

No. \_\_\_\_\_

---

---

In The  
**Supreme Court of the United States**

---

---

J.M.F.,

*Petitioner,*

v.

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS,

*Respondent.*

---

---

**On Petition For A Writ Of Certiorari  
To The Superior Court Of New Jersey,  
Appellate Division**

---

---

**PETITION FOR A WRIT OF CERTIORARI**

---

---

JULIA MARIA FERNANDEZ  
442 5th Avenue, #1596  
Manhattan, NY 10018  
Phone: (201) 558-0443  
Email: juliamaria@mail.com

---

---

## QUESTIONS PRESENTED

1. Whether ALJs violate the rule of law by depriving petitioners of their disability pensions on credibility grounds when petitioners have met their burden of proof and the questioning of their credibility is based on an ALJ's unexplained "impression" and on a state expert's opinion not based on medical facts.
2. Whether state Appellate and Supreme Courts respectively deny petitioners due process of the law when:
  - a. Affirming an ALJ's Decision by making false statements prejudicial to petitioner and by failing to address petitioner's Brief's legal points showing that the ALJ's Decision wasn't based on cogent reasons.
  - b. Ignoring a petitioner's request to investigate a likely collusion between the Appellate Court and the agency in an ongoing appeal and later denying review of said court's decision.
3. Whether state courts violate the First Amendment when sealing records on the grounds that petitioner's privacy needs to be protected even though such privacy does not overcome the strong presumption of public access to records and even though petitioner wants the record unsealed in order to share it with the public.

## LIST OF PARTIES

Petitioner is Julia Maria Fernandez, former teacher in a New Jersey public school.

Respondent is the New Jersey Department of the Treasury, Division of Pensions and Benefits.

Respondent was originally the Board of Trustees, TPAF. However, the Appellate Court forced petitioner to amend the caption to the present name.

## RELATED PROCEEDINGS

*J.M.F. v. Department of Treasury, Divisions of Pensions and Benefits*, No. 086353, New Jersey Supreme Court. Judgment entered Jan. 10, 2023.

*J.M.F. v. Department of Treasury, Divisions of Pensions and Benefits*, No. 086353, New Jersey Supreme Court. Judgment entered Sept. 7, 2022.

*J.M.F. v. Department of Treasury, Divisions of Pensions and Benefits*, No. A-2658-18, New Jersey Court of Appeals. Judgment entered Sept. 15, 2021.

*Julia Fernandez v. Teacher's Pension and Annuity Fund*, No. TYP 01684-14, New Jersey Office of Administrative Law, Judgment entered Aug. 9, 2018.

## TABLE OF CONTENTS

|                                                                                                                                 | Page |
|---------------------------------------------------------------------------------------------------------------------------------|------|
| QUESTIONS PRESENTED .....                                                                                                       | i    |
| LIST OF PARTIES .....                                                                                                           | ii   |
| RELATED PROCEEDINGS .....                                                                                                       | ii   |
| TABLE OF CONTENTS .....                                                                                                         | iii  |
| TABLE OF AUTHORITIES .....                                                                                                      | ix   |
| OPINIONS BELOW.....                                                                                                             | 1    |
| JURISDICTION.....                                                                                                               | 1    |
| CONSTITUTIONAL PROVISIONS .....                                                                                                 | 1    |
| INTRODUCTION .....                                                                                                              | 1    |
| STATEMENT OF THE CASE.....                                                                                                      | 5    |
| I. Facts Material for Consideration of Question 1.....                                                                          | 5    |
| A. The NJ Board of Trustees, TPAF Denies Petitioner Her Disability Pension .....                                                | 5    |
| B. ALJ Richard McGill Affirms Agency's Decision .....                                                                           | 6    |
| C. Petitioner's Reply to Above Decisions: Her Merits Brief.....                                                                 | 6    |
| 1. <u>Point I.</u> The agency's decision was arbitrary and capricious, unsupported by substantial credible evidence .....       | 6    |
| 2. <u>Point II.</u> ALJ McGill's Credibility Decision does not deserve deference because it is not based on cogent reasons..... | 9    |

## TABLE OF CONTENTS – Continued

|                                                                                             | Page |
|---------------------------------------------------------------------------------------------|------|
| II. Facts Material for Consideration of Question 2.....                                     | 17   |
| A. NJ Appellate Court Affirms ALJ McGill’s Decision.....                                    | 17   |
| B. Petition for Certification to the NJ Supreme Court.....                                  | 18   |
| C. NJ Supreme Court Denies Review of Appellate Decision.....                                | 22   |
| III. Facts Material for Consideration of Question 3.....                                    | 23   |
| A. Background on Sealing of Petitioner’s Record.....                                        | 23   |
| B. Petitioner’s Merits Brief’s Legal Points on Sealing.....                                 | 24   |
| 1. Sealing did not meet the good cause requirements decided by the NJ Supreme Court in 1995 |      |
| 2. It violates petitioner’s First Amendment Right to Freedom of Speech                      |      |
| C. Appellate Court Affirms Sealing. Petitioner’s Reply.....                                 | 25   |
| REASONS FOR GRANTING THE WRIT.....                                                          | 26   |
| I. Petitioner Was Deprived of Her Disability Pension Without Due Process of The Law ...     | 27   |
| A. Judges Made False Statements Prejudicial to Petitioner.....                              | 27   |
| B. The NJ Appellate Court Denied Petitioner’s Right to Appeal.....                          | 28   |

## TABLE OF CONTENTS – Continued

|                                                                                                                                                                                                                                                    | Page |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| C. Petitioner Was Denied Opportunity to Present Evidence.....                                                                                                                                                                                      | 29   |
| D. The NJ Supreme Court Denied Petitioner Review.....                                                                                                                                                                                              | 30   |
| E. Petitioner Was Shut Down Every Time She Attempted to Bring Wrongdoings to the Court’s Attention.....                                                                                                                                            | 31   |
| F. The ALJ Waited Four Years to Grant Petitioner a Hearing.....                                                                                                                                                                                    | 33   |
| G. Petitioner Did Not Get an Impartial Tribunal.....                                                                                                                                                                                               | 33   |
| H. Agency’s Actions Against the Rule of Law and Due Process .....                                                                                                                                                                                  | 34   |
| II. The ALJ’s Decision to Deny Petitioner her Disability Pension on Credibility Grounds Conflicts with the Rulings by US Circuit Courts of Appeals Requiring that Said Decisions Be Based on Substantial Credible Evidence and Cogent Reasons..... | 36   |
| III. This Decision Has Caused Petitioner Grave and Permanent Harm.....                                                                                                                                                                             | 37   |
| A. Petitioner has been deprived of her livelihood                                                                                                                                                                                                  |      |
| IV. Petitioner and The Public Were Denied Their First Amendment Rights .....                                                                                                                                                                       | 38   |
| A. The sealing of petitioner’s record forbids her from sharing it with the public and from criticizing the NJ government                                                                                                                           |      |

## TABLE OF CONTENTS – Continued

|                                                                                                                                                                                                   | Page |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| B. The public is being denied its right to inspect the record of a judicial proceeding                                                                                                            |      |
| V. This is a Matter of Public Interest and of National Importance .....                                                                                                                           | 38   |
| A. Rightful disability pension claimants are being deprived of the pension they might need to live                                                                                                |      |
| B. The staff of these agencies and courts are being hurt by having to participate in these unjust denials                                                                                         |      |
| C. The public is being denied its right to inspect the record of judicial proceedings                                                                                                             |      |
| D. From this case, it is reasonable to conclude that NJ courts are giving undue deference to agencies in other matters aside from disability pensions. Thus, many people are being denied justice |      |
| E. This case needs to serve as precedent for any state that may be engaging in similar actions against its citizens                                                                               |      |
| VI. The Constitution and the Rule of Law Need to Be Defended .....                                                                                                                                | 40   |
| CONCLUSION.....                                                                                                                                                                                   | 41   |

## TABLE OF CONTENTS – Continued

|                                                                                                             | Page    |
|-------------------------------------------------------------------------------------------------------------|---------|
| APPENDIX                                                                                                    |         |
| APP A: NJ Court of Appeals Decision<br>(Sept. 15, 2021).....                                                | App. 1  |
| APP B: NJ Supreme Court Order Denying<br>Petition for Certification<br>(Sept. 7, 2022).....                 | App. 23 |
| APP C: NJ Supreme Court Order Denying<br>Mt. for Reconsideration<br>(Jan. 10, 2023) .....                   | App. 24 |
| APP D: NOA and NJ Appellate Court Orders<br>Notice of Appeal, p. 1<br>(Feb. 25, 2019).....                  | App. 25 |
| Appellate Court Denies Pension Appeal<br>(Feb. 10, 2020).....                                               | App. 27 |
| Appellate Court Vacates Denial of<br>Pension Appeal<br>(March 19, 2020).....                                | App. 29 |
| Appellate Court Denies Motion to<br>Supplement Record<br>(Oct. 1, 2020).....                                | App. 32 |
| Appellate Judge Carmen Messano’s<br>Order<br>(Nov. 25, 2020) .....                                          | App. 34 |
| APP E: Petitioner’s Letters to Chief Justice<br>Stuart Rabner, p.1<br>(March 16, 2020; Jan. 20, 2021) ..... | App. 36 |



## TABLE OF CONTENTS – Continued

|                                                                                                            | Page    |
|------------------------------------------------------------------------------------------------------------|---------|
| Letter from NJ Supreme Court to<br>Petitioner<br>(Oct. 27, 2020).....                                      | App. 38 |
| Letter from NJ Advisory Committee<br>on Judicial Conduct<br>(Feb. 22, 2023).....                           | App. 40 |
| APP F: Agency’s Reply to Petitioner’s Merits<br>Brief<br>(March 3, 2021).....                              | App. 42 |
| APP G: Emails from Agency’s Secretary on<br>Appeal Deadline<br>(Nov. 16, 2018 through Jan. 24, 2019)...    | App. 54 |
| Email from Agency’s Secretary- Oral<br>Arguments<br>(April 2, 2019).....                                   | App. 57 |
| APP H: Emails from Division of Pensions and<br>IME’s Employer<br>(Oct. 22, 2018 through April 8, 2019).... | App. 60 |
| Email from OAL Chief Justice’s Secre-<br>tary (May 29, 2019) .....                                         | App. 62 |
| APP I: Excerpts from Merits Brief to Appellate<br>Court (Jan. 4, 2021).....                                | App. 64 |
| Excerpts from Petition of Certification<br>to NJ Supreme Court (May 12, 2022)....                          | App. 73 |
| APP J: Constitutional Provisions .....                                                                     | App. 75 |

## TABLE OF AUTHORITIES

|                                                                                                        | Page   |
|--------------------------------------------------------------------------------------------------------|--------|
| CASES                                                                                                  |        |
| <i>Azarowicz v. Metropolitan Beef Co.</i> ,<br>191 A. 483 (N.J. 1937) .....                            | 11     |
| <i>Ames v. Sheffield Farms Company</i> ,<br>1 N.J. 11 (1948).....                                      | 11     |
| <i>Beam v. Kent</i> ,<br>3 N.J. 210 (1949).....                                                        | 15     |
| <i>Brady v. Bd of Review</i> ,<br>152 N.J. 197 (1997).....                                             | 6, 7   |
| <i>Fink v. City of Paterson</i> ,<br>44 N.J. Super. 129 (App. Div. 1957).....                          | 15     |
| <i>Gerba v. Public Employees' Retd. Sys. Trustees</i> ,<br>83 N.J. 174 (1980).....                     | 2      |
| <i>Gilbert v. Gilbert Machine Works, Inc.</i> ,<br>122 N.J.L. 533 (Sup. Ct. 1939) .....                | 11     |
| <i>Gorzynski v. Public Service Interstate, etc., Co.</i> ,<br>5 N.J. Super. 191 (App. Div. 1949.)..... | 15     |
| <i>Greenwood v. State Police Training Ctr.</i> ,<br>127 N.J. 500 (1992).....                           | 7      |
| <i>Hammock v. Hoffmann-LaRoche, Inc.</i> ,<br>142 N.J. 356 (1995).....                                 | 24, 25 |
| <i>Manimbao v. Ashcroft</i> ,<br>329 F.3d 655 (9th Cir. 2003).....                                     | 10     |
| <i>Morgan v. Mukasey</i> ,<br>529 F.3d 1202 (9th Cir. 2008).....                                       | 10     |

## TABLE OF AUTHORITIES – Continued

|                                                                                                   | Page |
|---------------------------------------------------------------------------------------------------|------|
| <i>Paterson v. Board of Trustees,<br/>State Police Retd. System,<br/>194 N.J. 29 (2008)</i> ..... | 10   |
| <i>Retlaw Broad. Co. v. NLRB,<br/>53 F.3d 1002 (9th Cir. 1995)</i> .....                          | 10   |
| <i>Russo v. Wright Aeronautical Corp.,<br/>1 N.J. 417 (1949)</i> .....                            | 11   |
| <i>Swanson v. Wiesenfeld,<br/>24 N.J. Super. 576 (N.J. Super. App. Div. 1953)</i> .....           | 15   |
| <i>Trusky v. Ford Motor Co.,<br/>19 N.J. Super. 100 (App. Div. 1952)</i> .....                    | 15   |
| <br>FEDERAL LAW                                                                                   |      |
| <i>Briggs v. Massanari,<br/>248 F.3d 1235 (10th Cir. 2001)</i> .....                              | 37   |
| <i>Ceguerra v. Secretary of Health &amp; Human Servs.,<br/>933 F.2d 735 (9th Cir. 1991)</i> ..... | 37   |
| <i>Figeroa v. US INS,<br/>886 F.2d 76 (4th Cir. 1989)</i> .....                                   | 37   |
| <i>Ghiselli v. Colvin,<br/>837 F.3d 771 (7th Cir. 2016)</i> .....                                 | 37   |
| <i>Kepler v. Chater,<br/>68 F.3d 387 (10th Cir. 1995)</i> .....                                   | 37   |
| <i>NLRB v. New York-Keansburg-Long Branch Bus Co.,<br/>578 F.2d 472 (3d Cir. 1978)</i> .....      | 37   |
| <i>Universal Camera Corp. v. NLRB,<br/>340 U.S. 424 (1951)</i> .....                              | 37   |

TABLE OF AUTHORITIES – Continued

|                                                                                             | Page              |
|---------------------------------------------------------------------------------------------|-------------------|
| RULES                                                                                       |                   |
| NJ Rule 1:2-1 .....                                                                         | 24                |
| NJ Rule 1:7-4(a).....                                                                       | 15                |
| NJ Rule 2:5-5 (b).....                                                                      | 29                |
| NJ Rule 2:12-4 .....                                                                        | 31                |
| NJ Rule 703 .....                                                                           | 15                |
| CONSTITUTIONAL PROVISIONS                                                                   |                   |
| Article VI of the Constitution.....                                                         | 1, 40             |
| Due Process and Equal Protection Clauses of<br>the 14th Amendment of the Constitution ..... | 1, 2, 26          |
| First Amendment Free Speech Clause ..                                                       | 1, 23, 26, 30, 38 |
| STATUTES                                                                                    |                   |
| 8 U.S.C. § 1252(b)(4)(B) .....                                                              | 37                |
| 28 U.S.C. § 1257(a).....                                                                    | 1                 |
| OTHER AUTHORITIES                                                                           |                   |
| N.J.A.C. 1:1-14.1 .....                                                                     | 25, 26            |

## **OPINIONS BELOW**

The New Jersey Supreme Court's order denying review is reported at App. 23-24.

The New Jersey Court of Appeals' Decision is reported at App. 1.

The ALJ's Decision is reported at Sapp. 1.



## **JURISDICTION**

The New Jersey Supreme Court issued an order denying petitioner's Motion for Reconsideration of said Court's denial for review of the Appellate Decision on January 10, 2022.

This Court has jurisdiction under 28 U.S.C. §1257(a).



## **CONSTITUTIONAL PROVISIONS**

The texts of the Fourteenth and First Amendments to the United States Constitution and of Article VI of the Constitution are found at App. 75.



## **INTRODUCTION**

### **Preface**

The statements made in this petition regarding members of the New Jersey judiciary are intended to

convey the necessity for the rule of law in NJ and in this nation. They are directed to specific judges, not to their noble profession. And not to the many honorable members of the Judiciary, some of whom are sometimes defamed by people whose only intention is to cause them harm.

...

The Due Process and Equal Protection Clauses of the 14th Amendment of the Constitution are meant to protect the constitutional rights of the citizens of this nation and to ensure that they are not deprived by their state governments of life, liberty or property without the due process of the law.

But what happens when a state government unjustly deprives its citizens of those rights and of their livelihood with the complicity of the very institution that is supposed to prevent it?

In such a case, will this Court intervene on behalf of the individuals being harmed and on behalf of the Constitution and the rule of law?

This is the main question before this Court.

In his dissenting opinion in *Gerba v. Bd. of Trustees, Public Employees' Retd. Sys.*, 83 N.J. 174 (1980), New Jersey Supreme Court Justice Morris Pashman denounced the state agency's abuse of power in denying Joseph Gerba his rightful Accidental Disability Pension without Substantial Credible Evidence and lamented the Court's "deference" to the state agency, describing it as an "unwholesome" development in the

administrative law of NJ, which would allow state agencies to continue to abuse their power and deny people their rightful disability pensions “*without fear of reversal.*”

This case shows that Justice Pashman was right in his prediction.

Petitioner was deprived of her rightful disability pension despite having met her burden of proof by a preponderance of the evidence. The state agency was not based on substantial credible evidence. The ALJ who affirmed said decision, aware that an affirmance of such decision would be reversed by impartial judges, likely decided to affirm it on credibility grounds because said decisions are normally given deference. However, his decision was not based on cogent reasons, as required by the law.

The following is an outline of how petitioner was denied due process by the New Jersey Courts throughout her disability pension appeal;

1. After waiting four years to grant petitioner a hearing, the ALJ ignored her letters informing him of a likely collusion between her attorney and the agency and of the obstruction of justice committed by the agency’s expert at trial. He later affirmed the agency’s decision against the law and logic.

2. The Appellate Court first denied petitioner her right to an appeal by accepting the agency’s claim that she had filed her NOA late, which she had proven false. But after she wrote to the NJ Supreme Court

Chief Justice asking for an investigation, they vacated their decision and allowed her to present her arguments in her Merits Brief.

However, when she did that, her legal points were ignored. The court simply “pretended” to have considered her case. This court also denied her the chance to present relevant evidence and it affirmed the unlawful sealing of her record, which prevents her from exposing their wrongdoings.

3. The NJ Supreme Court, who had ignored petitioner’s repeated requests for an investigation on a likely collusion between the Appellate Court and the agency while her appeal was ongoing, later denied her request for review.

This case shows that in New Jersey, government agencies are free to discriminate and deprive rightful claimants of their livelihoods for reasons OTHER than the law and the facts.

This Court should intervene to preserve the Constitution as the Supreme Law of the land. Because if state agencies and courts are not held accountable for unconstitutional decisions that greatly and permanently harm citizens, they will have no reason to change and people will continue to suffer.

And this great nation might eventually degenerate into a tyranny where the Constitution is simply a notion to pay lip service to.





## **STATEMENT OF THE CASE**

### **I. Facts for Consideration of Question 1**

#### **A. The NJ Board of Trustees, TPAF Denies Petitioner Her Disability Pension**

Julia Maria Fernandez applied for an Accidental Disability pension in November of 2012, over two years after suffering a blow to the head at the school where she had worked as a Spanish teacher for 11 years, and after developing permanent concussion symptoms which kept her from being able to perform the duties of a classroom teacher. She had the support of several doctors (a neurologist, a psychiatrist, a neuropsychologist and an expert on Traumatic Brain Injury) and diagnoses of mTBI (mild Traumatic Brain Injury), PTSD, anxiety, depression and Postconcussional Disorder. She was 45 years old.

The Board of Trustees, TPAF denied petitioner's application twice based on the opinion of their expert, psychologist Richard Filippone, whom petitioner had met briefly on Jan 30 of 2013.

Mr. Filippone denied all her doctors' diagnoses claiming that she could not have suffered a brain injury because she had not had any visible signs of injury. He attributed her symptoms to pre-existing conditions. At trial, he accused petitioner of staying home to avoid having to work (perhaps to watch TV) and of having abandoned her sick and elderly parents. Sapp. 61 and Sapp. 59.

## **B. ALJ Richard McGill Affirms the Agency's Decision**

ALJ McGill found that petitioner had in fact suffered a brain injury as a consequence of the 2010 accident, but affirmed the agency's decision on credibility grounds based on Mr. Filippone's opinion that her neuropsychological test showed no cognitive deficits, which, the ALJ argued, DEMONSTRATED that she exaggerated her cognitive symptoms. Sapp.\* 21a.

ALJ McGill also found that petitioner exaggerated ALL her symptoms because: a. he had already concluded that she exaggerated her cognitive symptoms; b. he found Mr. Filippone's opinion in that regard persuasive, and c. petitioner's demeanor and testimony gave him the impression that she was exaggerating. Sapp. 21.

In addition, ALJ McGill stated that petitioner had failed to meet her burden of proof by a preponderance of the evidence because she had failed to prove that she had not recovered from her symptoms. Sapp. 22.

## **C. Petitioner's Reply to Above Decisions: Her Merits Brief**

**1. Point I. The agency's decision to deny petitioner's disability pension was arbitrary and capricious, unsupported by substantial credible evidence.** App. 65-66. The law requires that such decisions be overturned. *Brady-v. Bd. of Review*, 152 N.J.

---

\* Sapp. stands for Supplemental Appendix.

197, 210-211 (1997); *Greenwood v. State Police Training Ctr.*, 127 N.J. 500, 513 (1992).

The opinion of Richard Filippone, the agency's expert, was not based on facts. The agency accepted his opinion that petitioner had not suffered an mTBI on the basis she didn't have any visible signs of injury even though, in her appeal to the agency, petitioner presented letters from mTBI expert Dr. Michael Lipton and other doctors stating that visible injury is typically NOT present in mTBI. Sapp. 36.

In addition, Mr. Filippone repeatedly failed to address her MRIs results consistent with mTBI (in his original report and two subsequent addenda) and the agency never asked him to do so. At trial, Mr. Filippone said petitioner's brain lesions could have been caused by MS or other illnesses she has no history of, a second blow, or nothing at all.

Contrary to Richard Filippone's claim, petitioner's symptoms were not pre-existing conditions. Prior to the accident, she had some sinus and allergy issues\* and some life stress and anxiety, as most adults do. But she had no pre-accident history of psychiatric treatment or the psychiatric conditions Mr. Filippone alleges. In her Merits Brief, petitioner asked the agency to present proof of such allegations. Proof was not presented.

---

\* These problems were resolved when petitioner learned to naturally clean her sinus passages to get rid of her phlegm (use of Neti Pot, steam inhalation, etc.).

Mr. Filippone was wrong in claiming that the fact that petitioner remained at her job for 18 months after the accident showed she was able to function as a classroom teacher. She did not quit right away because she was initially told by her neurologist that she would soon recover and she needed to support herself. But she missed work a lot (months at a time) and often played educational movies to keep the children quiet and avoid having to talk. She quit when it became clear that she was not recovering and her principal expressed concern about her many absences. Mr. Filippone acknowledged at trial that he had mTBI patients who went back to work with symptoms.

In her Merits Brief, petitioner explained in detail why she cannot function in the mentally demanding environment of a classroom where she is required to talk, think and teach almost non-stop for many hours every day. Noise, constant talking, being around many people and having to multi-task are great triggers to her symptoms to this day. Petitioner's school district did not offer petitioner a job outside the classroom that she might have been able to do from the quiet of her home (such as writing children's books.) Sapp. 47. School districts are not required to do so.

At trial, Mr. Filippone baselessly accused petitioner of malingering, of wanting to stay home to watch TV. The Appellate Court denied petitioner's request to present proof that she did not even have tv/cable service during this time (before and after suffering her brain injury.) App. 32-33. Mr. Filippone also falsely stated that petitioner had abandoned her sick and elderly parents. Sapp. 59. His original report states his dad

was a teacher and was deceased. It says nothing about her mother being poor or sick. Sapp. 60.

It seems likely that Mr. Filippone had originally written a report agreeing with petitioner's doctors and changed it after being informed of petitioner's complaint letter\* about him. On page 8 of his report, under "Summary and Conclusions," he wrote that the incident (the blow to petitioner's head) had caused her current psychiatric problems. Sapp. 41. This statement contradicts his claim that petitioner had not suffered a brain injury and that her symptoms were pre-existing. Sapp. 42. He likely changed it at the last minute as he was about to send his report in order to retaliate against petitioner. But he likely changed it in a hurry and forgot to delete that and other statements. That would explain Dr. Hunt's observation about his contradictory statements regarding petitioner's cognition (Sapp. 38) as well as other contradictions found in his report: he says petitioner was kind and cooperative at all times and later states that she constantly interrupted him and that she shows rancor.

Petitioner made the agency aware of this significant contradiction in their expert's report during her appeal to the agency.

## **2. Point II. The ALJ's Decision to deny petitioner's disability pension on credibility grounds**

---

\* Petitioner was told to bring her brain exams, etc., to the evaluation (Sapp. 44), but Mr. Filippone refused to take her brain CD. This along with other things such as not having being given an evaluation greatly concerned petitioner.

**does not deserve deference because it is not based on cogent reasons and substantial credible evidence.** App. 67-68.

According to case law, credibility decisions cannot be upheld if they are “*inherently or patently unreasonable*,” or not supported by specific, cogent reasons. *Retlaw Broad. Co. v. NLRB*, 53 F.3d 1002, 1006 (9th Cir. 1995); *Morgan v. Mukasey*, 529 F.3d 1202, 1210 (9th Cir. 2008); *Manimbao v. Ashcroft*, 329 F.3d 655, 658 (9th Cir. 2003).

The question is: Is ALJ McGill’s Decision based on cogent reasons? Reasons compelling enough to justify depriving a claimant of her livelihood? The answer is no for the following reasons:

### **1. Petitioner Met Her Burden of Proof by A Preponderance of The Evidence**

She had expert evidence (several doctors supporting her disability) and objective proof of her brain injury: Two MRIs showing brain lesions consistent with mTBI. This means that petitioner’s symptoms are NOT subjective, as ALJ McGill claims. Sapp. 21. The law defines subjective illness as an ailment that lacks laboratory tests (such as X-rays or MRIs) and whose symptoms are based solely on the patient’s complaints. *Paterson v. Board of Trustees, State Police Retirement System*, 194 N.J. 29, 51 (2008).

The ALJ writes that petitioner’s testifying doctor admitted that her symptoms were subjective. App. 21. This was stated in the context of psychiatry in general.

However, what the ALJ fails to mention is that said doctor also made clear that petitioner had objective proof of her mTBI. Sapp. 62. The ALJ also fails to mention Dr. Lipton and Hunt's letters asserting the same. Sapp. 34, 38.

Having expert evidence and proof of objective injury makes petitioner's disability 51% more likely than not, which is what the Preponderance of the Evidence Standard requires. *Gilbert v. Gilbert Machine Works, Inc.*, 122 N.J.L. 533 (Sup. Ct. 1939).

Petitioner is not required to prove it with certainty or to eliminate all doubts in the judge's mind. *Azarowicz v. Metropolitan Beef Co.*, 191 A. 483 (N.J. 1937); *Ames v. Sheffield Farms Company*, 1 N.J. 11 (1948); *Russo v. Wright Aeronautical Corp.*, 1 N.J. 417 (1949).

In his one-page Law and Analysis Report, ALJ McGill seems to imply that Dr. Lipton agrees that petitioner had not presented credible evidence that she had not recovered from her symptoms. And the ALJ replaces the "substantial" minority described by Dr. Lipton with just "some" patients, thus, suggesting that petitioner's disability is even less likely. Sapp. 22.

What the ALJ fails to say is that Dr. Lipton makes very clear in his report that he believes petitioner IS in that substantial minority of people who suffer permanent symptoms. He writes that the brain lesions found on the side of the head where she was hit and had most of the pain and pressure are highly consistent with mTBI. Sapp. 34. And that the fact that the MRI showed evidence of her injury (which is

typically not the case even in patients who have substantial and permanent problems) indicated that petitioner had much more widespread injury which could not be seen because it was too microscopic. Sapp. 35.

Therefore, ALJ McGill failed to follow the law by ascribing the wrong meaning of subjective illness to petitioner's symptoms and by holding her to a stricter standard of proof than the one required by the law. Using ALJ McGill's reasoning in this case, all mental disabilities would have to be denied. And even many physical disabilities, because absolute proof of permanency of symptoms cannot be given.

## **2. ALJ McGill's Assertion That Petitioner Exaggerated Her Symptoms Is Not Based on Substantial Credible Evidence**

It is based on the groundless claims by Mr. Filippone and on the ALJ's own impression of petitioner's testimony and demeanor, which, by virtue of being an impression, cannot be regarded as compelling enough to deprive a person of her livelihood when she has met her burden of proof. Aside from the fact that it is an unexplained impression that was based on a preconceived notion that petitioner was dishonest and a bad person: the ALJ had already concluded that she had exaggerated her cognitive symptoms; and he had heard Mr. Filippone testify that a. she would rather watch TV than work. and b. that she had abandoned her elderly parents. No judge would ever find a person capable of that credible.



ALJ McGill accepted Mr. Filippone's opinion on the results of petitioner's neuropsychological test rather than that of the neuropsychologist who had conducted such test, Dr. Sandra Hunt. That was illogical. Mr. Filippone had denied the diagnosis of brain injury. Thus, he had to deny any tests supporting such injury: petitioner's neuropsychological test and brain MRIs. And he had to deny its manifestations. He did that by calling them pre-existing conditions and exaggerations unrelated to mTBI. Yet, ALJ McGill accepted his opinion against that of petitioner's doctors, whose diagnoses he agreed with. This was illogical.

Further, Mr. Filippone had repeatedly suggested that mTBI required visible signs of injury, causing the original denial of petitioner's pension; he had contradicted himself on multiple occasions at trial and had originally pretended to have conducted the neuropsychological evaluation petitioner was sent to him for (Sapp.43a) but he had not. At trial he stated he hadn't because he did not feel it necessary (Mr. Filippone was not deemed a credible witness by the ALJ who ruled in *Wesley Little v. Board of Trustees*, TPAF, in part because he had failed to conduct the evaluation he was supposed to conduct, just as it happened in this case.)

Despite all that, the ALJ accepted his opinion. His Decision was illogical and, therefore, cannot constitute a cogent reason deserving of deference to deprive a claimant of her livelihood when she has met her burden of proof.

Of note, Richard Filippone was caught at trial patently lying regarding an agoraphobia diagnosis being in petitioner's pre-accident record. Sapp. 56-58. Yet, ALJ McGill seems to cover up this blatant lie in his explanation of said testimony. Sapp. 18.

With respect to the neuropsychological test, even assuming it had in fact shown petitioner's cognition intact, it did not necessarily follow that what ALJ McGill refers to as cognitive complaints are exaggerations. His conclusion is based on several wrong assumptions:

1. He seems to have taken petitioner's complaints that her head is broken and cannot function (etc.) literally, ignoring the fact that people often use hyperbole to convey their symptoms.
2. He wrongly labels petitioner's complaints cognitive. By saying that her head is broken, petitioner mainly alluded to how quickly triggers worsened her physical symptoms and rendered her unable to function (specifically in a classroom environment.)
3. He seems to assume that, because petitioner was able to do "OK" on a test which was taken once in a quiet room with very little talking and no distractions, it follows that she would be able to perform the mentally demanding duties of a teacher on a daily basis.
- 4 He fails to consider that what he describes as exaggerations could be the result of anxiety, as Mr. Filippone himself had written in his original report. Sapp. 42.
5. He fails to consider that the emails and letters petitioner wrote to the agency throughout her appeal show that she was able to read and write and, thus, that she was not trying to deceive people into thinking that her brain could literally not

function. Sapp. 50-51. At trial, she stated she could do everything as long as she was in a quiet place and was given enough time.

ALJ McGill's acceptance of Mr. Filippone's opinion was illogical and against the law. Mr. Filippone's opinion should have been dismissed because it was not based on facts. According to NJ Rule 703 and case law, the opinions of experts must be founded upon facts and inferences supportable by proofs. *Fink v. City of Paterson*, 44 N.J. Super. 129, 135 (App. Div. 1957); *Beam v. Kent*, 3 N.J. 210, 215 (1949).

ALJ McGill's acceptance of Mr. Filippone's opinion was also against the law because according to case law, "*the principle is well established that an attending physician is in a better position to express an opinion as to cause and effect than a mere medical expert.*" *Swanson v. Wiesenfeld*, 24 N.J. Super. 576 (N.J. Super. App. Div. 1953); *Trusky v. Ford Motor Co.*, 19 N.J. Super. 100 (App. Div. 1952).

In addition, since petitioner had several doctors supporting her disability, Judge McGill should have taken into account that "*numerical superiority in qualified experts with competent testimony does aid in establishing one's case by a preponderance of believable testimony.*" *Gorczynski v. Public Service Interstate, etc., Co.*, 5 N.J. Super. 191, 194 (App. Div. 1949).

ALJ McGill also failed to follow the law by failing to fully explain his Decision, as required by NJ Rule 1:7-4(a). He should have explained:

1. Why several doctors whose diagnoses he agrees with are wrong in believing that petitioner's symptoms are consequences of said diagnoses rather than exaggerations, as Mr. Filippone alleges.

2. Why Dr. Hunt's opinion that petitioner's neuropsychological exam shows cognitive deficits is wrong. He should also have addressed her observation about the contradictory comments in Mr. Filippone's report regarding petitioner's cognition, stating that she had no cognition deficits and saying someplace else that she was tangential, overly detailed, and needed to be redirected. This, according to Dr. Hunt, is common in mTBI patients Sapp. 38.

3. What facts Mr. Filippone's opinion are based on.

4. What about petitioner's testimony or demeanor gave him the impression that she was exaggerating her "other" symptoms. In this context, it is curious that he fails to mention the long crying spell petitioner suffered during the first part of her testimony.

5. Why he says that petitioner's symptoms are subjective when she has objective proof of the brain injury he believes she has suffered.

6. Why he is requiring petitioner to PROVE that she had not recovered from her symptoms when he knows the standard of proof by the preponderance of the evidence only requires her to prove that her disability is 51% more likely than not.

In conclusion, ALJ McGill failed to follow the law and logic by accepting Mr. Filippone's opinion on petitioner's condition over that of her doctors. His Decision is not based on substantial credible evidence and cogent reasons; reasons compelling enough to deprive a claimant of the disability pension she is entitled to and needs to live when she has objective proof of injury, the support of several doctors, and a history of being a productive and law-abiding citizen.

ALJ McGill's credibility Decision does not deserve deference and it should be reversed in the interest of justice.

## **II. Facts for Consideration of Question 2**

### **A. The NJ Appellate Court Affirms ALJ McGill's Decision**

1. Judges Geigner and Susswein repeat the ALJ's claims: 1. Petitioner had no objective proof of injury, only subjective symptoms; 2. The neuropsychological test showed that her cognitive complaints were exaggerations. 3. Her physical and emotional complaints were also not credible; 4. Petitioner failed to present credible evidence that she had not recovered from her symptoms; App. 13, 5. She had pre-existing conditions. App. 8.

2. These judges also write that petitioner's appeal was vulnerable to dismissal because she had filed her NOA late. But that they are addressing her Merits

Brief because the agency did not object to her appeal. App. 21.

**B. Petition for Certification to the NJ Supreme Court**

**1. The Appellate Court's Decision Was Unlawful and Denied Petitioner Due Process.**

By law, Appellate judges Geigner and Susswein were obliged to reverse the ALJ's Decision for the reasons explained in section I.

Yet, they affirmed it by repeating the ALJ's false claims and by failing to address petitioner's response to them in her Merits Brief. Thus, they denied her due process by denying her what is normally a claimant's last opportunity for justice.

In their Decision, they quote ALJ McGill suggesting that Dr. Lipton believes petitioner had not presented credible evidence that she had permanent symptoms. App. 13.

Just like ALJ McGill had done, they fail to discuss the relevant testimony by Doctors Lipton and Hunt, which were given by letter because they could not testify in person on the day of the hearing. These judges only mention these doctors very briefly, omitting the most vital points favorable to petitioner. This Court can see this by comparing these judges' comments regarding these doctors' testimony (Dr. Lipton at App. 8,

13 and Dr. Hunt\* at App. 12) to what said doctors actually wrote in their reports. Sapp. 34-39.

Just like ALJ McGill had done, they also omit relevant comments by petitioner's testifying doctor favorable to her and take others out of context (ex: petitioner's symptoms are subjective.)

Their summary of witness testimony contains numerous falsehoods, omissions, and half-truths supporting their narrative. For example: 1. they have petitioner saying that she had pre-existing conditions and depression; that she couldn't stop crying; App. 5, 6, 2. They have her testifying doctor stating that she was treated for anxiety, panic attacks, and problems sleeping before the accident, and acknowledging there were other possible causes for petitioner's brain lesions.

App. 8-9, 3. they write that petitioner "*claimed*" a mop hit her, but that "*there is no joint statement of facts,*" thus, suggesting that petitioner's claim is not a fact. App. 2. Yet, the record contains two notes signed by the witnesses to this accident. Sapp. 45-46. These are a few examples of deceptive comments among many.

---

\* They fail to quote Dr. Hunt's entire letter discussing petitioner's condition, the exam she conducted, and Mr. Filippone's contradictory opinion. Their only comment is from her original neuropsychological evaluation regarding the mop handle that hit petitioner.

By omitting Doctors Lipton and Hunt's comments, omitting and twisting those made by petitioner and her testifying doctor, and repeating Mr. Filippone's claims, they create a record of their own. This allows them to address petitioner's point that the ALJ had failed to explain his credibility decision by alleging that ALJs don't have to explain credibility decisions if "the record" makes finding clear. App. 18.

The other only point from petitioner's Merits Brief they seem to address is the one stating that, according to case law, the opinion of a petitioner's doctor deserves more weight than that of the agency's expert. They respond asserting that ALJs are not obligated to accept the opinion of a claimant's doctor.

However, petitioner never claimed that. She claimed that, by law, ALJs are required to "*give more weight*" to the opinion of petitioner's doctor. Especially when there is numerical superiority. These judges fail to explain why the ALJ did not do that.

From the above it follows that these judges failed to address ALL the legal points made by petitioner in her brief, as summarized in section I, thus, denying her last opportunity for redress.

These judges' decision devotes four entire pages to case law but fails to explain how such law applies to this case. App. 15-20.

If this Court grants this petition, petitioner's Merits Brief will contain an in-depth discussion of all the ways in which this and the ALJ's Decisions were



against the rule of law and petitioner due process' rights along with all necessary documents.

**2. These Judges' Claims That Petitioner Filed Her NOA Late and That The Agency Did Not Object to It Are False**

Petitioner filed her NOA in a timely matter. This was explained in pages 1-3,5, and 10-11 of petitioner's Merits Brief. App. 64.

Following the Oct. 4, 2018 agency's final decision on her pension appeal, both the agency's secretary and her assistant (Angelina Scales and Shannon Barnes respectively) told petitioner that the 45 days to appeal her pension denial would start counting AFTER the OAL had made a decision on the sealing of her record and AFTER the Board had issued a final administrative decision on the matter. App. 54-56. Such final decision was made on January 24, 2019. Therefore, when she filed her NOA on February 25, 2019, she did it in time. App. 25-26.

Secondly, contrary to what these judges claim, the agency repeatedly asked the court to dismiss petitioner's pension appeal on the grounds that it had been filed late. See their reply to petitioner's Merits Brief. App. 43, 49-50.

These judges also allege that petitioner did not file exceptions to the ALJ's Decision. App. 14. Petitioner was informed two weeks late of the ALJ's Decision by her attorney, Samuel Gaylord. He told her in an email

that he had gotten her an extension to file exceptions, but didn't provide proof of it. When she called the agency, she was told that such was not the case.

### **C. Supreme Court Denies Petitioner Review of Appellate Decision. App. 23**

Chief Justice Rabner had previously failed to act on petitioner's letters requesting an investigation of a likely collusion between the agency and the Appellate Court while her appeal was ongoing. App. 36-37.

In said letters she explained that the Appellate Court had denied her right to her pension appeal. She also explained the problems she was having with court staff (her case manager refusing to give her proof of filing her motions; being forced to change her caption name, etc.)

In addition, petitioner stated in her letter that she had reason to believe the agency had abused its power and obstructed justice from the beginning of her appeal. She explained that:

1. she had reason to believe her own counsel, Samuel Gaylord, had been in cahoots with the agency because of the many things he had done against her interest;
2. that she had been shut down by OAL Chief Justice Lisa James Beavers when she inquired about the lawfulness of the sealing of her record;
3. that the Division of Pensions and Benefits had covered up for Mr. Filippone's perjury by preventing IMX (his employer) from conducting the investigation she had

requested; 4. that she had been shut down by NJCI Executive Director Lee Seglem after being originally told by agent Kyle that the agency would be investigated if it had committed the wrongdoings alleged by petitioner.

Petitioner told the Chief Justice that she could provide proof of her claims and asked him to ensure that the appellate judges assigned to rule on her appeal were truly fair and impartial.

After several months during which petitioner left several messages with the Supreme Court clerk, she finally received a letter stating that the Justices could not intervene on her behalf. A second letter got the same reply. App. 38-39.

### **III. Facts for Consideration of Question 3**

#### **A. Background**

The agency advised petitioner that she could request the sealing of her record after she stated during oral arguments that the ALJ's credibility decision had forever stained her reputation. Sapp. 52. She took the agency's advice and emailed them her request for the sealing, as instructed by the agency's secretary. Sapp. 53. Upon receiving the sealing order from the OAL and learning that it forever forbade her from sharing her record with the public, and greatly valuing her First Amendment right to freedom of speech, she asked the agency not to adopt the sealing. Her request was denied and the ALJ's office told her the matter was out

of the court's hands. She then appealed this matter to the Appellate Court as a second matter in her disability pension appeal. App. 70-72.

### **B. Petitioner's Merits Brief Legal Points on Sealing**

The state agency and ALJ JoAnn Lasala Candido's sealing of petitioner's record was unlawful. NJ Rule 1:2-1 requires that records be sealed ONLY for good cause, and good cause is governed by a Good Cause Standard decided by the NJ Supreme Court in 1995 in *Hammock v. Hoffmann-LaRoche, Inc.*, 142 N.J. 356 (1995). This standard has the following requirements, none of which were met by petitioner:

1. There is a very strong presumption in favor of public access to court documents (*Hammock*, supra, 142 N.J. at 375, 386, 662 A.2d 546).

2. The person who seeks to overcome this strong presumption of public access must prove by a preponderance of the evidence that the interest in secrecy outweighs this presumption. Unsubstantiated claims of harm will be insufficient. (*Hammock*, supra, 142 N.J. at 375-76, 381-82, 662 A.2d 546).

3. There is also a need to show a "*clearly defined and serious injury, sufficient to override the public right of access to the courts.*" Harm to the parties' reputation does not justify sealing the record. *Id.* at 492, 1071.

The sealing of petitioner's record failed to meet these requirements. Her reason for wanting it sealed

was far from the “*clearly defined and serious injury*” required to overcome the strong presumption of public access. Her short email requesting such sealing did not even explain why she wished it sealed. And she was never asked to attend the hearing in order to prove her need for the sealing to ALJ LaSala Candido.

In addition, according to the Sealing Order, the judge held a hearing closed to the public. In *Hammock v. Hoffmann-LaRoche, Inc.*, 142 N.J. 356, 375, 380-83, 662 A.2d 546 (1995) the NJ Supreme Court stated that judicial proceedings must be open to the public.

### **C. Appellate Court Affirmance of Sealing and Petitioner’s Reply**

Appellate Judges Geiger and Susswein fail to address the above points from petitioner’s Merits Brief. They allege that, according to N.J.A.C. 1:1-14.1(b), the record should be sealed because petitioner’s psychiatric records needed to be protected “*from undue embarrassment or deprivation of privacy.*” App. 21-22.

In her Petition for Certification, petitioner explained that N.J.A.C. 1:1-14.1(b) does NOT mandate records containing a party’s psychiatric information to be sealed. Rather, it says that a judge shall “*consider*” whether a sealing for privacy reasons is warranted. And such may be the case in certain circumstances. But the psychiatric information on petitioner’s record consists of typical psychiatric diagnoses which do not warrant sealing; they cannot overcome the strong presumption of public access that the Good Cause Clause

requires. N.J.A.C. 1:1-14.1(a) makes it clear that “*records shall be open to public inspection*” and that a sealing may be ordered ONLY “*for good cause.*” This is consistent with the sealing requirements discussed above.

These judges allege that petitioner was the one who requested the sealing. As explained in petitioner’s Merits Brief, the agency tricked her into doing so. But neither the agency nor ALJ LaSala Candido informed her that the sealing would forbid her from sharing it with the public. She became aware of it reading the Sealing Order.

Ultimately, what matters is not who requested the sealing but, rather, that it was unlawful and unconstitutional. Because it denies the public access to the record of a judicial proceeding to which they are entitled by law. And because it denies petitioner her First Amendment right to share her record with the public and the ability to criticize the agency and judiciary’s wrongdoings. The latter requires being able to show the evidence in the record, not just talking about it.

---

◆

### **REASONS FOR GRANTING THE WRIT**

This decision conflicts with the most fundamental principles and rights afforded by our Constitution: the rule of law, the Due Process and Equal Protection Clauses of the 14th Amendment, the First Amendment Free Speech Clause and right of access, and separation of powers.

This appeal has so far departed from the usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

This court should grant this petition to defend the Constitution and to protect the citizens of this nation from their state governments' unconstitutional decisions when their own courts fail to do it.

**I. Petitioner Was Deprived of Her Disability Pension Without Due Process of The Law**

Due process requires fair and equal application of the law.

Judge Henry Friendly created a list of due process procedures which have remained influential to this day. They include: an impartial tribunal, an opportunity to be heard and to present evidence, an opportunity for confrontation and cross-examination, and a written explanation of the court's decisions, among others. None of these were part of this appeal.

**A. Judges Made False Statements Prejudicial to Petitioner**

Surely there cannot be a fair trial if the very people tasked with preserving truth and justice make false statements detrimental to a petitioner.

Appellate judges Geigner and Susswein made false statements in their Decision. They claimed that petitioner had filed her NOA late. And, just as ALJ

McGill had done before them, they made false statements by omission and by distorting the facts in order to support their narrative that petitioner lacked credibility and that she had failed to meet her burden of proof. This is explained in the Statement of Facts.

Of note, these judges got petitioner's case on Sept 15, 2021 and issued their Decision on Sept. 28. App. 1. This means they had roughly eight business days to read and consider a very voluminous record and write their Decision. It seems very unlikely they were able to conduct the "*careful*" review of the record they allege to have conducted. App. 20.

### **B. The NJ Appellate Court Denied Petitioner's Right to Appeal**

1. Judges Clarkson Fisher Jr and Lisa Rose initially denied petitioner's right to her pension appeal by accepting the agency's claim that she had filed her NOA late, even though petitioner had proven it false. App. 27-28. They vacated that decision after petitioner wrote to NJ Supreme Court Chief Justice Rabner asking for an investigation. App. 29-31. App. 36-37.

2. Judges Geigner and Susswein's Decision dismissed petitioner's appeal by affirming the ALJ's Decision without addressing her Merit's Brief legal points showing that such decision was not based on cogent reasons. By allowing petitioner to present her arguments in her Merits Brief after having denied her right to it, this court simply "pretended" to give her an



opportunity to be heard. But, in reality, she did not get such an opportunity, since her points were not addressed. App. 1-22.

Of note, Appellate Judge Carmen Messano wrote that she would dismiss petitioner's appeal if her Merits Brief contained any deficiencies. App. 34-35. Petitioner had previously been told by Appellate Court Supervisor Tawana Perkins that claimants always got a chance to correct deficiencies. This judge's order was consistent with an ongoing attempt by this court to dismiss petitioner's appeal.

### **C. Petitioner Was Denied an Opportunity to Present Evidence**

Appellate Judges Clarkson Fisher Jr. and Scott Moynihan denied petitioner's request to present evidence as per Rule 2:5-5(b). App. 32-33. Presenting such evidence was important because the agency's expert had made new statements at trial regarding petitioner's credibility that she had not had a chance to address (she and her doctor had testified months earlier at the original hearing, which Mr. Filippone had failed to attend citing scheduling conflicts.)

Mr. Filippone stated at trial that petitioner's fear of suffering even small bumps on the head and her wearing a helmet for some time in order to protect her head from things being thrown out of windows were exaggerations unrelated to mTBI. Sapp. 15-16, 19.

The evidence petitioner wanted to present would have shown that Mr. Filippone's claims were wrong; that 1. other mTBI patients had fears of suffering even small bumps on the head; 2. that other mTBI patients had worn a helmet to protect their head; 3. that sometimes people do throw things out of windows, and 4. that in the months following her brain injury, petitioner had an incident where a Coca-Cola can fell out of a window and barely missed her head as she walked on the street, prompting her to wear a helmet for some time (she had a 2011 email where she explained this incident.)

The Appellate Court should have allowed petitioner to present this evidence because ALJ McGill had deprived her of her livelihood based on Mr. Filippone's statements that she exaggerated her symptoms without real proof of dishonesty. Her evidence would have also shown that Mr. Filippone was wrong about other statements he had made at trial.

#### **D. The NJ Supreme Court Denied Petitioner Review**

In her Petition for Certification, petitioner explained the reasons why her request for review should be granted: in the interest of justice and in defense of the rule of law, due process, and the First Amendment right to freedom of speech, all of which had been denied to her throughout her appeal. App. 73-74.

The Supreme Court denied both her Petition and her Motion for Reconsideration without explanation

even though petitioner had met the court's requirements as per Rule 2:12-4. App. 23-24.

**E. Petitioner Was Shut Down Every Time She Attempted to Bring Wrongdoings to the Court's Attention**

1. ALJ McGill failed to act on her letters informing him that 1. her attorney had failed to present vital evidence at the hearing and had shut her down when she asked him about it, and that 2. the agency's expert had killed her credibility by baselessly suggesting she was malingering and by falsely accusing her of having abandoned her sick and elderly parents. (Petitioner learned this reading the hearing transcripts.)

Petitioner asked the ALJ to give her a polygraph on her disability (or to accept the ones she had taken) and to allow her to present evidence that would show the agency's expert had lied. He wrote her back saying that she could not write him because she had an attorney and because she had failed to notify the other party. Sapp. 33. Her subsequent letters, which were also sent to the agency, were ignored.

However, according to Rule 2.9 (B) concerning ex parte communications, ALJ McGill could have acted on petitioner's letters provided he informed the agency. Further, petitioner had written him before and was never told she couldn't write him directly. And he had initially mailed petitioner copies of the letters sent to her attorney, although he later stopped doing it (he didn't mail her his Decision.)

2. NJ Supreme Court Chief Justice Rabner failed to act on petitioner's letters informing him of a likely collusion between the Appellate Court and the agency (discussed in the Statement.) The response petitioner received from the Court stated that the Justices could not intervene on her behalf App. 38-39. This reply overlooked petitioner's serious allegations and pretended she had asked the Court to intervene for no good reason. In addition, said letter stated that, if necessary, petitioner would be able to appeal to the Supreme Court after the Appellate Court had issued a decision. Yet, when she did, she was denied review.

As the person ultimately responsible for justice in New Jersey, didn't Chief Justice Stuart Rabner have a duty to investigate petitioner's serious allegations of a likely collusion between the Appellate Court and the agency, and ensure that her appeal was assigned fair and impartial judges? And, having failed to do so, did he not have a duty to review the case after the Appellate Decision was issued?

Petitioner asked this question of the NJ Advisory Committee for Judicial Conduct, whose members are appointed by Chief Justice Rabner. They replied saying that the Chief Justice had done nothing wrong and that they were closing the file. App. 40-41.

3. OAL Chief Justice Lisa James Beavers' secretary shut down petitioner when she inquired about the lawfulness of the sealing of her record. App. 62-63.

### **F. The ALJ Waited Four Years to Grant Petitioner a Hearing**

The case was transferred to the OAL in the Fall of 2013 and the hearing date was August 8, 2017. In addition, the agency's expert was allowed to testify several months later, after he presumably had an opportunity to review the testimony of petitioner and her doctor.

### **G. Petitioner Did Not Get an Impartial Tribunal**

All judges involved in this case had a conflict of interest, because in New Jersey, unlike in most states in the US, judges are appointed, given tenure, and promoted by the governor. Thus, they depend on the governor throughout their careers for tenure and promotions as well as for their salary increases.

Some of the grievances our Founding Fathers listed in the Declaration of Independence against King George III were that he "*obstructed the administration of justice . . . made Judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.*"

ALJ Joann Lasala Candido became OAL Deputy Director sometime after she sealed petitioner's record. OAL Chief Justice Lisa James Beavers was promoted to the Superior Court a few months after her secretary shut petitioner down. ALJ Richard McGill is retired. Judge Clarkson Fisher Jr. was promoted to the NJ Supreme Court before retiring last November due to a

mandatory retirement age policy (he was appointed for recall service at the Appellate Court.) The rest of the judges are Appellate Judges. Petitioner does not know what caused these promotions; she is simply stating facts.

Chief Justice Roberts has said that judges should not rule in cases where they have a conflict of interest. In New Jersey, all judges ruling in cases involving the government have a conflict of interest. Contrary to what the Constitution requires, there seems to be no separation of powers in the NJ government, as this case shows.

#### **H. Agency's Actions Against the Rule of Law and Due Process**

1. The agency originally denied petitioner's disability pension based on their expert's opinion, which contradicted brain injury facts. They never required him to address petitioner's brain MRI results consistent with mTBI. Yet, they accepted his opinion that she had not suffered a brain injury. Experts' opinions are required by law to be based on facts.

2. The agency's Brief to ALJ McGill stated that petitioner had failed to meet her burden of proof because she didn't have expert evidence. Doctors Lipton and Hunt's testimony was ignored; that of petitioner's testifying doctor was twisted and demeaned, and the opinion of their expert presented as factual. Petitioner's brain MRI showing lesions consistent with mTBI was not mentioned. Sapp. 26-32.

Of note, the agency failed to address all of petitioner's Merits Brief legal points in their reply to it. They simply reiterated that their decision was reasonable and based on facts. App. 42-53.

3. At the hearing, the agency's attorney carried out a misleading questioning of petitioner's testifying doctor in order to get the answers they needed to support their legal points in their Brief. This unethical practice greatly undermines the fairness of a trial. Examples of this questioning will be given in the Merits Brief if this Court grants this petition.

4. During oral arguments following the ALJ's Decision, petitioner was stopped from talking and the public sent out of the room when she began to discuss their expert's wrongdoings. She was later told that it was done for privacy reasons. App. 57-59. Her letter explaining the ALJ's legal errors was not accepted, and the agency adopted the ALJ's decision in front of her without giving her an opportunity for rebuttal. She later requested the transcripts of the meeting and was told there were none. App. 57-59. The agency revised their original adoption of the ALJ's decision to include having considered petitioner's testimony during oral arguments. Sapp. 52, 53. However, how could they have considered it when they voted to adopt the ALJ's Decision in front of her without any discussion?

5. The Board tricked petitioner into requesting the sealing of her record knowing it was against the law and later adopted it against petitioner's wishes.

6. The Board repeatedly lied about petitioner having filed her NOA late and denied her due process by asking the court to dismiss her appeal.

7. The Division of Pensions and Benefits kept IMX (Mr. Filippone's employer) from conducting the investigation petitioner had requested regarding his false claims which had caused her pension denial. IMX told petitioner that the state had told them that they would take care of the matter within their office. Petitioner was lied to for many months and nothing ever happened. The Division of Pensions and Benefits covered up their expert's perjury and the agency's wrongdoings. App. 60-61.

8. Petitioner has reason to believe her attorney, Samuel Gaylord, was in cahoots with the agency because of all the things he did against her interest. This was mentioned in petitioner's Merits Brief. App. 69. In the Motion to Supplement the Record that was denied by the Appellate Court, petitioner had asked to be allowed to present proof of this.

**II. The ALJ's Decision to Deny Petitioner her Disability Pension on Credibility Grounds Conflicts with the Rulings by US Circuit Courts of Appeals Requiring that Said Decisions Be Based on Substantial Credible Evidence and Cogent Reasons**

The Fourth, Seventh, Eighth Ninth, and Tenth Circuit Courts of Appeals have ruled that credibility decisions must be based on substantial credible evidence



and cogent reasons\*. ALJ Richard McGill's Decision was not, as explained in the Statement.

Also, federal law requires that agency's decisions be based on substantial evidence: **8 U.S.C. § 1252(b)(4)(B)**. The same was decided by this Court in *Universal Camera Corp. v. NLRB*, 340 U.S. 424 (1951). The agency's original decision was not based on substantial credible evidence, as explained in the statement.

### **III. This Decision Has Caused Petitioner Grave and Permanent Harm**

The NJ government did not just deprive petitioner of an "Accidental" Disability Pension. They deprived her of her livelihood, as she was not even granted an ordinary pension.

This Court is her last opportunity for justice.

---

\* *Ghiselli v. Colvin*, 837 F.3d 771 (7th Cir. 2016); *Ceguerra v. Secretary of Health & Human Servs.*, 933 F.2d 735, 738, 741 (9th Cir. 1991); *Figeroa v. US INS*, 886 F.2d 76, 78-79 (4th Cir. 1989); *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 382-86 (4th Cir. 1994); *Briggs v. Massanari*, 248 F.3d 1235 (10th Cir. 2001); *Kepler v. Chater*, 68 F.3d 387, 391 (10th Cir. 1995); *NLRB v. New York - Keansburg-Long Branch Bus Co.*, 578 F.2d 472, 477-78 (3d Cir. 1978); *Smith v. Shalala*, 31 F.3d 715, 717 (8th Cir. 1994).

#### **IV. Petitioner and the Public Were Denied Their First Amendment Rights**

A. The sealing of petitioner's record violated her First Amendment right to freedom of speech because it forbids her from sharing her record with the public and from criticizing the NJ government. The NJ agency and Court argue that she is allowed to "discuss" her case. However, without being able to show the evidence in her record, she cannot show the veracity of her claims.

B. Under the First Amendment and common law right of access, documents may be sealed only if there are "overriding interests" requiring secrecy. This court should intervene in the interest of the public, who is being denied their right to inspect the record of a judicial proceeding and to find out the wrongdoings their government commits. If not remedied, this abuse of power will only get worse.

#### **V. This Is a Matter of Public Interest and National Importance**

A. This Court should intervene for the sake of all New Jerseyans. How many rightful claimants have been denied the disability pension they might need to live since Justice Pashman first sounded the alarm? This will never be known. Who is watching the watchers?

In the 2018 *Ezzard Williams v. Board of Trustees, Police and Firemen's Retirement System* Decision,

Officer Williams was denied his disability pension even though he had met his burden of proof. The agency claimed that he had failed to prove he was disabled because their expert said so and he hadn't proven he had knee pain. It seems the agency deprived him of his disability pension for reasons other than the facts and the law. And did so with the permission of Appellate Judges Rothstadt and Gooden Brown.

B. Other group of people who are being hurt is the staff of these agencies and courts, who are forced to participate in these unjust denials and do so probably for the sake of their jobs.\* But if they are good people, having to lie and cause others harm will violate their conscience and deeply hurt them in the long run. They should not be put in that terrible position.

C. The public is being denied their right to inspect the record of judicial proceedings, as mentioned above.

D. In addition, a reasonable mind would conclude that if NJ courts are giving undue deference to government agencies in the context of disability pensions, they likely do it in other types of judicial proceedings. Therefore, it is likely that many different people are being and will continue to be denied justice.

---

\* Christopher Neuwirth is, in petitioner's opinion, an example of what happens to NJ government employees who have the integrity and courage to disobey unlawful orders from their government: they get fired.

E. This is also a case of national importance. Because if the NJ government is not held accountable for the unconstitutional decisions that gravely hurt its citizens, other states that might engage in similar behavior will have no reason to change. And law-abiding and hard-working people will continue to suffer.

## **VI. The Constitution and The Rule of Law Need to Be Protected**

Article VI of the Constitution establishes the Constitution as the Supreme Law of the Land. The judges involved in this appeal had sworn to protect it and to follow a code of conduct that requires them to *“respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”*

Unfortunately, neither they nor government officials can be held accountable for their unconstitutional decisions against the citizens of New Jersey. And if they can't be held accountable, how can it be said that the rule of law is alive and well in the Garden State?

This Court should take this case to defend the Constitution and the rule of law in New Jersey and the entire nation.

For, what does it profit a man to have a constitution if he lacks the power to enforce it?



**CONCLUSION**

For all the foregoing reasons, this petition should be granted. Petitioner respectfully asks this Court not to remand this case to the same biased courts which have made clear they have no intention of doing petitioner justice.

Respectfully submitted,

JULIA MARIA FERNANDEZ  
442 5th Avenue, #1596  
Manhattan, NY 10018  
Phone: (201) 558-0443  
Email: juliamaria@mail.com

June 8, 2023