No. _____

IN THE
Supreme Court of the United States

_____

KAREN HORWITZ
Petitioner, Pro Se

v.

ILLINOIS STATE BOARD OF EDUCATION, STEPHEN B. RUBIN, AND BOARD OF EDUCATION OF AVOCA SCHOOL DISTRICT NO. 37, COOK COUNTY, ILLINOIS
Respondents

_____

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

Illinois School Code mandates "continuous service of good teachers" for the public's sake and hence governs procedures with which the Illinois State Board of Education may hold termination hearings for tenured teachers charged by their School Boards with insubordination; hearings, though, must comply with the Due Process Clause under the 14th Amendment. Did the State err in finding the following issues inapplicable to due process and appropriate federal law? The questions presented are:

I. Whether School Boards, in their supervisory capacity, have a duty to protect their teachers and students from damages caused by discriminatory or retaliatory orders, and whether School Boards have a duty to investigate complaints of discrimination and retaliation to ensure that orders are not damaging, and that insubordination charges against teachers resulting in termination recommendations are not based on orders that infringe upon statutorily protected rights.

II. Whether States have a duty to hold termination hearings that protect teachers' constitutionally protected rights under the 1st Amendment Right to Free Speech after teachers speak adversely against their School Board, and whether such hearings guarantee due process to protect teachers' statutorily protected rights after filing a complaint with the U.S. Equal Employment Opportunity Commission, (EEOC)

III. Whether teacher termination hearings that bar the ability to consider and corroborate evidence of discrimination and retaliation by School Boards, and thus damage teachers who have participated in protected activities, and that show conflict amongst the district courts with interpretations of law that depart far from the accepted and usual course of statutory proceedings to find cause, and therein change the mandate of the Illinois School Code, show an abuse of

discretion on the part of the Hearing Officer and fail to comply with Due Process under the 14th Amendment.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that this Honorable Court will issue a writ of certiorari to review the judgment below.

OPINIONS BELOW

The opinion of the highest State court to review the merits, Illinois Appellate Court, First District, appears at **Appendix B** to the petition and is Unpublished. Circuit Court Judge O'Brien's Memorandum Opinion and Judge Agran's Memorandum Opinion appear at **Appendix C** to the petition. Hearing Officer Stephen B. Rubin's Dismissal Opinion appears at **Appendix D** to the petition.

JURISDICTION

The date on which Illinois Supreme Court decided Petitioner's case was November 29, 2006. A copy of that decision appears at **Appendix A.** The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Due Process Clause under the 14th Amendment,
U.S. Const., Free Speech Clause under the 1st Amendment,
Illinois Const., Article I, Bill of Rights § 1., § 2., § 4., § 12.

I. STATEMENT OF THE CASE

Petitioner was a well-liked (V.29RC7240) substitute teacher/ aide at Avoca School District #37 ("Avoca") **1989-1993**. Principal Rak hired her as a full time teacher fall of **1993** at which time Dr. Venette Biancalana ("Principal"), a first year principal, replaced Rak. Principal began creating problems for older teachers (p12-17, 36f). **11/96** After witnessing and enduring discrimination for 3 years, Petitioner complained to Supt. Sloan ("Supt.") about it; he threatened to make her life miserable if she escalated an age complaint (V.4RC879L16-23). **4/97** Petitioner and 3 older teachers sought legal advice to end Principal's discrimination (p12-17, 36f). **5/12/97**

Petitioner hired same attorney to ask the Avoca School Board ("Board") to protect her from discriminatory acts (V.30R C7434-9). Board failed to respond. After 5 months, Petitioner made discrimination public in Petitioner's article ("Article") submitted to a local paper. **10/15/97** Board created animosity against Petitioner (V.14RC3421L13-24)(V.11RC2502L4-24) by holding district-wide meetings to condemn Article (p38-42f) that described discriminatory treatment of older teachers and its harm to children (p3-4, 12-17, 43-48f). **1/19/98** Petitioner begged Board to investigate and end the retaliation (V.27RC6653-V.28RC6875). **2/16/98** Board refused (p49-50f) (V.27RC6654-9) (V.14RC3418L14-19L23). Principal rated Petitioner "excellent" as a professional/teacher before her speech and EEOC age discrimination complaint (p3-4, 6-7f) (V.24RC5991) (V.30RC7268; 7360; 7369; 7455). **4/20/98** Board remediated her speech expressing distress about Board's refusal to investigate retaliation (V.24RC6148-51).

7/15/98 Board ordered Petitioner to undergo an evaluation by its psychiatrist. Petitioner requested an unbiased doctor (V.31 RC7605-10); Board refused (V.36RC8773-4)(V.R C3422L1-17). **10/16/98** Petitioner filed a federal lawsuit for protection from discriminatory and retaliatory orders under Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623 (a) & (d) ("ADEA") and a complaint under the Free Speech Clause of the 1st Amendment (V.35RC8530). On **4/23/99**, without investigating whether the administrators' charges were retaliatory (p11AB, 49-50f) (V.37RC9144L13-21), Board voted to fire Petitioner, not the three other teachers who did not file ADEA charges. From **5/15/00-8/16/00**, despite Petitioner's objections (p5-6, 25-29f)**,** Hearing Officer Stephen Rubin ("Officer") held a termination hearing that failed to investigate retaliation over Petitioner's lawsuit or her adverse speech. Officer declared the following: "Is it appropriate for a teacher to make certain demands, even if she is picked on (p5f-L24-1)?" "But I will not hear, and you may take this up to as many courts as you wish, I will not hear a trial about the competence, treatment, or anything else of Dr. Biancalana or Dr. Sloan (p6fL8-11)." Board testified it ignores evaluations and complaints (p11A, Bf). *Illinois*

School Code (*105 ILCS 5/),* ("*Code*") mandated a decision on the hearing by **10/2000**; Officer shirked his duty. The Illinois State Board of Education, ("ISBE") allowed the process to drag on saying it could do nothing (V.37RC9116-8), ignoring *Code§34-85*: "If a hearing officer fails to render a decision within 3 months after the hearing is declared closed, the State Board of Education shall provide the parties with a new list of prospective, impartial hearing officers (p4g)." Petitioner contacted public officials. **6/05/02** After the media called ISBE, it threatened to sue Officer (V.35RC8558-8) for failing to decide. **6/29/02** Officer decided 19 months late, admitting he had no excuse (V.35RC8512). Officer affirmed the firing based on insubordination using "higher authority" rather than a "reasonable" standard (p85d). Officer held her speech insubordinate (p19f), doing no 1st Amendment balance (p69-70d). Petitioner preserved her record (p12-17, 25-29, 36f).

6/12/03 Petitioner appealed that unconstitutional construal of *Code* violated her Due Process rights under the 14th Amendment, her right for protection from a retaliatory discharge, and her right to protected speech under the 1st Amendment to the Circuit Court ("Cir. Ct."). It found Officer's construal discretionary (p2c) and that her disruptive speech warranted termination with no examination since *Horwitz v. Bd of Educ. of Avoca School*, 260 F.3d 602 (7th Cir. 2000) was an identical cause of action, applying res judicata (p3c). **10/1/04** Petitioner appealed to the Illinois Appellate Court First District ("App. Ct."), arguing res judicata was applied in error as this case involves different parties and a different cause of action (p14-18e). It declined 1st Amendment and retaliatory discharge claims (p22-3b) and held broad discretion. **11/29/06** The Illinois Supreme Court entered a denial to hear this case (p.1a). Petitioner preserved her rights to appeal violations of federal law (p1-20e).

II. REASONS FOR GRANTING THE PETITION

A. RETALIATORY DISCHARGE UNLAWFUL

The App. Ct.'s decision in this case directly conflicts with federal statutes and this Court's holding in *Burlington*

Northern v. White, ___U.S.___, 126 S.Ct. 2405, 165 L.Ed.2d 345, 352 (2006): "The anti-retaliation provision seeks to prevent employer interference with 'unfettered access' to Title VII's remedial mechanisms by prohibiting employer actions that are likely to deter discrimination victims from complaining to the EEOC, the courts, and employers." In *Burlington*, this Court embraced the remedies available under federal law that are necessary to deter unlawful harassment and intentional discrimination in the workplace. *McKennon v. Nashville*, 513 U.S. 352, 358 (1995) said: "ADEA and Title VII share common substantive features and also a common purpose: 'the elimination of discrimination in the workplace.'" States must work with the courts in enforcing these EEOC regulated statutes that govern one's inalienable rights. This Court cannot allow State procedures to exclude an examination of retaliatory discharge in light of these statutes and rulings or it renders federal law moot. Despite proper presentation (p9e), Illinois Courts evaded Petitioner's retaliation claim, ruling in direct opposition to *McKennon, 358, Burlington, 353,* and *McGee v. Procter & Gamble Distributing Co*. 445 F. Supp.2d 481, 490 (E.D.Pa. 2006), which held that an employee who had engaged in a protected employee activity is entitled to due process to determine if his employer had acted in a way that "well might dissuade*"* employees from pursuing their statutorily protected activity. The Illinois Courts chose to ignore these rulings when it denied Petitioner due process to determine if her employer had acted in a way that "well might dissuade*"* her, given her participation in a protected employee activity and guaranteed due process rights as a tenured teacher. (*Board of Regents*, 408 U.S. 564, 570 (1972)(due process guaranteed) *Limbach v. Hooven* 466 U.S. 353, 362 (1984) held: "We are concerned with federal issues and a contention that a state court disregarded a federal constitutional ruling of this Court*."*

This case epitomizes this concern. It involves administrators who evaded the law against retaliatory discharge by setting her up to fail and, with Board's help, hired attorneys who duped the lower courts into believing that charges against her were not a pattern of retaliatory harassment that, in fact,

upset her deeply due to the impact on children. Officer, who believes retaliatory orders are irrelevant to deciding cause to fire teachers, helped evade federal law. Officer created a record that turned a victim of retaliation from engaging in a protected activity into the cause of conflict, and misled courts into finding the record adequate despite disturbing views including (p5-6, 12-17, 36f)(V.16RC3936L14-3938L19) and:

> "The discrimination issues are not before me, as I understand my charge. That is national origin, age, sex, et cetera, et cetera, et cetera. Those things are not before me. In such a case I think disparate treatment would be part of your case. The issues before me are, regardless of how other teachers may have been treated, whether Mrs. Horwitz in her conduct was insubordinate and whether Mrs. Horwitz in her conduct was unprofessional (p13f-L1-13)."

Officer refused to examine orders that led to insubordination charges, ruling: "The orders upon which the District relies were related to her work. Their reasonableness is also established (p89d)." The App. Ct. affirmed Officer's misapplication of *Code*, which barred vital evidence at a termination hearing, providing no remedy to deter retaliation. (*Intern. Soc. For Krishna v. Rochford*, 585 F.2d 266, 265 (1968))(statutes unconstitutional if interpreted wrong) Officer barred Petitioner's evidence corroborating that charges against her were designed to stop her and others from filing discrimination charges, and discounted evidence of retaliation that were admitted stating "none of these orders subjected anyone to imminent danger (p85d)." The App. Ct. found Petitioner's claim that Officer aided an unlawful firing since unexamined orders masking a retaliatory discharge caused "imminent danger" of property loss irrelevant saying:

> "The problem was not that Hearing Officer did not permit Horwitz to present her defense. The problem was that much of Horwitz's defense was largely irrelevant to the charges against her. Horwitz sought to use the hearing to air her grievances against the

> administration, rather than to rebut the District's evidence (p21b)."

But Petitioner's "grievance" is what this Court held relevant: retaliatory discharge. This arduous record, focused on blaming Petitioner, has diverted subsequent courts from Officer's untenable construction of *Code*; they rehashed "facts" rather than addressed her claims of constitutional deprivation. When a wrong conclusion of law as to federal rights is intermingled with a finding of facts, facts are no longer facts. Such as, Officer found (p102d) it was "monstrous*"* of Petitioner to say that child E was put in her class to build a case against her despite evidence demonstrating this occurred (p6-8Af). Testimony shows Mrs. E feared Petitioner's Jewish upbringing (p29A-31f); Principal arranged a placement unwanted by Mrs. E to ignite conflict to dispose of Petitioner. Officer refused to consider Board's use of students as pawns despite this and other evidence that Petitioner's concerns were real, and reflected the community's; he was biased only Petitioner would act "monstrously." Officer barred Petitioner's cross examination of Board to show that its unlawful acts harm children (p1B-3, 20C, 33, 43-48f) since its acts were irrelevant to him. Officer ignored a father: "my trust has been shattered. It sickens me to watch abuse of power by the School District. It sickens me to know that my children are pawns in your political struggle (p47f)," and a mother describing a meeting where Principal targeted Petitioner: "Something is going on here…..that was a deep freeze in there. And it was directed at her. And this is my son's teacher (p1-3f)." Officer ignored a parent's letter: "I am concerned that the administration, in furtherance of this dispute, may be jeopardizing the children in the class (p45f)."

Officer's bias over Petitioner's accusations, which damaged Petitioner, could not have survived scrutiny of Board's acts. *Bd. of Ed. of CCSD No. 54 v. Spangler,* 328 Ill. App.3d 747, 755 (2002) held that bias violates *Code*. (*Jorman v. Veterans Admin*., 579 F. Supp. 1407, 1418 (1984))("an agency's failure to consider data is arbitrary and capricious if it entirely fails 'to consider an important aspect of the

problem'*"*) Deeming a claim of retaliation "monstrous" on its face turned this case on Officer's bias, not on what occurred. Arbitrarily limiting accusations against employers opposes *McKennon*, 359: "the occurrence of violations may disclose patterns of noncompliance resulting from a misappreciation of the Act's operation or entrenched resistance to its command, either of which can be of industry-wide significance. The efficacy of its enforcement mechanisms becomes one measure of the success of the Act." Officer's limits masked the real monster discrimination complainants face, forfeiting the Act's success.

Trivializing Petitioner's core argument, the App. Ct. found a large record showing hostility sufficient, despite Officer's refusal to judge retaliation or allow an affirmative defense (p20b). Officer slyly noted its absence rather than admit he caused its absence when he said: "Assuming that such an affirmative defense is available in teacher dismissal cases, it has not been made out here. There is only Horwitz' unsupported allegation that the District was imposing unreasonable demands upon her (p102d)," leading the App. Ct. to assume that Petitioner failed at proving her affirmative defense, rather than discern that Officer had banned it from the hearing. Despite Petitioner's, 33-paged argument against retaliatory discharge grounded in case law, some found at (p7-19e), the App. Ct. focused only on whether Officer appeared biased in his rulings of what he allowed into the record, and found her need for evidence cumulative (p20, 22b) ignoring her point that no ability to show discriminatory and retaliatory orders made this hearing unconstitutional. Substituting quantity for a meaningful record and finding an absence of bias on how Officer ruled on an unconstitutional record based on his belief: "discrimination issues are not before me (p13f)," allows employers with deep pockets to create large records to prejudice courts, conflicting with this Court's ruling in *Burlington,* 362: "We would undermine the significance of that congressional judgment were we to conclude that employers could avoid liability in these circumstances*,"* and *McKennon*, 358: "The objectives of the ADEA are furthered when even a single employee

establishes that an employer has discriminated against him or her." The objectives of the ADEA are impeded when a single board evades the law as Board did. The lower courts erred in finding procedural due process sufficient when it is widely held that a meaningful standard, or sufficient process for the issues at hand, fulfills substantive due process (*Miller v. Retirement Bd. Policemen's Annu.,* 329 Ill. App.3d 589, 602 (2002)(due process is meaningful process) Misconstruing Petitioner's position on meaningfulness of process, the App. Ct. dwelled on refuting charges rather than on what Petitioner sought, an ability to show unreasonable charges (p22b). Irremediability, or inability to correct behavior of reasonable orders, establishes cause to fire teachers. (*BOE of Round Lake Area Schools v. ISBE*, 292 Ill. App. 3d 101, 110 (1997)) ("It therefore follows that the instructions, or rules, of the employer must first be reasonable.")(*Id.,* 111)(reasonability hinges on whether orders infringe upon a legally protected behavior) Disobeying damaging orders cannot rise to cause, since damaging orders surpass the "bad Christmas" prohibited in *Burlington*, 362. Petitioner's class had a "bad Christmas." Supt. ruined a planned student holiday project (p31A-33f) by holding an impromptu retaliatory meeting.

Also, the App. Ct. misinterpreted Petitioner's argument on manifest weight. *Hazelton v, Zoning Bd of Appeals, Etc*. 48 Ill. App.3d 348, 353 (1977) held that a lack of evidence of a substantial nature resulted in a decision that was against the manifest weight of the evidence when all reasonable persons would agree it is clearly evident that a court erred and should have reached the opposite conclusion. Any reasonable person would agree that Officer's opinion that he need not consider Board's acts while it was the target of Petitioner's lawsuit, (p3-4, 6-7, 8B-10, 25-29f) (V.35RC8530) lacks substance for the issue at hand, and defies reason. Evidence of retaliatory orders would result in an opposite conclusion. It is unjust for the App. Ct. to rule that Officer, who said he would not hear accusations of retaliation, considered retaliation especially when the App. Ct. held Petitioner's "grievance" [retaliatory discharge] was not part of the hearing (p21b)(p5-6 herein). The App. Ct. focused on the factual question of Officer's

disbelief of Petitioner's testimony (p31, 36b) rather than on the legal question of whether his belief that retaliation was immaterial to this case and that he had power to bar accusations thereof is constitutional. Believability turned on Petitioner's right to make her accusations rather than on the truth of her accusations, setting a precedent that says States may deprive employees of their property rights based on an aspect of an EEOC claim. Also, *Sylvester v. SOS Children's Villages Ill. Inc*, 453 F.3d.900, 902 (7th Cir. 2006) held "similarly situated employees treated differently" is a sign of retaliation. Yet, Officer barred evidence from the three older "picked on" teachers who filed no charges, and who were not fired (p12-17, 36f). (Trivializing discrimination with his term "picked on (p5fL24-1)," Officer reveals disrespect for federal law, which shaped his rulings.) His "entrenched resistance*"* to anti-discrimination laws took root; he made damage from a complaint worse than discrimination (p3-4, 8B-10f). His construal of *Code* allows what *Regents* prohibits, deprivation of property over unwanted claims. It turned ADEA into a weapon of the State and impedes teachers from filing EEOC charges, fearful their accusations will be judged unworthy.

To determine retaliation a court must examine the acts of potential retaliators. Although Petitioner has argued this in each court, none have taken up her argument that it is unconstitutional to hold termination hearings for teachers that deny due process to protect them from retaliation. Without investigating orders, Officer ruled that "higher authority*"* renders all but dangerous orders reasonable, with no ability to determine danger, and with grieving as the sole recourse (p85d), which if available, would not satisfy procedural and substantive due process rights as per *Regents*, 570. He attacked Petitioner's integrity for not filing grievances (p90-1d) despite hearing the Union Official testify twice that Petitioner could not contractually grieve discrimination (p1A, 8B-11f) (*Hazelton, 351*)(findings must be based on the record) In response to Petitioner's citing of *Dusanek v. Hannon,* 677 F.2d 538, 543 (1982*),* Officer said: "the teacher had the opportunity to question the legitimacy of the order in the dismissal hearing (p82d)," but denied this ability to

Petitioner saying: "Horwitz arrogated to herself the role of determining the legitimacy of this and other orders." Petitioner's point was that if "arrogating" exists, Dusanek "arrogated" waiting for a hearing to avoid damages and Petitioner is entitled to the same rights. (Petitioner requests this Court take judicial notice of Officer's arbitrary application of law, altering of facts, and hyperbole in his decision, showing his anger against Petitioner for asserting EEOC rights.) It is important to note that Petitioner's refusal of orders to protect herself from damage occurred after years of coping with abuse and then being denied protection by Board (p49-50f). *Id.*, 543 and *BOE of the City of Chicago v. Denise Weed*, 281 Ill. App. 3d 1010, 1019 (1996) held that teachers may refuse unreasonable orders. Petitioner, harmed by discriminatory orders, triggered a hearing to show the hostile work environment with evidence that Principal bullied (p1B-3, 6-10f), denied support (V.39RC9721L10-23L18), and falsely blamed her (V.38R C9330-39). *Id.*, 1019 held: "Weed's decision to ignore the Board's order and wait for a dismissal hearing at which to defend herself was a proper exercise of her procedural rights and did not amount to insubordination." Instead of seeing if orders were reasonable, the App. Ct. judged "length of time" of conflict (p30b), and allowed Officer to "disagree*"* with the settled "reasonable*"* standard for deciding insubordination allowed the teacher in *Round Lake*, 110, and with the right to trigger a hearing to decide the legitimacy of orders allowed *Weed* and *Dusanek*. It contradicted Petitioner's multiple citations of settled law on this topic, citing no authority, handing boards a tactic to prevail at retaliatory discharge, using time to trap their prey.

Without process to show retaliation, Officer allowed what this Court prohibited in *McKennon*, an employer succeeding at discriminatory discharge over an employee's subsequent conduct. Based on this case, which judged Petitioner on how she fended off abuse, if teachers file EEOC complaints, they must endure damage like sitting ducks until a federal court intervenes, or lose the coveted property of teachers, their jobs. *McKennon 360* held that while *McKennon's* misconduct after she filed an ADEA charge warranted her firing, it did

not erase her employer's discrimination against her. It held mixed-motive cases "important to the extent they underscore the necessity of determining the employer's motives in ordering the discharge, an essential element in determining whether the employer violated the federal antidiscrimination law." Since States hold the sole process for teachers to retain jobs, a process with no ability to show retaliatory discharge allows boards control over EEOC complaints, making complaints career suicide. Even if interim damage was tolerable and federal courts had jurisdiction to reinstate teachers, a hearing like this causes insurmountable prejudice.

Given Officer's insistence that the administrators are "not on trial" at a hearing (p5f-L24-1), the App. Ct. erred ruling that Officer had considered hostility (p20b). His "monstrou*s"* accusation and "higher authority" standard in his decision proved he had not budged (p85d). This case shows *contrived insubordination,* not insubordination since insubordination is a refusal to obey reasonable orders. In light of *Burlington*, 352, the use of damaging orders to cause insubordination is improper; this Court unanimously ruled that no amount of retaliation is tolerable as it fetters the path to filing EEOC complaints. In this case, the courts denied Petitioner an ability to show her employers' acts that caused loss of her career, of retirement benefits, of her good name, and via legal fees and costs, and loss to those denied her as a teacher, since her ability with students is undisputed (p43-48f)(V.14RC 3485L2-7)(V.37RC9179L14-24)(V.38C9320-5;9342)(V.30R C7426-7;7432-3). Further, *Krishna,* 267 and *Round Lake*, 110-111 found vague, inconsistent directives unreasonable. The App. Ct., focused on finding cause so it could ignore federal law, held Petitioner insubordinate for not producing a "meaningful" (p35b) medical certificate when Board had no definition of "meaningful," and for refusing to change a grade when *Code/10-20.9a* (p4-5g) expressly says that boards are to change grades by initialing changes, and that teachers have a right to their professional judgment to determine grades. The lawful remedy is to note and remediate deficient judgment, not infringe upon teachers' rights and property. (*Grayned v City of Rockford*, 408 U.S. 104, 108 (1972)) ("Man must be free to

steer between lawful and unlawful conduct.") Arbitrary law foils steering. *Chemetco, Inc. v. Ill. Pollution Control*, 140 Ill. App.3d 283, 289 (1986) held: "Abrupt shifts in interpretation constitute 'danger signals.'" Applying "believability (p31b)," the App. Ct. abruptly shifted the legislature's intent. If boards disagree with teachers' judgment, now they may "disbelieve" and label them insubordinate, rather than treat teachers professionally. To avoid loss over an arbitrary statute, teachers will obey orders, shifting a professional paradigm striving for quality education to one suiting "entrenched" boards. *Buchna v. ISBE*, 342 Ill.App.3d 934, 938 (2003) held that *Code/24-A-1,A-5* (p4g) striving for continuous service of good teachers, mandates that boards help teachers improve. Labeling teachers insubordinate when deficient causes turnover, which opposes *Code's* goal. (*Krishna*, 267) (vague statutes unconstitutional)

Petitioner relied on her oath as a mandated reporter of child abuse and EEOC regulations guaranteeing protection from discrimination and retaliation, certain that Illinois authorities would protect her from a retaliatory discharge. *Spangler*, 754 held: "potential for abuse present where a board of education itself decides whether it had just cause to remove a tenured teachers from its employment." Allowing uninvestigated charges to remain uninvestigated enhanced the potential for abuse. Yet, the App. Ct affirmed Officer's restrictions: "In short, Horwitz's complaints that the Hearing officer unfairly limited the record are irrelevant because the evidence she sought to admit and the arguments she sought to make did not and could not refute the allegations made against Horwitz (p22b)." It is relevant that Board never investigated (p.49-50f) allegations arising from orders made with an intent to retaliate, and that Officer refused to hear the legitimacy of the orders, and that neither afforded her substantive due process, to refute unlawful charges. Discretionary evidentiary rulings that eliminate an ability to show the truth of the matter cannot be constitutional when protection from retaliation is owed. *McKennon, 352* held that ADEA "was intended to eradicate invidious bias in the workplace." (*Spangler*, 747, 754-6) (*Code* amended in 1975, adding unbiased hearing officer to ensure lasting service of good teachers) (*M.I.G. Investments,*

Inc. v. Environmental Protection Agency, 122 Ill.2d 392, 400 (1988)(court must address stated purpose of act, especially amended acts) *Id.,* 400 held that "administrative authority derives its power solely from the statute by which it was created." *Sylvester*, 905 held that insubordination can be a "set up." By refusing to judge retaliation, the true nature of the conflict, Officer ignored the purpose of *Code* and federal law. The App. Ct. allowed broad discretion for unlawful limits, which exceeded *Code*'s power and nullified federal law, and supplanted the standard of legislative intent or rationality.

The App. Ct. ruled that proof of Petitioner's insubordination suffices as cause, but evidence that is part of a bogus set up, or a series of retaliatory land mines designed to cause failure, must be considered in the context of the conflict. (*Sylvester,* 904-905) (insubordination can be a "set up") (*Krishna*, 265) ("nullifying Constitution has chilling effect") *Code* became unconstitutional with the Illinois courts' overly broad interpretation. Petitioner's hearing was improper since bogus charges did not matter to Officer (p5-6, 19-20f). If employers may use their power over employees to cause calculated reactions, and if courts may find insubordination when orders are unreasonable, then they may fetter the right to file EEOC complaints. (*Krishna,* 265) (statutes become unconstitutional by construal) Also, if the mere utterance of a claim of retaliation labels a teacher "monstrous," it denies the ability to prove retaliation, and it invites school officials to escalate their acts to ward off EEOC complaints. Using acts too depraved to be believed, boards can inflict prejudice on teachers for discussing these acts. Ordering a teacher to a psychiatrist who diagnoses her uninvestigated accusations of retaliation as signs of "personality traits with paranoid ideas (p22-25f)," is abhorrent, Soviet Union style oppression, not due process. Petitioner had only excellent evaluations (V.24R C5991)(V.30RC7268; 7360; 7369; 7455). She earned tenure, and worked well with her superiors (V.30RC7362) until she filed an EEOC charge (V.24RC6148-51). Damage over accusations created the barriers *Burlington*, 352 prohibits. And unexamined retaliatory orders force teachers into a legal arena, relying on attorneys who make mistakes as did

Petitioner's (p27b). *Balmoral Racing Club v. Illinois Racing Board*, 151 Ill.2d 367, 410-411(1992) held that constitutional rights cannot be acquiesced at an administrative hearing. Technical mistakes that cause property loss, caused by an unconstitutional process, are intolerable damage. Petitioner's rights have been acquiesced by technicalities as if this were a game and Petitioner lost. Officer had a duty to void uninvestigated charges once aware of a lawsuit (p11A,49-50f). Instead he let technicalities of the process damage her. *Gigger v. Board of Fire & Police Com'rs. of E. St. Louis*, 23 Ill. App. 2d 433, 439 (1960) held that the process of an administrative hearing should not show bullying; hearings are to determine truth, not prosecutions. *Id.*, 439: *"*It should never appear, as it does in this case that the procedure was aimed primarily at proving the guilt of the plaintiff."

B. VIOLATIONS OF 1st AND 14th AMENDMENT

The App. Ct. held Petitioner's conflict with Board irrelevant (p21-22b), setting unconstitutional standards for protected speech. *Regents*, 564 holds: "When a violation of First Amendment rights is alleged, the reasons for dismissal or for nonrenewal of an employment contract must be examined to see if the reasons given are only a cloak for activity or attitudes protected by the Constitution." *Id.*, 570 says: "And a weighing process has long been a part of any determination of the "form*"* of hearing required in particular situations by procedural due process." Yet, the Illinois courts heard a case, acutely impacted by Article (p38-42f) with no consideration for the special "form" needed. The App. Ct. said (p19b): "Administrative proceedings do not operate under the same procedural rules as full trials," overlooking substantive due process needed to ensure compliance with the Constitution. *Balmoral*, 411 held that administrative hearings cannot acquiesce constitutional rights. *Rankin v. McPherson* 483 U.S. 378, 388 (1987) holds that speech is not considered in a vacuum. Sanitizing speech from Petitioner's case violated her due process rights; Petitioner's conflict was over speech that deserved protection under the 1st Amendment. Despite the constitutional guarantee for an analysis of speech (p20A, 21-29f) and agreement that an examination is proper (p26fL2-

28fL18), Officer admitted he did not do one (p69-70d). He rationalized his failure to do so saying: "It [Article] largely dealt with her personal issues (p70d)." He erred since he used speech against her beyond Article that needed balancing, and since "her personal issue*"* was age discrimination. *Connick v. Myers*, 461 U.S. 138, 148 (1983) found racial discrimination a matter of public concern. Acts that harm students and incur costs on taxpayers are public issues (p43-48f). *Krishna,* 271 held when a 1st Amendment challenge is raised against a procedure, as Petitioner clearly did (p25-29f), it poses "a serious question of constitutional validity." If Petitioner had a chance to show that a bombardment of unlawful orders was the conflict, and that her protected speech dealt with orders that damaged her and her students, the outcome would be entirely different. The Cir. Ct. held that since Petitioner's unexamined speech was disruptive, it was cause for termination (p9c). Petitioner argued punishing unexamined speech is unconstitutional; nothing was heard to determine if Board concocted charges due to her speech or to balance its content with need. **(***Pickering v. Bd of Educ.,* 391 U.S. 563, 564, (1968)) (must examine speech to see if protected) (*Id.***,** 563) (must balance speech on "content and need") The App. Ct., placing her speech in a vacuum, said: "Even if we were to agree with Horwitz that *resjudicata* should not bar her claims concerning her exercise of free speech, there is other evidence, completely separate from her purportedly protected speech, sufficient to support the Hearing Officer's ruling. Thus, we decline to address this issue (p23b)." This ruling does not comport with due process. (*Rankin*, 388) (speech "is not considered in a vacuum") This should alarm this Court.

Errors of law regarding speech went unchecked. *Givhan v. Western Line Consol. Sch. Dist.*, 439 U.S. 410, 413, (1979) held that speech in private memos is protected, yet, the courts judged Petitioner by her unexamined, private speech. The App. Ct. admonished Petitioner's written speech (p36b), judging her as arrogant, out of context, when an examination would show that she was telling Board she was a voice for other dedicated teachers who could not afford to be fired, and was observing the EEOC's rules on who can file complaints

saying: "In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity." It found her "insubordinate and unprofessional" for her private memos calling colleagues "Stepford teachers and quislings" without reviewing the conflict or applying law that protects private speech (p36b). Officer also prejudged Petitioner over speech (p20Bf) and said, regarding her private memo complaining about administrative dishonesty: "If calling a superior a liar is an act of insubordination, and I am inclined to think that it is, regardless of the provocation, it is no defense to show the lie or lies, and I will not hear such evidence (p19-20f)." Yet, *Regents*, 564 says courts must examine for pretext, the foundation of which is lying, which is integral to retaliating. Barring a defense to show lies, barred a defense to show retaliation (p19, 20f). The App. Ct. affirmed Officer's bar of evidence on the topics in Petitioner's speech. (p3-4, 25-29f) (V.17RC4115-9) saying the truth of the matter need not be determined. A proper balance of need and disruptiveness was thus unachievable in conflict with *Pickering*, 563-564, which held courts must examine speech to see if protected and *Id.*, 563 holding courts must balance speech on content and need.

More disturbing, Officer misrepresented Article (p38-42f) as not part of Board's charges against Petitioner (p69-70d), when Officer, himself, said it was (p17A, 21f) and it dominated the record (p18,19f). Board Psychiatrist Fink based the following on her Article (p22-25f) (V.4RC938): "Her deliberate and self-destructive undermining of those relationships with little factual basis appears to be the result of something deeply rooted (p77d)." Officer, relying on Fink's view derived from Article, wrongly found Article, the cause of her demise, unworthy of an examination and irrelevant (p35d). *(Hazelton, 351)*("findings must be based on record") Despite alarming errors, the courts focused on cause to terminate (p30b), ignoring pretext for retaliation over speech or retaliatory discharge. The App. Ct.'s reliance on "facts" derived from an inadequate record and its misapplication of the doctrine of res judicata on retaliatory discharge (p22-23b), robbed Petitioner of her good name.

(*Regents*, 573)(right to good name) Petitioner had argued (p14-18e) diverse actors and diverse cause of action and that the determination of property rights was outside the federal court's jurisdiction, citing *Vargas-Harrison v. Racine USD,* 272 F.3d 964 (7th Cir. 2001) holding: "the district court's dismissal of a 1st Amendment case does not moot a procedural due process claim since property rights must be guaranteed." The App. Ct.'s res judicata ruling (p23b) (p15 herein) opposes *Vargas*. This Court must decide if a doctrine intended for judicial economy may eliminate 1st Amendment claims at such a hearing because "other evidence" exists.

Further misapplication of law is vital to note since the radical nature of these errors shows zeal to establish cause to avoid applying federal law, opposing McKennon's intolerance for employers' evasion of federal law. *Code/24-5* (p4g) allows boards to order teachers for fitness for duty exams by licensed physicians to protect students from unfit teachers, not for silencing dissent. Using Board's documents (p22-25f) rather than a full and proper investigation, Fink decided Petitioner was "imagining" retaliation. Serving more as a lawyer than a doctor, he used Petitioner's lack of specificity about teacher abuse at Avoca as proof she imagined it. Judging Petitioner on *lack of facts* caused by his power to control questions and keep facts out is an explicit violation of *Code's* guarantee for an impartial hearing. Consider this: Board imposed Fink on Petitioner despite her appeal for an unbiased doctor (V.31RC7605-10). Fink admitted he violated (V.4RC967 L1-968L2) Petitioner's release, admitted he used only Board documents (V.4RC984L22-985L19); and admitted bias: "It's hard for me to be completely objective because of my involvement in this case (V.4RC0909)." Yet oddly, Officer found Fink unbiased (p36b)(V.37RC9137-8). (*Sylvester,* 904-905)(courts must find "set up's") *Caviness v. BOE. of Ludlow CUSD No. 2,* 59 Ill. App. 3d 28,31(1978) says procedures cannot "obliterate protections of statute." (*Regents*, 572)(liberty guaranteed) *Burger v. Lutheran General Hosp.* 198 Ill. 2d 21, 51 (2001) held: "unreasonable invasions of privacy are constitutionally forbidden." Yet, the App. Ct. approved Officer (p36b) expanding *Code§24-5*

(p4g) beyond the legislature's intent to where it evaded Petitioner's privacy. It held Petitioner insubordinate for refusing medically invasive orders based on Officer's excuse (p87d): "[the exam] gave rise to questions as to whether Mrs. Horwitz had a more serious condition that she was attempting to hide," when Fink testified: "[Petitioner] was clearly very bright and that in terms of her behavior she had it pulled together (V.4RC985L12-14)." It is indefensible to order medical treatments for "pulled together" teachers; it opens disturbing doors. Taken to its logical extreme, there would be no end to the type of intrusive examinations and procedures performed on teachers. As it is, Board ordered Petitioner to discuss her sex life as part of Fink's "exam" he shared with Board, adding sexual harassment to the weapons available to ward off EEOC complaints; this act, born from unbridled power, damages far more than *Burlington*'s bad Christmas.

What's more, Fink put the object of Petitioner's EEOC complaint (V.25RC6079-98), Supt., in charge of monitoring Petitioner's *need* for medical care based on if Supt. observed a "continuing perception of harassment," employing intimidation to stifle EEOC complaints (p35d). Officer's cavalier reply to Petitioner's claim that only Board can legally order an exam exhibits disregard for the law (p85d): "These are distinctions without a difference. Higher authority is higher authority; if Horwitz' inaction was due to her waiting for the Board to order the examination, there could be no argument that she was refusing Sloan's directive, clearly insubordination." But there is a difference when orders are retaliatory, and teachers need protection. If a refusal to follow unlawful orders, after found fit for duty, is cause to terminate, as the App. Ct. held (p36b), when no finding of retaliation took place, Illinois Courts have honed a menacing tool for boards. This Court must limit courts to what statutes allow and ban scheming boards from medically infringing upon fit teachers. This case gives this Court insight into why attracting and keeping quality teachers is problematic, and certain to remain as such unless this Court uses its supervisory authority to order "entrenched resistant" boards (p37f) and States to comply with the law. *Rankin,*388

held: "It is clearly established that a State may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom of speech. We have also determined that speech alleging illegal misconduct by public officials occupies the 'highest rung of First Amendment hierarchy.'" Broad discretion moved evasion of discrimination laws to the highest rung. The rulings herein on our nation's most cherished right (p17A-29f) are appalling.

Round Lake, 113 held that an administrative hearing must uphold guidelines that comply with due process under the 14th Amendment. Violations of speech and refusal to hear retaliatory discharge caused a lack of substantive due process. (*Jorman,* 1418)("agency's failure to consider data is arbitrary and capricious if it entirely fails 'to consider an important aspect of the problem' ") *Zuber v. Ill. Power Co*., 135 Ill.2d 407, 416 (1990) said rulings cannot "frustrate the manifest legislative intent." The App. Ct. said due process was met because the record of the hearing contains hostility (p19b), ignoring that Officer refused to consider any evidence pertaining to the retaliatory acts of her superiors, which Petitioner could have shown included orders and acts designed to single her out, humiliate her, burden her with duties, bully her until stress broke her down, prejudice her colleagues, and create a hostile work environment with orders that would cause her to resign or if that failed, appear insubordinate. Petitioner's argument has been that Officer stated explicitly he would not consider evidence regarding administrators' treatment and that he denied corroboration to that which slipped in such as the Union Director's testimony: "I thought the district was making [a] very bad mistake by what we saw as a kind of vendetta against Karen for filing a suit (p7f)." *People v. Badoud,* 122 Ill.2d 50, 62-63 (1988) held that "deciding due process requires balancing three considerations." One is the risk of erroneous deprivation: an employee's opportunity to respond must be adequate enough to prevent deprivation. His rulings, denying Petitioner an affirmative defense showing the true nature of the charges against her, denied substantive due process since what made the record, remained uncorroborated and ignored. The App.

Ct. ignored the heart of her claim by trivializing the law and focusing on partial evidence and *facts* born from a process in conflict with the Constitution. It had a duty to respond to Petitioner and rule on Officer's construal of *Code*; facts are irrelevant if Officer failed to follow the law to form them and made an incomplete record for the court.

The App. Ct. erred finding that Officer considered what he avowed he would not hear, and stated he did not consider and in finding evidence crucial to Petitioner's defense immaterial, such as colleague Lanners' testimony (p12-17, 36f)(p21-22b). It should have been considered and not limited since it was critical testimony to corroborate her claim of retaliatory firing. Lanners knew that Principal: bullied teachers into not filing EEOC charges; targeted Petitioner with discriminatory orders to silence her; fomented discord amongst staff to turn them against Petitioner; and persistently fabricated incidents. Officer barred Petitioner from asking Lanners questions material to her defense. And what is in the record, but not considered, amounts to the same injustice as if it had never entered the record, resulting in erroneous deprivation. (*Levenstein v. Salafsky et al.*, 164 F.3d 345, 351 (7th Cir. 1998)("excluding a full hearing on civil rights lets the state eliminate property rights at whim") *Wainscott v. Henry,* 315 F. 3d 844, 854 (7th Cir. 2002) held that the mayor's lack of meaningful investigation before firing *Wainscott* failed to comport with due process. This Court must decide if Board's undisputed refusal to investigate discrimination and retaliation (p37, 49-50f), which subjected Petitioner to damaging orders, then forced her into a damaging legal procedure, violates due process under the 14th Amendment, or if the responsibility lies with Officer, or both, in light of *Burlington*. The Illinois legislature added a hearing officer to the termination process in 1975, because as *Spangler*, 755 said: "the legislature clearly concluded that local boards were not always disinterested nor impartial and, therefore, were unable to afford the necessary process required prior to dismissal of a tenured teacher." Since Board had a motive to retaliate against Petitioner, an investigation was needed. *Stull v. Depart. of Child, & Family Serv.,* 239 Ill. App.3d 325, 333 (1992): "The

purpose of judicial review of an administrative agency's decision is to keep the agency within its statutory grant of authority and thus guard the rights of the constitution and statute." *Buchna*, 938, speaking on *Code/24-A-1, A-5* said boards must properly evaluate to help teachers grow. Board and Officer opted out of their duty to *Code* (p11A, B 49, 50f) and federal law. This decision makes law elective, creating a *retaliatory insubordination plan* for teachers who assert rights.

Further*, Bd. of Educ. of Chicago v. State Bd of Educ.,* 113 Ill.2d 173, 196-197 (1986) held that signs of cover up are relevant and *Sylvester,* 904-905 held that evidence is needed to see if an employee was set up to appear insubordinate. (*McGee,* 490)(courts must protect statutorily protected rights) Officer, misled the courts (p5-6f) about his ban on an ability to show arbitrariness by opining (p85d): "Unless it could be shown that [Supt.] Sloan's directive was arbitrary, she had no right to disobey," and (p101d): "The burden of proving that matter [retaliation] must lie with Mrs. Horwitz. She has failed to show that the attention devoted to her, the great amount of memos and meetings, etc. were for any purpose other than legitimate bureaucratic self-protection." Officer's deception and focus on bureaucratic need to guard against complaints rather than on Board's duty to prevent retaliation demonstrates bias and intolerable ignorance of the law that departs too far to leave standing; self-protection to crush dissent is not legitimate. *Sylvester*, 904-905 says when retaliatory discharge is raised, it is the duty of the courts to look for "pretext." Officer's false assertions, his finding Fink unbiased (p17 herein), and the altered documents in the record, discussed below, are suspicious acts that conflict with the App. Ct's finding of "no signs of conspiracy (p27b)." *Sylvester,* 904-905's holding that courts have an obligation to uncover "set up's" applies to Officer and ISBE as well as Board. (*Gigger*, 439)(*"*It should never appear, as it does in this case, that the procedure was aimed primarily at proving the guilt of the plaintiff.") Officer blocked Petitioner from cross examining Board (p33A-35f) regarding Forgery #1's

(V.37RC9090-1) obstructed text[1] that showed Board's disregard for the public it serves (p36f)(V.27R C6653-V.28 RC6875) based on content and likely tampering with public documents. Since the App. Ct. found Petitioner's conflict with Board [retaliatory discharge] "irrelevant," it held obstructed text as "not probative of the issues presented in the case (p25b)." However, it is probative of the issues needed to comply with due process and uncover "set up's."

Also, the conflict between the App. Ct.'s interpretation of "shall*"* in this case (p23b) and the Illinois Appellate Court Third District's interpretation of "shall*"* in *Stull,* 332 as well as in *Buchna*, 938 is so extreme that only an agenda to find Petitioner guilty or an attempt to find cause to avoid federal law could explain it. Petitioner argued that Officer's late decision violated *Code/§34-85* (p4g) and her due process rights under the 14th Amendment, making it invalid. (*Zuber, 416)*(statutory violations cause erroneous deprivation) Time limits ensure a process cannot be made arbitrary. (*D'Acquisto v Washington*, 640 F.Supp. 594, 618 (N.D.Ill. 1986)) (delays require the same due process balancing acts as other issues). The App. Ct. replied that *Stun v. Depart. of Child, & Family Serv.,* 239 Ill. App.3d 325, 332 (1992), meaning *Stull,* held that "shall*"* is directory, or discretionary, not mandatory (p23b) when a review of *Stull* supports Petitioner's claim that *shall* is mandatory. *Stull*, 333 says: "Thus the word 'shall' may be held to be merely directory only where no advantage is lost, no right is destroyed, and no benefit is sacrificed, either to the public or to any individual." *Id.*, 332, held: "The purpose of judicial review of an administrative agency's decision is to keep the agency within its statutory grant of authority and thus guard the rights of the constitution and statute," and "The failure to comply with a mandatory provision of a statute will render void the proceeding to which the provision relates." *Id.*, 332 continued: "This is particularly true where the agency's non-compliance with its own rules

[1] Text removed from a letter to Board said: "Throughout the years, past experience has shown that what the parents want and what the children need is not important…it is what [Supt.] Dr. Sloan wants is what goes."

prejudices one who is subject to the authority of the agency" and "determining whether a provision is mandatory requires examining the statute's intent." *Id.*, 335 "We think it follows that a gross deviation from those time limitations would be deemed to be unreasonable and contrary to the legislative intent, evidenced by the setting of time limitations, that the agency act in a reasonably timely manner." *Id.,* 333 held that statutes prescribe conduct to safeguard rights *"*which may be injuriously affected by failure to act within the specified time as mandatory." *Buchna*, 938 applied this argument to *Code* holding therein "shall" means mandatory since: "By using both the words 'may' and 'shall' in adjoining sentences, the legislature demonstrated independent signification of permissive and mandatory scenarios." A choice for a late decision is unconstitutional on its face since it is not an option in *Code*. *Jones v. General Superintendent of Schools*, 58 Ill. App.3d 504, 507 (1978) also on *Code*, says: "A tenured teacher is entitled to a construction of the tenure laws consistent with the prime purpose or object." *Jones,* 507 held: "because the statute in question is designed to expedite the disposition of charges against an employee and to protect the employee from arbitrary and capricious delay by the Board, the procedures and time periods set forth in the statute should be interpreted as mandatory rather than directory.*"* *Jones*, 508 held: denying *Code*'s protection damages teachers; any remedy to changing a statute lies with the legislature, not the courts; and boards lose authority to dismiss teachers by failing to follow *Code*, a precedent the App. Ct. disregarded. It is well settled that statutes are to be followed explicitly or a system becomes arbitrary. *Caviness*, 31 held: "procedures cannot obliterate statute's protections." ISBE ignored *Code*'s mandate to promulgate uniform standards and feigned no remedy (V.37RC9116-8). It stated in its 3/28/02 letter to her that it could not guarantee Officer would return the record, implying that either she stick with Officer or create a new record. However, *Code§34-85* (p4g) mandates that ISBE remove Officer, who exceeded *Code*'s time limit and broke his promise to render a decision three times (V.38RC9390; 9393; 9399; 9402). The stalled process and Petitioner's fear of having to start over impelled her to use a letter writing

campaign that prejudiced her case (V.38RC9389-9421). On 6/5/02, ISBE threatened to sue Officer (V.35RC9139-0); this impelled his decision. Board backed Petitioner's argument that a late decision was unfair (V.35RC8515-6; 8532), "neither party should be placed in the position of probing the reasons for delay." The App. Ct.'s finding that a late decision caused no prejudice (p24b) is seriously in error. *Horwitz*, Petitioner's federal case, decided in 2000, held that Petitioner was not fired over speech, thus denied a trial, when it turned out she was fired over many speech issues. Had Officer rendered a timely decision, in 2000, Board could not have prevailed at summary judgment. A manipulated 2002 decision let Board and ISBE apply res judicata and fire Petitioner over speech.

Condoning a late decision that infringed her rights opposes this Court's position in *McKennon*, *Burlington*, and *McGee,* which forbid workplace retaliation as well as established law on protected speech. Also, if an agreement to a late decision (with rights preserved) (V.35RC8562) relieves the ISBE of its constitutional duty, it allows the ISBE to rewrite the law and randomly put teachers in a holding pattern so they will relinquish their rights, which should be estopped. (*Geddes v. Mill Creek Country Club*, 196 Ill.302, 314, (2001))(cannot trick other party into a loss) (*Krishna*, 265) (Laws permitted to become arbitrary are unconstitutional) *In Re Consolidated Objections to Tax Levies,* 193 Ill.2d 490, 496 (2000) held that a departure from the plain language that reads meaning into a statute other than the expressed intent is not a proper standard and *Id*., 500 held that a court considers each provision of a statute in connection with every other section. Late decisions oppose continuous service of good teachers. Nor can Petitioner's manipulated consent for a late decision relieve the mandate to protect public interest, the reason for observing statutes as written. Parents begged for Petitioner's return (p43-48f). Since the legislature provided constitutional alternatives, ISBE cannot give Petitioner unconstitutional choices that violate her due process rights under the 14th Amendment or the public's interest. (*Jones,* 508)(court has "duty to apply the strict standards" of *Code*). Courts must attach suspicion to acts that wear down opponents and stray

from settled law. *Citizens Environment v. Ill. Pollution Bd*. 152 Ill. App.3d 105, 112 (1987) held an official with an "unalterably closed mind in matters critical to the disposition of the proceeding shows convincing evidence of administrative irregularity." The engineered outcome that shows bias, caused prejudice. It is obvious who caused the shameful, threatening letter (V.35RC9139-40) sent to Officer. Only Petitioner (and students) stood to lose if no decision was rendered as Board was rid of Petitioner with no decision. Petitioner triggered a hearing to escape a retaliatory employer. (*Weed*,1019)(can trigger hearing) (V.32RC7893-5) Forgery #2, a document altered while in ISBE's hands to remove Petitioner's accusations of unlawful acts in Special Education, signaled that she had best agree to a late decision, secure her record and escape from game playing ISBE. She wrongly believed a real court would not affirm the justice obstructing acts of ISBE's kangaroo court since permission to manipulate *Code* erodes *Code*, *Jones, 507.* Since trampling teachers' rights, thus those of students and taxpayers, was immaterial to the Illinois Courts, Petitioner took this to this Court. Case law, statutory interpretation and history, and a reasonable and just reading of that provision of *Code* itself do not justify the App. Ct.'s findings that nullify federal statutes.

Also, *Geddes*, 314 and *Byron Com. Un. Sch. Dist. v. Dunham-Bush*, 215 Ill. App. 3d 343, 348 (1991) held that reasonable reliance on another party is the standard for estoppel. The App. Ct., in conflict with settled law, raised the standard for estoppel to "under official order" of the other party when *Grayned,* 108 held that laws cannot be arbitrary. It is undisputed that Petitioner's disclosure of her personal audio tape ("Tape") to Board members was the act that deprived her of her right to personal use of Tape and caused a ruling of insubordination (p81d)(p33b). The App. Ct. ruled that since the two Board members, who listened to Tape did not officially order Petitioner to play Tape, the Respondents were not estopped from causing Petitioner's shift from a right to Tape for personal use to a charge of being in possession of a student record. It correctly stated that Petitioner made Tape to show teacher abuse (p33b), discounting that retaliation,

held unlawful by *Burlington*, 352 and *McGee*, 490, is a form of teacher abuse. By sending Board members to Petitioner's home to feign concern about harm occurring to Petitioner and her students, Board tricked her into playing Tape for them. Petitioner "reasonably relied" that they had authority to know of and intent to stop unlawful retaliation that was harming children (p31A-33, 43-48f), unaware that playing Tape for them could turn it into a student record, and allow Board to establish insubordination. Had she held it to use in court, permissible prior to her playing Tape (p33b) (p81d), the opportunity to use an order against her would not exist. The App. Ct.'s ruling conflicts with *Geddes*, 314 holding that a party must be estopped from deliberately causing another party to fail. Citing no authority, the App. Ct. changed the doctrine of estoppel that case law has held for hundreds of years. *(Krishna*, 265)(Laws permitted to become arbitrary are unconstitutional.) Also, Petitioner only needed Tape because Board failed to provide protection from her administrators (p49-50f)(V.36RC8986-90); property loss has occurred over denied protection as well as capricious interpretations of law.

Sylvester, 902 held that protection from retaliation calls for an examination of pretext. The App. Ct.'s reference to teacher abuse as "her own interest (p33b)*"* and its rulings conflicting with precedent are startling given the likelihood of retaliation with this set of facts.[2] The App. Ct.'s sanction of a new standard for estoppel, placing charges built on entrapment in reach of boards, has so departed from the usual course of judicial proceedings, this Court needs to intervene to preserve judicial integrity. *In re Lieberman*, 201 Ill. 2d 300, 307, (2002) held: "the legislature did not intend inconvenience, absurdity, or injustice, in its enactment of legislation," all elements herein. After evading his duty to decide, Officer misled busy courts by cleverly disguising and thus muting the scope of the case in his decision. Officer told Petitioner to take her case to a higher court if she disagreed (p5-6f), but used his power to obstruct her. An officer who

[2] Petition asks this Court to take judicial notice of academic research on teacher abuse in *Breaking the Silence*, by Drs. Blase (V.36RC8810-8830).

disrespects *Code* and the rule of law, and misleads higher courts must not succeed. *Greer v Ill. Housing Author.,*122 Ill.2d 462, 505, 497 (1988) held agency actions can be "set aside due to arbitrariness." It is time a court rules on the rulings that decided the process and consider ulterior motives for stalling the decision: fear that his rulings could not survive an appeal or Petitioner's federal case. (To this day, no court considered evidence about a scheming board.) Officer assumed that Petitioner would persist; he aptly noted (p35d): "Horwitz portrays herself as a champion of students' welfare and a leader against the fight over age discrimination at her school." She remains dedicated to this cause. He had motive to hide a decision that echoed *Dred Scott v. Sandford*, 60 U.S. 393 (1857), a blemish on this nation, holding that African American citizens were unworthy of rights afforded white citizens. This case holds teachers unworthy of rights afforded other employees, also creating an underclass. Not publishing this case ensures that many teachers will remain in the destructive cycle described herein due to confusion over law, as will their unfortunate students. The future of our schools now lies in this Court's hands. For the sake of all effected by the education system, including children who suffer from the collateral effects of retaliatory discharge, Petitioner respectfully requests that this Court serve in a supervisory capacity to clear up a disturbing decision that permits States to eliminate a retaliation defense and thus use retaliatory orders to deprive excellent teachers of property, and to settle serious conflicts within Illinois Courts to safeguard due process for hearings.

III. CONCLUSION

In a news article about Petitioner's federal lawsuit, some young teachers called Petitioner "disruptive," advising her to resign if "unhappy" (V.35RC8530), when what made her "unhappy" was age discrimination, retaliation and its harm to students (p38-42f). Petitioner believes protecting teachers and thus children is patriotic. *Davis v. Monroe County Bd. of Educ.,* 526 U.S. 629 (1999) held children cannot be denied education on a discriminatory basis. Retaliating against teachers places unlucky students in the line of fire used to

cause these teachers to fail. Targeted teachers become preoccupied with fending off damages, and coping with classes "stacked" with unruly students. Board's agenda of using students as pawns (p1B-3f, 43-48f) is a precursor for school violence. Yet, the rulings in this case show the Illinois Courts agreeing with those teachers. However, this Court's prior rulings contradict her colleagues' advice of job loss to remedy discrimination. Petitioner relied on the EEOC's promise as posted at her school, to protect her from retaliation and its inevitable damages including property loss. Officer's ruling that unlawful acts of administrators are not a defense in a termination hearing turned a promise into a trap. (*Grayned,*108)("Man must be free to steer between lawful and unlawful conduct") This country needs an authoritative voice to settle this and publish its decision to prevent the harmful effects of widespread confusion about federal law as it pertains to teachers, which includes fear of speaking about practices in schools that hurt children, despite oaths to report abuse and adhere to constitutional law. Rules not enforced by the EEOC invite serious damage to teachers exposed by participating in protected activity. For the sake of similarly situated teachers and students, Avoca must serve as an example; uninvestigated charges must be held invalid. (*Round Lake,* 107-108) (unreasonable charges void) Reporting discrimination in good faith to Board after years of enduring and witnessing such, should not result in retaliatory discharge. This Court needs to protect the integrity of education and the law and use this opportunity to clarify the law as it pertains to school boards in light of its position on discrimination, retaliation and free speech.

Unpublished, the few attorneys who discover that process to determine retaliation is optional at a termination hearing will begin warning teachers against filing EEOC complaints or speaking of such. Most will not find this case, and will continue to advise teachers of their statutorily protected rights, at the peril of teachers and students. Before finances required Petitioner to proceed pro se, many attorneys advised her that she need not obey retaliatory orders (V.38RC9359-64). Officer held, "The fact that she may have acted on the

advice of counsel is no defense (p89d)." If his rulings are proper, this Court needs to publish his rulings to guide attorneys so they can preserve their clients' property unlike Petitioner's who failed to protect her property. (*Grayned,*108) (guaranteed freedom to "steer between lawful and unlawful conduct") Or, if this Court agrees that teachers' statutorily protected rights are not discretionary and Officer is incorrect, it must order States to hear sufficient testimony during termination hearings to ensure orders to which teachers are held insubordinate are not retaliatory, and bar discretionary rulings on such issues. Boards' motives for orders after teachers raise constitutional complaints must be "on trial*"* or retaliation is advanced. No teacher should experience the damages inflicted on Petitioner, yet many have. Teacher Stories at *EndTeacherAbuse.org* verify boards' unchecked use of retaliatory discharge. The serious conflicts of law, potential for a widespread erosion of rights in other States, and high costs to society make this vital to review; children will remain vulnerable without widely known findings. Petitioner asks this Court to take judicial notice that the union (NEA) denied representation for her appeal; unions discard targeted, not deficient teachers. The balance of power is far too skewed for this to settle in time. This case is a chance for this Court to cure serious systemic discrimination problems.

In view of the widely known problems of our failing public schools, Petitioner brought this case to the highest court for the same reason she became a teacher: to make a difference. This Court cannot expect to see a teacher put forth this effort anytime soon because the costs in time and money are vast given boards' tax subsidized power to bury adversaries with documents such as Officer's 67 single-paged decision required in this petition and the more than 10,000-paged record. Also, it entails learning the law to file pro se as attorney fees are prohibitive. This is a rare opportunity for this Court to examine the public school system from a new perspective, wary of broad discretion, which has allowed the rulings in this case to stray far from the U.S. and Illinois Constitutions. In his concurring opinion in *Schaffer v. Weast*, 546 U. S. 49, 126 S. Ct. 528, 537 (2005), Honorable Justice

Stevens said: "I believe that we should presume that public school officials are properly performing their difficult responsibilities." However, when dealing with entrenched resistors, which this case shows, a presumption of good faith eliminates the crucial checks and balances needed to detect improper acts that hinder enforcement. A critical examination of this present case shows officials fostering power rather than serving children, a fundamental reason that education reform fails. Boards advance retaliatory discharge of teachers due to their privileged ability to evade the law using taxpayers' funds for litigation few private businesses, much less teachers, could afford. Thus, few teacher discrimination cases advance high enough to allow this Honorable Court a role in repairing defects in our schools stemming from their resistance to law. Nor do many find justice. *Settlegoode v. Portland Public Schools*, 371 F.3d 503 (9th Cir. 2004) is a rare case in which a targeted teacher prevailed. *Moser v. Bret Harte Union High School*, 366 Fed. Supp.2d 944 (E.D. Cal. 2005) is a rare example where a court sanctioned a legally finagling board, an appeal Petitioner had to forgo due to space limitations on appeal, not on its merits; it is no accident that teacher mistreatment is almost unknown. Abuse of power is fundamental to school failure; broad discretion has become a weapon of mass destruction in our schools. The "if it ain't broke don't fix it" theory cannot apply to an institution widely recognized as broken. Since public education is the great equalizer, when courts misapply law in education, as in this case, they contribute to the dismal status quo that denies our society quality schools. On behalf of all teachers, children, parents, and taxpayers, who are powerless to effect change and are losing in so many ways due to public schools that operate above the law, Petitioner prays that this Honorable Court will grant this writ of certiorari and bring the full weight of its authority to bear to inject wisdom and rule of law, both profoundly missing, into our failing education system, systemically mired in "entrenched resistance," and thereby compromised in its ability to perpetuate the core democratic values of our society.

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