CAUSE NO. D-1-GN-16-000517

S.O.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
v.	§	
	§	
UNIVERSITY OF TEXAS AT AUSTIN	§	
PRESIDENT,	§	**419th JUDICIAL DISTRICT**
GREGORY L. FENVES, *et al.*	§	
DEFENDANTS,	§	
(in their Official capacities only.)	§	**TRAVIS COUNTY, TEXAS**

PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT

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To the Honorable Judge Karin Crump:

Plaintiff S.O. files this Motion for Final Summary Judgment and Permanent Injunction against the Defendants University of Texas at Austin President Gregory L. Fenves *et al*.[1] Summary judgment is appropriate because S.O. has alleged claims for declaratory relief which involve questions of law for the Court. See Tex. R. Civ. P. 166a(c). She also requests the Court enter an award of attorneys' fees. In support of her Motion, she also submits Exhibits 1 - 9.

I. Introduction and Background

A. UT is Illegally Attempting to Revoke S.O.'s PhD Outside of Court

S.O. graduated from the University in 2008 with a PhD in Chemistry, a degree which conferred on her "all the rights and privileges thereto appertaining." Ex. 1. As part of her research, she attempted to synthetically create lundurine and reported the results in her dissertation. Years later, in 2012, a complaint was brought against her alleging she engaged in scientific misconduct. The University shut S.O. out of their investigation, even though over and

[1] Plaintiff is referred to by her initials, S.O., to protect her privacy. The other Defendants are Vincent Shelby Stanfield (Registrar); Soncia Reagins-Lilly (Dean of Students, Sr. Associate Vice-President for Student Affairs); Jeana Lungwitz (Clinical Professor and Faculty); Paul L. Foster (Chairman of the Board of Regents); R. Steven Hicks (Vice-Chairman of the Board of Regents); Jeffrey D. Hildebrand, (Vice-Chairman of the Board of Regents); and the individual Members of the Board of Regents: Alex Cranberg, Wallace L. Hall Jr., Brenda Pejovich, Ernest Aliseda, David J. Beck, and Sara Martinez Tucker

again it promised to provide her access to the relevant witnesses and information. They have likewise denied her countless requests for documents to which she is legally entitled, such as her student laboratory notebooks, electronic data, and research results relevant to defend against their allegations. Ex. 2, Affidavit of S.O. at ¶¶ 18-19; *See* Ex. 3, Affidavit of S.O. and attachments. The University has also, without S.O.'s knowledge, added a bar on her student record that prevents her from, for example, obtaining an official transcript. Ex. 2, Affidavit of S.O. at ¶19

After years of back and forth with no regard for S.O.'s rights, their *ad hoc* process has culminated to include this final "hearing" before an unknown, arbitrary hearing advisor. Left with no other options, S.O. seeks relief from this Court. 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[2] 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.

B. S.O. Now Sues for Declaratory & Permanent Injunctive Relief

In her Original Petition, S.O. has asked the Court to enter eight declarations that would resolve the live dispute[3] between the parties. There exists a genuine controversy that would be terminated by the granting of declaratory judgment. Tex. Civ. Prac. & Rem. Code § 37.001 *et. seq*. All of these declarations involve questions of law perfectly suited for summary judgment resolution.

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[2] In Texas courts, "due process" and "due course of law" are used interchangeably.

[3] S.O. had also requested a ninth declaration to disqualify Prof. Jeana Lungwitz from participating in the hearing, but this request is now moot as the University agreed during the Feb. 17 hearing to replace her. *See* Plaintiff's Original Petition at p. 27 (S.O.'s specific request for Declaration IX).

The first three declarations she seeks address the University's lack of authority to revoke her PhD and a declaration of her property and liberty interests in her PhD:

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

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

The fourth through eighth declaration that S.O. seeks establish the controlling agreement between the parties, and further interprets the parties' rights thereto:

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

- **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.

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

- **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;

- **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.[4]

Each of these declarations will resolve the ongoing dispute between the parties regarding their rights, obligations, and duties. As set forth below, the Court should enter the requested declarations as a matter of law. Further, S.O. has asked the Court for an order granting permanent injunctive relief. Should the Court enter her requested declaratory judgment, the

[4] 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."

permanent injunction is requested to give effect to the judgment. S.O. also seeks an award of attorneys' fees and expenses as authorized by Tex. Civ. Prac. & Rem. Code § 37.009.

II. Statement of Facts

S.O. submits this statement of facts to provide context. There are no disputed facts to preclude summary judgment because her claims for declaratory relief involve pure questions of law. Are any factual disputes regarding the allegations of academic misconduct are not relevant at this stage. As evidence to this Motion, S.O. submits the following Exhibits 1-10:

Ex. 1, Copy of S.O.'s PhD conferred by the University

Ex. 2, Affidavit of S.O. (dated March 15, 2016)

Ex. 3, S.O. Affidavit (with attachments of University denying documents) (dated Feb. 23, 2016)

Ex. 4, Affidavit of Phillip D. Magnus

Ex. 5, Affidavit of J.T. [5]

Ex. 6, Feb. 17 Hearing Transcript

Ex. 7, Att'y Gen'l Op. M-466 (Sept. 11, 1969)

Ex. 8, 2003 University Catalog/Rules

Ex. 9, Affidavit of David K. Sergi

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

[5] At the Court's instruction, the parties refer to this post-doc by his initials, J.T., to protect his privacy.

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

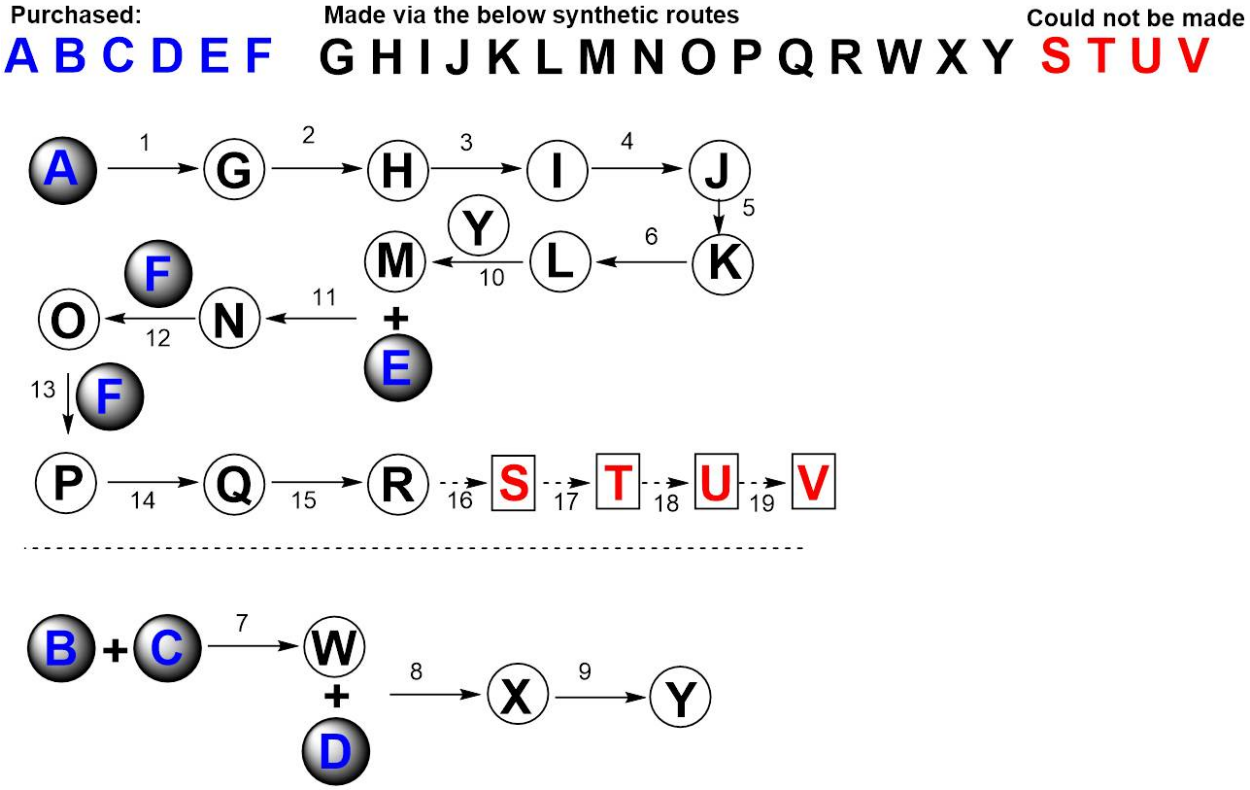
S.O. enrolled at the University of Texas at Austin in 2003 and graduated in 2008. After years of research during 2003-08 timeframe, she earned and was awarded her Doctor of Philosophy (PhD) degree from the Department of Chemistry. Ex. 1, S.O.'s Ph.D Degree; Ex. 2, Affidavit of S.O. at ¶ 1. She worked under the supervision, guidance and mentoring of her graduate advisor Prof. Stephen Martin. *Id*. at ¶ 3. 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). *Id*.

For her dissertation[6], 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. *Id* at ¶¶ 3-4. 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. *Id.* Although S.O. was the first of his students to try and create lundurine B, she was not the last. *Id*. 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. *Id.*

[6] 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.

2. S.O.'s Research and Multi-Layered Experiments to Attempt to Create lundurine B

S.O. chose certain commercially available molecules as starting materials, and then designed a 19-step route to experiment and analyze their transformation. Ex. 2, Affidavit of S.O. at ¶4. 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 approved it. *Id.* The following is a diagram to demonstrate the 19-step process she designed for a portion in her dissertation:



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. Ex. 2, Affidavit of S.O. at ¶4. If the experiments were successful, the final compound V represents the synthetically created lundurine B. *Id.* The University's allegations

against S.O. are all focused on interpretation and/or reporting of the results of Compounds P, Q, and R. *Id.*

S.O.'s experiments started with her analysis of the chosen starting materials A-F, to certify and confirm their identity and purity. Ex. 2, Affidavit of S.O. at ¶ 5. Once S.O. verified the identity of her chosen materials A-F, she began her experiments to attempt to synthetically create lundurine B. *Id*.

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. *Id*. In addition to her notebooks, there are electronic and hard copy records of her work. *Id*. S.O. used her data in 6-month progress reports and my dissertation. *Id*. at ¶ 6. Prof. Martin required full characterization, assignment of structures and copies of NMR data for her 6-month reports. *Id*. The analysis data from these four tests were stored as hard copies in a card board box and also in large binders. *Id*. The analytical testing data from the machines she used is stored electronically on the University equipment provided for such testing. *Id*. 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. Ex. 2, Affidavit of S.O. at ¶ 6. 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. *Id*. S.O. has requested access to and copies of these records numerous times, and each time the University rejected her request. *Id*. at ¶ 18; Ex. 3, Affidavit of S.O. with attachments.

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

After each step in the experiments, new compounds were created. These new compounds are represented as G-R and W-Y in the diagram. Ex. 2, Affidavit of S.O. at ¶¶ 7-8. 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. *Id*. Thus, all of S.O.'s dissertation data and conclusions were supported by a multitude of overlapping experiments necessary to "fully characterize" the compounds. *Id*.

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.

Id.

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. *Id*. at ¶ 7. She

cross-referenced the results of each test for any given compound to propose its identity. Ex. 2, Affidavit of S.O. at ¶ 7. 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. *Id.* 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. *Id*. 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. *Id.* 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. *Id*. Many of these predictions are described in analytical chemistry textbooks and journal articles. *Id*.

The above four tests are all subject to the interpretation of the scientist analyzing them. Ex. 2, Affidavit of S.O. at ¶ 8; Ex. 4, Affidavit of Phillip D. Magnus. A test that can be used to fully confirm--not just propose—a molecule's identity is a small molecule X-ray. Ex. 2, Affidavit of S.O. at ¶ 8; Ex. 4, Affidavit of Phillip D. Magnus. It is considered the most reliable of the testing methods. Ex. 2, Affidavit of S.O. at ¶ 8; Ex. 4, Affidavit of Phillip D. Magnus. Prof. Martin, however, considered the H-NMR data (and the other three tests) to be sufficient to identify molecules. Ex. 2, Affidavit of S.O. at ¶ 8; Ex. 4, Affidavit of Phillip D. Magnus. 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. Ex. 2, Affidavit of S.O. at ¶ 8; Ex. 4, Affidavit of Phillip D. Magnus. Under Prof. Martin's protocol, S.O. was required to identify molecules by the four tests described above. Ex. 2, Affidavit of S.O. at ¶8. Prof. Martin

recommended X-ray testing if the molecule could be crystallized but he gave little guidance on how to crystallize molecules. *Id*.

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

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. Ex. 2, Affidavit of S.O. at ¶9. This indicated that the subsequent planned steps could not be completed to the end. *Id*. And an unsuccessful Step 16 indicated the route could not be used to for Steps 16 -19 to make S, T, U and V. *Id* Therefore, S.O. had to make conclusions regarding P, Q and R. *Id*. This is where the expertise, advice, and input from Prof. Martin was necessary for a graduate student like S.O. *Id*. After analysis and discussion, Prof. Martin agreed with S.O.'s conclusions and full characterization as presented in her dissertation. *Id*.; Ex. 4, Affidavit of Phillip D. Magnus. Without his endorsement, she would not have been allowed to appear before the dissertation committee. Ex. 2, Affidavit of S.O. at ¶ 9.

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. Ex. 2, Affidavit of S.O. at ¶ 9. 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. *Id*.

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

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). Ex. 2, Affidavit of S.O. at ¶ 10. Each molecule also passed the

H-NMR test; however, the molecules were contaminated by several side products and solvents, making analysis difficult. *Id*. 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. *Id*. Molecules P, Q and R were also tested by the C-NMR test and the IR test. *Id*.

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. Ex. 4, Affidavit of Phil D. Magnus; Ex. 2, Affidavit of S.O. at ¶ 11. Nor was S.O. required to actually create any specific substance to earn her degree. Ex. 4, Affidavit of Phil D. Magnus; Ex. 2, Affidavit of S.O. at ¶ 11. 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. Ex. 2, Affidavit of S.O. at ¶ 11. And there is absolutely nothing to indicate a motive or intent to falsely report the data. *Id*. 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. *Id.* 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.[7] Ex. 2, Affidavit of S.O. at ¶ 11; Ex. 4, Affidavit of Phillip D. Magnus.

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

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. Ex. 2, Affidavit of S.O. at ¶¶ 12-16. The students have attempted different methods to reach the desired result, trying different scientific processes. *Id*. Sometime in 2009, unbeknownst to S.O., another graduate/post-doctoral researcher (referred

[7] 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.

to as J.T. or "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. Ex. 5, Affidavit of J. T.

Sometime in 2011, S.O. attended the birthday celebration of Prof. Martin in Austin. At the celebration Prof. Martin discussed her lundurine B research along with the work of the post-doc, expressing an interest in having the above route published. Ex. 2, Affidavit of S.O. at ¶ 13. Until this meeting in 2011, S.O. was unaware that her abandoned lundurine B research had continued. *Id*. 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. *Id*. at ¶¶ 12-13. 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. *Id*. It was the standard in Prof. Martin's group (at least in 2003-2008) that new 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. *Id*.

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. Ex. 5, Affidavit of J.T. A paper was published in which Prof. Martin was the leading (aka corresponding) author, and the post-doc and S.O. were coauthors of the journal article.[8] Ex. 2, Affidavit of S.O. at ¶ 14; Ex. 5, Affidavit of J.T. S.O. intended and expected that the post-doc would fully characterize the compounds as part of reproducing her work. Ex. 2, Affidavit of S.O. at ¶¶ 13-14. 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. *Id.*; Ex. 5, Affidavit of J.T. On relevant issues related to Compounds P, Q, and R, J.T.

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

reached the same or similar conclusions as S.O. that are discussed in his post-doctoral final report. Ex. 2, Affidavit of S.O. at ¶¶ 13-14,17; Ex. 5, Affidavit of J.T. 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)[9]. Ex. 2, Affidavit of S.O. at ¶14; Ex. 5, Affidavit of J.T.

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

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.[10] Ex. 2, Affidavit of S.O. at ¶ 17; Ex. 5, Affidavit of J.T. The post-doc ran two different tracks of experiments simultaneously in attempting to synthetically create lundurine B. Ex. 5, Affidavit of J.T. On the first track, he 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. Ex. 5, Affidavit of J.T. 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. Ex. 5, Affidavit of J.T. 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). *Id*.

On the second track of experiments, the post-doc *did* fully characterize the compounds. Ex. 5, Affidavit of J.T. For those experiments, the post-doc used an alternate method to synthesize a similar compound as that at Step 13 in the above diagram. *Id.* Unfortunately, he

[9] 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.

[10] 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.

was forced to abandon his alternate route. *Id.* Ultimately, like S.O., the post-doc did not synthetically create lundurine B. *Id*.

Despite his frustrations with both tracks of these experiments, the post-doc had hoped to be able to publish his work. Ex. 5, Affidavit of J.T. 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. *Id*. 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 testing results bearing S.O.'s file names. *Id*. Although S.O. had discussed and instructed him on how to locate her electronic data files, he did not do so.[11] Ex. 2, Affidavit of S.O. at ¶ 14. 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 and small amounts of molecules) and was privately concerned about whether the journal would accept the data. Ex. 5, Affidavit of J.T. 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. *Id*. 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. *Id*.; Ex. 2, Affidavit of S.O. at ¶ 15.

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

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

[11] 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.

experiments she performed under the supervision of her graduate advisor Prof. Martin. *Id*. 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, a committee which included Prof. Magnus. Ex. 4, Affidavit of Phillip D. Magnus. 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 co-authors and the journal's peer review committee.

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. Ex. 2, Affidavit of S.O. at ¶ 16. 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.

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. Ex. 2, Affidavit of S.O. at ¶ 11; Ex. 4, Affidavit of Phillip D. Magnus. She could have also proposed different identities for these three molecules. Ex. 2, Affidavit of S.O at ¶ 11. But with the input and consent of Prof. Martin, she reported these results in her dissertation. *Id.*

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

The decision to revoke a PhD is a harsh, severe and rare penalty. Ex. 4, Affidavit of Magnus. 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 that can only be had in this Court. *See id*. 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

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. Ex. 2, Affidavit of S.O. at ¶16. 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.[12] *Id.* 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. The University's research and funding could be compromised because of these allegations of misconduct, and so too is Prof. Martin's reputation at risk for his conduct as an advisor, research chemist, and author. *See e.g.,* 42 C.F.R. Parts 50 & 93 (addressing the NIH policies for research misconduct, standards, definitions, and consequences).

[12] 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.

Despite S.O.'s objections, UT continued to identify Prof. Martin as the "complainant" against S.O. and allowed the investigative committee to interview and communicate with him. Ex. 2, Affidavit of S.O. at ¶¶ 16-18.

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 investigative 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.

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 evidence they used against her was from the 2011 journal article, not from her dissertation.[13] Ex. 2, Affidavit of S.O. at ¶ 19. She was further denied access to experimental research files of the post-doc responsible for the submission of data to the publication. *Id*. at ¶¶17-19. 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. *Id*.; *see also* 42 C.F.R. 92 *et al*. (discussing research misconduct).

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

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*.[14] *Id*. 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.

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

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 involvement in the dissertation committee's work due to lack of fairness, an objection that went unheeded. As explained through Prof. Magnus's testimony, even he questioned the fairness of the process and objected to the dissertation committee's handling of the matter. Ex. 4, Affidavit of Phillip D. Magnus.

a. Prof. Magnus Objected to the Dissertation Committee's Review Because He Was Not Provided With the Relevant Data to Review the Allegations

Prof. Phillip D. Magnus is an Emeritus Chemistry Professor at the Chemistry Department of the University, who was tenured for twenty-five years, having retired in 2014. Ex. 4, Affidavit of Phillip D. Magnus. He supervised and taught hundreds of undergraduate, graduate, and post-

[14] 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.

doctorate students over his fifty years of experience in organic chemistry. *Id.* He has also published hundreds of peer reviewed journal articles and book chapters. *Id*.

Prof. Magnus has known both S.O. and Prof. Martin. He was a member of S.O.'s PhD candidacy committee (2006) and also a member of her dissertation committee (2008). Ex. 4, Affidavit of Phillip D. Magnus. He viewed S.O. as one of the best students, if not the best student, in her class. *Id*. She received an academic scholarship while she was a graduate student for her achievements.

Prof. Magnus first learned of the allegations against S.O. in 2013 when Dean Langlois asked him (via e-mail) to participate in meetings with the rest of the dissertation committee to determine whether there was scientific misconduct. *Id*. He understood that Dean Langlois was acting on instructions from Provost Leslie, and after speaking to Dean Langlois, he believed "the tone of what Provost Leslie set seemed to be predetermined—that it was not neutral for [S.O.]." He asked for further details about the allegations against S.O., and requested specific information to properly evaluate them. Ex. 4, Affidavit of Phillip D. Magnus. Those questions were never answered, and Magnus declined to participate in the dissertation committee review. *Id*. He also asked Prof. Martin about the details of the allegations and for proof of them, and he has never provided it. *Id*.

Prof. Magnus was unhappy with the University's protocol as applied against S.O. *Id*. He was being asked to make a judgment on the nmr data, but the University would not provide the data for him to review. *Id*. The accusations were "vague and not specific." *Id*. Therefore, he sent a letter to Dean Langlois expressing his concerns. Ex. 4, Affidavit of Phillip D. Magnus (Oct. 21, 2013 letter to Langlois attached thereto). He explained to her that "PhD revocation is an extremely harsh punishment, and that time would be better spent by [S.O.] and Dr. Martin

resolving the issue themselves." *Id*. He also mentioned that S.O. had made significant contributions to the science of organic chemistry and that if she had failed to make a specific compound in her research that would not be a proper reason to revoke her degree. *Id*. Prof. Magnus's questions remain unanswered and he was excluded from any and all further deliberations by the rest of S.O.'s committee members and Dean Langlois. *Id*.

From Prof. Magnus's perspective, he states:

> [S.O.] had an immaculate student record at UT. She was a stellar student and conducted her work with the highest integrity. She always conducted herself with the highest level of professionalism. Her work ethics and approach to science was certainly a model for other graduate students.
>
> It is not logical based on [her] stellar track record as a scientist that she would engage in any intentional wrongdoing, nor would she have had any motivation to do so. [S.O.]'s research in the Martin group and her dissertation consisted of two branches of work towards alkaloid natural products and a methodology project to generate novel structures. She characterized about 100 organic compounds in her dissertation. Even without completed syntheses of natural products, her research towards the natural products was significant, and provided her the training to become a skillful and passionate scientist. Being correct or incorrect is part of scientific research. Being correct, or synthesizing a particular molecule are not requirements for passing a course at the University, or obtaining a Ph D degree. Furthermore, the possibility of being wrong is not a justifiable reason to rescind a former student's degree.

Ex. 4, Affidavit of Phillip D. Magnus. Prof. Magnus was not alone in his opinions, as these opinions were also expressed by one of the investigative committee members who dissented from a finding of any misconduct.

b. A Partial Dissertation Committee Revoked S.O.'s Degree, Without Ever Receiving Input From S.O.

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 Prof. Magnus did not participate in the decision. Ex. 4, Affidavit of

Phillip D. Magnus. S.O. was informed that the University Registrar Stanfield would be implementing the degree revocation.

S.O. was not allowed access to the dissertation committee before its decision. Ex. 2, Affidavit of S.O. She was not accorded notice of the cause or causes presented to the dissertation committee for the action to be taken against her. *Id*. S.O. was not provided with the materials that the dissertation committee considered in reaching its decision, materials that were in fact erroneous. *Id*. 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. *Id*. 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. *Id*. J.T.'s work (which had similar results to S.O.) has never been questioned or challenged. Ex. 4, Affidavit of J.T. S.O.'s results and research have since been used in the dissertation of another of Prof. Martin's graduate student in 2012. *Id*. 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 J.T.? or another student's degree four years later*?

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

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.

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.

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.[15]

The University scheduled a hearing for March 4 that was to be conducted before a panel of undergraduate students, but after S.O. objected and this Court conducted a hearing, the

[15] For over nine months, from May 2014 to March 2015, S. O. fully co-operated with the Director at the Dean of Students Office who was leading this new process. The Director did not disclose the nature of the violation that she was accused of. The Director promised S. O. that she would have an opportunity to see all and any evidence and testimonies, and an opportunity to respond before any decisions were made. Ex. 3. Affidavit of S.O. Until March 25, 2015, S. O. did not receive any response to her inquiries about the nature of the violation, or the opportunity to see evidence and testimonies. On March 25, 2015 the Dean of Students office sent her their administrative disposition and conclusion of their investigation stating that the University would revoke her Ph D degree. Again, this investigation occurred over nine months without any opportunity for S. O. to respond to (or see) evidence used in this decision. In addition, an expert witness was used that is a friend of Prof. Martin

University agreed to allow her to have a hearing officer hear the allegations. The University, however, refused to agree to a hearing officer qualified as a PhD in Chemistry to conduct the hearing, but has indicated a random faculty member would be selected. Over S.O.'s objections, the University has determined it will apply the University Catalog from 2013-14, years after she graduated.

III. Argument & Authorities

On S.O.'s claims for declaratory relief, the Court must analyze sections of the Texas Education Code as well as the University's Catalog.

A. Summary Judgment Standard of Review: The Court Interprets Questions of Law *De Novo*

The purpose of summary judgment is to provide a method of terminating a case when it is clear that only a question of law is involved and there is no genuine issue of material fact. *GSC Enterp. Inc. v. Ryland*, 86 S.W.3d 469, 472 (Tex.App.—Austin 2002 no pet.) (interpreting Texas Property Code as a matter of law). Matters of statutory construction are questions of law for the court to decide rather than issues of fact. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 357 (Tex. 2000); *Johnson v. City of Fort Worth,* 774 S.W.2d 653, 656 (Tex.1989).

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).

B. S.O. Is Entitled to Declarations I & II: UT Does Not Have Authority to Revoke a Degree

S.O.'s motion for summary judgment turns on the statutory construction of Texas Education Code Section 65.31 to determine the scope of the University's authority. The Court should look to the language of the statute creating the University's Board of Regents, the interpretation of predecessor statutes, and the Administrative Procedure Act ("APA") in reaching the conclusion that the University is not authorized to revoke a degree.

1. The Express Language of Tex. Educ. Code § 65.31 Does Not Include Authority to Revoke a Degree

S.O seeks a declaration that the University Officials are not authorized to revoke a degree, but are only authorized to act under the 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. The University Board of Regents, as a statutory creation, "may exercise only those powers the law, in clear and express statutory language, confers upon them . . . Courts will not imply additional authority to agencies, nor may agencies create for themselves any excess powers." *See Subaru of Amer. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002) (analyzing and discussing jurisdiction of Motor Vehicle Board, which has a hybrid claims-resolution process; it could regulate distribution and sales of cars, but not resolve disputes to remedy harm).

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.

2. Interpreting a Predecessor Statute, The AG Determined that the University Does Not Have Statutory Authority to Revoke a Degree

As previously argued before the Court, the Texas Attorney General Op. M-466 (1969) concluded there is no statutory authority (express or implied) to revoke a degree under the former statute:

> It is our opinion that Article 2585 does not impose a mandatory duty upon the Board of Regents to confer or to grant any particular degree or diploma to any graduating students. Therefore, it is further our opinion that the Board of Regents **has no implied authority, pursuant to Article 2585, to annul a degree once conferred**. *The power of an administrative body cannot be derived by inference or implication*.

Ex. 1, Op. Tex. Att'y Gen'l M-466 at 2319 (emphasis supplied).

The Attorney General's Op. M-466 has not been withdrawn, modified, or otherwise overruled. Nor have any of the relevant statutes or cases been revised, amended, reversed, or otherwise changed to alter the results of the Attorney General's analysis. There is no reason for the Court to ignore this Attorney General Opinion because it is as relevant and persuasive today as it was when it was published in 1969. *See Southwestern Bell Tel. Co. v. Combs*, 270 S.W.3d 249, 261-2 (Tex.App.—Amarillo 2008, pet. denied) (finding Attorney General's 1952 opinion persuasive on matter where statutes had not changed and were consistent with the comptroller's rules); *accord In re Texas Dept. of State Health Svcs.*, 278 S.W.3d 1 (Tex.App.—Austin 2008, orig. proceedings) (according great weight to Attorney General opinions). Further, legislative action (and inaction) since 1969 demonstrates that the Legislature could have amended the statute to delegate this authority but did not.

As explained further below, the relationship post-graduation between the University and S.O. remains contractual, and the University may seek relief (including an attempt to revoke her degree) only through a court of competent jurisdiction.

3. The Court May Not Find Implied Authority to Revoke a Degree

b. Implied Powers are Limited to What is Reasonably Necessary to Effectuate Expressed Powers

The University claims to have implicit authority in its rulemaking ability to manage and set the conditions for granting a degree. Ex. 6, Feb. 17 Hearing Trans. at p. 15. While it is true that the University has the power and discretion to implement rules, its powers are limited by statute and those implied powers necessary to effectuate the expressed powers. *See Texas Mun. Power Agency v. Public Util. Comm'n,* 253 S.W.3d 184, 192–93 (Tex.2007) (quoting *Public Util. Comm'n v. City Pub. Serv. Bd. of San Antonio,* 53 S.W.3d 310, 315 (Tex. 2001) (stating state agency's powers limited by statute and those implied powers necessary to effectuate the expressed powers). Implied authority to create rules is understood for daily operations of the University and management of faculty and staff, but degree revocation can hardly be said to be part of those routine events.[16] Thus, as the Texas Supreme Court explained:

> The grant of an express power carries with it by necessary implication every other power necessary and proper to the execution of the power granted. When the law commands anything to be done, it authorizes the performance of whatever may be necessary for executing its commands.

Terrell v. Sparks, 135 S.W. 521 (Tex. 1911). There is no logical connection between what is necessary for awarding degrees—a property right—and the conditions for taking away that property right.[17] The power to award a degree can be effective without any power to revoke one. The University has simply not shown otherwise.

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[16] There are other statutes expressing those powers for the University to manage its facilities, faculty, contracts, donations/funding, and property. *See* Tex. Educ. Code §§65.31 et seq.

[17] They claimed to have an interest in protecting the integrity of their degrees and their reputation as an institute of higher education. But what about S.O.'s interest in protecting *her* reputation, good name, and credibility among her peers and colleagues? In spite of efforts to protect her privacy, it is virtually impossible as one need only search for the publication, which Prof. Martin retracted, to discover her identity. In fact, the very notion that the University should be allowed to handle this matter internally to protect its own reputation highlights the strong bias to preserve its image at all costs and underscores the very need to level the playing field for students like S.O. That can only be had in a court of competent jurisdiction.

b. If the Court Implies Authority in the Statute, it Would be Implying the University is an Administrative State Agency, Which is Contrary to the Legislature's Express Intentions

The Court should consider the significant difference between the State's delegating authority to grant property rights and its ability to take property rights away. The Legislature enacted the Administrative Procedure Act (the "APA") to provide the statutory scheme for the deprivation of a property interest with what the Legislature has determined are minimum due process safeguards. Those safeguards include proper notice of the charges, procedures for discovery and other pre-trial motions, and specifically defined standards for judicial review in this Court. No such standards exist in any of the University's rules as set forth in the 2003 Catalog. The existence of the APA underscores the significance of the authority to revoke and deprive a citizen of their property.

i. The University is Not a Statutorily Defined "State Agency"

The Court should determine the Legislative intent by looking at the overall statutory procedures in place for an administrative state agency. *See Jones v. Fowler*, 969 S.W.2d at 432 (determine the legislative intent from the entire act and not just from an isolated portion). The APA was enacted for the purpose of setting minimum standards of uniform practice for "state agencies" and to provide judicial review of "state agency" action. Tex. Gov't Code § 2001.001. The APA defines "state agencies" who may create their own rules and regulations, and it specifically excludes an "institute of higher education" like the University.

Under Tex. Gov't Code § 2001.003 (7), a state agency is defined as a "state officer, board, commission, or department with statewide jurisdiction that makes rules or determines contested cases." The term "state agency" "does not include (E) an institution of higher

education." Tex. Gov't Code § 2001.003 (7)(E). The University is an "institute of higher education." *See* Tex. Educ. Code §67.02. Thus, the Court cannot imply any authority for the University to act in the same manner as a statutorily defined "state agency" whose primary function is to adjudicate contested cases and regulate occupational licenses. If the Legislature had intended for the University to be such an agency, it would have made it one. Rather than include them, the Legislature has expressed its clear intention that the University ***not*** be authorized to regulate the degrees it confers.

The APA is significant because it demonstrates two things: (1) the Legislature knew how to set up administrative hearings to satisfy due process and (2) the Legislature specifically excluded schools like the University from conducting administrative hearings through SOAH[18] for the regulation of the degrees they are authorized to confer. Further, the Legislature's delegation of authority to the University in Tex. Educ. Code § 65.31 likewise limits their authority, and has never been revised after the Attorney General Opinion to include authority to revoke a degree. Had the Legislature intended to authorize the University to regulate and revoke the degrees it confers, it clearly knew how and could have done so.

ii. Historically, the Legislature Did Not Intend for the University to be an Administrative "State Agency"

The Legislature specifically excluded the University from the APA such that it cannot act as a "state agency" for purposes of functioning as an administrative state agency. This is consistent with the Attorney General conclusions as well, that even in 1969 the University was not an administrative "state agency": *The power of an administrative body cannot be derived by inference or implication.* Ex. 7, Att'y Gen'l Op. M-466 at 2319 (citations to *Board of Ins.*

[18] There are 60 state agencies which may conduct administrative hearings through the State Office of Administrative Hearings ("SOAH"), and the APA provides the procedural rules that must be followed. The rules include discovery rules and other pretrial procedures designed to provide due process.

Commissioner's of Texas v. Guardian Life Ins. Co. of Texas, 180 S.W.2d 906 (Tex. 1944); *accord Subaru of America, Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220-22 (Tex. 2002) (explaining that administrative agencies exercise only those powers the law, in clear and express statutory language, confers upon them).

After a review of the relevant sections of the APA, the only conclusion that can be drawn is that the Legislature never intended for the University to act with the authority of an administrative "state agency" with the power to revoke a degree (a property interest). Thus, the Court should resist the urge to confer such a broad grant of administrative state agency on the University when the Legislature has indicated its intention that it not be one. The Court must hold it does not have any statutory authority—express or implied—to revoke a degree.

For these reasons, S.O. asks the Court to enter a judgment as a matter of law ordering Declarations I - II.

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

S.O. asks the Court to order Declaration III recognizing that she 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. Ex. 1, Copy of S.O.'s PhD. The degree confers upon her "*all the rights and privileges there to appertaining*." These are her 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).

As set forth below, Texas state and federal courts have recognized that a student has a property and liberty interest in their education and degree that entitles them to due process protection. The Attorney General likewise concluded that a graduate student has a protected property interest in their PhD. *See* Ex. 7, Att'y Gen'l Op. M-466 at 2321. The Court should therefore hold that S.O. has a protected property and liberty interest in her PhD.

1. Federal Courts Recognize the Property & Liberty Interest in a Degree

In defining the scope of protected liberty interests under the Fourteenth Amendment, the United States Supreme Court said a liberty interest:

> [D]enotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, . . . and generally enjoy the privileges long recognized . . . as essential for the orderly pursuit of happiness by free men.

Board of Regents of State Colleges v. Roth, 408 U.S. 564, 572 (1972). Moreover, 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. *Goss v. Lopez*, 419 U.S. 565, 574 (1975) (students have property interest in public elementary and secondary education). Thus, the Supreme Court has held there is a constitutionally protected liberty and property interest in an education/degree. Years before those Supreme Court decisions, the U.S. Court of Appeals for the Fifth Circuit held there is a protected property interest in a college degree. *See Dixon v. Alabama State Board of Ed.,* 294 F.2d 150, 157 (5th Cir. 1961).

2. Texas State Courts Recognize the Property & Liberty Interest in a Degree

The Texas Supreme Court followed that precedent. *University of Tex. Med. Sch. at Houston v. Than,* 901 S.W.2d 926, 930 (Tex.1995). In *Than*, a medical student sued the University of Texas over their disciplinary proceedings claiming he was denied due process when he was dismissed from the university. *Id*. at 928. Than was accused of cheating during the board of medical examiners exam and was dismissed without his degree. *Id*. In holding Than was denied due process, the Texas Supreme Court recognized his protected liberty interest:

> A medical student charged with academic dishonesty faces not only serious damage to his reputation but also the loss of his chosen profession as a physician. . .The stigma is likely to follow the student and preclude him from completing his education at other institutions. **We hold that Than has a constitutionally protected liberty interest in his graduate education that must be afforded procedural due process**.

Id. at 930 (citing *Goss* and *Roth*) (emphasis added). The Texas Supreme Court did not, however, express any opinion on whether graduate students have a property interest in their education at state universities because it had already determined Than had a protected liberty interest. 901 S.W.2d at 934, n.1. As explained in *Roth*,

> [t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

408 U.S. at 577. Clearly, S.O. has a legitimate claim of entitlement to her PhD that this Court should hold is a protected property interest. *See also National Collegiate Athletic Ass'n v. Yeo*, 171 S.W.3d 863, 870 (Tex. 2005) (refusing to equate an interest in intercollegiate athletics with an interest in graduate education); *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)

3. The Attorney General Recognized the Property Interest in a Degree

The Attorney General recognized that "the recipient of the degree has received an award in the nature of a property right which in our opinion is protected by due process." *See* Ex. 7, Att'y Gen'l Op. M-466 at 2321. Because "[t]he Legislature has not seen fit to prescribe an administrative procedure whereby degrees awarded students may be cancelled or rescinded by the administrative board," the Attorney General concluded that "such degree can only be set aside or annulled by a Court of competent jurisdiction." *Id*.

There is no reason for this Court to deviate from the relevant holdings the higher courts as set forth above. Following *Roth*, *Goss*, *Dixon*, and *Than*, the Court must enter a judgment for Declaration III—that S.O. has a constitutionally protected property and liberty interest in her graduate education/PhD degree that must be afforded due process.

D. 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

S.O. asks the Court to order Declarations IV and V. To date the University has cited and attempted to enforce the rules of at least three different years against S.O. But after she objected and informed them that the only rules that could be applied are the 2003 Catalog in effect when she first enrolled as a student, they finally decided they would apply the 2013-14 Catalog. *See* Ex. __, 2003 University Catalog/Rules. Under relevant Texas law, the University's 2013-14 rules cannot be retroactively enforced or applied against her. Doing so would be contrary to well-settled law, contract principles, and a violation of her constitutional rights.

1. Texas Cases Hold the University's Relationship With S.O. is Contractual

For over a century Texas courts have held the relationship between the University and its students are contractual, and that was the reasoning of the Attorney General in their 1969 decision. Ex. 7, Att'y Gen'l Op. M-466 at 2319-21. Numerous Texas courts 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).

More recent precedent reaffirms this principle: 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 when she enrolled 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 in effect at enrollment 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.").

2. The University Catalog Does Not Expressly Disclaim a Contract

The law regarding the parties' contractual relationship has not changed, but 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). Here, the University Catalog does not have any express disclaimers that would change the nature of their relationship. Nor has the University alleged that there is such a provision.

The University, in fact, has refused to even acknowledge that their Catalog constitutes a contract with S.O., but under the cases cited here, the Court cannot hold otherwise. 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 declare the 2003 University Catalog in effect when S.O. enrolled is constitutes a binding contract with the University, and further that the University may not enforce any rules amended, modified, or adopted after S.O. enrolled or graduated.

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

E. 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

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.

1. S.O. is Entitled to Procedural and Substantive Due Process

S.O. has objected to many aspects of this disciplinary process that are so fundamentally flawed as to violate her right to due process. In matters of procedural due process, the Texas Courts also follow federal due process interpretations of procedural due process issues. *Than*, 901 S.W.2d at 930. 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 (which S.O. does as explained above); and (2) if so, what process is due. *See Than,* 901 S.W.2d at 929. 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

The more severe the penalty, the more is required to satisfy due process. *Than*, 901 S.W.2d at 930-31. What process is due is measured by a flexible standard that depends on the practical requirements of the circumstances. This flexible standard, according to the Texas Supreme Court, includes three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through procedures used; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id*. When these

factors are considered in S.O's case—a former student who graduated eight years ago, the Court must conclude the University's "informal give-and-take" does not satisfy due process standards.

For a case with disputed allegations of misconduct, as in this case, due process requires more. The *Than* Court's reasoning about due process for a *current* student *denied his degree* concluded that the student interest is entitled to more deference than would be afforded a temporary suspension:

> Although university officials presumably act in good faith bringing charges of academic dishonesty against a student, there is a significant risk of error because the controlling facts are in dispute and university officials often must rely on circumstantial evidence and reports of others. . . . **Due process in this case requires something more than the "informal give-and-take" required for short temporary suspensions.**

Id. at 931 (emphasis supplied). Further, although the *Than* Court would not specify what process is required for disciplinary dismissals from a state university, it cautioned that "a university is an academic institution, not a courtroom or administrative hearing room" and that the

> due course of law guarantee, like the due process clause, does not ensure that the academic disciplinary process is accurate and without error; **it merely guards against the risk of unfair dismissal or suspension if that may be accomplished without prohibitive cost or interference with the educational experience**.

Id. at 931 (citations omitted) (emphasis supplied). When the Court applies the factors and reasoning of the *Than* Court, it must conclude two things: (1) that the University's procedures do not provide due process when they are seeking to revoke a degree; and (2) the trial court is the proper forum to do so, consistent with the Attorney General's 1969 Opinion.

2. The University's "Informal Give-and-Take" Process" Does Not Satisfy Due Process

a. Weighing the *Than* Factors in S.O.'s Case, the Court Must Hold Due Process Is Not Satisfied

Unlike in *Than*, the University is dealing with a former student who graduated and earned her degree—and there is no concern of Court interference with her educational experience. Rather, the University's process interferes with S.O.'s property and liberty interest in her PhD which is significant. Her interest in keeping her degree goes to her ability and desire to continue working in her chosen profession, to protect the integrity of her reputation and the respect of her peers, and to pursue professional opportunities. The risk of an erroneous deprivation of her property and liberty interests is extremely high (if not a near certainty) given the University's intended process. The University is the victim, the accuser, the judge, the jury, and the executioner. It holds all of the cards and there is no winning for any student under such a scheme. Even Prof. Magnus expressed his serious concerns at the unfairness of the process, finding the results to be "pre-determined" against S.O. Ex. 4, Affidavit of Phillip D. Magnus.

As far as the University's interest, and any burdens on it to provide S.O. with due process, it simply cannot outweigh S.O.'s interests. The University's claimed interest in its reputation cannot be greater than S.O.'s constitutionally protected interests. In fact, the University's claimed interest to protect itself underscores the need for an outside, impartial tribunal to protect S.O., as the University has every incentive to take advantage of and sacrifice a student for the sake of its reputation and often times financial reasons (government funding, grants, and other programs that might otherwise be compromised). *See e.g.*, 42 C.F.R. 50 & 90 (addressing research misconduct and consequences). Consistent with the Attorney General's

conclusion that the University does not have authority to revoke a degree, the University must seek relief in a court of law where the playing field is leveled.

b. The "Hearing Advisor" is Not an Impartial or Qualified Tribunal

S.O. is entitled to more than this "informal give-and-take" that the University's disciplinary process provides. Revocation of a degree is the most severe penalty. In fact, it is the only apparent sanction if and when there is a finding of academic misconduct. *See* Ex. 8, 2003 University Catalog, Section 11-502(n) (stating "revocation of the degree and withdrawal of the diploma may be imposed when the violation involves scholastic dishonesty or otherwise calls into question the integrity of the work required for the degree."); *see also* Sec. 11-501 (listing revocation as one of the "Authorized Disciplinary Penalties"). The University revoked S.O.'s degree once before in 2014 *without any opportunity for her to present her own defense*. After she sued, the University reinstated her degree and promised her an opportunity to be heard in disciplinary proceedings established *after* S.O. graduated (clearly contrary to the law). Yet the University's disciplinary proceedings provide nothing but an informal process—one that is inherently one-sided, fraught with uncertainty, and designed with the University in absolute control of every aspect.

Until weeks ago, the University intended 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. After the temporary injunction hearing, it then offered S.O. the option of having her case heard before a hearing officer to be randomly selected from their list of professors. Regarding a "hearing officer," the 2003 University Catalog states the following:

> e. 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.

f. 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).

Ex. 8, 2003 University Catalog, Section 11-103 at p.8. Following these rules as written, S.O. is denied equal protection and due process under the law.

At a minimum, among other things, due process also requires a **hearing before a tribunal with subject matter expertise and apparent impartiality**. *Ferguson v. Thomas*, 430 F.2d 852, 856 (5th Cir. 1970). Under the express language of Sec. 11-103(4) set out above, if S.O. was a law student, the rules guarantee her the right to law faculty on her tribunal. 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. This is simply not due process.

c. There is No Meaningful Opportunity to Prepare, Defend, or Be Heard

S.O objects to the procedural due process because the 2003 University Catalog does not afford her an opportunity to be heard in a meaningful manner. The 2003 University Catalog (and the present rules which they seek to enforce) does not require the University to disclose or provide S.O. with any of its evidence or witnesses until a mere 5 days before its scheduled hearing. On that same date, S.O. is supposed to disclose her evidence and witnesses as well. Ex. 8, 2003 Catalog at Section 11-404; *see also* Sec. 11-406-07. When one is facing allegations of academic misconduct which will result in the revocation of a PhD, meaningful notice and an

opportunity to be heard demands more. This can only be had in a court of competent jurisdiction, as contemplated by the Attorney General in 1969. In a Texas state court, S.O.'s property rights are guaranteed due process, with a fair and impartial jury, an opportunity to conduct discovery, known rules of evidence, well-defined burdens of proof and standards of review, and pre-trial procedures designed to protect all parties. This is in stark contrast to the inherently one-sided disciplinary process of the University.

d. S.O. Must Represent Herself—She is Not Allowed Counsel

There are further examples of what will happen if forced to an informal hearing through the University—demonstrating the fundamentally flawed procedure that will deny S.O. due process. Although S.O. is permitted to have a "hearing advisor", she is not permitted to have legal counsel speak on her behalf. Ex. 8, 2003 University Catalog at Section 11-406. **SHE** must represent herself—she must be the one to speak, present her case to defend herself, present witnesses, cross-examine witnesses, and make any objections and argument. Her hearing advisor may be an attorney, but the attorney may not speak at all during the proceeding.

e. S.O. Has Been Denied Access to ALL Evidence Needed for Her Defense

To date, over the last four years, S.O. has request on at least a dozen occasions that she have access to certain information necessary to defend against the University's allegations. The University has denied every single request, even though she is legally entitled to the information. Her requests and the University responses denying them are attached. Ex. 3, S.O. Affidavit with attachments. For any hearing that may take place, S.O. will not have evidence of *her own electronic laboratory results at issue*, nor will she have the written laboratory notebooks at issue.

S.O. also will not have evidence of the electronic laboratory results, reports and notebooks of the work performed by the post-doc J.T., which when cross-referenced with her

results would show her results were reproduced. *See* Ex. 5, Affidavit of J.T. S.O. has also been denied access to his written laboratory notebooks as well, and to date has never been able to review them for comparison. Ex. 2, Affidavit of S.O. at ¶17. These data are subject to National Institute of Health open data sharing policies as the research was funded by that agency. Inexplicably, her requests have been denied. *See Id*. at ¶¶ 17-18; Ex. 3, Affidavit of S.O. with attachments. S.O. will never have had the opportunity to interview witnesses or discover evidence from others who had access to her laboratory results, or of those responsible for maintaining those records electronically and in hard copy form. She will not have been able to interview witnesses who are employees or within the control of the University either.

Beyond the deprivation of evidence, S.O. will be required to operate without any operative evidentiary or procedural rules that would typically be known to parties in this Court. S.O. will not have access to any of the University witnesses with sufficient time to interview and prepare for her defense. *Id*. Nor will she have sufficient time to prepare and secure her witnesses, many of whom do not reside in state. *Id*. S.O. will not have access to any of the documentary evidence until five days before the hearing, which is essentially trial by ambush, something which the rules of discovery are designed to prevent.

Finally, there is no additional process on appeal that would cure the defects in the initial hearing. Having been denied the relevant documents (including her own laboratory results at issue or those of J.T.), the procedural defect is in the evidence that will be relied upon by the hearing officer. *Than*, 901 S.W.2d at 933. Any appellate review is limited to the incomplete evidentiary record and simply cannot cure the defect. The appeals process to the President of the University is therefore insufficient for due process, as it was in *Than*. *Id*.

Importantly, there is **no standard of judicial review in this Court**. Because the University is not a "state agency", if the Court implies its authority, there will not be any established rules to follow because the APA explicitly does not apply. This lack of evidence impairs S.O.'s ability to appeal the case. There is no additional process on appeal that would cure the defects in the initial hearing. Having been denied the relevant documents (including her own laboratory results at issue or those of J.T.), the procedural defect is in the evidence that will be relied upon by the hearing officer. Any appellate review is limited to the incomplete evidentiary record and simply cannot cure the defect. *See Than*, 901 S.W.2d at 933.

Based on all of the foregoing reasons, the University's intended proceedings do not satisfy due process. S.O. therefore requests that the Court enter the requested Declarations VI – IX finding the University's 2003 catalog unconstitutional.

IV. The Court Should Exercise its Discretion and Award S.O. Her Attorneys' Fees

S.O. asks the Court to award her attorneys' fees and expenses as are permitted under the Declaratory Judgment Act. As part of declaratory relief, a trial court has discretion in awarding costs and attorneys' fees as are "equitable and just." Tex. Civ. Prac. & Rem. Code § 37.009; *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 888 (Tex. 2000); *Texas A & M University-Kingsville v. Lawson*, 127 S.W.3d 866, 874-75 (Tex.App.—Austin 2004, pet. denied). The award of attorneys' fees is not dependent on a finding that the party "substantially prevailed" and a trial court may award just and equitable attorneys' fees to a non-prevailing party. *Barshop v. Medina County Underground Water Conservation Dist.,* 925 S.W.2d 618, 638 (Tex. 1996); *Lawson*, 127 S.W.3d at 874-75. Here, the Court should award attorneys' fees to S.O. whether she is a prevailing party as are just and equitable. S.O. submits proof by affidavits of her costs incurred to date for attorneys' fees and expenses in this litigation, which are in

excess of $95,000. Ex. 2, Affidavit of S.O. at ¶2. Her attorney's fees and expenses continue to accrue and be incurred as the litigation continues. *Id*. She had previously retained counsel at the law firm of Deats, Durst, Owen, and Levy, having paid them $40,099. *Id.*

She also submits the affidavit of her attorney David K. Sergi who has represented her since around May 2015. Ex. 9, Affidavit of David K. Sergi. He has been licensed in Texas since 1985 and in California since 1987. *Id*. He has maintained an active general civil and criminal litigation practice in San Marcos, Texas for over 20 years. *Id*. He handles litigation in and out of Texas in state and federal courts. *Id*. Mr. Sergi's hourly rate in this litigation has been $250/hour, which is reasonable for an attorney of my skills and experience. He has experience in degree revocation cases, and his normal hourly rate is $450. For this case, he reached an agreement with S.O. to work for a reduced rate.

Mr. Sergi was retained in or around May 2015 to represent S.O. in this action. From the beginning of my representation in 2015 through the filing of the Plaintiff's Motion for Final Summary Judgment, S.O. has incurred reasonable and necessary attorneys' fees and expenses totaling approximately $56,000 which continue to accrue. *Id*. The total number of hours to date of attorney and paralegal time spent by me and my office is over 240 hours. *Id*. This work includes research, drafting pleadings, reviewing documents, meeting experts, discussions with the Defendants and their counsel, attending hearings, including the Feb. 17 hearing on the injunction, and the research and drafting of this Motion for Final Summary Judgment. He expects additional fees and expenses to be incurred for counsel to attend a hearing on the Motion for Final Summary Judgment through the final resolution of this case. *Id*.

In light of this evidence, S.O. asks the Court to enter an award of attorneys' fees and expenses in the amount of $95,099, as is equitable and just, and to further include an award of attorneys' fees of $50,000 for any appeal.

V. Conclusion & Prayer for Relief

Plaintiff S.O. prays that, after an oral hearing, the Court grant this final summary judgment entering the requested Declarations I-IX and a permanent injunction giving effect to this judgment. More specifically, she seeks a permanent injunction against the University from conducting informal disciplinary proceedings to revoke her degree. S.O. further requests that the Court enter an award of attorneys' fees and expenses in the amount of $95,099 paid to date, as well as $50,000 for attorneys' fees and expenses for any appeal of this action. *See* Tex. Civ. Prac. & Rem. Code § 37.009. Finally, she asks the Court to award Plaintiff such other and further relief to which she may be justly entitled. A proposed judgment is attached.

Respectfully submitted,

/S/ David K. Sergi
By:_____

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CERTIFICATE OF SERVICE

I certify that on March 15, 2016 a true and correct copy of Plaintiff's Motion for Final Summary Judgement was served on the following counsel:

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