

ORIGINAL

25-7051

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

JAMES PAUL ROGERS,

Petitioner,

v.

WESTERN GOVERNORS UNIVERSITY,

Respondent.

Supreme Court, U.S.
FILED

MAR 11 2026

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PETITION FOR A WRIT OF CERTIORARI

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

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QUESTION PRESENTED

Whether the “puffery” doctrine permits an institution founded by nineteen State Governors to shield the systematic, algorithmic depletion of a disabled veteran’s Fifth Amendment-protected property interests, where such a rule creates an express circuit split with the Ninth, Eighth, and Eleventh Circuits regarding the materiality of recruitment inducements in federal benefits programs.

PARTIES TO THE PROCEEDING

Petitioner: James Paul Rogers, plaintiff-appellant below.

Respondent: Western Governors University (WGU), defendant-appellee below.

RELATED PROCEEDINGS

1. Rogers v. Western Governors University, No. 23-cv-3774-JPG (S.D. Ill.). Judgment entered Feb. 20, 2025.

2. Rogers v. Western Governors University, No. 25-1470 (7th Cir.). Judgment entered Dec. 12, 2025.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Western Governors University is a nonprofit corporation. It has no parent corporation, and no publicly held company owns 10% or more of its stock. Under Respondent's Articles of Incorporation, the sitting Governor of each Member State serves as the sole corporate member. (App. C)

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The order of the United States Court of Appeals for the Seventh Circuit (Dec. 12, 2025) is reproduced at Appendix A. The district court's memorandum and order granting summary judgment (Feb. 20, 2025) are reproduced at Appendix B.

JURISDICTION

The judgment of the court of appeals was entered on December 12, 2025. No petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. I, § 8, cl. 1 (Taxing and Spending Clause / General Welfare).

U.S. Const. art. VI, cl. 2 (Supremacy Clause).

U.S. Const. amend. V (Due Process; protection of property interests).

38 U.S.C. § 3100 (purposes of Chapter 31 vocational rehabilitation).

38 U.S.C. § 3696(a)–(b) (prohibition on deceptive enrollment practices; recordkeeping of enrollment materials).

38 U.S.C. § 3685(b) (institution liability to the United States for overpayments caused by willful/negligent false certification or reporting failures).

TABLE OF AUTHORITIES

Cases

Supreme Court of the United States

- Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)
Goldberg v. Kelly, 397 U.S. 254 (1970)
Glossip v. Oklahoma, 604 U.S. ___ (2025)
Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944)
Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988)
Lebron v. National Railroad Passenger Corp., 513 U.S. 374 (1995)
Lynch v. United States, 292 U.S. 571 (1934)
Omnicare, Inc. v. Laborers' District Council Construction Industry Pension Fund, 575 U.S. 175 (2015)
Pennhurst State School & Hospital v. Halderman, 451 U.S. 1 (1981)
United States v. Bornstein, 423 U.S. 303 (1976)
Universal Health Services, Inc. v. United States ex rel. Escobar, 579 U.S. 176 (2016)
Virginia Bankshares, Inc. v. Sandberg, 501 U.S. 1083 (1991)

United States Courts of Appeals

- Cushman v. Shinseki, 576 F.3d 1290 (Fed. Cir. 2009)
Lonsdorf v. Seefeldt, 47 F.3d 893 (7th Cir. 1995)
Southland Sod Farms v. Stover Seed Co., 108 F.3d 1134, 1145 (9th Cir. 1997)
United States ex rel. Hendow v. Univ. of Phoenix, 461 F.3d 1166 (9th Cir. 2006)
United States v. Corinthian Colleges, 655 F.3d 984 (9th Cir. 2011)
United States ex rel. Leveski v. ITT Educ. Servs., Inc., 719 F.3d 818 (7th Cir. 2013)
United States ex rel. Miller v. Weston Educ., Inc., 840 F.3d 494 (8th Cir. 2016)
Urquilla-Diaz v. Kaplan Univ., 780 F.3d 1039 (11th Cir. 2015)

Constitutional Provisions

- U.S. Const. art. I, § 8, cl. 1 (Taxing and Spending Clause)
U.S. Const. art. VI, cl. 2 (Supremacy Clause)
U.S. Const. amend. V (Due Process Clause)

Federal Statutes

18 U.S.C. § 1519 (Destruction, alteration, or falsification of records)

28 U.S.C. § 1254(1) (Supreme Court Jurisdiction)

31 U.S.C. § 3729 (False Claims Act)

34 C.F.R. § 600.2 ("distance education" from "correspondence courses")

38 U.S.C. § 3100 (Purposes of Chapter 31 vocational rehabilitation)

38 U.S.C. § 3696 (Prohibition on deceptive enrollment practices)

Rules

Fed. R. Civ. P. 60(b) (relief from judgment — extraordinary circumstances)

SUMMARY OF THE ARGUMENT

This petition presents a critical conflict between the Seventh and Ninth, Eighth, and Eleventh Circuits regarding whether federal contractors can shield systematic fraud behind the mask of "puffery". While the Ninth Circuit holds such deception actionable, the decision below allows a "Hybrid" entity to leverage the "Color of State Law" to secure federal funds while invoking "Private Status" to evade Due Process.

Petitioner, a disabled veteran, suffered a life-threatening medical emergency, only to have his constitutionally protected Chapter 31 benefits algorithmically revoked without notice or recourse. Furthermore, the Respondent secured summary judgment by purging the evidentiary record in direct defiance of a judicial order. This Court's intervention is necessary to affirm that "Sovereign Arbitrage" and the "Privatization Loophole" cannot be used to insulate federal contractors from the Constitution or the truth.

STATEMENT OF THE CASE

A. The Inducement Western Governors University (WGU) leverages its founding by nineteen U.S. state governors to project governmental legitimacy, marketing its educational programs as “self-paced” and promising that students can “accelerate through courses.” Relying on these specific representations, the Petitioner, a service-connected disabled veteran, enrolled and transferred his federal Chapter 31 Vocational Rehabilitation and Employment benefits to WGU. However, WGU enforced without disclosure an algorithmic “four-course cap” per term, a material restriction that prevented the advertised acceleration and was not disclosed until after federal funding was secured. (App E)

B. The Extraction On May 3, 2023, the Petitioner suffered an acute “widow-maker” heart attack (100% LAD occlusion). On May 15, 2023, WGU Manager John Carpenter explicitly approved a medical accommodation, granting the Petitioner expanded course access to aid his recovery. Days later, while the Petitioner was recovering, WGU’s proprietary system algorithmically issued an internal command stating “Need to remove C948” and revoked the Petitioner’s access to the course he was actively studying. WGU provided no advance notice and no human explanation for this revocation. (App. G; App. K)

C. The Cover-Up In February 2024, the Petitioner submitted a direct FERPA records request and received a 168-page production that included Manager Carpenter’s accommodation-approval emails and the internal “Remove C948” command logs. During litigation, on March 8, 2025, sixteen days after the district court granted summary judgment, WGU served a sanitized 106-page discovery production covering the exact same timeframe. The Carpenter approval emails and select notes of hostility and commands were affirmatively deleted from this post-judgment production. (App. G; App. H)

The Premeditated Purge: The deletion of these records was not a clerical error; it was premeditated. On September 6, 2024, Petitioner filed a Motion for Sanctions (Docket 50) specifically demanding logs regarding the denial of course access. In response, Respondent's counsel certified to the District Court that "no documents exist" to provide. On November 19, 2024, the District Court overrode this denial, explicitly ordering Respondent's counsel on the record to "find those [emails] and give them to him." Trapped between their prior certification and the Judge's order, the Respondent purged the evidence. Sixteen days after securing summary judgment, WGU produced a sanitized litigation file with the Carpenter approvals and hostility logs affirmatively deleted.

D. The Procedural Wall The district court's summary judgment rested on a distorted record. WGU quoted the Petitioner's July 17, 2024 deposition stating he was "pretty much okay" after the heart attack, but surgically excised the immediately following testimony, at pages 134:17-137:24 (App M), detailing his ongoing nitroglycerin dependency, subsequent cardiac relapses, and inability to concentrate. When the Petitioner attempted to hand-deliver a Motion in Limine on February 18, 2025, a documented clerk's error caused the motion to remain undocketed. Two days later, on February 20, 2025, the district court granted summary judgment on the incomplete and sanitized record, stating Petitioner had presented "no evidence of spoliation." (App. B, App. I)

This procedural wall was compounded by opposing-party misconduct: on February 3, 2025, Respondent's counsel selectively served a Motion in Limine (Doc. 74) upon Petitioner via email, but deliberately withheld service of their Pretrial Memorandum (Doc. 75) and Exhibit Objections (Doc. 76) filed the exact same day. Consequently, the district court excluded Petitioner's evidence based on objections he was never permitted to see.(App I)

THE STAKES BEYOND THIS CASE

This case affects more than one disabled veteran. WGU enrolls over **20,000** military affiliated students and veterans annually using federally funded benefits. The “puffery” rule adopted below shields any federally funded institution from liability for recruitment inducements, no matter how specific, so long as the institution later points to written policies that contradict those inducements. The Department of Education’s Office of Inspector General has questioned \$712 million in costs at WGU due to Title IV compliance failures (a 62% non-compliance rate), and this individual case exemplifies institutional practices. (App J) If the decision below stands, federally funded institutions may market “flexibility” to induce veterans to obligate finite property interests and benefits, restrict that flexibility through undisclosed policies, and invoke “puffery” defenses borrowed from State retail consumer law. This Court’s intervention is necessary to preserve both the integrity of federal contracting under the Spending Clause and the Due Process rights of disabled veterans and others whose property interests in awarded benefits have Fifth Amendment protection.

REASONS FOR GRANTING THE PETITION

This Petition presents a recurring federal question about the boundary between “puffery” and actionable inducement in a federally funded veterans education and rehabilitation channel. The decision below adopts a categorical “no reasonable person” rule that insulates recruitment inducements from a materiality inquiry, even where the record reflects objective program limits that bear directly on the meaning of the inducement. (App. A) Three independent grounds support certiorari: the decision below creates a threshold immunity that no other circuit applies in the federal education funding context; it sanctions the destruction of federal records by affirming

a judgment on a demonstrably sanitized evidentiary record; and it denies constitutional due process to disabled veterans whose earned property interests in rehabilitation benefits warrant heightened protection under the Fifth Amendment.

REASON I. The decision below converts “puffery” into a threshold immunity that defeats inducement-based misrepresentation claims even when the record reflects objective policy limits contradicting the marketed premise.

The Seventh Circuit’s puffery ruling rests on two compounding errors. First, it misapplies the puffery doctrine by treating an objectively measurable enrollment cap as a matter of subjective opinion. Second, its finding that Petitioner “waived” the evidentiary basis for the misrepresentation claim is an artifact of two sequential procedural failures, a November 12, 2024 clerical merger that absorbed Petitioner’s summary judgment evidence into an undifferentiated block, important filings never served on the Plaintiff, and a February 18, 2025 weather-delayed hand-delivery that left Petitioner’s spoliation motion physically in the courthouse but undocketed when judgment entered, not because Petitioner failed to raise these issues. Both errors are addressed in turn, and together they demonstrate that the judgment below was secured neither on the merits nor on a complete record.

A. The Origins and Proper Scope of the Puffery Doctrine

The puffery doctrine originated in retail advertising law as a narrow exception for vague, non-verifiable sales talk, statements such as “our coffee is the best” or “you’ll love our service.” Such expressions, courts reasoned, are understood by ordinary consumers to be subjective opinion rather than factual representation, and no reasonable buyer could claim to have relied on them in making a purchasing decision. See, e.g., *Southland Sod Farms v. Stover Seed Co.*, 108

F.3d 1134, 1145 (9th Cir. 1997) (puffery consists of “general, subjective claims” incapable of being proven true or false).

The doctrine has always carried a limiting principle: a statement is puffery only when it is so general and unverifiable that no reasonable person could understand it as a concrete factual representation. Where a statement, however couched in marketing language, carries an objective, verifiable meaning, or is directly contradicted by an undisclosed policy, it is not puffery. It is a factual claim, and its accuracy is subject to scrutiny.

The court below lost sight of this limiting principle entirely. By applying a categorical “no reasonable person” rule to inducements marketed in a federal veterans rehabilitation channel, inducements accompanied by a hard-coded, undisclosed four-course enrollment cap, the Seventh Circuit transformed a narrow exception into a general immunity for federally funded institutions. That transformation is not supported by any precedent of this Court and directly conflicts with the treatment of materially equivalent claims in the Ninth, Eighth, and Eleventh Circuits.

The Seventh Circuit erred in dismissing Respondent’s ‘competency-based’ representations as puffery. Under 34 C.F.R. § 600.2, the distinction between ‘distance education’ and a ‘correspondence course’ is a material regulatory boundary. Petitioner’s evidence, specifically the C948 logs showing multiple algorithmic demands and manual course removal, proves that Respondent functioned as a correspondence course where interaction was ‘limited’ and ‘primarily initiated by the student.’ A representation regarding a program’s legal status under federal law is a material fact, not an opinion.

B. Respondent’s Congressional Testimony Directly Contradicts Its Puffery Defense

The puffery defense is further undermined by Respondent's own sworn representations to a coordinate branch of the federal government. On December 10, 2025, while WGU's counsel was simultaneously urging the Seventh Circuit that representations of "flexibility" and "acceleration" were too subjective to be actionable, WGU President Scott Pulsipher testified before the House Subcommittee on Higher Education that WGU "was designed to be flexible" and operates on a "competency-based education model" as a matter of institutional design. He expressly invoked the institution's founding by a "bipartisan group of 19 governors" to assert WGU's operational model as a basis for federal legislative influence. ¹ (App D)

An institution cannot represent to Congress that its flexibility is a designed, operational fact in order to secure federal legislative influence, while simultaneously representing to the federal judiciary that the same flexibility is a subjective, unverifiable marketing slogan in order to escape fraud liability. That position is not merely inconsistent, it is a representation that cannot be simultaneously true. Where the same characteristic of the same program is asserted as a concrete operational reality before one federal body and dismissed as legally meaningless puffery before another, the puffery defense has been falsified by the party invoking it. This Court's review is warranted to establish that the puffery doctrine cannot be deployed selectively, as a sword before Congress and a shield before the courts, in a federally funded veterans benefits program.

C. The Seventh Circuit's Rule Is Internally Inconsistent

The logical tension in the decision below is stark and unrebutted. The court simultaneously held: (1) that representations of "flexibility" and the ability to "go at your own

¹ See Testimony of Scott Pulsipher, President of Western Governors University, Before the House Subcomm. on Higher Education and Workforce Development, at 5 (Dec. 10, 2025) (stating the institution "was designed to be flexible, accessible, and closely aligned with workforce needs"). Available at: https://edworkforce.house.gov/uploadedfiles/pulsipher_testimony_final.pdf.

pace” are too subjective to be actionable; and (2) that the University’s restriction of Petitioner to four courses at a time was lawful and controlling. (App. A). These two holdings cannot be reconciled.

If “go at your own pace” is genuinely subjective and its truth “cannot be precisely determined,” then the four-course cap is a material qualification of that claim that bears directly on what any reasonable person, let alone a disabled veteran committing finite, time-limited rehabilitation benefits, would understand the marketing to promise. Conversely, if the four-course cap is an objectively determinable policy constraint, then the marketed premise of unlimited self-pacing is objectively false, not merely puffery. The Seventh Circuit chose both conclusions simultaneously, creating a rule that immunizes whatever the institution says in its marketing by pointing to whatever the institution enforces in its operations.

This is not a rule that courts have applied in comparable contexts. It is a logical anomaly that, if left standing, provides a template for any federally funded institution to recruit students with specific operational promises and defeat liability by pointing to the fine print that negates them.

This Court's own precedent confirms that subjective framing does not immunize a knowingly false statement. In *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1090–91 (1991), the Court held that directors' statements of belief and opinion are actionable under federal law when the speaker knows them to be false, the label "opinion" does not convert a false factual representation into protected speech. *Omnicare, Inc. v. Laborers' District Council Construction Industry Pension Fund*, 575 U.S. 175, 185–86 (2015), refined that standard: a statement of opinion is false, and actionable, when the speaker does not sincerely hold it, or when it omits facts a reasonable person would consider material to evaluating the opinion's basis.

WGU's representations of "flexibility" and "self-paced acceleration" satisfy both tests: the four-course cap is an undisclosed hard-coded restriction that directly contradicts the represented flexibility, and internal records, including the "Need to remove C948" command issued soon after Manager Carpenter approved expanded access, establish that WGU's operational reality was known to be inconsistent with its marketing at the time the representations were made.

D. The False Claims Act Framework Requires Materiality Analysis, Not Threshold Dismissal

Under the False Claims Act, 31 U.S.C. § 3729, liability attaches when a contractor submits a false or fraudulent claim to the government, or when it makes or uses a false record material to such a claim. In *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016), this Court held that the implied false certification theory is viable when a claim for payment makes specific representations about goods or services provided and the defendant's failure to disclose noncompliance with material statutory, regulatory, or contractual requirements makes those representations misleading half-truths.

Escobar's materiality standard is demanding but it is not a threshold immunity. Materiality is a fact-intensive inquiry, and Escobar expressly warned against courts resolving it at the pleadings stage or on summary judgment without examining the record. 579 U.S. at 194–95. Yet that is precisely what the court below did: it resolved the misrepresentation question at the threshold by classifying the inducements as puffery, without ever reaching whether the four-course cap was material to a reasonable veteran's decision to commit Chapter 31 benefits to WGU's program.

The binary contrast here is precise and undisputed. WGU marketed "unlimited pace" and "go at your own pace" as operative features of its program and inducement (App E). WGU internally enforced a literal four-course enrollment cap with no disclosed exceptions. These are

not competing subjective impressions; they are mutually exclusive operational facts. A veteran told he may take as many courses as he can manage, then restricted to four (at times one), has not received what he was promised. The gap between the marketed premise and the enforced reality is measurable to the course.

The implications for federal contracting are direct. Every time WGU certified Petitioner's enrollment to the VA as a qualifying pursuit of his rehabilitation plan, it made an implicit representation that the educational services being funded were being delivered as promised. The course cap, and restrictions and actions documented in logs present in the February 2024 FERPA production and absent from the March 2025 FERPA records production, undermine that representation. Under Escobar, the omission of those material facts from WGU's VA certifications rendered those certifications misleading half-truths. The court below never engaged with this analysis because it terminated inquiry at the puffery label. That is the error this Court should correct.

E. The Rule Creates a Safe Harbor for Bait-and-Switch Practices in Federal Benefits Programs

The practical consequence of the decision below is that any federally funded institution may market "flexibility," "unlimited pace," or similar inducements to veterans, enforce an undisclosed hard cap on access, and defeat all resulting claims by pointing to the gap between marketing and operations as a matter of subjective opinion. *United States v. Bornstein*, 423 U.S. 303, 309 (1976), established that the government is entitled to recover for every false claim a contractor submits, and that the harm to the government need not be direct. This action by WGU points to a national systemic approach. Applied here, each VA certification WGU submitted

while Petitioner's access was blocked was a potentially false claim under Bornstein's framework.

The decision below forecloses that analysis entirely by treating the predicate inducement as legally meaningless before any examination of what was certified or whether the certification was accurate. That categorical foreclosure is inconsistent with the government's fundamental interest in the integrity of its contracting relationships and with the congressional purpose behind the VA's Chapter 31 program, which exists to restore disabled veterans to gainful employment through genuine educational opportunity, not the appearance of it. (38 U.S.C. § 3100)

F. The Waiver Finding Rests on Clerical Suppression of the Forensic Record, Not Deliberate Omission

The Seventh Circuit's conclusion that Petitioner waived the evidentiary basis for his misrepresentation claim cannot be sustained on this record. The record reflects three independent procedural failures, not caused by Petitioner, that altogether ensured the spoliation evidence was absent from the docket when judgment entered. On November 12, 2024, Petitioner's nine-file summary judgment opposition was processed as a single block by the Clerk's Office, striking the filing for length and eliminating from the record 88 pages of documentary evidence and 46 factual rebuttals. On February 18, 2025, Petitioner personally hand-delivered a Motion in Limine February 18, 2025 (two days before summary judgment). The Clerk's Office was closed for weather; the motion was physically in the courthouse but not processed. A prior filing was erroneously re-docketed in its place; Petitioner's motion did not appear on the electronic docket until February 25, 2025, as Doc. 83, five days after judgment. Petitioner proactively emailed defense counsel on February 19 to confirm the delivery. The motion was not ignored or overlooked by Petitioner; it was rendered procedurally invisible by an administrative error in the

court's own system. On February 3, 2025, Counsel for WGU did not serve key documents 75 and 76, while serving document 74. Documents 75 and 76 were material to the Summary Judgement delivered February 20, 2025 (App B, App. I)

Waiver doctrine is not designed to penalize a party whose timely-filed evidence was suppressed by an administrative error in the court's own system. Its purpose is to prevent deliberate sandbagging, the strategic withholding of arguments to gain procedural advantage. Nothing in this record suggests strategic withholding; the forensic exhibits were filed, they simply did not reach the judge. Applying waiver in these circumstances transforms a procedural accident into a permanent forfeiture of constitutional rights, and does so in a manner that directly rewards the party whose suppression of discovery including deletion of 62 pages of federal records created the evidentiary gap in the first place. Under *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), the integrity of the judicial process requires that judgment not rest on a record corrupted by the interplay of evidence deletion and docketing error.

REASON II. Courts of appeals in other circuits apply materiality analysis to recruitment inducements tied to federal education payments, creating a conflict that warrants this Court's resolution.

The decision below is an outlier. In every other circuit that has addressed the intersection of recruitment inducements and federal education funding, courts have treated inducement-based misrepresentation claims as requiring materiality analysis, not threshold dismissal on puffery grounds. The Seventh Circuit's categorical approach diverges from that body of law and, if left in place, will create a structural advantage for institutions operating in the Seventh Circuit over those litigated elsewhere.

A. The Ninth Circuit Applies Materiality Analysis: Hendow and Corinthian

In *United States ex rel. Hendow v. University of Phoenix*, 461 F.3d 1166 (9th Cir. 2006), the Ninth Circuit held that enrollment-related representations made to the government in the context of federal student aid eligibility could support False Claims Act liability when they were material to the government's payment decision. The court analyzed the representations in detail, asking whether the omitted facts would have been significant to the government's decision to fund the enrolment. It did not dismiss the claims at the threshold on puffery grounds.

In *United States v. Corinthian Colleges*, 655 F.3d 984 (9th Cir. 2011), the court sustained FCA claims based on enrollment and accreditation representations, again applying a materiality framework rather than categorical dismissal. The court reasoned that representations bearing on the delivery of the educational service funded by the government are not mere advertising and must be evaluated against what the government would have done with accurate information.

Neither *Hendow* nor *Corinthian* suggested that marketing language used to induce federal-program enrollment is categorically exempt from misrepresentation analysis. The Ninth Circuit's approach requires courts to engage with the substance of the representation and its relationship to the federal payment. The Seventh Circuit's approach terminates that engagement before it begins.

B. The Eighth and Eleventh Circuits Reach the Same Conclusion

In *United States ex rel. Miller v. Weston Educational, Inc.*, 840 F.3d 494 (8th Cir. 2016), the Eighth Circuit analyzed recruitment-related misrepresentations in the context of federal financial aid, evaluating whether the representations were material to the government's payment decision rather than treating them as nonactionable marketing. The court's analysis focused on

whether a reasonable government decision-maker would have considered the omitted information significant.

In *Urquilla-Diaz v. Kaplan University*, 780 F.3d 1039 (11th Cir. 2015), the Eleventh Circuit similarly sustained claims arising from enrollment representations tied to federal student aid, applying the FCA's materiality standard rather than a threshold puffery screen. These decisions reflect the settled practice in other circuits: when recruitment representations are intertwined with federal funding obligations, the appropriate inquiry is whether the representation was material, not whether it can be labeled subjective.

C. The Seventh Circuit's Own Precedent Supports Materiality Analysis

The conflict is not only inter-circuit. The Seventh Circuit itself applied materiality analysis rather than puffery dismissal in *United States ex rel. Leveski v. ITT Educational Services, Inc.*, 719 F.3d 818 (7th Cir. 2013). There, the court treated recruiting-related misrepresentations tied to federal student aid as the basis for serious False Claims Act litigation, evaluating whether the representations were material to the government's payment decision. The court did not categorically shield the recruiting representations as puffery.

The decision below departs from ITT without distinguishing it. The only meaningful difference between ITT and this case is that the court below applied a categorical "no reasonable person" rule that ITT did not use. That unexplained departure from the circuit's own precedent reinforces the need for this Court's review to restore coherence to the law in this area.

D. The Conflict Is Recurring and Will Affect Thousands of Veterans

This is not a narrow or fact-specific conflict. The question of how courts should treat recruitment inducements in federally funded education programs arises in hundreds of cases each

year, involving hundreds of thousands of veterans, servicemembers, and other federal-program participants. The rule adopted below, that marketing language in a federal education channel is categorically nonactionable puffery if the institution can point to a written policy that qualifies it, will govern every future case arising in the Seventh Circuit. That rule is irreconcilable with how other circuits approach materially equivalent claims. Certiorari is warranted to resolve the conflict.

REASON III. The decision below was rendered on a demonstrably incomplete record and rewards the systematic destruction of federal evidence in violation of 18 U.S.C. § 1519.

Certiorari is independently warranted because the judgment below was secured on a record that Petitioner can demonstrate, through forensic comparison of sequentially produced FERPA files, was materially altered after a litigation hold was in effect, starting November 2023. The destruction of federal records to influence judicial proceedings is not an administrative irregularity; it is a federal crime under 18 U.S.C. § 1519, and a court that affirms judgment on such a record compromise its own integrity.

A. The Forensic Record Demonstrates Systematic Deletion of Material Evidence

Petitioner conducted a “Digital Twin” forensic comparison of two FERPA record productions: a February 2024 production of 168 pages and a one-year later March 2025 litigation production of 106 pages. The objective, mathematical loss of 62 pages between those productions is not attributable to pagination differences, format changes, or the exclusion of irrelevant documents. The records present in the 2024 production but absent from the 2025 production include accommodation-approval correspondence from Manager John Carpenter and the C948 system-level access logs that document the specific administrative restriction applied to

Petitioner's account. A side-by-side comparison is reproduced at Appendix H; the forensic discrepancy chart is at Appendix K. (App. H; App. K)

This evidence is material for two reasons. First, the Carpenter correspondence directly bears on what Respondent knew about Petitioner's medical condition and when it knew it, knowledge central to both the misrepresentation and accommodation claims. Second, the C948 access logs document the operational mechanism by which Petitioner's account was restricted, providing the objective, verifiable evidence that the Seventh Circuit said was absent from the record when it classified the inducements as puffery. The C948 revocation was also done in late August, 2023, and led to the dead term, loss of stipend and doom loop. The 62-page deletion of both categories of evidence, after a litigation hold was in effect, is not coincidental. Under 18 U.S.C. § 1519, it is a federal crime.

B. This Court Has Inherent Power to Vacate Judgments Obtained on Corrupted Records

In *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), this Court held that a federal court has inherent power to vacate a judgment at any time if it was obtained by fraud on the court, a "planned and carefully executed scheme" to deceive the tribunal. The Court emphasized that the integrity of the judicial process depends on the accuracy of the record on which it acts, and that a judgment secured through deliberate record manipulation cannot stand regardless of the procedural posture in which the fraud is discovered.

In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), this Court confirmed that judgments must be vacated when the integrity of the judicial process is compromised, and identified the relevant inquiry as whether the record before the court was adequate to support the judgment rendered. Where, as here, the record before the court was

materially incomplete due to the deletion of 62 pages of evidence that would have defeated the basis for dismissal, the judgment cannot be sustained on integrity grounds alone.

C. Two Independent Procedural Failures Erased Petitioner's Spoliation Evidence Before Judgment, Defeating the Seventh Circuit's Waiver Finding

The Seventh Circuit treated Petitioner's spoliation argument as waived because the evidentiary basis for it was not before the district court when summary judgment entered. That finding rests on a false premise, because two separate procedural failures, each independently attributable to court administration, not to Petitioner, erased that evidence before the ruling.

The first failure occurred on November 12, 2024. Petitioner submitted nine separate files constituting his summary judgment opposition, including 88 pages of supporting exhibits. The Clerk's Office processed these distinct filings as a single undifferentiated block, artificially inflating the page count. The Court struck the filing for length and never reviewed Petitioner's 46 specific factual rebuttals or the documentary evidence that accompanied them. (App. I)

The second failure occurred on February 18, 2025, two days before judgment. Petitioner personally hand-delivered a Motion in Limine containing his spoliation analysis to the courthouse. The Clerk's Office was closed due to inclement weather; courthouse security accepted the filing and placed it in a designated intake area. Petitioner proactively emailed defense counsel on February 19, 2025 to notify them of the filing and the weather-related delay. Instead of processing the delivered motion, the Clerk erroneously re-entered Plaintiff's earlier February 5 Answer as a new entry, labeled "Doc. 81." Petitioner's actual spoliation motion was not docketed until February 25, 2025, as Doc. 83, five days after judgment. On February 20, 2025, when the Court entered final judgment stating Petitioner had presented "no evidence of

spoliation,” that evidence was physically present in the courthouse but invisible on the electronic docket. (App. I)

The waiver doctrine exists to prevent parties from sandbagging courts with arguments they deliberately withheld. It does not exist to punish parties whose timely-filed evidence was rendered invisible by successive administrative errors in the court’s own case processing system. Applying waiver on these facts elevates administrative accident over substantive justice. The Seventh Circuit’s waiver finding cannot be sustained when the record shows that Petitioner’s evidence was filed, physically delivered, and electronically noticed to opposing counsel before judgment, and was nonetheless absent from the docket when the Court ruled. Under *Liljeberg*, a judgment is subject to vacatur when the process by which it was obtained compromised the integrity of the judicial record, regardless of the label attached to the procedural mechanism. The combination of a 62-page evidentiary deletion, a November clerical merger that erased the summary judgment opposition; non service of documents 75 and 76; and a February docketing failure that suppressed the spoliation motion is precisely the kind of multi-layered record corruption that *Hazel-Atlas* and *Liljeberg* were designed to address. Under Rule 60(b)(6), extraordinary circumstances exist when multiple independent procedural failures, none attributable to the party seeking relief, converge to deprive the Court of a complete record. See *Lonsdorf v. Seefeldt*, 47 F.3d 893, 897 (7th Cir. 1995).

The third failure involved direct opposing-party misconduct. Because Petitioner is a pro se non-ECF registrant, he relies on opposing counsel for service. On February 3, 2025, Respondent’s counsel filed three documents but selectively served only one (Doc. 74), withholding Dockets 75 and 76. Docket 76 contained the very evidentiary objections the district court subsequently relied upon to exclude Petitioner’s records. A judgment that rests on

unopposed objections deliberately withheld from a pro se litigant violates fundamental due process and cannot stand under the integrity framework of *Hazel-Atlas*.

D. The Integrity of Federal Evidence in VA-Funded Programs Cannot Be Compromised

The records at issue here are not ordinary business documents. They are records created and maintained in connection with a federally funded veterans rehabilitation program(38 U.S.C. Chapter 31), subject to FERPA's record keeping requirements and the VA's oversight obligations. Their deletion after a litigation hold was in effect implicates 18 U.S.C. § 1519, which prohibits the destruction or falsification of any record in connection with any matter within the jurisdiction of a federal department or agency. If federal contractors can delete material records during active federal litigation and obtain affirmance of the resulting judgment without consequence, the federal government's ability to enforce the conditions of its spending programs through litigation is structurally compromised. This Court's intervention is necessary to signal that such conduct does not escape judicial accountability.

REASON IV. The decision below denies constitutional due process to a disabled veteran whose earned Chapter 31 rehabilitation benefits are protected property interests under the Fifth Amendment.

The puffery ruling is not merely a contract-law error. It has constitutional dimensions that warrant this Court's attention. VA Chapter 31 vocational rehabilitation benefits are not gratuities; they are earned entitlements awarded to disabled veterans as compensation for service-connected impairments that limit their employability. As protected property interests under the Fifth Amendment, these benefits cannot be depleted through undisclosed administrative mechanisms without the process that the Constitution demands.

A. Chapter 31 Benefits Are Protected Property Interests Under the Fifth Amendment

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), this Court held that government benefits awarded to eligible recipients constitute protected property interests under the Due Process Clause of the Fifth Amendment and that those interests cannot be terminated without notice and an opportunity to be heard. The Court reasoned that benefits which form the basis of recipients' economic livelihood carry the same constitutional weight as more traditional forms of property, and that the government's interest in fiscal efficiency does not override the individual's interest in continued receipt of benefits to which he is legally entitled.

The Federal Circuit applied *Goldberg* to veteran disability benefits in *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009), holding that a veteran's entitlement to disability benefits is a protected property interest and that any process affecting those benefits must satisfy due process requirements. This Court established the underlying principle still earlier in *Lynch v. United States*, 292 U.S. 571, 577 (1934), holding that veterans' benefits under federal statute are not gratuities but contractual obligations of the government, property interests that vest upon eligibility and cannot be revoked without due process. Chapter 31 vocational rehabilitation benefits, awarded specifically to enable disabled veterans to achieve meaningful employment, carry at least equivalent constitutional weight. They are finite, limited by both the duration of the veteran's rehabilitation plan and the nature of the service-connected disability, and once depleted through administrative action, they cannot be recovered. Under *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 17 (1981), the conditions attached to federal spending must be stated unambiguously, a requirement WGU inverted: it stated flexibility unambiguously in its marketing while concealing the arbitrary course restrictions entirely. An institution that accepts federal Chapter 31 funds cannot simultaneously disclaim the obligations those funds carry. *Davis*

v. *Monroe County Board of Education*, 526 U.S. 629, 642 (1999), reinforces this principle in the educational funding context specifically: Spending Clause recipients must have clear, unambiguous notice of the conditions attached to federal funds before those conditions can be enforced against them, or, as relevant here, invoked as a defense by them. WGU cannot simultaneously accept Chapter 31 funds under a statutory framework that conditions payment on provision of the advertised program, and then disclaim the content of its own enrollment representations as legally meaningless when a veteran seeks to enforce what those representations promised.

B. Respondent's Undisclosed Access Restrictions Depleted Petitioner's Property Interest Without Process

Petitioner relied on WGU promises and did not receive notice that a four-course cap existed when he relied on WGU's marketing to commit his Chapter 31 benefits to the WGU program. He did not receive notice that his account would be subject to system-level access restrictions that would prevent completion of his rehabilitation plan. He did not receive a hearing at which he could contest those restrictions before his benefits were effectively exhausted by the passage of time during the lockout period. He was, in the language of Goldberg, deprived of his property interest without the "rudimentary due process" the Constitution requires.

The lower court's puffery ruling eliminates the legal vehicle through which Petitioner could have sought redress for that deprivation. By classifying the inducements as legally meaningless, the court removed the basis for any claim that Petitioner's reliance on them was reasonable, and therefore reasonable notice, was owed. But the constitutional question is independent of whether the inducements were puffery: a federally funded institution that operates under the imprimatur of nineteen State Governors and receives federal funds to deliver

vocational rehabilitation services to disabled veterans cannot use undisclosed administrative mechanisms to deplete those benefits without any process at all. That is a due process violation regardless of how the marketing is labeled.

C. The Governor Structure Demonstrates a Pattern of Governmental Insulation Incompatible With Private-Status Due Process Immunity

WGU's charter structure is not incidental to the constitutional analysis. When nineteen sitting State Governors serve as the sole corporate members of an institution, that institution does not occupy the same constitutional position as a purely private contractor. In *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374 (1995), this Court held that an entity created by government, controlled by government-appointed officers, and furthering governmental objectives is a governmental actor for constitutional purposes regardless of its nominal private charter. WGU fits that pattern with precision: its founding governors drafted its charter, sitting governor of each member state holds ongoing corporate membership, and the institution's market position rests largely on the governmental legitimacy that membership projects. A disabled veteran committing finite federal rehabilitation benefits to a program branded under nineteen governors' authority is not making a purely private commercial decision, he is relying on the accountability obligations that governmental authority carries. (App D)

The public record demonstrates that WGU's hybrid status produces a concrete and asymmetric result: governmental insulation from federal accountability when enforcement is inconvenient, combined with a claim of private status when individual beneficiaries seek constitutional process. In 2017, the Department of Education's Office of Inspector General audited WGU and found that 69 of 102 required courses across its three largest programs lacked the "regular and substantive interaction" between students and instructors required for Title IV

eligibility, recommending repayment of nearly \$712 million in federal funds. The Department's Federal Student Aid office subsequently reversed that finding, declining to require repayment on grounds that the applicable standards were ambiguous and that WGU had made a "reasonable and good faith effort to comply." The reversal was grounded in post-hoc regulatory guidance that had not existed during the audit period. An ordinary private contractor that delivered non-compliant services across the majority of its required courses would not receive that deference. The structural explanation for why WGU did is the same structure that induces veterans to enroll: the governmental imprimatur of nineteen sitting governors.

Petitioner's experience in this process involved many requests to honor agreements and attempts for compromise, and was met with hostility from some, hostility and algorithmic throttling discovered and confirmed in the FERPA 2024 records, the Petitioner found through actions bypassing JacksonLewis. Petitioner's loss of stipend, which is a type of employment nature, and Petitioner's DUTY to honor his side, and to minimize costs as directed. And the later actions by WGU through the deposition, withholding of documents, statements that contradict written materials, non-service of key legal submissions to the District Court, and other actions, suggest that WGU has an view that they are above the law, and this reflect back to how they buried the Department of Education 2017 OIG findings.

The constitutional defect this pattern reveals is precise. Under the unconstitutional conditions doctrine, a federal contractor cannot accept Spending Clause funds under conditions that require due process compliance and then disclaim those obligations when a beneficiary seeks to enforce them. WGU accepts federal Chapter 31 funds under a program whose entire statutory purpose is the rehabilitation of disabled veterans. It projects governmental authority to induce their enrollment. It then invokes private-contractor status to deny them the notice,

process, and accountability that governmental authority demands. The OIG enforcement episode illustrates the asymmetry concretely: \$712 million in documented noncompliance produced regulatory deference for WGU; a single disabled veteran's depleted rehabilitation benefits produced a puffery ruling. Where an institution deploys governmental authority to secure federal funds and defeat federal oversight alike, it cannot simultaneously claim the due process immunities of a purely private actor. The decision below permits exactly that, and this Court's intervention is necessary to close the structural gap it creates.

D. The Statutory-Waiver Point Does Not Control This Petition

Respondent will argue that Petitioner referenced 38 U.S.C. § 3696 on appeal and that the Seventh Circuit treated that statutory theory as waived. (App. A). This Petition does not seek review of any statutory-waiver ruling. The Question Presented targets the court's merits holding: that the recruitment assurances are nonactionable "puffing" as a matter of law and that "no reasonable person" could rely on them to understand program limits. That merits holding controls the outcome and will govern future VA-funded enrollments and disputes in a national market. The waiver ruling is a separate threshold determination that Petitioner does not challenge here; it is the puffery immunity, applied to objective, verifiable operational limits in a federal benefits channel, that requires this Court's review. However, 38 U.S.C. § 3696 underscores Congress's intent to strictly prohibit misrepresentations by federal education contractors.

The Calculated Deception: The Respondent's distortion of the medical record was not an oversight; it was premeditated. On February 6, 2024 (Docket 30), the Petitioner formally filed his medical exhibits, putting the Respondent on actual notice of his subsequent ER visits and calls to the 988 Veterans Crisis Line. Despite possessing this documented proof of a life-

threatening crisis, the Respondent intentionally isolated the "pretty much okay" deposition quote months later to manufacture a false narrative of stability and secure summary judgment. (App M)

E. Requiring Proof of Subjective Intent to Establish Spoliation Creates an Unrebuttable Safe Harbor for Institutional Record Destruction

The Seventh Circuit dismissed Petitioner's forensic proof of spoliation as "mere speculation" because he could not independently prove Respondent's subjective intent when deleting the files. That standard is irreconcilable with this Court's framework in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), and *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), which locate the relevant inquiry not in the subjective mental state of the spoliating party but in whether the record before the court was adequate to support the judgment rendered. This Court reaffirmed that animating principle in *Glossip v. Oklahoma*, 604 U.S. ____ (2025), holding that due process is violated when a judgment rests on a record from which material evidence has been suppressed, because the constitutional guarantee of a fair proceeding depends on the completeness of the record the tribunal actually reviews, not merely the formal regularity of the process by which it was assembled.

The factual predicate here is not speculative. On September 6, 2024, Respondent received specific written notice to preserve evidence. The district court subsequently ordered their production on November 19, 2024, an order reflected in the existing docket record. (App. I) Respondent thereafter produced a sanitized 34 documents largely from the Petitioners own evidence. The sanitized 2025 FERPA file had been deleted were received directly through administration of WGU. Under 18 U.S.C. § 1519, the destruction or falsification of any record in connection with any matter within the jurisdiction of a federal agency is a federal crime regardless of the actor's stated motive. Deleting federal educational records after a specific

judicial production order is not “routine maintenance”, it is obstruction, and the objective documentary evidence of deletion is sufficient to establish it.

By requiring a pro se litigant to prove the subjective mental state of corporate officers who controlled the deletion, the Seventh Circuit effectively guarantees that any sophisticated federal contractor can sanitize a digital record with impunity. That result is incompatible with the constitutional due process interests of disabled veterans whose earned property rights, already compromised by undisclosed access restrictions, are further extinguished when the documentary evidence of those restrictions is deleted from the record the Court must review. This Court’s intervention is warranted to establish that objective forensic proof of deletion after a preservation notice and a production order is sufficient to trigger the fraud-on-the-court framework of Hazel-Atlas and Liljeberg, without requiring the impossible: proof of the subjective intent of the parties who destroyed the evidence.

CONCLUSION

The petition presents three independent grounds for certiorari, each of which independently satisfies the standards of Supreme Court Rule 10. The decision below creates a threshold puffery immunity that conflicts with the treatment of materially equivalent claims in the Ninth, Eighth, and Eleventh Circuits, and with the Seventh Circuit’s own precedent. It affirms a judgment rendered on a demonstrably incomplete record from which material federal evidence was deleted after a litigation hold was in effect. And it eliminates the legal vehicle through which a disabled veteran might seek redress for the depletion of Fifth Amendment-protected property interests through undisclosed administrative mechanisms, without notice or process of any kind.

Each of these errors is recurring. Each will affect thousands of veterans and other federal-program participants in future cases. And each reflects a failure of the courts below to engage with the structural question this case presents: whether a federally funded institution, operating under the public imprimatur of nineteen State Governors, may use the puffery doctrine as a shield against accountability for the gap between what it promises to veterans and what it delivers.

The Petition for a Writ of Certiorari should be granted.

DECLARATION I, James Rogers, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

March 11, 2026

Respectfully submitted,



A handwritten signature in cursive script, appearing to read 'J.P. Rogers', is written over a horizontal line.

James Paul Rogers, Petitioner Pro Se