CAUSE NO. _____

S.O.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
v.	§	
	§	
UNIVERSITY OF TEXAS AT AUSTIN	§	
PRESIDENT,	§	**____JUDICIAL DISTRICT**
GREGORY L. FENVES, *et al.*	§	
DEFENDANTS,	§	
(in their Official capacities only.)	§	**TRAVIS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, REQUEST FOR TEMPORARY INJUNCTION, REQUEST FOR PERMANENT INJUNCTIVE RELIEF & JURY DEMAND

To the Honorable Court:

Plaintiff S.O. files this as her Original Petition, Application for Temporary Restraining Order, Request for Temporary Injunction, Request for Permanent Injunctive Relief, and Jury Demand, complaining of the University of Texas President Gregory L. Fenves, University of Texas Board of Regents, University of Texas Registrar Vincent Shelby Stanfield, University of Texas Dean of Students Soncia Reagins-Lilly, and University Professor Jeana Lungwitz, each in their official capacities.[1] Plaintiff S.O seeks declaratory and injunctive relief from the Court, and in support she states the following:[2]

1. This case involves both the ability of the University of Texas to attempt to revoke Plaintiff's 2008 PhD degree in Organic Chemistry as well as the constitutionality of the University's disciplinary procedures as they are trying to enforce them against its graduate. Without immediate Court intervention, S.O. will be forced to fight to keep her

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[1] This Petition and Application for TRO is verified by S.O. *See* Tex. R. Civ. P. 682. Proposed orders are submitted to the Court with this filing.

[2] Plaintiff has been engaged in this protracted disciplinary process for four years now, as the original allegations of misconduct were made in 2012.

hard-earned degree before a panel of three undergraduate students and two University faculty members—none of whom are qualified to evaluate the scientific evidence being used against S.O. A "hearing" has been scheduled over her objections for March 4, 2016.

2. The University simply does not have the authority to do so, absent the filing of a lawsuit against S.O. And, if in fact the University does have such authority, under relevant law, S.O. has a constitutionally protected property and liberty interest in her PhD. The University should not be permitted to so cavalierly attempt to take it away. S.O's scientific career—and her livelihood—hinge on how a panel of undergraduate students review and interpret highly complex scientific data at the doctoral and post-doctoral level in organic chemistry. At the outset, the University's intended proceedings clearly demonstrate the panel will either be delving into an area in which they are unqualified to judge or that the University's student justice panel is a kangaroo court that affords S.O. neither due process nor justice. The Court must grant the requested relief so that S.O. is not stripped of her constitutionally protected property and liberty interests without the due course of law, due process and equal protection of the law. Finally, given that the University cannot by long-standing precedent remove a degree without resort to the Court, this Court must enjoin the proceedings.

I. DISCOVERY CONTROL PLAN

3. Plaintiff intends to conduct discovery under Level 2 of Tex. R. Civ. P. 190.3.

II. PARTIES

4. Plaintiff S.O. is an individual who is a non-resident of the State of Texas. She may be reached by contacting her undersigned counsel of record. Plaintiff is referred to here by her initials "S.O." for purposes of privacy protections under Family Education Rights and Privacy Act ("FERPA").

5. Defendant Gregory L. Fenves is the President of the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

6. Defendant Vincent Shelby Stanfield is the Registrar at the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

7. Defendant Soncia Reagins-Lilly is Dean of Students, Sr. Associate Vice-President for Student Affairs of the University of Texas at Austin. She has been sued in her official capacity and may be served with process by certified mail to the Attorney General's office.

8. Defendant Jeana Lungwitz is a Clinical Professor and Faculty member of the University of Texas at Austin School of Law. She is sued in her official capacity and may be served with process by certified mail to the Attorney General's office.

9. Defendant Paul L. Foster is the Chairman and Member of the Board of Regents of the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

10. Defendant R. Steven Hicks is Vice-Chairman and Member of the Board of Regents of the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

11. Defendant Jeffrey D. Hildebrand is Vice-Chairman and Member of the Board of Regents of the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

12. Defendant Alex Cranberg is a Member of the Board of Regents of the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

13. Defendant Wallace L. Hall Jr. is a Member of the Board of Regents of the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

14. Defendant Brenda Pejovich is a Member of the Board of Regents of the University of Texas at Austin. She has been sued in her official capacity and may be served with the process by certified mail to the Attorney General's office.

15. Defendant Ernest Aliseda is a Member of the Board of Regents of the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

16. Defendant David J. Beck is a Member of the Board of Regents of the University of Texas at Austin. He has been sued in his official capacity and may be served with the process by certified mail to the Attorney General's office.

17. Defendant Sara Martinez Tucker is a Member of the Board of Regents of the University of Texas at Austin. She has been sued in her official capacity and may be served with process by certified mail to the Attorney General's office.

18. In this Petition, unless individually named, Plaintiff S.O. refers to these individuals as the "Board of Regents," and as to *all* Defendants collectively as "University Officials," or "the University." Each of these Defendants is acting under the purported authority of the Board of Regents which is constrained by the Legislative grant of authority in Tex. Educ. Code § 65.31.

III. JURISDICTION & VENUE

19. Venue is proper in this Court under Tex. Civ. Prac. & Rem. Code § 15.002, because all or a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in Travis County, Texas.

20. The Court has personal jurisdiction over the Defendants because they are residents of and/or operating business in the State of Texas subject to the Court's general jurisdiction.

21. Pursuant to Tex. R. Civ. P. 47, at this time Plaintiff S.O. seeks declaratory and injunctive relief, as well as attorneys' fees and expenses pursuant to Texas law. In short, she seeks declarations that the University Officials are attempting to act outside of their authority because they may not attempt to revoke her degree outside a court of competent jurisdiction; a declaration that she has constitutionally protected property and liberty interests in her PhD which may not be taken away from her without due process and equal protection of the law; and that the University be enjoined from its intended

disciplinary proceedings because doing so would be in violation of Texas law and the Texas Constitution.

22. The Court has subject matter jurisdiction over S.O.'s claims because a plaintiff can maintain a lawsuit against a state official in her official capacity if it seeks injunctive relief from a governmental entity to remedy a violation of the Texas Constitution. *See City of Elsa v. M.A.L.*, 226 S.W.3d 390 (Tex. 2007). Suits for equitable remedies for a violation of constitutional rights are not prohibited by immunity. *Id.*; *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995). S.O. alleges claims arising from unconstitutional conduct, *ultra vires*, by government actors, seeking to require them to comply with statutory or constitutional requirements of due process. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). *Ultra vires* suits do not attempt to exert control over the State—they attempt to *reassert* the control *of* the State. *Id*. at 373. Further, these types of suits cannot be brought against the State, which retains immunity, but must instead be brought against the State actors in their official capacity. *Id*.

IV. FACTS AND BACKGROUND

23. This case is another chapter in the University's pursuit of disciplinary proceedings against S.O. for allegations of misconduct when she was a graduate student conducting research for her PhD. They intend to revoke[3] her PhD, making her the sacrificial lamb to protect its tenured Prof. Stephen Martin. The University has made it abundantly clear that it is willing to sacrifice the good name, reputation, and integrity of S.O. for the sake of Prof. Martin. Rather than have Prof. Martin admit his own errors and

[3] Although the University has initiated "disciplinary proceedings" against her, which in theory means there is a full range of potential sanctions and/or penalties that the University may decide to impose upon a finding of misconduct, the University has shown its predisposition to revoke her degree. They previously revoked it, but after a lawsuit, immediately reinstated it for a do-over.

shortcomings as a graduate advisor, research chemist, and author, the University has embarked on years of secret investigations as it attempts to revoke S.O.'s PhD for what may be a subjective error in scientific judgment. The entirety of her professional career is now contingent upon three scientific test results, and how they were interpreted and/or reported. At this point, the Court must intervene to put an end to this persecution.

24. As of this filing, the University has indicated its intention to move forward with a hearing on **March 4, 2016** at 9 a.m. The Dean of Students' Office has stated this will take place before a panel of students appointed by Soncia Reagins-Lilly, Sr. Associate Vice-President for Student Affairs of the University of Texas at Austin. She has also identified Professor Jeana Lungwitz, a clinical professor of family law, as the "foreperson" of the student panel. Prof. Lungwitz has specifically (a) overruled objections to her qualifications based on an apparent conflict under legal ethics rules and (b) determined a question of law in an arbitrary and capricious manner such that S.O. is being denied due process.

25. It is important for the Court to understand how the parties got here. In the following sections, S.O. sets forth (1) a brief explanation of her research as an organic chemistry graduate student; (2) a discussion of how her PhD dissertation was used for a subsequent journal publication by Prof. Martin and another student; (3) the allegations of misconduct and the inherently skewed University investigations to date; (4) the results of previous TRO litigation against the University; and (5) the current state of the University's mission and how its disciplinary proceedings violate S.O's constitutional rights.

A. 2003-08: Plaintiff Was a UT Graduate Student in Organic Chemistry Working Under the Supervision of Prof. Martin

26. S.O. enrolled at the University of Texas at Austin in 2003 and graduated in 2008. After years of research during 2003-08 timeframe, she earned and was awarded her Doctor of Philosophy (PhD) degree from the Department of Chemistry. She worked under the supervision, guidance and mentoring of her graduate advisor Prof. Stephen Martin. He was responsible for advising her throughout her research, to approve her experiments, to discuss/analyze the results, and to help prepare her for presenting her work to the dissertation committee (of which he was also a member).

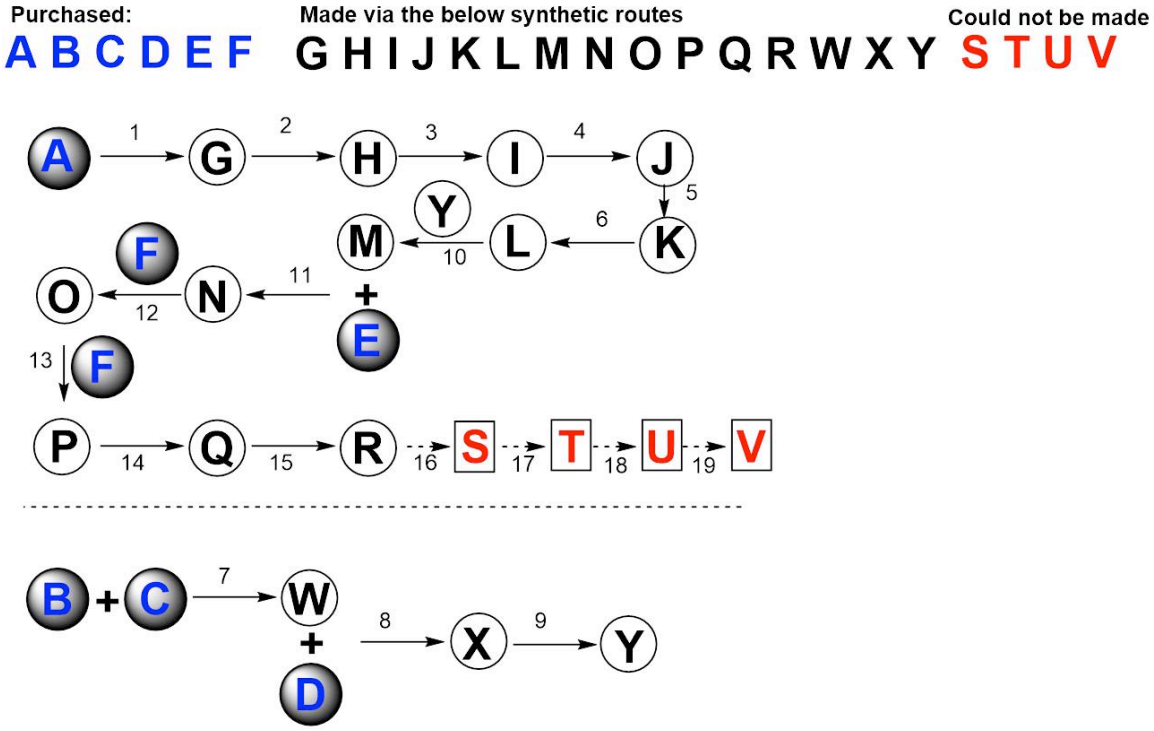
27. For her dissertation[4], she studied the synthesis and analysis of organic molecules. For her research, with the approval of Prof. Martin, she chose a target molecule to synthesize—Lundurine B. Over the last several years since S.O. began this work, Prof. Martin has continued to study ways to synthetically create Lundurine B (a natural product) because it is considered a relevant product of limited availability. Although S.O. was the first of his students to try and create Lundurine B, she was not the last. Subsequently, in the past year at least two separate research groups (outside of the University of Texas) have been able to synthesize Lundurines A-C.

1. S.O.'s Research and Multi-Layered Experiments to Attempt to Create Lundurine B

28. S.O. chose certain commercially available molecules as starting materials, and then designed a 19-step route to experiment and analyze their transformation. This particular route was one of many other approaches she had proposed to Prof. Martin. Once she had formulated her research plan, Prof. Martin reviewed and

[4] S.O.'s dissertation consists of two parts covering her two different research projects. From 2003-06, she performed her research on a natural product FR901438. And from 2006-08 she did the research that is at issue here.

approved it. The following is a diagram to demonstrate the 19-step process she designed for a portion in her dissertation:



29. In the diagram above, A-F represent the materials S.O. purchased for her starting point, and G-V represent the compounds she expected as a result of the reactions and methods she chose to apply. If the experiments were successful, the final compound V represents the synthetically created Lundurine B. The University's allegations against S.O. are all focused on interpretation and/or reporting of the results of Compounds P, Q, and R.

30. S.O.'s experiments started with her analysis of the chosen starting materials A-F, to certify and confirm their identity and purity. Once S.O. verified the identity of her chosen materials A-F, she began her experiments to attempt to synthetically create Lundurine B.

31. Just as for all of her graduate research, for Steps 1- 16, she meticulously documented her work, the amount of the reagents, solvents, additives, and/or catalysts used, along with the exact procedure in her laboratory notebooks. In addition to her notebooks, there are electronic and hard copy records of her work. The analytical testing data from the machines she used is stored electronically on the University equipment provided for such testing. S.O.'s laboratory notebooks, as well as all of the scientific data related to the experiments she conducted, have at all times been in the possession, custody, and control of the University. These records were and have always been maintained by the University, including after S.O. graduated, so that other graduate students may refer to and benefit from the results of her work.

2. S.O. "Fully Characterized" the Resulting Compounds

32. After each step in the experiments, new compounds were created. These new compounds are represented as G-R and W-Y in the diagram. The scientific method required S.O. to "fully characterize" each new compound and to judge whether its identity was as set forth in the theory. To "fully characterize" a compound meant that S.O. conducted four different tests on each compound and analyzed the different data. Thus, all of S.O.'s dissertation data and conclusions were supported by a multitude of overlapping experiments necessary to "fully characterize" the compounds.

33. There are several different scientific tests conducted to "fully characterize" a compound and at a minimum four separate tests are required. The four scientific tests, which S.O. performed on each of the Compounds G-R and W-Y, are as follows:

a. **Hydrogen Nuclear Magnetic Resonance (or H-NMR) testing** is a method by which a substance is tested by an analysis of the number of hydrogens present in a molecule.

b. **Mass spectrometry testing (or MS)** is a method by which the molecular mass of the substance (in its ionized form) is measured to determine its composition.

c. **Carbon Nuclear Magnetic Resonance (or C-NMR)** is the method by which the substance is tested by an analysis of the number of carbons present in a molecule.

d. **Infrared (or IR)** is the method by which the substance is tested by analysis of functional groups present in the molecule.

34. When testing a compound, a scientist such as S.O. would look at the results of each of the four corresponding tests to analyze whether the substance is what she thinks it is. She would cross-reference the results of each test for any given compound to propose its identity. For H-NMR, one would predict where the expected signals should appear on the graph and how many signals one should expect based on the hydrogens in the hypothesized new compound, and compare the prediction to the graph obtained from the machine. For MS, one would calculate the molecular weight of the expected molecule and study whether that same number (in its ionized form) appears on the graph obtained from the machine. For C-NMR, one would predict where the expected signals should appear on the graph and how many signals one should expect based on the carbons in the hypothesized new compound, and compare the prediction to the graph obtained from the machine. For IR, one would predict the location of the

signals on the graph based on expected locations for specific functional groups in the intended molecule. Many of these predictions are described in analytical chemistry textbooks and journal articles.

35. The above four tests are all subject to the interpretation of the scientist analyzing them. A test that can be used to fully confirm--not just propose—a molecule's identity is a small molecule X-ray. It is considered the most reliable of the testing methods. Prof. Martin, however, considered the H-NMR data (and the other three tests) to be sufficient to identify molecules. Some other graduate advisors required an X-ray testing for complex molecules because H-NMR data and interpretation has more room for errors and can be inconclusive. Under Prof. Martin's protocol, S.O. was required to identify molecules by the four tests described above. Prof. Martin recommended X-ray testing if the molecule could be crystallized but he gave little guidance on how to crystallize molecules.

3. Inconclusive Results at Steps 13-15 (Compounds P, Q, & R) Meant that the Compounds S, T, U, & V Could Not Be Created

36. At Steps 13, 14 and 15, S.O. encountered some difficulty with the compounds P, Q, and R, which left S.O. with inconclusive results. This indicated that the subsequent planned steps could not be completed to the end. And an unsuccessful Step 16 indicated the route could not be used to for Steps 16 -19 to make S, T, U and V. Therefore, S.O. had to make conclusions regarding P, Q and R. This is where the expertise, advice, and input from Prof. Martin was necessary for a graduate student like S.O. After analysis and discussion, Prof. Martin agreed with S.O.'s conclusions as presented in her dissertation. Without his endorsement, she would not have been allowed to appear before the dissertation committee.

37. When she had unsuccessful results at Step 16, it indicated that the remaining Steps 17-19 could also not be used to make Lundurine B. Ultimately, in her dissertation, S.O. indicated that this route would most likely not furnish Lundurine B and she proposed alternative options for anyone who might follow up this work.

4. The Reporting and Results of Compounds P, Q, and R

38. The results and reporting of Compounds P, Q, and R (Steps 13-15) have been the focus of the University's allegations of misconduct against S.O. S.O. documented all of these steps in her laboratory notebooks and performed the aforementioned four tests to analyze the molecules. Each molecule P, Q and R passed the Mass Spectrometry test in both low and high resolution machines (LRMS and HRMS). Each molecule also passed the H-NMR test; however, the molecules were contaminated by several side products and solvents, making analysis difficult. In addition, the tests for these three molecules were done on small amounts of material making the test results show "noisy background" and broadened signals. Molecules P, Q and R were also tested by the C-NMR test and the IR test.

39. None of the results—individually or cumulatively—of the testing on Compounds P, Q, or R controlled the decision to grant S.O. her PhD. Nor was S.O. required to actually create any specific substance to earn her degree. The results of Compounds P, Q, and R accounted for but 3% of the data and the literally thousands of calculations S.O. made and reported for her dissertation. And there is absolutely nothing to indicate a motive or intent to falsely report the data. At worst, S.O.'s alleged misinterpretations demonstrate the inexperience of a graduate student who was still learning her craft. The alleged misinterpretations are nothing but part of a scientific

process. In scientific process, there are only theories, not facts. A theory can of course be proven wrong. In this case, it is still up to debate what the actual identities of Compounds P, Q, and R are.[5]

B. 2009-11: The Post-Doc Continues the Lundurine B Research

40. After S.O. graduated, Prof. Martin continued with the research of Lundurine B. In fact, throughout the years, he has had several of his graduate students and post-doctoral researchers study and attempt to create it synthetically. The students have attempted different methods to reach the desired result, trying different scientific processes. Sometime in 2009, unbeknownst to S.O., another graduate/post-doctoral researcher (referred to as "post-doc") began working in Prof. Martin's department, and Prof. Martin wanted this post-doc to continue S.O.'s work with an eye towards publishing.

41. Sometime in 2011, S.O. attended the birthday celebration of Prof. Martin in Austin. At the celebration he discussed her Lundurine B research along with the work of the post-doc, expressing an interest in having the above route published. Until this meeting in 2011, S.O. was unaware that her abandoned Lundurine B research had continued. Because S.O. considered parts of that research work unsuccessful, inconclusive and/or incomplete, she initially declined Prof. Martin's request to participate in any efforts to publish the work. However, at Prof. Martin's insistence, and to benefit the post-doc's sparse publication record, S.O. reluctantly agreed to permit a journal article on the condition that the post-doc repeat the experimental work and reported his own results. It was the standard in Prof. Martin's group (at least in 2003-2008) that new

[5] As methods, machines, and accuracy of interpretation evolve, new interpretations can be proposed and old theories proven wrong. Another graduate student from Prof. Martin's group proposed an alternative structure for Compound P in his dissertation in 2012.

students/post-docs who followed former students' work were required to use their own data and results for publications. S.O. expected this standard to still be in effect in 2011.

42. From 2009-11, the post-doc conducted his research on Lundurine B as well, repeating some of S.O.'s work, including all of the Steps 1-16 from the above diagram. A paper was published in which Prof. Martin was the leading author, and the post-doc and S.O. were coauthors of the journal article.[6] S.O. intended and expected that the post-doc would fully characterize the compounds as part of reproducing her work. Unbeknownst to S.O., the post-doc instead made markings, scanned, and submitted experimental data containing S.O.'s file names and some incorrect (and inaccurate) pages as part of the journal article. On relevant issues related to Compounds P, Q, and R, he reached the same or similar conclusions as S.O. that are discussed in his post-doctoral final report. Nonetheless, the article was ultimately retracted, and the decision to retract was apparently made by Prof. Martin without input from his co-authors (S.O. and the post-doc)[7].

1. On Compounds P, Q, & R (Steps 13-15), the Post-Doc Reached Similar Conclusions as S.O.

43. Long after the publication and retraction, S.O. finally learned that although the post-doc reproduced S.O.'s results on the compounds at issue, he did **not** in fact fully characterize them.[8] The post-doc ran two different tracks of experiments simultaneously in attempting to synthetically create Lundurine B. On the first track, he

[6] Along with them, there was a second post-doc who was also a co-author, for a total of four co-authors.

[7] Prof. Martin merely informed S.O. and the post-doc of the decision to retract, as he was required to do by the journal publisher's guidelines.

[8] For several years now since UT has pursued these disciplinary proceedings, S.O. has asked the University to produce the post-doc's research, data, and the results of his experiments. The University has refused to comply with her requests and to date has not produced any of his work.

reproduced S.O's results and characterized the work with a single test—the H-NMR test which he cross-checked with S.O.'s data. He compared his H-NMR test results with those of S.O. and was satisfied that he had reproduced her results so that he did not need to perform any other characterization tests. He succeeded in reproducing S.O.'s results up until a certain point—the same points at which S.O. struggled in Steps 13-15 (at Compounds P, Q, and R).

44. On the second track of experiments, the post-doc *did* fully characterize the compounds. For those experiments, the post-doc used an alternate method to synthesize a similar compound as that at Step 13 in the above diagram. Unfortunately, he was forced to abandon his alternate route. Ultimately, like S.O., the post-doc did not synthetically create Lundurine B.

45. Despite his frustrations with both tracks of these experiments, the post-doc had hoped to be able to publish his work. Rather than publish his route, however, Prof. Martin decided he wanted to publish the route from the above diagram because S.O. and the post-doc had gone further in this route than in the alternative route by the post-doc. By this point, the post-doc had accepted a private sector job, and was leaving Prof. Martin's group. When it came time to submit the paper to the journal, at the instruction of Prof. Martin, the post-doc reviewed S.O's hard copy data and submitted her testing results. Although S.O. had discussed and instructed him on how to locate her electronic data files, he did not do so.[9] When the post-doc pulled S.O.'s hard copy data to prepare for the journal article, he was surprised by the level of noise hiding in the signals (indicating impure molecules) and was privately concerned about whether the journal

[9] When the post-doc had inquired about S.O.'s electronic data files, S.O. was under the impression that it was so that he could cross-reference and compare it to his own data. She did not realize that he intended to submit her data to the journal.

would accept the data. Prof. Martin had compared S.O.'s and the post-doc's data side by side and decided to use S.O.'s hard copies that the post-doc handed him. Ultimately, the paper was published after review by Prof. Martin and the journal's peer review, all of whom presumably studied the results submitted to the journal.

C. 2012: Prof. Martin Questions S.O.'s Research, Research Which Was Subject to Scrutiny By Prof. Martin, the Dissertation Committee, and the Journal's Peer Review

46. By 2012, S.O.'s dissertation research had been subjected to scrutiny at many different points in time. First, all of her data and conclusions were supported by the overlapping experiments she performed under the supervision of her graduate advisor Prof. Martin. With Prof. Martin's endorsement, S.O. presented and defended her dissertation to a committee of five professors from the UT Chemistry Department in 2008. After their review, S.O. was awarded her PhD. S.O's work presumably underwent further scrutiny when Prof. Martin submitted the paper for publication in 2011 by the journal's peer review committee.

47. Nonetheless, another graduate student working in Prof. Martin's group reviewed the published work, along with S.O's and the post-doc's data. This graduate student conducted experiments that led him to believe that what was submitted to the journal article was somehow erroneous or otherwise inaccurate. Once this graduate student questioned the data, Prof. Martin brought a complaint against S.O. alleging scientific misconduct.

48. Of the literally thousands of tests and calculations S.O. performed, the allegations of misconduct are focused on the three results of Compounds P, Q, and R. The reality is that S.O. could have easily excluded the testing results from her

dissertation, and it would not have had any effect on her work or her degree. She could have also proposed different identities for these three molecules. But with the input and consent of Prof. Martin, she reported these results in her dissertation.

D. The University's Disciplinary Proceedings Do Not Satisfy Constitutional Due Process Requirements

49. The decision to revoke a PhD is a harsh, severe and rare penalty. When presented with an otherwise impeccable record such as S.O.'s, who has enjoyed a successful career and maintained her good name and reputation in the face of these outrageous accusations, the University is required to afford the highest of due process protections which can only be had in this Court.

50. As it stands, however, the University has engaged in its own *ad hoc* process laser focused on revocation of S.O's degree without any regard for the relevance, reliability or credibility of the evidence or the disciplinary procedures in place. Under scrutiny from this Court, their fundamentally flawed disciplinary proceedings cannot possibly satisfy constitutional requirements of due process and equal protection under the law.

1. The University Stacked the Deck by Excluding S.O. From the Investigative Process, Denying Her an Opportunity to Cross-Examine or Rebut Witnesses, Including "Expert" Testimony

51. The complaint by Prof. Martin led the University to launch an investigation that lasted for 15 months. But, as explained here, UT's investigation of S.O. was riddled with unfairness and partiality from the outset. S.O. objected over and again to the inherent unfairness of the investigation process. For instance, the identity of the complainant (Prof. Martin) was kept from S.O. until she saw the investigating committee's first report in 2012. S.O. objected to Prof. Martin's involvement because

she was concerned that he could not be a fair and impartial participant of the investigation.[10] As her former graduate advisor, the former supervisor of her graduate research and the leading author on the journal article, Prof. Martin clearly had and continues to have a conflict of interest and the motivation to clear his own name and cast the blame on S.O. Despite S.O.'s objections, UT continued to identify Prof. Martin as the "complainant" against S.O. and allowed the investigation committee to interview and communicate with him.

52. The investigative committee relied heavily on Prof. Martin's testimony, and they allowed him the opportunity to respond to their draft report to rebut S.O.'s explanations. S.O., on the other hand, was not allowed access to any witnesses or the evidence brought against her. Further, the investigation committee obtained the assistance of an "expert" whose identity, qualifications and opinions were not disclosed to S.O. until *after* the investigation was concluded and the committee's report had been written. S.O. was not allowed to cross-examine the "complainant," the expert or any witnesses in the investigation.

53. Prof. Martin, as "complainant," brought up factual allegations occurring years after S.O.'s graduation involving the 2011 publication—conduct which is outside the scope of any disciplinary proceedings and the University's reach. That is, the University rules dictate they only apply and seek to discipline a student for conduct *that happened when enrolled as a student*. The committee nonetheless appeared to consider such allegations, without allowing S.O. a meaningful opportunity to respond. The

[10] Before the investigation was launched, Prof. Martin told S.O. in a phone conversation that there was a structural mistake in the journal article they published and that he would probably have to retract the article. He did not inform her that he had made a complaint against her. After S.O. learned that there was an investigation against her regarding the journal article she asked Prof. Martin about the details or meaning of the investigation. Prof. Martin told her to co-operate and admit misconduct to speed up the process.

evidence they used against her was from the 2011 journal article, not from her dissertation.[11] She was further denied access to experimental research files of the post-doc responsible for the submission of data to the publication. To date she has still been denied those records, in spite of the fact that the research was funded by grants that Prof. Martin obtained from the National Institute of Health (or NIH) which requires all research data to be accessible to public.

54. Despite the faulty process, a committee concluded by a split vote that S.O. had engaged in scientific misconduct. One member of the committee concluded twice that S.O. had *not intentionally engaged in any misconduct*.[12]

55. A written report from the investigative committee was issued as well. The University now seeks to use this report as evidence against her, although it is unreliable hearsay that could never be admissible under any meaningful evidentiary rules.

56. After its investigation, of which S.O. was largely shut out, the University narrowed its allegations to the three testing results of Compounds P, Q, and R.

2. The University Referred the Allegations to the Dissertation Committee

57. Following the committee's investigation and conclusions, the University decided that S.O.'s dissertation be "remanded" to her former dissertation committee, which was to "evaluate the dissertation" and "at a minimum, ensure that the dissertation reflects the actual results of her research." S.O. again objected to Prof. Martin's

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[11] Even under the University rules, they may not attempt to discipline a student for allegations of misconduct which occur *after* a student graduates.

[12] The dissenting committee member took into account the facts, including emails between the post-doc and S.O. in which he asked S.O. where to find the archived data files that he ultimately made markings on and submitted to the journal. This committee member concluded that the evidence did not support finding any intent to deceive.

involvement in the dissertation committee's work due to lack of fairness, an objection that went unheeded.

58. After several months, in February 2014, S.O. received correspondence from Dean Judith Langlois, stating that the partial dissertation committee reached its conclusions: S.O.'s PhD degree was to be revoked. The dissertation committee was not unanimous in the decision to revoke, however, because one member of the dissertation committee declined to participate in the decision. S.O. was informed that the University Registrar Stanfield would be implementing the degree revocation.

59. S.O. was not allowed access to the dissertation committee before its decision. She was not accorded notice of the cause or causes presented to the dissertation committee for the action to be taken against her. S.O. was not provided with the materials that the dissertation committee considered in reaching its decision, materials that were in fact erroneous. S.O. was not provided the opportunity to be heard by the dissertation committee to address and defend the integrity of her dissertation or to rebut the *ex parte* and erroneous information that UT provided the committee. Instead, Dean Langlois had informed S.O. without any explanation that about half of her dissertation—the entire Lundurine B section—could not be used towards her degree. The results and research have since been used in the dissertation of another of Prof. Martin's graduate student in 2012. This begs the question: *if S.O.'s results in her dissertation are not sufficient for her to have earned her degree, how could they have been sufficient for another student's degree four years later*?

E. S.O. Sued the University Seeking to Enjoin it from Revoking Her Degree

60. After the decision to revoke, the University stated that neither the results of the investigation nor the dissertation committee's decision could be appealed. S.O. was forced to file suit in February 2014. She alleged that the University's actions violated her constitutional rights and sought a TRO to prevent any disciplinary action against her. Immediately before the TRO hearing, the parties signed a Rule 11 agreement pursuant whereby S.O. agreed to "pull down" the TRO hearing and the University agreed to restore her degree.

61. The Rule 11 agreement also specified that the parties would continue to discuss "additional process" and "potential resolution" to the litigation, and recognized that such discussions would require "further discussion and consideration by the parties." The University unilaterally decided it would initiate a new disciplinary proceeding against S.O., and that S.O. would receive additional communications regarding the discipline process from the Dean of Students.

62. S.O., through counsel, attempted to learn additional information about the University's proposed actions and their relationship to the TRO litigation and the parties' Rule 11 agreement. In response, the University replied that its decision was final and not open to negotiation. In subsequent communications, S.O.'s counsel attempted to learn additional details about the disciplinary procedure that were not addressed in the written policy, such as the nature of the violation that she was accused of under this new process, the evidence supporting the accusation, the relationship between the Dean of Students disciplinary procedure and the earlier investigations, the effect that the new procedure would have on the earlier investigation, and the identity and qualifications of the

person(s) who would adjudicate the investigation. For most of S.O.'s questions, the response was that those details would be disclosed to S.O. later, during the course of the disciplinary procedure.

63. Until now, S.O. has not received any meaningful response to her inquiries. S.O. received notice that the University intended to conduct a hearing on January 29, 2016. Over objections and discussion among counsel over scheduling and due process concerns, the University has rescheduled the hearing to March 4, 2016.

64. The University's January 8, 2016 email states as follows:

> In accordance with Subchapter 11-600 of the University's *Institutional Rules on Student Services and Activities* ***2013-14*** this letter and complaint will serve as notification that a hearing concerning your alleged violation of the University's *Institutional Rules* will take place on Friday, January 29, 2016 in . . . Due to previous rescheduled appointments, the Office of the Dean of Students does not support any additional postponements.
>
> You are charged with violating Sections 11-402(a), 11-402(b), and 11-402(c)(9):
>
> Sections 11-402(a) and (b) subjects a student to disciplinary sanction for academic dishonesty which includes, but it not limited to, cheating, plagiarism, collusion, falsifying academic records, misrepresenting facts, and any act designed to give unfair academic advantage to the student (such as, but not limited to, submission of essentially the same written assignment for two classes without the prior written permission of the instructor), or the attempt to commit such an act.
>
> Section 11-402(c)(9) subjects a student to disciplinary sanction for cheating, which includes, but is not limited to falsifying research data, laboratory reports, other academic work offered for credit, or work done in conjunction with the completion of course requirements.
>
> **You are charged with violating the aforementioned sections when you allegedly falsified data and modified Nuclear Magnetic Resonance (NMR) spectra. The allegations involve underreporting and misreporting NMR signals for three compounds, designated 3.210, 3.237, and 3.238, in your doctoral dissertation.**

> The entirety of the *Institutional Rules* may be found online at [(2014-2015) http://catalog.utexas.edu/archive/2014-15/pdf/2014-15-generalinformation.pdf
>
> Specifically, Chapter 11 of the *Institutional Rules* begins on page 130. OR (2015-2016) http://catalog.utexas.edu/general-information/appendices/appendix-c/student-discipline-and-conduct/]

See January 8, 2016 email from the University (emphasis supplied).

65. In this letter/notice of hearing, the University has indicated that the University rules from three different years will apply—2013-14, 2014-15, and 2015-16. When S.O. objected and informed Prof. Lungwitz that the 2003 Institutional Rules and Regulations are the only rules that may be enforced against S.O., she requested input from Dean Reagins-Lilly's office, and they responded that their practice was to follow the rules in effect when the allegations of misconduct were made—the 2013-14 rules would apply.

66. S.O. informed Prof. Lungwitz of relevant case law, specifically *University of Texas Health Science Center at Houston v. Babb*, 646 S.W.2d 502, 506 (Tex.App.—Houston [1st Dist.] 1982, no writ) in arguing that the 2003 Catalog in effect when she enrolled apply. In *Babb*, UT tried to change course/graduate requirements on a nursing student, but she challenged that and won. The court held that the University of Texas catalog constitutes a written contract where entrance to the school is had under those terms—and the catalog in effect when the student was first enrolled would control. *Id*. Further, it explains that the student is entitled to rely on those rules as the terms of the parties' contract, and the university may not amend, modify or otherwise change the rules that apply to the student. *See id*. at 505-06.

67. S.O. requested information regarding Prof. Lungwitz's role, and she stated she was not making decisions on questions of law. Yet, she did. Ignoring this relevant case law on a question of law that goes to the core of the case, Prof. Lungwitz ruled and informed S.O. that she would be following the 2013-14 Institutional Rules and Regulations as indicated by Dean Reagins-Lilly's office.

68. Clearly, the Court must rule and determine that the University's 2003 Catalog and rules in effect when S.O. first enrolled as a graduate student are the only rules that can be applied against her. Further, the Court must declare that the University may not attempt to enforce any amended, modified, or newly adopted rules, including the 2013-14 Institutional Rules and Regulations.

69. S.O. has additional objections with Prof. Lungwitz serving in any capacity to oversee proceedings against her. S.O.'s counsel David Sergi recognized Prof. Lungwitz's name because he conferred with her law firm—The Lungwitz Law Firm (previously Lungwitz & Lungwitz)—regarding S.O.'s case. Specifically Mr. Sergi counsel conferred with her husband Kevin Lungwitz, who declined to assist in the representation of S.O. When asked about this apparent conflict, Prof. Lungwitz stated the following:

> While I am a part owner of The Lungwitz Law Firm, P.C., I have not done legal work for the firm in years as my job at the law school consumes all of my time. Kevin Lungwitz is my husband, and because our areas of expertise are vastly different, we rarely talk about our cases with one another. Regarding [S.O.], I have had no conversations with Kevin regarding this matter. I also have had no conversations with him about any discussions he may have had with your partner, Mr. Sergi. Although I have no personal knowledge about whether Kevin declined to assist your law firm in its representation in [S.O.'s] case, this in no way hinders my judgment in this case. As a panel member, I am required to be fair and objective and will do so.

70. S.O. has objected to her continued participation, to the panel of undergraduate students, the failure to produce their evidence, and to conducting the hearing on March 4, 2016 with only one of her two advisors present.

V. CAUSES OF ACTION

A. CLAIMS FOR DECLARATORY RELIEF: Plaintiff Requests Declaratory/Injunctive Relief Because There is a Genuine Controversy that Would Be Terminated by Granting a Declaratory Judgment

71. Plaintiff seeks declaratory and injunctive relief from the Court pursuant to the Texas Uniform Declaratory Judgment Act. There exists a genuine controversy between the parties that would be terminated by the granting of declaratory judgment. Tex. Civ. Prac. & Rem. Code § 37.001 *et. seq.*

72. She asks the Court to declare:

a. **Declaration I**: the University Officials are acting without authority to revoke a degree;

b. **Declaration II:** the University Officials are not authorized to revoke a degree, but are only authorized to act under the express authority bestowed by the Texas Legislature in Tex. Educ. Code § 65.31;

c. **Declaration III**: S.O. has a constitutionally protected property and liberty interest in her PhD;

d. **Declaration IV:** the 2003 University Catalog in effect when S.O. was a graduate student constitutes a binding contract with the University;

e. **Declaration V**: for disciplinary proceedings against S.O., the University may not enforce any rules amended, modified, or adopted after S.O.

graduated from the University, as doing so would be unconstitutional and contrary to Texas law.

f. **Declaration VI:** the 2003 University Catalog as written for disciplinary proceedings is unconstitutional because it does not satisfy due process;

g. **Declaration VII:** the 2003 University Catalog as written for disciplinary proceedings is unconstitutional because it does not provide S.O. equal protection under the law;

h. **Declaration VIII:** The University's 2003 Catalog, specifically Sec. 11-103(4) defining a "hearing officer" is unconstitutional because it violates S.O.'s rights to equal protection and due process under the law by providing more protection to a law student than it does to other students.[13]

i. **Declaration IX:** Prof. Lungwitz may not participate in any proceedings against S.O. because of an apparent conflict that disqualifies her or otherwise makes her ineligible to participate with fairness or impartiality.

73. S.O.'s claims arise solely under Texas law and the Texas Constitution. Any reference to "due process" is also a reference to the "due course of law" provision.

1. S.O. Is Entitled to Declarations I & II as a Matter of Law: The University Does Not Have Authority to Revoke a Degree

74. The Court must interpret Tex. Educ. Code §65.31 to determine the scope of the University's authority. The Court rules on questions of law, including statutory interpretation. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 357 (Tex.

[13] The University's 2003 Catalog indicates that the President must appoint a "hearing officer," who is defined in Sec. 11-103(4) as "a person appointed by the president to conduct hearings of alleged violations of a regents' rule, University regulation, or administrative rule." Further, Sec. 11-103(4) states that "whenever a case involves a student in the School of Law, the hearing officer she be a faculty member in the School of Law."

2000). In construing a statute, the Court determines the Legislature's intent. Tex. Gov't. Code § 312.005; *American Home Prods. Corp. v. Clark*, 38 S.W.3d 92, 95 (Tex. 2000). The general rules of construction require the Court to (1) look to the plain and common meaning of the statute's words; (2) if the meaning is unambiguous, the Court must interpret the statute according to its plain meaning; and (3) determine the legislative intent from the entire act and not just from an isolated portion. *See Jones v. Fowler*, 969 S.W.2d 429, 432 (Tex. 1998). In ascertaining the legislature's intent, the Court may also consider other matters, including the law's objective and the consequences of a particular construction. *See* Tex. Gov't Code § 311.023. Indeed, it has long been a rule of statutory construction that "a statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one of which will carry out and the other defeat such manifest object, [the statute] should receive the former construction." *Citizens Bank v. First State Bank,* 580 S.W.2d 344, 348 (Tex.1979); *see Nootsie, Ltd. v. Williamson County Appraisal Dist.,* 925 S.W.2d 659, 662 (Tex.1996) ("[W]e must reject interpretations of the statute that defeat the purpose of the legislation so long as another reasonable interpretation exists."). If possible, we will construe a statute in a manner that renders it constitutional if such construction is consistent with the statute's plain language and effectuates the legislature's intent. *See Texas Mun. League Intergovernmental Risk Pool v. Texas Workers' Comp. Comm'n,* 74 S.W.3d 377, 381 (Tex.2002). Finally, there is another relevant principle that will instruct the Court: *expressio unius est exclusio alterius*, which means the expression of one excludes the others.

75. S.O seeks a declaration that the University Officials are not authorized to revoke a degree, but are only authorized to act under the express authority bestowed by the Texas Legislature consistent with Tex. Educ. Code § 65.31. In relevant part, Section 65.31 states that the Board of Regents may award a degree, but is silent on any authority to revoke one:

> (b) The board is authorized to prescribe for each of the component institutions courses and programs leading to such degrees as are customarily offered in outstanding American universities, **and to award all such degrees**. It is the intent of the legislature that such degrees shall include baccalaureate, master's, and doctoral degrees, and their equivalents, but no new department, school, or degree-program shall be instituted without the prior approval of the Coordinating Board, Texas College and University System.

Tex. Educ. Code § 65.31(b) (emphasis supplied). The University's authority may not be inferred or otherwise implied.

76. Therefore, applying principles of statutory construction, the Court must interpret Tex. Educ. Code § 65.31 and hold that the University Officials, including the Board of Regents named in their official capacities, President Fenves, Registrar Stanfield, the Dean of Students Reagins-Lilly, and Prof. Lungwitz, are not expressly authorized to revoke a degree, and such authority cannot be inferred or implied. Their act of attempting to revoke her degree is not authorized, and to permit them to do so would be an unconstitutional deprivation of S.O.'s property and liberty interests.

77. For these reasons, S.O. asks the Court to enter a judgment ordering Declarations I - II.

2. As a Matter of Law, S.O. is Entitled to Declaration III Because She Has a Protected Property and Liberty Interest in her PhD.

78. S.O. asks the Court to order Declarations III. Through this declaratory and injunctive relief, Plaintiff S.O. seeks to protect and enforce her statutory and constitutional rights as guaranteed by the Texas Constitution and other relevant law. Article I, Section 19 of the Texas Constitution states that '[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land." Tex. Const. art. I § 19. The Fourteenth Amendment to the United States Constitution also provides that "[no] . . . State [shall] deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV. The Texas Constitution is textually different from the United States Constitution in that it refers to "due course" rather than "due process." But those terms are regarded without a meaningful distinction. *University of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 930 (Tex. 1995).

79. Plaintiff seeks Declaration III from this Court recognizing that Plaintiff has a legal and/or equitable interest in the subject property—her doctorate degree—the PhD which she earned and that University conferred upon her in 2008. Texas state and federal courts have recognized that a student has a property or liberty interest in their education and degree that entitles them to due process protection. *See Goss v. Lopez,* 419 U.S. 565, 574-75 (1975); *Dixon v. Alabama State Board of Education,* 294 F.2d 150, 157 (5th Cir. 1961); *University of Tex. Med. Sch. at Houston v. Than,* 901 S.W.2d 926, 930 (Tex.1995).

80. Following *Than*, the Court must enter a judgment for Declaration III—that S.O. has a constitutionally protected liberty interest in her graduate education that must be afforded due process. *See id.* at 930.

3. As a Matter of Law, S.O. is Entitled to Declarations IV & V Because the Rules in Effect When S.O. Enrolled as A Graduate Student Constitute a Binding Contract

81. S.O. asks the Court to order Declarations IV and V. The University is attempting to enforce its 2013-14 rules against S.O.—but the 2013-14 rules cannot be retroactively enforced or applied against her. Doing so would be a violation of well-settled contract principles and her constitutional rights. Under Texas law, the University's catalog constituted a written contract between the University and S.O., and a student such as S.O. is entitled to rely on those rules as the terms. *See University of Texas Health Science Center at Houston v. Babb*, 646 S.W.2d 502, 506 (Tex.App.—Houston [1st Dist.] 1982, no writ) (holding university catalog constitutes a written contract where entrance is had under its terms); *see also Texas Military College v. Taylor*, 275 S.W. 1089 (Tex. Civ.App.—Beaumont 1925, no writ). The University, therefore, may not amend, modify, or otherwise change the rules that apply to S.O. *See Babb*, 646 S.W.2d at 505-06 (explaining that any rule change "would not apply retroactively to a student electing to be bound under a previous catalog.").

82. The Court should consider other relevant authority on point with this issue. Other courts—in and out of Texas—have recognized this general rule, holding that the rules and regulations set forth in a college catalog constitute a written contract between the college and the student. *See, e.g., Vidor v. Peacock*, 145 S.W. 672 (Tex. Civ. App. 1912, no writ); *Texas Military College v. Taylor*, 275 S.W. 1089 (Tex. Civ.

App. 1925, no writ) *S.M.U. v. Evans*, 115 S.W.2d 622 (Tex. 1938). In *Foley v. Benedict*, the Texas Supreme Court stated unequivocally:

> A student who is admitted to the University receives the privilege of attending that institution subject to the reasonable rules and regulations promulgated by the board of regents and **existing at the time of his entrance into the school**.

55 S.W.2d 805, 809 (Tex. 1932) (emphasis added). The law has not changed on this point, and has grown to allow a university catalog to expressly disclaim a contract. *See Alcorn v. Vaksman*, 877 S.W.2d 390, 403 (Tex.App.—Houston [1st Dist. 1994, writ denied) (stating university catalog is contract with student); *Courtney v. University of Texas Sys.*, 806 S.W.2d 277, 281 (Tex.App.—Fort Worth 1991, writ denied) (holding contract with University of Texas System, a state institution, was a contract with the State).

83. S.O. and the University had a contract under the University's 2003 Catalog, and there is no express disclaimer within the Catalog. Thus, S.O. agreed to follow and be bound by the rules in effect when she was a student. So, too, did the University. Therefore, the Court should enjoin the University from its efforts to apply any rules not in effect when S.O. was student. The only rules the University may seek to enforce and impose upon S.O. are those in effect when she first enrolled in 2003 because those rules constitute a binding contract and agreement between the parties.

84. For these reasons, the Court should grant S.O.'s request for a judgment entering Declarations IV – V.

4. S.O. Is Entitled to Declarations VI-IX as a Matter of Law Because UT's Disciplinary Procedures Would Deny S.O. Equal Protection and Due Process

85. S.O. asks the Court for a judgment entering Declarations VI-IX. As set forth above, the University cannot enforce new rules amended years after she graduated. The Court must therefore declare that the rules in effect when S.O. was a student, beginning in 2003-04, are the rules that must be followed for any disciplinary proceedings. But S.O. asks the Court to go one step further and to declare the University's 2003 Catalog/Rules are unconstitutional because they do not afford her due process or equal protection under the law.

86. The University Catalog/Rules from 2003 states the following:

a. Upon receiving information that a student has allegedly violated a University rule, the dean shall investigate the alleged violation. Sec. 11-301(a). After conducting the preliminary investigation, the dean may summon the student for conference and, after conferring with the student, dismiss the allegation or prepare a complaint and proceed under Sec. 11-400. *Id*. at 11-301(a).

b. Under Section 11-401, charges of misconduct "shall be heard and determined by a hearing officer." The hearing officer shall rule on the admissibility of evidence and objections to the procedure; render a written decision which shall contain findings of fact and conclusions as to whether a violation of the rules has occurred; assess a penalty; and provide the student and the dean with a copy of the decision. Sec. 11-401.

c. A hearing officer is defined as "a person appointed by the president to conduct hearings of alleged violations of a regents' rule, University regulation, or administrative rule; whenever a case involves a student in the School of Law, the hearing officer shall be a faculty member in the School of Law." Sec. 11-103(4).

d. A complaint is also defined as a "written statement of the essential facts constituting a violation of a regents' rule, University regulation, or administrative rule." Sec. 11-103.

87. Following these rules as written, S.O. is denied equal protection and due process under the law. First, as of this filing, the University has indicated it intends for S.O. to defend her property and liberty interests before a panel of three undergraduate students and two faculty members, none of whom has any education, experience, or training in organic chemistry. The panel consists of a journalism student, a business/marketing student, a Plan II/liberal arts and mathematics major, a natural sciences faculty member, and a faculty member from the law school.

88. If S.O. were a law student, she would be entitled to a hearing before a faculty member from the law school, as specifically stated in the University rules. Clearly, the rules anticipate that a hearing officer hearing a complaint against a law student contemplates the need for review by a legal expert. But as a graduate student from the college of chemistry, S.O. is not guaranteed the same protection and afforded a panel of faculty from the college of chemistry.[14]

89. In matters of procedural due process, the Court must follow federal due process interpretations of procedural due process issues. *Than*, 901 S.W.2d at 930. The Texas Supreme Court has cited, with approval, the U.S. Supreme Court's dictate that "where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of due process must be satisfied." *Than*, 901 S.W.2d at 930 (citing *Goss v. Lopez*, 419 U.S. 565, 574 (1975)). As in *Than*, the Court must declare that S.O. has a constitutionally protected liberty

[14] At a minimum, S.O. should be entitled to a panel of organic chemists to evaluate the allegation of misconduct. Just as a panel of organic chemists was required to evaluate her dissertation and award her PhD, equal protection of the law and due process dictate that the same panel of organic chemists with PhD's are required to evaluate allegations of misconduct. Although S.O. suggests that a panel of organic chemists with PhD's are required to evaluate the allegations of misconduct, S.O.'s position is that they may only recommend a remedy to the University. Should the recommendation be revocation, the University may only do so through a court of competent jurisdiction.

interest in her graduate education that must be afforded procedural due process. *See id.* at 930.

90. A review of due course of law claim requires a two-part analysis: (1) whether plaintiff has a liberty or property interest that is entitled to due process protection; and (2) if so, what process is due. *Than,* 901 S.W.2d at 929; *see also Texas A&M Univ. v. Carapia,* ___, S.W.3d ____, 2015 WL3451609, at *4 (Tex.App.—Waco 2015, pet. denied) (recognizing a protected property and liberty interest in an education and degree, but rejecting such an interest to participate in extracurricular activities).

91. There are two components to due process: substantive and procedural. *Ho. v. University of Tex. at Arlington*, 984 S.W.2d 672, 683 (Tex.App.—Amarillo 1998, pet. denied). Substantive due process protects citizens from arbitrary or capricious deprivations of an interest in life, liberty, or property. *Id*. Procedural due process requires "notice and an opportunity to be heard in a meaningful manner before any rights in life, liberty, or property may be taken away" by the state. *Id*. at 683-84

92. Here, the University Officials have already revoked S.O.'s degree once in 2014, reinstated it after litigation started, and are back to the drawing board with their plans for a hearing on March 4, 2016 before its student panel. Their stated intentions are to use "evidence" they accumulated in their own internal investigations—including interviews with Prof. Martin, their expert, and others—in a hearing before undergraduate students who are anything but qualified to evaluate the complexities of the scientific issues at hand. Further, S.O. was entirely shut out of those investigations and has been denied access to all information relevant to her defense of the allegations of misconduct. Under Texas law, this fundamentally flawed process cannot pass constitutional muster.

93. It is established that, at a minimum, to be deprived of an interest by the government, a person is entitled to notice for the causes of the proposed deprivation in sufficient detail to fairly enable her to show error; notice of the names and the nature of the testimony of witnesses against her; a reasonable time thereafter, a meaningful opportunity to be heard; and a **hearing before a tribunal with subject matter expertise and apparent impartiality**. *Ferguson v. Thomas*, 430 F.2d 852, 856 (5th Cir. 1970). The University's proposed panel of undergraduate students is far from a "tribunal with subject matter expertise" sufficient to evaluate the allegations against S.O. Under the express language of the University 2003 Rules set out above, if S.O. was a law student, the rules guarantee her the right to law faculty on her tribunal. But she is not and is being denied similar protection.

94. The facts to date further demonstrate that the University has failed at every turn to provide her due process—by denying her access to records, witnesses, and information relevant to defend herself. Further, the University's allowing the participation of Prof. Martin in earlier parts of the proceedings from which S.O. was shut out entirely demonstrate the lack of partiality of previous investigations that led to this hearing. None of this could possibly pass constitutional scrutiny.

95. When the most harsh remedy is sought, such as revocation, the due process protections due are heightened. S.O. argues that she may only be afforded due process through a court of competent jurisdiction such as this Court. The University expects that providing S.O. with the evidence it intends to use against her—evidence which they have had literally for years—just days before its intended March 4 hearing is somehow sufficient for due process.

96. S.O. has objected over and again to these deficiencies describe above, as well as others, such as the disqualification of Prof. Lungwitz, the participation of Prof. Martin and his *ex parte* communications with the University committees who conducted earlier investigations, her inability to cross-examine witnesses, her requests to have access to documents residing at the University and her request to have both advisors present for this anticipated hearing. And every time she objects, the University presses on.

97. S.O. therefore requests that the Court enter the requested Declarations VI – IX.

C. Application for Emergency/Temporary Restraining Order

98. Plaintiff S.O. incorporates by reference paragraphs 1-96.

99. Plaintiff seeks a Temporary Restraining Order preventing the University from conducting its hearing (or any other disciplinary proceedings) regarding allegations of misconduct until this Court can determine whether she is entitled to a permanent injunction and declaratory relief as requested.

100. Plaintiff has notified the University regarding this Application for a temporary restraining order and the hearing for same in compliance with Tex. R. Civ. P. 680 and Travis County Local Rule 7.3(a).

1. The Court May Order Injunctive Relief Under Tex. Civ. Prac. & Rem. Code § 65.011

101. S.O.'s Application for a temporary restraining order and temporary injunction is authorized by Tex. Civ. Prac. & Rem. Code § 65.011 (1), (2), (3), and (5). This Petition is signed and verified by S.O. *See* Tex. R. Civ. P. 682. In relevant part, Tex. Civ. Prac. & Rem. Code § 65.011 states:

> (1) the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant;
>
> (2) a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual;
>
> (3) the applicant is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions;
>
> * * *
>
> (5) irreparable injury to real or personal property is threatened, irrespective of any remedy at law.

102. As set forth below, S.O. satisfies the requirements of Section 65.011.

103. The requirements of Section 65.011(1) are met. S.O. is entitled to the relief demanded as part of the relief sought is an injunction restraining the University from conducting its hearing on March 4, 2016, or at any other time, until the Court adjudicates her claim on the merits of whether the University is violating her constitutional rights. The University's conduct, and the scheduled hearing, is prejudicial to her rights. To allow it to go forward without a resolution from the Court of her claims would result in irreparable injury to S.O.'s personal property and liberty interests in her PhD.

2. Equitable Principles Under Texas Law Are Satisfied

104. Section 65.011(2) requirements are also met. The first injunction requirement is for the applicant/Plaintiff to plead a cause of action against the defendants. *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993). Plaintiff S.O.'s allegations are detailed in this Petition and Application. Plaintiff has pled a cause of action against the University seeking declaratory and injunctive relief.

105. Plaintiff has a probable right to the relief sought: An applicant need not prove that it will prevail on the merits at trial, but is only required to show a probable right to relief on the merits and a probable injury in the interim. *Sun Oil. Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968).

106. Plaintiff seeks to protect and enforce her statutory and constitutional rights as guaranteed by the Texas and U.S. Constitutions, as well as other state and federal laws. *See* Tex. Const. art. I § 19 ('[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land"); U.S. Const. amend. XIV ("[no] . . . State [shall] deprive any person of life, liberty, or property without due process of law.").

107. She has shown she has a probable right to relief on the merits and probable injury in the interim.

2. With S.O.'s Property and Liberty at Stake, the Court Must Enjoin the Proceedings to Preserve the Status Quo Pending a Final Judgment From this Court on Her Claims for Declaratory Relief

108. Section 65.011 (5) requirements are met. S.O. asks the Court for a temporary restraining order to stop the University's scheduled disciplinary hearing on March 4, 2016. She asks the Court to further enjoin the University from any further disciplinary proceedings to preserve the status quo pending a final judgment and/or ruling on her claims for declaratory relief. Without an injunction, S.O.'s property and liberty interests are at stake and she stands to suffer irreparable harm if she is unconstitutionally deprived of those interests—again.

109. This application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code §65.011(1). S.O. is entitled to a temporary restraining order and

temporary injunction because, as set forth here, she has demonstrated the following four grounds for relief: (1) the existence of wrongful acts; (2) the existence of imminent harm; (3) the existence of irreparable injury; and (4) the absence of an adequate remedy at law. *See Pinebrook Prop. v. Brookhaven Lake*, 77 S.W.3d 487, 505 (Tex.App.—Texarkana 2002, pet. denied).

110. The University is wrongfully attempting to conduct disciplinary proceedings against S.O. which put her constitutionally protected property and liberty interest in jeopardy. The disciplinary proceedings must be halted otherwise the University will revoke her PhD for the second time—an action that would result in irreparable injury to S.O. Because there is not an adequate remedy at law, the Court must intervene and enter the temporary injunction to preserve the last peaceable status quo until the Court can conduct a trial on the merits.

111. It is probable S.O. will recover from the University after a trial on the merits because the University disciplinary proceedings do not satisfy constitutional requirements of due process and equal protection under the law. In spite of S.O.'s objections to the University's planned disciplinary proceedings, the University has continued with its wrongful conduct and indicated its intent to conduct the hearing.

112. S.O. has standing to bring this claim and for her request for emergency relief. If her application for injunctive relief is not granted, harm is imminent and irreparable because the University will conduct its disciplinary hearing without affording S.O. due process, and will further deprive her of her property and liberty interest in her PhD. The hearing is scheduled for March 4, 2016.

113. S.O. simply has no other adequate remedy at law, especially with the hearing scheduled within days.

114. S.O. is willing to post bond should the Court determine it is necessary.

115. **REQUEST FOR HEARING ON TEMPORARY INJUNCTION:** Plaintiff asks the Court to set her application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against the Defendants.

116. Plaintiff has joined all indispensable parties under Texas Rule of Civil Procedure 39.

VI. EXHIBITS

117. It is Plaintiff's position that under FERPA, Plaintiff has the right to have her name shielded and protected by the University and its Board of Regents. Plaintiff will provide supporting documents/exhibits to the Court under a sealed protective order at a later date as may be necessary.

VII. ATTORNEY'S FEES

118. Plaintiff seeks attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code §37.009. The trial court has the discretion to award costs and attorney fees as part of a declaratory judgment. *John G. & Marie Stella Kennedy Mem'l Found. v. Dewhurst,* 90 S.W.3d 268, 289 (Tex.2002). Plaintiff was forced to retain counsel who has been representing her for years in this protracted degree revocation process. Therefore, she has incurred significant attorneys' fees and expenses for which she seeks reimbursement. Plaintiff is entitled to recover all reasonable and necessary attorney's fees and expenses incurred in preparing and maintaining this action including but not limited to reasonable

and necessary attorney's fees and expenses occasioned by an appeal. Plaintiff is also entitled to the maximum amount of pre- and post- judgment interest, as permitted by law.

119. **JURY DEMAND:** Plaintiff reserves the right to demand a trial by jury.

120. **REQUEST FOR DISCLOSURE:** Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of process of this request, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PLAINTIFF S.O. respectfully requests that:

1. The Defendants be cited to appear and answer.

2. The Court enter a (1) temporary order for injunctive relief enjoining the Defendants from proceeding with any disciplinary proceedings on March 4, 2016; and (2) permanent order for declaratory relief consistent with these pleadings, specifically ordering Defendants to comply with the requirements of the Texas Constitution and Tex. Educ. Code § 65.31.

3. The Court set this matter for hearing and issue appropriate permanent injunctive relief enjoining Defendants from violating Plaintiff's rights under the Texas Constitution as set forth above, and specifically enjoining the University from conducted any disciplinary proceedings (including the March 4, 2016 hearing) pending final resolution of S.O.'s claims;

4. The Court enter a judgment including Declarations I – IX above, pursuant to Texas Civil Practice & Remedies Code Chapter 37;

5. The Court award Plaintiff costs and reasonable and necessary attorney's fees pursuant to Texas Civil Practice & Remedies Code § 37.009; and

6. The Court award Plaintiff such other and further relief to which she may be justly entitled.

Respectfully submitted,

/S/ David K. Sergi
By:_____

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