No. _____

In the
Supreme Court of the United States

JUN XIAO,
Petitioner,
v.

REGENTS OF THE UNIVERSITY OF MINNESOTA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the state district court erred in dismissing Petitioner's 42 U.S.C. § 1983, Fourteenth Amendment equal protection claim for failure to state a claim upon which relief can be grated.

Whether the lower courts, given the facts, wrongfully employed and misapplied a heightened scrutiny standard rather than the deferential *Turner* standard? *See Turner v. Safley*, 482 U.S. 78 (1987).

Whether the Fifth and Fourteenth Amendments can prevail a state status (Minn. Stat. § 606.01) when deciding whether students can be awarded monetary relief for their property damages (education right is a property right).

Whether students at a state-owned university should have the same federal legal rights as students at private universities when state-owned university students suffered property loss.

Whether maliciously acting government officials should be awarded "qualified immunity" in terms of First Amendment retaliation.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this Court are as follows:

Jun Xiao, Petitioner

Regents of the University of Minnesota, *et al.*, Respondents

LIST OF PROCEEDINGS

STATE OF MINNESOTA IN SUPREME COURT
Case No. A18-0646
JUN XIAO, an individual v. Dr. Raquel Rodriguiz, individually and in her official capacity, et al.
Petition for further review DENIED dated 8/6/19.

STATE OF MINNESOTA IN COURT OF APPEALS
Case No. A18-0646
JUN XIAO, an individual v. Dr. Raquel Rodrigues, individually and in her official capacity, et al.
District Court determination AFFIRMED, for the same reasons dated 5/6/19.

STATE OF MINNESOTA, FOURTH JUDICIAL DISTRICT COURT
Court File No. 27-CV-16-12740
JUN XIAO, an individual v. Dr. Raquel Rodriguiz, individually and in her official capacity, et al.
Defendants' motion for summary judgment is GRANTED dated 2/22/18.

STATE OF MINNESOTA, FOURTH JUDICIAL DISTRICT COURT
Court File No. 27-CV-16-12740
JUN XIAO, an individual v. Regents of the University of Minnesota, et al.
Defendant's motion to dismiss GRANTED for all issues except 42 U.S.C. § 1983 Retaliation claim dated 2/17/17.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully requests that a Writ of Certiorari be issued to review the Denial of his appeal by the Supreme Court of Minnesota on August 6, 2019.

OPINIONS BELOW

The August 6, 2019 order denying petition for further review in the State of Minnesota Supreme Court is reproduced at App. 1. The May 6, 2019 opinion in the State of Minnesota Court of Appeals is reproduced at App. 2. The February 22, 2018 order in the State of Minnesota District Court is reproduced at App. 27. The February 17, 2017 order in the State of Minnesota District Court is reproduced at App. 39.

BASIS FOR JURISDICTION IN THIS COURT

The February 17, 2017 and the February 22, 2018 Decisions by the Minnesota district court, and the subsequent May 6, 2019 Order of in the Minnesota Court of Appeals denied Petitioner's appeal, are abrasive to Petitioner's constitutional rights. Minnesota Court of Appeals denied important questions of federal law as it pertains to § 1983, First Amendment Retaliation, Fifth and Fourteenth Amendment violations. The lower court's ruling is ripe for federal review. Additionally, the Minnesota Supreme Court's Order on August 6, 2019, denying Petitioner's motion for further review, enabled and exacerbated the Minnesota lower courts' unconstitutional findings. The Court of Appeals' opinion can be found at *Xiao v. Rodriguez*, No. A18-0646, 2019 WL 1983488 (Minn. Ct. App. May 6, 2019), review denied (Aug. 6, 2019).

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is U.S. Const. art. III. and 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

U.S. Const. amend. I.

> 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.

U.S. Const. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, § 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.

Minn. Stat. § 606.01

> No writ of certiorari shall be issued, to correct any proceeding, unless such writ shall be issued within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby. The party shall apply to the Court of Appeals for the writ.

STATEMENT OF THE CASE

This Petition brings a challenge to the Minnesota district court's and the court of appeals' refusal to hear the § 1983, First Amendment Retaliation, Fifth and Fourteenth Amendments violations claims in an action against the University of Minnesota (UMN). The Petitioner's central argument is that § 1983 protection, First Amendment Retaliation, Fifth and Fourteenth Amendments violations, and subsequent case law, provide for tangible remedies. Moreover, state courts neglected to apply *Turner* deference when they refused jurisdiction over several of Petitioner's listed grievances in his initial complaint. See *Turner v. Safley*, 482 U.S. 78 (1987). Petitioner requests that this Court grant Certiorari so the Court may address novel and important questions of Constitutional and federal law, namely, a) whether state courts must apply this Court's deference standards; b) whether the Fifth and Fourteenth Amendments can prevail a state status (Minn. Stat. § 606.01) when deciding whether students can be awarded monetary relief (the "just compensation") for their property damages; c) whether students at a state-owned university should have the same federal legal rights as students at private

universities when state-owned university students suffered property loss; d) what is the amount of compensation to be considered "just" when a student's property was taken by a state government; e) whether maliciously acting government officials should be awarded "qualified immunity" in terms of First Amendment retaliation; f) whether § 1983 provides for relief which requires review, as applied in this case.

A. Factual Basis for the Writ.

On August 27, 2012, Petitioner was removed from Patient care (a required rotation) at Fairview Infusion (7126) four and half days before the rotation ended, and the Respondents assigned 4 days as "professional leave" even without Petitioner's "request" (Sorrentino Depo.[1] p.28, line 1). This violated Respondents' policy ("No more than three days of professional leave or vacation may be taken during any one rotation. Students can request professional leave via 'Time Tracking' function in E*Value."). Respondents illegitimately assigned an "F" to this rotation. On September 12, 2012, after Petitioner worked for only three and a half days, Petitioner was removed from Medication History (an elective rotation) at UMMC (7211) due to a patient's complaint about Petitioner's English accent. (Compl. ¶41,42,47,187,188.) Petitioner passed an English proficiency evaluation before the rotation, and during the three and half days, Petitioner successfully interviewed approximately sixteen (16) patients without any complaint from patients. (Compl.

[1] Sorrentino's deposition transcript was submitted to the District Court as Ex. F.

¶42.) The preceptor never gave any grade to Petitioner for this rotation, but Respondents assigned an "F" to this rotation in violation Respondents' policy (Compl. ¶56, 95.) Due to the two F's, Respondents was placed on academic probation. (Compl. ¶62.) By February 21, 2013, Petitioner has successfully repeated 7211[2] and was repeating 7126 at Walgreens. Rodriguez informed Petitioner that the probation would be "automatically" removed per policy once Petitioner passed 7126 at Walgreens ending on March 29, 2013. (Compl. ¶64, 65.)

On approximately April 25, 2013, Prof. Johnson highlighted all of the questions that Petitioner answered wrong in an examination with a pink highlighting marker and lifted this highlighted examination sheet in front of Petitioner and another resident student to publicly humiliate Petitioner as "one of the three (3) worst students" during Johnson's "thirty-five (35) or thirty-six (36) years of" teaching. Johnson further announced, in front of the student, that the Petitioner's grade on the examination was "a low D" …… (Compl. ¶70.) Rodriguez was Johnson's supervisor. AFTER (emphasis added) Petitioner reported Johnson directly to the school (free speech

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[2] After Petitioner allegedly failed his 7211 at UMMC, Petitioner successfully repeated 7211 at Arbit by December 21 of 2012 (The Email of Haeg, Director of Student Services, dated January 2, 2013. This email was disclosed to Petitioner during the Discovery of this litigation, and was submitted to the District Court as Ex. DD). Later, Petitioner successfully passed another 7211 equivalent elective at Fagron by February 22 of 2013. Petitioner's Fagron was labeled as 7213 while some of Petitioner classmates' Fagron was labeled as 7211 because all electives (7211, 7212, and 7213) were treated the same per policy. (Compl. ¶21, 66.)

right) bypassing Rodriguez, Rodriguez initiated numerous retaliations against the Petitioner. Briefly:

i) On May 17, 2013, Rodriguez made her first false accusation to the school that the Petitioner had "never repeated 7211" because "the three selective courses are treated substantially different." (Compl. ¶78.) Due to Rodriguez's false statement, Petitioner was illegitimately and maliciously kept on probation after March 29, 2013.

ii) On July 22, 2013, Petitioner presented evidence that all three (3) electives (7211, 7212, and 7213) were treated the same per policy. For example, as mentioned above, Petitioner's Fargon was labeled as 7213 while his classmates' Fargon was registered as 7211. (Compl. ¶89, also 21, 66.) On July 22, 2013, Rodriguez made her second false accusation that failed rotations were placed after "all scheduled rotation" and that the Petitioner had never repeated the allegedly failed course 7211 by March 29, 2013 (Compl. ¶91.) Due to this false statement of Rodriguez's, Petitioner was illegitimately and maliciously kept on probation after March 29, 2013.

iii) On September 12, 2014, Petitioner presented evidence that Rodriguez's second false accusation violated the school policy and also contradicted the fact that Petitioner's allegedly failed rotation was repeated before the scheduled rotations. (Compl. ¶96, 97.)

> Then, Rodriguez made her third false accusation that Petitioner needed to complete a "patient care" elective in order to be removed from the probation (Compl. ¶98.) Due to this false statement of Rodriguez's, Petitioner was illegitimately and maliciously kept on probation after March 29, 2013.

In his Appeal to Vice President Jackson on October 26, 2014, Petitioner presented evidence that a) at least two Petitioner's classmates had already graduated without taking any "patient care" elective (Compl. ¶99), b) After Petitioner allegedly failed his Medication History (labeled as 7211) and BEFORE (emphasis added) Petitioner reported Johnson, none of Petitioner's electives scheduled by Rodriguez were "patient care" electives (Compl. ¶69), c) school policy prohibits students from repeating a "patient care" elective because all of the five (5) required rotations were "patient care" courses. (Compl. ¶164) d) the Student Handbook does not distinguish 7211, 7212, and 7213 among the sixty-one (61) electives, which were neither assigned to a specific registration number, i.e., 7211, 7212, or 7213 nor classified as "patient care" or "not patient care" (Compl. ¶21); e) all the above-mentioned false accusations of Rodriguez's contradicted the facts and violated the school policies, and f) Petitioner's probation should have been removed by March 29, 2013 and accordingly, Petitioner should have not been dismissed. Per school policy, Vice President Jackson was required to "issue (his) decision within 30 calendar days" of October 26 of 2014, and he never informed Petitioner of any "compelling reasons for delay" (Compl. ¶103.) After almost four (4) months on

February 23, 2015, Vice President Jackson denied the Petitioner's Appeal, depriving Petitioner of his right to have his Complaint heard on the University level. (Compl. ¶104.)

Rodriguez's intentional, malicious, and repeated false accusations illegitimately kept Petitioner on probation while a grade of D from Johnson illegitimately dismissed Petitioner from the University when Petitioner almost graduated. At the time of being wrongfully dismissed, Petitioner had paid the University over $163,000 for his tuition, excluding other expenses. At the time of the dismissal, Petitioner had only three (3) five-week rotations left before he would otherwise graduated (Compl. ¶88). Without probation, Petitioner could not be dismissed because a grade of D is a passing grade if a student is not on probation per school policy. (Compl. ¶82)

Other disparate treatments include, but not limited to, a) Caucasian and non-disabled students were allowed 1-2 weeks or other remedies to pass their rotations instead of being given a failing grade; (Compl. ¶61.) b) Petitioner was denied access to medical records, whereas Caucasian students were provided access to such records. (Compl. ¶85.) c) After Petitioner went over Rodriguez's head to report Johnson to the school, Rodriguez insisted that Petitioner go back to Johnson with the intention of psychologically torturing Petitioner. Rodriguez further threatened that if Petitioner did not go back to Johnson, she would send Petitioner to the Academic Standing Committee (ASC), where she would propose a dismissal decision. (Compl. ¶76) d) During the ASC hearing, although Rodriguez

was not an ASC member, she actively joined the ASC deliberation after Petitioner was required to leave the room, proposed to dismiss Petitioner, and argued that Petitioner should be dismissed from the school while Petitioner was not present to defend himself. (Compl. ¶81) e) After Petitioner reported Johnson to the school, Johnson sent Petitioner two text messages, stating that Petitioner had to move out of his apartment (leased from a third party), and later went to Petitioner apartment in person to ask that Petitioner to move out more than one (1) month before the lease would end. (Compl. ¶77)

Petitioner proceeded to file a complaint in Minnesota district court. In his complaint, Petitioner asserted various claims including, breach of contract, promissory estoppel, unjust enrichment, First Amendment, Fifth and Fourteenth Amendments violations per 42 U.S.C. § 1983.

The district court granted, in part, and denied, in part, the motion and dismissed all of Petitioner's claims with the exception of the First Amendment Retaliation claim against Respondents. After discovery was completed, the district court granted Respondents' motion and dismissed the remaining First Amendment claim. The district court noted that they did not have the jurisdiction to review the school's adjudication per Minn. Stat. § 606.01. In coming to this conclusion, the district court employed a heightened scrutiny standard of review rather than the prescriptions found in *Turner*. Additionally, the district court noted that Petitioner's 42 U.S.C. § 1983 equal protection claim did not consist of a claim upon which relief could be granted.

Petitioner then appealed to the Minnesota Court of Appeals, and, on May 6, 2019, the court of appeals issued an opinion affirming the district court's prior determinations. Lastly, the Supreme Court of Minnesota denied Petitioner's request for further review on August 6, 2019.

This Petition for Writ of Certiorari followed.

REASONS TO GRANT THIS PETITION

I. THE MINNESOTA SUPREME COURT, COURT OF APPEAL, AND THE DISTRICT COURT (COLLECTIVELY, "MN COURTS") HAVE DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The fundamental issue of this case is whether a state law can be used to deprive a citizen's property rights, which were protected through the Fifth and Fourteenth Amendments, "without just compensation". The US Supreme Court ruled that educational right is a property right (public school students "have property and liberty interests" in their education. *Goss v. Lopez*, 419 U.S. 565 (1975). However, this Court needs to further settle whether a public school student is entitled to be awarded a monetary relief (the "just compensation") when his property right was wrongfully deprived. Minnesota State Statutes § 606.01 does not allow its state-owned university (UMN) students to be awarded monetary relief.

The UMN is considered to be an administrative body in the state of Minnesota. The MN courts ruled

that "[i]t is well-established that a writ of certiorari to the Court of Appeals is the appropriate method of reviewing an administrative body's quasi-judicial decisions," and "[t]his Court has no jurisdiction to pursue de novo review of these claims." (MN District court Order of February 17, 2017), and "[a] party must apply to the court of appeals for a writ of certiorari 'within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby.' Minn. Stat.§ 606.01 (2018)." (MN court of appeal's Decision of May 6, 2019).

However, the administrative body's administrative / quasi-judicial procedures do not permit aggrieved students to recover "monetary damages" for their property loss Thus, in addition to presenting claims in this litigation that were never adjudicated by the administrative body, Petitioner did not even have the opportunity to recover the monetary damages he seeks in this litigation. Specifically, Petitioner's complaint seeks damages for "substantial losses in earnings, bonuses, job benefits . . . , expenses incurred in the search for other employment . . . , and mental, emotional, and physical anguish," none of which were recoverable through the "administrative body's quasi-judicial" proceedings. (Compl. ¶125-126, 178, 227, 243, 259) The administrative body has deprived its students of the right to recover damages for their property loss through its administrative / quasi-judicial proceedings and, at the same time, has precluded the same students from being able to pursue a separate cause of action at the district court to recover those damages. While the administrative body's self-serving motives are understandable, this Court should not condone

such Catch-22 tactics that deprive vulnerable students of their constitutional right to due process of law and access to the courts.

MN courts' decisions immediately created two legal dilemmas inter-stately and intra-stately under one U.S. Constitution: a) A district court in Michigan court awarded monetary relief (the "just compensation") to a student of its state-owned university for the same property loss as Petitioner's. *Zwick v. Regents of the Univ. of Mich*. 2008 U.S. Dis. LEXIS 34472 (E.D. Mich. April 28, 2008); b) Minnesota Court of Appeals awarded monetary relief to Alsides (a student at a private MN education institution) for the same property loss as Petitioner's (a student at MN-owned education institution). *Alsides v. Brown Institute, Ltd.*, 592 N.W.2d 468, 472 (Minn. Ct. App. 1999), but Minnesota Court of Appeals denied Petitioner's request for monetary relief for the same property loss. The nature of these dilemmas is that MN made laws or administrative policies to abridge MN-owned university students' privileges of their property right protected by the Fifth and Fourteenth Amendments. This Court needs to settle these legal dilemmas.

As seen in *Zwick*, there is room for federal courts to award monetary relief. It follows that the same should apply to the states. Moreover, the retaliation of § 1983 and § 5 of the Fourteenth Amendment abrogate state Eleventh Amendment and sovereign immunity to suit in Federal Court. *Albright v. Oliver*, 510 U S. 266, 271, 144 S. Ct. 807, 127 L. Ed. 2d, 114 (1994). In addition, Respondent UMN is a recipient of Federal funds, and Congress conditions state agencies receiving Federal

funds constitutes a waiver of the Eleventh Amendment and sovereign immunity to suit 132 Cong. Rec. 28. 625 (1986). Additionally, the state cannot side-step the provisions of article U.S. Constitutional Amendment XIV, § 5, and Article 8. Cl. 1.

II. MN COURTS HAVE DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT DIRECTLY CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT IN TERMS OF PROPERTY PROTECTION.

The US Supreme Court has long recognized that property owners may bring Fifth Amendment claims for compensation as soon as their property has been taken, regardless of any other post-taking remedies that may be available to the property owner. *Jacobs v. United States*, 290 U.S. 13 (1933). Additionally, this Court has held that the compensation remedy is required by the Constitution in the event of a taking. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987). A property owner acquires a right to compensation immediately upon an uncompensated taking because the taking itself violates the Fifth Amendment. *San Diego Gas & Elec. Co. v. San Diego*, 450 U.S. 621, 654 (1981). The property owner may, therefore, bring a claim under §1983 for the deprivation of a constitutional right at that time. *Knick v. Township of Scott, Pennsylvania*, No. 17-647, 588 U.S. ____ (2019). Further, the US Supreme Court also established the "total takings" test for evaluating whether a particular regulatory action constitutes a regulatory taking that

requires compensation. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, (1992).

Over the past decades, this Court has established several practical guidelines concerning the amount of compensation that is "just" for real estate owners whose properties were taken by local governments. Courts usually awarded condemnees the fair market value of the property taken by the government because it is an objective and workable standard with two specific exceptions recognized by this Court --- when fair market value is too difficult to ascertain, and when application of the fair market value rule would result in "manifest injustice" to the owner of condemned land. (Orgel, *just compensation*, in SYMPOSIUM: THE PRACTICAL PROBLEMS OF CONDEMNATION 10 (The Association of the Bar of the City of New York, Committee on Real Property Law 1965; *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950). In her concurring opinion in *United States v. 50 Acres of Land*, 469 U.S. 24, 105 S. Ct. 451, 83 L. Ed. 2d 376, Justice O'Connor suggested that "manifest injustice" results when fair market value for public condemnees "deviates significantly from the make-whole remedy intended by the just compensation clause." 105 S. Ct. 451, 459 (1984)).

In contrast to the foregoing well-established and workable guidelines concerning the just compensation when the government takes real estate owners' property, no guidelines have been ever established by this Court concerning the just compensation when a state government (e.g. the UMN) takes a student's property (i.e., wrongfully dismisses this student). Like

an owner of real estate who pays his real estate, a university student pays his education. That is, both of them buy the property, which is protected through the Fifth and Fourteenth Amendments (education rights are a property right. *Goss v. Lopez*, 419 U.S. 565, 1975). Therefore, after a state-owned university wrongfully dismisses a student, a workable guideline has to be developed by this Court concerning how the "just compensation" is calculated. This court has never addressed the questions in this regard.

Petitioner respectfully requests that this Court consider the following facts when this Court develops a workable guideline for the just compensation for students: i) the value of the Doctor of Pharmacy or pharmacist license that Petitioner would have if he were not wrongfully dismissed; ii) the substantial loss of earnings, bonuses, and job benefits that Petitioner would not lose if he were not wrongfully dismissed; iii) six (6) years of full time study (two (2) years of pre-pharmacy and four (4) years of pharmacy). iv) Petitioner had paid the University over $163,000 for his tuition at the time of wrongfully dismissed; and v) other expenses related to his education (university housing, educational expenses except the tuition, etc.). Petitioner also respectfully requests that this Court consider the following: A student pays an educational institution for education with the hopes of obtaining a certain degree. When the student is wrongfully dismissed from the program without the degree, the institution walks away with the student's tuition and the student walks away heavily in debt without a degree. Even though the student does get the benefit of the education received prior to dismissal, that

education in professional schools like Petitioner's is practically worthless because without the degree, a student cannot apply for the license that he / she paid for his / her education. Therefore, at the time of wrongful dismissal, the value of a student's property of education is zeroed.

In contrast to the protection extents of the foregoing real estate owners' rights, the MN court decisions deprived Petitioner of his constitutional property right for just compensation after his property was wrongfully taken. These decisions directly conflicts with all the foregoing decisions previously made by this Court.

Moreover, that state-owned university students have to go through the administrative body's internal process without the right to pursue a cause of action at court for their property being wrongfully taken directly conflicts with a recent decision of this Court. ("because a taking without compensation violates the self-executing Fifth Amendment at the time of the taking, the property owner can bring a federal suit at that time." *Knick v. Township of Scott, Pennsylvania*, No. 17-647, 588 U.S. ___ (2019).

In addition, that state-owned university students have to go through the administrative body's internal process without the right to pursue a cause of action at court for their property being wrongfully taken abridged students constitutional rights in terms of the statute of limitation. Students have only 60 days to file a writ of certiorari per Minn. Stat. § 606.01 while they would have approximately four (4) years to pursue a cause of action at court for their property being wrongfully taken.

The three MN government branches united to unconstitutionally took their state-owned university students' properties "without just compensation". The administrative body (the Respondents) made a policy that prohibits students through a administrative / quasi-judicial procedure from being able to recover "monetary damages" for their property loss ("may not award monetary damages, or direct disciplinary actions against any employee of the university."[3]) the MN courts established "that a writ of certiorari to the Court of Appeals is the appropriate method of reviewing an administrative body's quasi-judicial decisions" (ibid.); and the legislature passed Minn. Stat. § 606.01 (2018). The nature of the Amendments is to protect the people from being unfairly treated by a local government. This Court needs to settle this significant discrepancy between the Amendments (V, XIV) and MN judicial/quasi-judicial procedures.

[3] Addressing Student Academic Complaints, https://policy.umn.edu/education/studentcomplaints (last accessed August 15, 2018).

III. THE MN COURTS DECIDED AN IMPORTANT § 1983 QUESTION THAT IS NOT CONSISTENT WITH THE DECISIONS OF OTHER COURTS AND CONFLICTS WITH § 1983 AND AMENDMENTS; THIS COURT SHOULD SETTLE THESE DISCREPANCIES INCLUDING THE APPLICABILITY OF THE TURNER STANDARD.

This Court should accept this Petition because the state district court erred in dismissing Petitioner's § 1983 claims for failure to state a claim upon which relief could be granted. Petitioner seeks recovery under § 1983 for property loss, alleged violation of his right to privacy, denial of equal protection, and due process. To hold Respondents liable under § 1983, Petitioner must demonstrate that the conduct he complains of was "committed by a person acting under color of state law," and such conduct deprived him of "a right secured by the Constitution and laws of the United States." *Roe v. Humke*, 128 F.3d 1213, 1215 (8th Cir. 1997) (quoting *West v. Atkins*, 487 U.S. 42, 48, 101 L. Ed. 2d 40, 108 S. Ct. 2250 (1988); *See DuBose v. Kelly*, 187 F.3d 999, 1002 (8th Cir. 1999)

In *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935 n.18 (1982), the Court determined that "Conduct satisfying the state-action requirement of the Fourteenth Amendment satisfies [Section 1983's] requirement of action under state law." "The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and

made possible only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941))

Here, it is evident that the Respondents who work at UMN acted under color of state law. Respondents, under the veil of their public institution, took detrimental action against Petitioner (wrongfully dismissed Petitioner or deprived Petitioner of his property). Notably, in Lugar, the court noted that "state employment is generally sufficient to render the defendant a state actor. *Lugar* at 935. It is worth noting that the state-action requirement was met in state court, and thus is satisfied for the purpose of the Petition.

To prevail in an Equal Protection Clause claim, Petitioner can proffer similarly situated individuals treated differently or through direct evidence of discrimination. *United States v. Frazier*, 408 F.3d 1102, 1008 (8th Cir. 2005). In the present case, the following instances, provide instances of disparate treatment between Petitioner and Caucasian students, as alleged in the Complaint:

> 36. The Plaintiff was never trained per the UMN policy; the Plaintiff was never trained per the UMN policy on his interactions with patients, although this was the main purpose of the course.
>
> 37. UMMC did not give any extra training to the Plaintiff when compared with other students.

83. Dr. Rodriguez, in violation of UMN policy and ACPE policies, officially enrolled the Plaintiff's Acute Care course at the Lake Region Hospital, but the actual course occurred within Dr. Johnson's personal consulting company ("Dr. Johnson's Consulting"), which signed consulting contract with multiple nursing homes or similar facilities hours of driving apart and hours of driving away from the Lake Region Hospital, where Dr. Johnson only occupies or rents about 3 or 4 rooms for his company. Per UMN and ACPE policies, the Acute Care has to be in hospitals ("inpatient setting").

84. Under the established practice, students of the Acute Care have inpatient profiles access and review patient profiles on a daily basis. However, while the Plaintiff was at Dr. Johnson's Consulting, he had no patient profile access to the Lake Region Hospital. The Plaintiff only audited three (3) meetings of physicians and nurses at the Lake Region Hospital. Dr. Johnson required the Plaintiff to count pills that otherwise, Dr. Johnson had to count himself.

85. Even for the three (3) meetings audited, the Plaintiff was not given full opportunities. The Plaintiff was not given patients' profiles ("med records") while the white students had the patients' profiles. After the meeting, when the Plaintiff asked one white student whether he could read the profile, the white student told the Plaintiff that he needed to get permission from the pharmacist. Dr. Johnson, in front of another

student on April 25, 2013, falsely accused the Plaintiff of taking the patient's profile.

86. The Plaintiff was not given the Course schedule while the white students had the schedule. The Plaintiff borrowed the schedule from one, white student and made a copy of the schedule. However, Dr. Johnson accused the Plaintiff of not professional" due to making a copy of the schedule.

99. Prior to, during, and after the September 12, 2014 hearing, UMN refused to acknowledge or address the Plaintiff's complaints or arguments regarding the illegal actions of UMN. Specifically, i) why the Plaintiff's, Fagron could not be treated as 7211 while other students' Fagron was, treated as 7211; and ii) why the Plaintiff had to take a "patient care" elective while other students had graduated without taking any "patient care" elective.

117. UMN violated its own policies, rules, and established practice by treating the Plaintiff differently than other students regarding academic requirements.

163. UMN, in violation of its own policies, rules, and established practice, required the Plaintiff to take a "patient care" elective course that other students had graduated without taking.

207. The individual Defendants, in violation of UMN's own policies, rules, and established practice, required the Plaintiff to take a "patient

> care" elective course that other students had graduated without taking.

(Compl. ¶36-37; 83-86; 99; 117; 163; 207.)

These facts adequately show that similarly situated Caucasian students were treated more favorably than Petitioner. Notably, the state district court did not take the time to adjudicate this matter because of their over-deferential reliance on the school board's quasi-judicial proceeding.

Ultimately, a state cannot conduct themselves in a way that either burden a fundamental right, target a suspect class, or intentionally treat one differently from the others without any rational basis. *Zwick v. Regents of the Univ. of Mich.*, 2008 U.S. Dist. LEXIS 34472 (E.D. Mich. April 28, 2008). Importantly, educators are not afforded absolute discretion. In *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), the Court noted that school boards are responsible for

> important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Barnette at 627.

Moreover, in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1980), the Court explained

that while deference is given to local school boards on the daily operations of school systems, the Court will intervene where their decisions are contrary to the Constitution.

Institutional academic freedom should not be used to squash the academic freedom rights of students or professors. The purpose of institutional academic freedom in preserving a robust exchange of ideas would be undermined if universities could invoke academic freedom to shelter themselves when they commit constitutional violations. Here, the lower courts never determined that Respondent's decisions were made under their academic freedom rights. It is worth noting that Respondents did not afford Petitioner a ruling on his dispute until the University proscribed time limit was exceeded. Although this point alone is not determinative, it points towards the abuse of discretion Respondents exercised. This failure deprived Petitioner of his property right to education without constitutionally sufficient notice or opportunity to be heard.

In *Grutter v. Bollinger*, 539 U.S. 306, 363 (2003), the Court established if a decision is determined to be academic, "good faith [on the part of the university] is presumed absent a showing to the contrary." Here, there is ample evidence of bad faith on behalf of Respondents. First, Petitioner was told that if he completed the required courses, he would be taken off academic probation. However, when it was time to show good faith, UMN faculty reneged on their promise. Second, during administrative proceedings, Respondents refused to answer Petitioner's questions

claiming that the school procedure "does not include a discovery process such as in litigation."[4] However, later during this litigation, respondents claimed that their administrative process was quasi-judicial. They thereby denied MN Court's jurisdiction over the matter. Third, during the administrative proceedings, respondents intentionally refused to disclose evidence that is favorable to Petitioner. It was not until the discovery in this litigation that such evidence was disclosed. (See Section V). Fourth, during the administrative hearing, Respondents even prohibited Petitioner from playing audio files that demonstrated Respondents' false allegations.

Moreover, the initial findings of retaliation of lower court drastically call into question the degree of good faith shown by Respondents. Even if the state court ultimately dismissed the retaliation claims, there was enough there for a trial court to determine that there was not good faith. Subsequently, the district court should have taken up the issue, rather than dismissing

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[4] The Respondents' email of June 24, 2014 (Mr. Latz was Petitioner's counsel): "There is no provision in the rules that allows for Mr. Latz's request. In formal litigation, there is discovery such as this. The formal conflict resolution process, though, does not include a discovery process such as in litigation. The "eliminate surprises" term relates to the pre-prehearing conference. It has no connection with what Mr. Latz is asking respondent to do. Respondent is required to provide a written response to the complaints, and this will be done. And we will come prepared to participate in the pre-hearing conference. Anything more than this would be a fundamental shift from the University's process and rules."

it for failure to state a claim of which relief could be granted.

It is reasonable to conclude that in this case, an institution is as likely as, or more likely than a court to err in making its own decisions and that the administrative costs of more searching judicial review of that institution's decisions are not particularly high. It is even more reasonable to believe that the institution intentionally made an unconstitutional decision that was favorable to itself given its bad faith as described throughout this petition. Thus, a rule of deference would not satisfy the court's desire to minimize either error costs or administrative costs. And in some middle category of cases, a court might conclude that although another institution is epistemically superior to the court, it is not so epistemically superior, and the administrative costs of more probing review are not so great, as to justify a general rule of deference.

The UMN did not exercise good faith and disparately treated Petitioner. Similar to the claims in this instance, in *Turner,* the Court promulgated a new "reasonableness" standard by which prisoners' constitutional claims will be judged. The Court held that a prison regulation is constitutionally valid if it reasonably relates to a legitimate penological objective. The *Turner* test is of monumental significance as it applies to all cases where prisoners assert that a penal regulation has violated their constitutional rights, regardless of the type or degree of the deprivation. Similarly, the *Turner* standard should apply here.

Under the first prong of the *Turner* test, whether there is a valid relationship between the regulation and a legitimate governmental interest, it clear that there is not a valid relationship between state law and University policies and their interest in providing education to ***all***. As to the second prong of the reasonableness test, whether there are alternative means of exercising the asserted right, Respondents could have stuck to their official promise to lift Petitioner off academic probation once he met the requirements so that Petitioner could not be dismissed. Additionally, UMN officials should have met and discussed their concerns with Petitioner to provide him proper notice of his imminent hardship. Moreover, the Minn. Stat. § 606.01 deprives Petitioner of his Due Process rights. Ultimately, the district court should have employed strict-scrutiny as provided in *Turner*.

IV. PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE RESPONDENT'S BAD FAITH QUASI-JUDICIAL PROCEEDING, AND HIS CASE SHOULD BE ALLOWED TO GO TO A FAIR TRIAL; THIS COURT NEEDS TO DECIDE THE IMPORTANT QUESTION IN THIS REGARD.

This Court has stated that fair trial in a fair tribunal is a basic requirement of due process and that in any administrative adjudicatory proceeding. *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50 (1950). One of the most paramount pillars in discerning the fairness of a proceeding is the existence of notice.

Here, Petitioner was not given adequate notice. First, he received positive reviews from Respondent's all the up to the moment before his dismissal. Second, several meetings and hearing took place without Petitioner present. This obviates a question of one's right to defend oneself in front of one's accuser. Third, during administrative procedure, the Respondents even refused to answer Petitioner's questions claiming that the school procedure "does not include a discovery process such as in litigation."[5] Fourth, during administrative procedure, Respondents intentionally hid evidence that is favorable to Petitioner, and it was not until the discovery in this litigation that such evidence was disclosed. (See Section V).

Individual students who suffer retaliation from instances where higher institutions are discriminatory under 20 U.S.C. § 1681 et. Seq., have a private cause of action under § 1983 retaliation. See *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969); *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005). The lower court judgment order is clearly erroneous.

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[5] The Respondents' email of June 24, 2014 (Mr. Latz was Petitioner's counsel): "There is no provision in the rules that allows for Mr. Latz's request. In formal litigation, there is discovery such as this. The formal conflict resolution process, though, does not include a discovery process such as in litigation. The "eliminate surprises" term relates to the pre-prehearing conference. It has no connection with what Mr. Latz is asking respondent to do. Respondent is required to provide a written response to the complaints, and this will be done. And we will come prepared to participate in the pre-hearing conference. Anything more than this would be a fundamental shift from the University's process and rules."

See *Pullman-Standard v. Swint*, 456 U.S. 273, 286-291 (1982).

V. THE MN COURTS WRONGFULLY MADE A DECISION BASED ON ABSOLUTE IMMUNITY THAT CONFLICTS WITH A PREVIOUS DECISION OF THIS COURT; MN COURTS' DECISION WILL RESULT IN SERIOUS CONSEQUENCES.

The District court ruled on February 17, 2017, that:

> *Dr. Rodriguez may be found to have retaliated against Plaintiff. ... Dr. Rodriguez refused to accommodate him when he asked to take a course that did not require patient interaction. His request to be accommodated was a protected action. She enrolled him for Medication History instead. When he had an altercation with a patient, she removed him from the course and he was given an "F" grade instead of an "I" grade. When he attempted to get off academic probation, she enrolled him in the wrong class, thus foiling his chances of getting off academic probation.*
>
> *Dr. Rodriguez also threatened to dismiss Plaintiff from the program by referring him back to ACS when he complained about discriminatory treatment by Dr. Johnson. Further, when the ACS reviewed Plaintiff's case, Dr. Rodriguez attended the hearing and stayed for the deliberation of the board. Finally, she allegedly "lied" in the Pharmacy School hearing regarding how she directed Plaintiff and what information she gave to him. If Dr. Rodriguez*

did, in fact, conduct herself in the way outlined here, then it is quite possible that she was retaliating against Plaintiff. If this is the case, then she was acting maliciously, which pierces her qualified immunity.

Third and finally, Dr. Johnson may be found to have retaliated against Plaintiff as well. When Plaintiff took his Acute Care I course, Dr. Johnson allegedly humiliated Plaintiff regarding his grades before another student and accused him of cheating in a humiliating and derogatory way. Plaintiff then complained to UMN, going over Dr. Rodriguez's head. Soon after, Dr. Johnson gave Plaintiff a "D" grade in his course (which precipitated his dismissal). He also allegedly harassed Plaintiff via text message and by showing up at Plaintiff's home, telling him that he should move out of his apartment. Based on these allegations, there may be some evidence that Dr. Johnson retaliated against Plaintiff because Plaintiff complained about him and asked to be removed from his class after Dr. Johnson humiliated him. Afterward, he gave him a grade that would result in his dismissal from the program and also harassed him. It is clear that harassing a student and retaliating against his complaint about discrimination are malicious actions and would allow not qualify Dr. Johnson to immunity under § 1983.

Therefore, Dr. Johnson and Dr. Rodriguez may not be immune from liability based on the standard for a motion to dismiss, which takes

facts in the light most favorable to the Complaint.

During the Depositions, a) Petitioner played audio files to Rodriguez, demonstrating that Rodriguez made false accusations to the Hearing Committee regarding the removal of the probation and Rodriguez admitted that her statements were "inconsistent"; (Rodriguez Depo.,[6] p. 114, line 18 -- p. 118, line 12; Compl. ¶65, 98ii); b) Sorrentino, the preceptor who assigned Petitioner's 4 days as "professional leave", admitted "[f]or those four days, he did not request them" (Sorrentino Depo.,[7] p. 28, line 1); c) Reidt, the Chairperson of the Hearing Committee, admitted the Committee's decision is "inconsistent with the policy" regarding assigning 4 days as "professional leave" and accordingly giving an F to Petitioner (Reidt Depo.,[8] p. 26 lines 14-19; Compl. ¶101); d) additional evidence was found to demonstrate that Rodriguez maliciously retaliated against Petitioner directly resulting in the dismissal.[9]

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[6] Rodriguez's deposition transcript was submitted to the District Court as Ex. Q.

[7] Sorrentino's deposition transcript was submitted to the District Court as Ex. F.

[8] Reidt's deposition transcript was submitted to the District Court as Ex. M.

[9] On January 2, 2013, Haeg, Director of Student Services, informed Rodriguez (rodre001@umn.edu) that Petitioner had successfully repeated 7211 at Arbit, an elective ("[Petitioner's] grade in 7211 is showing as an 'A'. Michelle is indicating that the 'A' comes from Harvet Arbit."). Therefore, Petitioner's probation should have been

Despite that all the evidence found during the Depositions supported Petitioner's claims and confirmed the qualified-immunity piercing malicious actions as described in the above District court Decision, the District court dismissed Petitioner's first Amendment retaliation claim in its second Decision based on absolute immunity ("In the immediate case, Defendants have been sued under §1983 in their individual capacities as members of the UMN staff. Each is state actors. As a result, they are entitled to qualified immunity protection where appropriate." The District court ruled on February 22, 2018).

Taken all together, eventually, the fundamental and important question is, and this court has to decide, whether maliciously acting government officials should be awarded absolute qualified immunity.

Actually, "[t]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions ... for speaking out." *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (citations omitted). According to the Minnesota courts, the University's internal

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removed by March 29, 2013 after he passed his 7126 at Walgreen's. Accordingly, Petitioner could not be dismissed even Johnson gave Petitioner a D. But Rodriguez made one false accusation after the other to inform the school that Petitioner had "never repeated 7211". Rodriguez illegitimately and maliciously kept Petitioner on probation after March 29, 2013 while a grade of D from Johnson dismissed Petitioner from the University. Without probation, Petitioner could not be dismissed because a grade of D is a passing grade if a student is not on probation per school policy. (Compl. ¶82). Haeg's email of January 2, 2013 was submitted to the District Court as Ex. DD

processes that were manipulated to achieve this unconstitutional result constitute quasi-judicial action, Subsequently UMN and its employees will remain absolutely immune from liability for First Amendment retaliation they committed -- as long as they go through the internal review process (emphasis added), where they can refuse to answer students' questions and refuse to disclose any evidence that is favorable to students, while prohibit students from presenting evidence at the Hearing, the retaliation will be free and without any consequence. This absolutely conflicts with the fundamental spirit of our Constitution Amendments and § 1983

In *Forrester v. White*, 484 U.S. 219, 224 (1988), this Court cautioned that to "avoid unnecessarily extending the scope ... of absolute immunity," the functions lawfully entrusted to particular officials must be identified, and the effect of exposure to liability on those functions evaluated. *Wood v. Strickland*, 420 U.S. 308 (1975), is this Court's only decision directly addressing claims for quasi-judicial immunity by school officials. In *Wood v. Strickland*, it was emphasized by this court that quasi-judicial immunity is only permittable if avoiding personal liability will enable government officials to do their job lawfully. Here, it is important to emphasize that UMN officials did not act lawfully. Rather, they acted with malice and discrimination toward Petitioner.

Allowing UMN personnel to avoid personal liability offends the rule of law. Furthermore, it allows public institutions to violate the constitution while hiding behind their own self-governance. In doing so, state

and federal courts alike are unable to spot and adjudicate constitutional violations. They are thereby enabling public institutions to act to the detriment to any student they wish.

VI. THE AVAILABILITY OF PUNITIVE DAMAGES SHOULD BE CONSIDERED IN THE CONTEXT OF AMENDMENTS AND IN THE LIGHT OF NATURE OF LAW.

This Court has held that punitive damages are not recoverable against a municipality in a § 1983 action. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271, 101 S. Ct. 2748, 69 L. Ed. 2d 616 (1981). However, Petitioner urges the court to reconsider this notion for several reasons. First, if persons such as Petitioner are barred from relief, then what relief is available? Second, in essence, this notion enables states like Minnesota to shield their public employees and deprive public school students of liberties private school students enjoy. Third, this notion will essentially encourage public universities and their employees to act in their own best interest instead of abiding by the law. Eventually, this will result in corruption throughout our society.

VII. AS THE LAST RESOURCE FOR JUSTICE IN THIS NATION, THIS COURT IS OBLIGATED TO MAINTAIN THE INTEGRITY IN THE U.S. HIGHER EDUCATION.

American higher education produces significant soft power for the United States. Secretary of State Colin Powell, for example, said in 2001: "I can think of no

more valuable asset to our country than the friendship of future world leaders who have been educated here." (http://forum.mit.edu/articles/soft-power-and-higher-education/, access on 10/19/2019) To keep this soft power, integrity must be maintained in American higher education. However, Respondents are hurting this integrity: a) A professor of a famous American university publicly humiliated a student; b) Another professor made one lie after the other to retaliate this student directly resulting in dismissing this student from the university; c) Academic requirement is different for different students (e.g., Petitioner had to take a "patient care" elective while his classmates had graduated without taking any "patient care" elective. Compl. ¶98i, 99ii); ..... ; d) The Hearing Committee defended Sorrentino, who "falsely claim [Petitioner] completed 200 hours" by assigning 4 days as "professional leave" while even Sorrentino herself admitted in her deposition that "[f]or those four days, [Petitioner] did not request them" (Sorrentino Depo. p. 28, line 1. Sorrentino's Depo. Was submitted to the District Court as Ex. F.), and even concluded that the school did not violate its policies ignoring all the facts outlined above; ... etc.

In contrast, when Haruko Obokata made false claims in her work, her employer, the RIKEN Center for Developmental Biology in Japan, investigated the false claims immediately and concluded Obokata's false claims were misconduct. (https://www.ncbi.nlm.nih.gov/books/NBK519803/box/box002/?report=objectonly, accessed on 10/19/2019) It is time for this Court to review this case for the interest of this nation and to maintain the integrity of higher education in the US.

For the reasons stated above, Petitioner respectfully asks this Court to grant Certiorari.

CONCLUSION

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

Respectfully submitted,

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