was negatively affected. Yet, requests for a court appointed attorney were not honored while private attorneys requested on the upside of

$10,000. Consequently, acting as pro se, the Petitioner's rights were violated in the courtrooms on numerous occasions. The Honorable Judge Marci B. McIvor and John Corbett O'Meara were not impartial and both were easily persuaded by the Defendants' counsel. Petitioner's request to consider testimony, recent legal cases and the law was not received. The Courts continued to allow Defendant attorneys to dominate the legal discussion while Petitioner was not allowed to exercise her 1st Amendment right to speak. Additionally, when Pro Se Petitioner was provided with an opportunity to speak she was not heard. Subsequently, case analysis, decision and order was based on incorrect facts. For Example:

> Honorable John Corbett O'Meara **<u>OPINION AND ORDER AFFIRMING JUDGMENT OF THE BANKRUPTCY COURT</u>**
>
> BACKGROUND FACTS
>
> Appellant Conner is a single, 61year-old mother of a teenaged daughter. She sought a bankruptcy court discharge for student loan debt of at least $214,746.50. Conner incurred this debt by taking out 26 separate loans between 1992 and 2006. The loans are divided equally between DOE and ECMC or its predecessor in interest. She obtained three degrees from Wayne State University in business administration, education, and communication; however, her entire student loan debt is solely attributable to graduate-level education she completed in 2005 or 2006.

The loan history above indicates that loans were also attributable to undergraduate level education and the first loan was disbursed in 1992. The education degree and teacher certifications were mandatory to maintain employment. Once Petitioner bridged to a business teacher educational certification her employer required her to bridge to a special education certified teacher to maintain employment. Evidence was presented to verify these facts by both the Petitioner and the Defendant,

> Conner has maintained full-time employment as a teacher with Detroit Public Schools for the last 16 years. Her annual gross incomes for years 2009-2013 were as follows: $58,369.00; $60,118.00; $58877.16; and $62,593.16, respectively. In addition to her salary from teaching, Connor received an adoption subsidy for her daughter and annuity payments from Minnesota Life Auto during those years. Her average federal tax refund for those years was $4,111.00, or $343.00 per month.

The transcript testimony from the trial and Exhibits will show that the gross income levels reported in Judge O'Meara's Background Facts are incorrect and represent at a minimum the double counting of a subsidy received as income. The type of subsidy received is "protected" under both his order and the order of Judge Marci B. McIvor along with other case information; yet both included protected information in their Order and Opinion for publication. The other information includes health information Judge O'Meara reports in his next paragraph of the Background Facts.

> Connor has some health issues, including arthritis-related conditions and baldness, for which she requires several medications. In the opinion of her doctor, however, these conditions are "controllable." Trial Tr. at pp. 6 and 7. Similarly, her teenage daughter has various health issues. In the words of her pediatrician, however, the daughter's prognosis was that "she should do fairly well," and "go on and work a job and have a more or less normal life." Id. at pp. 8 and 22.

The doctor's testimony was first revealed and paraphrased by the Defendant ECMC's attorney, Daniel Starkey, in a brief after the attorney was under an "Order" from Judge Marci B. McIvor to seal the information from the public. Petitioner, in accordance with LCvR 6.1 and LCR 55.1 sought a Protective Order that was granted; yet, Instead the attorney Daniel Starkey electronically filed the information in a brief for public viewing; subsequently, the Judges and other legal publishers published the information in mass media. There was also a granted motion to redact pleadings. A motion to sanction was denied by Judge Marci McIvor and Judge O'Meara. Judge McIvor did not order redactment of documents until the middle of the trial.

> According to her disclosures, Conner's monthly expenses average $4,300.00. While her expenses include necessary payments for housing, utilities, medical care and food, she also spends several hundred dollars per month on discretionary items, including a $290/month cellular phone plan.

The discretionary spending statements here is misleading and does not compensate for the fact that Petitioner does not have a home phone. The cellular phones are used by Petitioner and her dependent to make medical calls and to complete work and school responsibilities. The referenced cellular plan has an unlimited internet service used to post student grades and complete lesson plans for teaching. Petitioner's dependent used the internet to complete and upload educational assignments. The several hundred dollars spent per month on discretionary items is also misleading because as Judge O'Meara indicated, even with her exclusion of necessary expenses there was not several hundred dollars left from income to spend after expenses. Another reason to show how outdated the Brunner Test is today.

> Connor has admitted that she has never made a voluntary payment on her DOE loans. During the course of the adversary proceeding, the bankruptcy court ordered her to apply for an Income Based Repayment Plan ("IBR") with the DOE. She initially complied and completed a direct loan consolidation application to DOE on July 16, 2014. Based on the information provided, it was determined that her monthly IBR payment amount would be $267.63. However, on August 15, 2014, Connor canceled her application and never established a repayment plan. She sought to have her student loan debt discharged in her bankruptcy proceeding, claiming that it would otherwise impose an undue hardship upon her and her daughter. The bankruptcy court held that Connor failed to establish that repayment would cause an undue hardship.

Finally, statements about DOE loan payments are misleading. Payments were made on the DOE loans and that is what is required to satisfy the Brunner Test, Prong III. Petitioner complied with all court orders and the statement that the IBR payment amount would be $267.63 is not representative of what the payment amount will be for the entire outstanding loans, only the Direct Stafford Loans. Judge O"Meara omitted the payment amount for the FFEL Stafford Loans. Likewise, Judge Marci B. McIvor made similar statements in her Background Facts. An important fact is that Judge Marci B. McIvor did not take into consideration transportation expenses (auto loan) and clothing expenses in her expense calculations. "The ICRP should not replace Federal Judges' case-by -case analysis with a computer-generated formula and remove the flexible inquiry, created by Congress, that allows judges to account for the totality of the circumstances". See *Lee*, 352 B.R. at 95–96; *Booth*, 410 B.R. at 677; *Collins*, 376 B.R. at 716.

4. Did the U. S. Bankruptcy Court Eastern District of Michigan, U. S. District Court and U. S. Court of Appeals for the Sixth Circuit, and attorneys for the Defendants abuse the doctrine of sovereign immunity?

A. Is the unconstitutional Brunner Test becoming an alleged statue?

The Brunner test was an outcome of Brunner v. New York State Higher Educ. Servs. Corp., 831 F. 2d 395 (2d Cir. 1987). The mere origination of the test, 1987, suggest that it is outdated and does not represent "minimum standards" of living in the 21st Century. The Brunner Test should never be allowed to rule the Federal Collection Financial Standards that the U. S. Government allows to be updated periodically. The text of section 523(a)(8) does not reveal what is required for a showing of undue hardship. Congress implemented the undue hardship requirement to curb perceived abuses described in a 1973 Report of the Commission of Bankruptcy Laws of the United States, such as well-educated debtors seeking discharge of their educational loans before beginning lucrative careers. *See Long v. Educ. Credit Mgmt. Corp. (In re Long)*, 322 F.3d 549, 553–554 (8th Cir. 2003); *In re Brunner*, 46 B.R. 752 (S.D.N.Y. 1985) aff'd sub nom. *Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987).

B. Is the Brunner Test analyzed the same in cases where the United States Department of Education, Educational Credit Management and other financial institutions are the defendants?

It would take more than 40 pages and empirical evidence to outline al of the student loan cases where the Department of Education and its agent Educational Credit Management has received favorable decisions. U.S. Department of Education and its agents, involved in student loan discharge proceedings, should not be judged and receive "hardship" decisions from a single or a select few individuals that are employed by the U.S. Government. The legal proceedings present a conflict of interest and waste court cost because it appears impossible to get a fair trial when there is a perceived sovereign immunity.

5. Did this case involve injury to this Petitioner because the officials of the United States Bankruptcy Court Eastern District of Michigan, U. S District Court and Court of Appeal for the Sixth Circuit sanction judicial proceedings that exceeded statutory authority, or sanction such a departure by a lower court, as to call for an exercise of this Court's supervisory power? (per Justice Felix Frankfurter)

A. Did the lower courts exceed statutory authority, Rule 7004. Process; Service of Summons, Complaint, (b)(8) and dismiss default previously entered by the bankruptcy clerk?

B. Should the Supreme Court rule in favor of the Petitioner as in United Student Aid Funds v. Espinosa, No. 08-1134, for failure of the defendants to timely respond to Petitioner's summons and complaint (Justice Thomas wrote, as they do not "provide a license for litigants to sleep on their rights,") and for the lower court judges not following procedures contemplated by the law.

C. Did the Bankruptcy Court and U, S, District Court err when it failed to sanction attorneys for not complying with a court order?

Judge McIvor allowed the Defendant attorney's, and, in particular, Daniel Starkey and Julia Caroff, defy court rules. She herself, McIvor, should have excluded herself from the case due to her co-worker relationship with the Defendant Attorney Julia Caroff. The Petitioner believes that it is because of the relationship between Caroff and Judge McIvor and the perception of soand her court order and escape their responsibilities of providing Discovery information and ordered responses, in a timely matter. Both failed to supply discovery information in the time allotted by the rules and both failed to provide a court order statement. Mr. Starkey, later, denied the court order and made medical information available to the public. Both Judge McIvor and Judge O'Meara denied Petitioner's motion for sanctions. In summary, the errors include:

- The failure of Homebanc, Inc to respond to notice of complaint.
- The lower courts failure to sanction attorneys for not complying with a court order?
- The lower courts multiple scheduling of pretrial conferences that prejudice Petitioners case. One was held on November 19, 2014 and a second pretrial conference was held immediately prior to the start of the hearing.
- The lower courts violation of the Court's Responsibilities to Attorneys/Pro Se Litigants.

Judge McIvor violated the Court's Responsibilities to Attorneys. As a Pro Se litigant it is in my opinion that Judge McIvor violated the following pledges:

> We will be punctual in convening hearings, meetings and conferences; if delayed, we will notify counsel, if possible.

The witnesses waited 2 hours for the hearing to begin.

> The Court, recognizing the existence of family and business obligations of parties, witnesses and attorneys, will attempt, in scheduling all hearings, meeting and conferences, to be considerate of time schedules of attorneys, parties and witnesses.

Petitioner has a daily obligation to work, transport dependent and self to medical appointments after work leaving little time to litigate.

> We recognize that an attorney has a right and a duty to present a cause fully and properly, and that a litigant has a right to fair and impartial consideration.

The Honorable Judge was not impartial and was easily persuaded by Defendant counsel rather than considering testimony, recent legal cases and the law.

> We will not impugn the integrity of professionalism of any attorney on the basis of the clients whom, or the causes which, an attorney represents.

Petitioner represented a hardship case and the Honorable Judge found it necessary to give more background on the Defendant's nonprofit charitable status than the Petitioner's charitable acts as a public servant and victim of the economy. In the Petitioner's opinion Judge McIvor's conduct is characterized as uncivil, an abuse of power and as-a- result denied justice for the Petitioner. Further, it is in the opinion of this litigant that attorneys for ECMC and the U.S. Department of Education failed in the Attorney's Responsibilities to the Court and Attorney's Responsibilities to Other Counsel:

> We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication.

Repeatedly, counsel for the Defendants misrepresented Petitioner income and expenses; even though, information was presented to the Defendants interrogatories and evidence presented. Judge McIvor forced Joint Exhibits 1 and 2, Income & Expenses that this Petitioner did not agree. Efforts to report this on the trial transcript was covered by the Judge's "talk over".

> We will not send letters to the Court (wheatear addressed to the Court or copies of letters to opposing counsel) that contain argument or criticize counsel in connection with a pending action, unless invited or permitted by the Court or as appropriate exhibits to

> Court filings, in which event a copy shall be provided to opposing counsel in such a manner as to insure delivery to opposing counsel on that same day that it is delivered to the Court.

Counsel for the Defendants did not provide copies of Post-Hearing Briefs to the defendants, did not comply timely with court orders regarding receipt of medical records as Ordered by the court.

> We will respond to document requests and interrogatories reasonably and not strain to interpret the requests or interrogatories in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents and information fairly within the scope of the requests or interrogatories. We will not produce documents or answer interrogatories in a manner designed to hide or obscure the existence of particular documents or information.

Defendant Attorneys failed to provide information during interrogatories; however, found the same information, readily available when it was time to produce evidence. Therefore, Petitioner's case was prejudiced in so many ways that it would be impossible to reveal each situation which includes failure to file a timely appearance by ECMC, failure of Home Bank to answer summons and complaint (transfer of debt to ECMC took place after the default). Additionally, Petitioner's request for sanctions for non-compliance of Federal rules and Court orders were not honored.

Congress has provided language in Section 13 of the Judicial Act of 1789 gives the Supreme Court appellate jurisdiction from the circuit court in this case and gives the Supreme Court power to writs of mandamus in this case which is warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States. Additionally, a panel of bankruptcy appeal judges in 2012 denounced what it called Educational Credit's "waste of judicial resources," and said that the agency's collection activities "constituted an abuse of the bankruptcy process and defiance of the court's authority."

REASONS FOR GRANTING THE PETITION

I. BOTH A CIRCUIT AND DISTRICT LEVEL CONFLICT EXIST REGARDING "UNDUE HARDSHIP" TEST FOR DISCHARGING STUDENT LOAN DEBT

The United States Bankruptcy Code, 11 U.S.C. 523(a)(8) sets aside a reason for discharging a debtor and the debtor's dependents student loans to avoid "Undue Hardship". Yet the Bankruptcy Courts, District Courts and Circuit Courts has not been able to agree upon the factors that constitute "Undue Hardship",

One reason for the inability to obtain consensus is because the courts apply various test to decide if a debtor's loan payments will cause undue hardship: (1) totality of the circumstances, (2) Brunner test which mandates that a debtor meets the requirements of three of three specific requirements.

U. S. Court of Appeals	**Test**	**Cases**
First Circuit NH,ME,MA, RI,PR,	Totality of the Circumstances	Bronsdon v. Educ. Credit Mgmt. Corp. (In re Bronsdon), 435 B.R. 791, 797-800 (B.A.P. 1st Cir. 2010).[2]
Second Circuit VT,NY,CT	Brunner Test	Brunner v. New York State Higher Educ. Servs. Corp., 831 F.2d 395 (2d Cir. 1987
Third Circuit PA,NJ,DE,VI	Brunner Test	Pa. Higher Educ. Assistance Agency v. Faish (In re Faish), 72 F.3d 298, 306 (3d Cir. 1995)
Fourth Circuit MD,VA,WV,NC,SC	Brunner Test	Educ. Credit Mgmt. Corp. v. Frushour (In re Frushour), 433 F.3d 393, 400 (4th Cir. 2005)
Fifth Circuit TX,LA,MS,DCZ	Brunner Test	U.S. Dep't of Educ. v. Gerhardt (In re Gerhardt), 348 F.3d 89, 91 (5th Cir. 2003)
Sixth Circuit MI,OH,KY,TN	Brunner Test	Oyler v. Educ. Credit Mgmt. Corp. (In re Oyler), 397 F.3d 382, 385 (6th Cir. 2005)
Seventh Circuit WI,IL,IN	Brunner Test	In re Roberson, 999 F.2d 1132, 1135 (7th Cir. 1993)
Eight Circuit ND,MN,SD,NE,IA,MO,AR	Totality of the Circumstances	Long v. Educ. Credit Mgmt. Corp. (In re Long), 322 F.3d 549, 554 (2003)
Ninth Circuit WA,MT,OR,ID,CA,NV,AZ,AK, GU,HI	Brunner Test	Educ. Credit Mgmt. Corp. v. Mason (In re Mason), 464 F.3d 878, 881-882 (9th Cir. 2006)
Tenth Circuit WY, UT, CO, KS, NM, OK	Brunner Test	Educ. Credit Mgmt. Corp. v. Polleys, 356 F.3d 1302, 1308-1309 (10th Cir. 2004)
Eleventh Circuit AL, GA, FL	Brunner Test	Hemar Ins. Corp. of Am. v. Cox (In re Cox), 338 F.3d 1238, 1241 (11th Cir. 2003)
District of Columbia		
Federal Judicial Circuit		
U. S. District Courts (94)	Various	
U. S. Federal Bankruptcy Courts	Various	

The flexibility of the totality of the circumstances test supports the policy that an honest but unfortunate debtor deserves a fresh start free from debt. Grogan v. Garner, 498 U.S. 279, 286, 287 (1991). "Courts properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry their ordinary, contemporary, common meaning." *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship,* 507 U.S. 380, 388 (1993). Because Congress left "undue hardship" undefined, there is no indication that the words of section 523(a)(8) should be given any meaning other than their common meaning. "Undue" is commonly defined as "more than is reasonable or necessary." *Undue*, MERRIAM-WEBSTER, http://www.merriam-webster.com (last visited Jan. 12, 2015). The totality of the circumstances test aligns with Congress' use of the word "undue" because it looks at the reasonableness of the debtor's possible repayment of the loan.

II. THE COURTS DIFFER IN HOW THE BRUNNER TEST IS APPLIED WHEN DETERMING THE DEBTORS PASSING OF THE THIRD PRONG "PAST GOOD FAITH EFFORT".

The courts of appeals applying Brunner also differ as to whether the failure to make any past payments on the precise student loan debt sought to be discharged is a per se bar to discharge under Brunner's "past good faith effort" requirement. Compare App., infra, 8a-9a, and Lehman v. N.Y. Higher Educ. Servs. Corp. (In re Lehman), 226 B.R. 805, 809 (Bankr. D. Vt. 1998), with Educ. Credit Mgmt. Corp. v. Mosley (In re Mosley), 494 F.3d 1320, 1327 (11th Cir. 2007), and Pol- leys, 356 F.3d at 1311. In petitioner's case, the Seventh Circuit created a per se rule that petitioner's failure to make any payments on the student loan debt he sought to discharge meant he could not satisfy Brunner's "past good faith effort" requirement. App., infra, 9a. By contrast, the Tenth and Eleventh Circuits have explicitly held that failure to make any student loan payments does not, standing alone, preclude a finding of past good faith effort. See Mosley, 494 F.3d at 1327; Polleys, 356 F.3d at 1311.

III. PRO SE PETITIONER'S RIGHTS WERE VIOLATED DURING LITIGATION.

The unconstitutional Brunner Test has been interrupted as a statute or law in cases and in too many cases has replaced the laws written by congress, 11 U.S.C. § 523(a)(8). Additionally, the lower courts, court officers, U. S. Department of Education and agent of the U.S. Department of Education, ECMC, abused sovereign immunity. Although Congress has waived sovereign immunity for the United States Department of Education in regards to student loan debt the use of the Brunner Test serves to block a citizen's right to successfully bring a law suit against the federal government in an authorized adversary hearing. Therefore, Congress purpose for creating the law has been defeated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: November 22, 2017