No. _____

In The
Supreme Court of the United States

FAYE RENNELL HOBSON,
Petitioner,

v.

RETIRED GENERAL JAMES MATTIS, Secretary, Department of Defense,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Petitioner, Pro Se *Dated: September 25, 2018*

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QUESTIONS PRESENTED

1. What is the level of bias that must be demonstrated before it constitutes a violation of a pro se litigant's right to due process guaranteed by the Fifth Amendment to the United States Constitution?

2. What is the level of resulting error that must exist before it constitutes a violation of a pro se litigant's right to due process guaranteed by the Fifth Amendment to the United States Constitution?

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LIST OF PARTIES

The parties below are listed in the caption. There were no additional parties joined in the action.

TABLE OF CONTENTS

[1] As a preliminary matter, the Appellant points out that she objected at the trial court level to the *Report and Recommendation* which was adopted by the trial court, and which resulted in the dismissal of her claims regarding these two positions, and she made reference to these two positions in her *Notice of Appeal*.

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

CONSTITUTIONAL PROVISION

OPINION BELOW

The judgment of the District Court was entered on the 2nd day of October, 2017. (App. 9a-10a). On May 23, 2018, the Court of Appeals affirmed the rulings of United States District Judge Aleta A. Trauger in regard to the District Court's dismissal via summary judgment of the Petitioner's claims concerning her non-selection for two positions, a LARS position and an AP English position. The Court of Appeals found that the bias alleged by the Petitioner on the part of the District Court was not significant enough to have negatively impacted her right to a fair trial. (App. 1a-8a)

STATEMENT OF JURISDICTION

On May 23, 2018, the Court of Appeals affirmed the rulings of the District Court in regard to summary judgment on two of the Petitioner's claims, and found no significance in the District Court's demonstration of bias insofar as the Petitioner's right to a fair trial and due process is concerned. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Amendment V, U.S. Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public

danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

This Petition arises from the Order of the United States Court of Appeals for the Sixth Circuit (hereinafter "the Court of Appeals"), No. 17-6192, filed on May 23, 2018, and not recommended for full-text publication. The Petitioner's appeal was based on several rulings of the United States District Court for the Middle District of Tennessee (hereinafter "District Court"), however, this petition focuses on three issues which are interrelated.

Namely, the Petitioner appealed the District Court's granting of summary judgment in her claims related to her non-selection for a Language Arts Reading Specialist position (hereinafter "the LARS position" and her non-selection for an Advanced Placement English Teacher position (hereinafter "the AP English position").[1] The Petitioner also argued on appeal that the District Court exhibited an extraordinary bias toward her, particularly as a result of her having proceeded on a pro se basis until virtually the eve of trial at which point legal counsel were appointed. The Petitioner alleged below that the obvious bias of the District Court continued to

[1] The Petitioner alleged violations of Title VII fo the Civil Rights Act of 1064, 42 U.S.C §§ 2000e *et seq.* (1964)

impact the proceedings to the degree that she was denied a right to a fair trial.

The Court of Appeals affirmed the rulings of the District Court in all of these matters and found that the Petitioner's allegation of bias on the part of the District Court was not substantiated. The Petitioner takes the position that the District Court's extraordinary level of bias resulted in the dismissal of claims and exclusion of evidence that rises to the level of a deprivation of her right to a fair trial in violation of the Fifth Amendment to the United States Constitution. There is a need for a clear ruling among the circuits identifying the point at which a pro se litigant's (or one who has previously proceeded pro se) right to due process is violated by a trial court's display of obvious bias which clearly results in the erroneous exclusion of evidence and the discounting of, or the ignoring of documentary evidence submitted by such a litigant. Accordingly, the Petitioner files this Petition for Writ of Certiorari to the United States Supreme Court.

I. THE COURT OF APPEALS ERRED IN ITS FINDING THAT THE APPELLANT WAIVED HER ARGUMENT CONCERNING THE TRIAL COURT'S DISMISSAL OF HER COMPLAINTS REGARDING THE LARS POSITION AND THE AP ENGLISH POSITION.[2] THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT AND DISMISSING HER COMPLAINTS OF DISCRIMINATION AS TO THE LARS POSITION AND THE AP ENGLISH POSITION.

The Petitioner (referred to as Appellant in the Statement of the Case) argued below that the Respondent (referred to as Appellee in the Statement of the Case) cancelled the recruitment action for the 0413 Language Arts Reading Specialist position (hereinafter "the LARS position")[3] due to the fact that she was on the referral list and because of the likelihood of her being the most qualified candidate for the position. The Appellant's argument is that, because of her prior protected activity, a decision was made to pull the recruitment action back as the Appellant was likely to be selected. The viability of this claim was first addressed in the Appellee's *Memorandum in Support of Defendant's Partial Motion to Dismiss* (Document

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[2] As a preliminary matter, the Appellant points out that she objected at the trial court level to the *Report and Recommendation* which was adopted by the trial court, and which resulted in the dismissal of her claims regarding these two positions, and she made reference to these two positions in her *Notice of Appeal*.

[3] The recruitment action for this position is also identified in the record as RPA #13JUN7XHEKY012377.

No. 15) The Appellee represented that this recruitment action was cancelled due to the fact that "it contained erroneous teaching category information and should have requested a 0310 English position".

The Appellee acknowledged in the *Memorandum in Support of Defendant's Partial Motion to Dismiss* that the Appellant had been "referred for consideration on the certificate of qualified individuals" for the LARS position and that subsequently the school "administration decided to cancel this RPA". The Appellee also represented that this authorization to hire was subsequently "used to hire and recruit for another teaching position", a 0310 Advanced Placement English Teacher position (hereinafter "the AP English position").[4] The Appellee stated that the Appellant was not referred for consideration for this position as she did not have the required AP certification.

The position taken by the Appellee in the *Memorandum in Support of Defendant's Partial Motion to Dismiss* was that, (1) the complaint regarding the LARS position should be dismissed because it was not an accepted issue for investigation in the administrative process, and (2) the Appellant was simply not qualified for the AP English position.

The *Report and Recommendation* (Document No. 25) addressed these claims concerning the LARS position and the AP English position. The

[4] The recruitment action for this position is also identified in the record as RPA #13JUL7XHEKY019211.

Magistrate recognized that the Appellant actually raised her concerns regarding the LARS position in the course of the administrative process: "In her EEO Complaint, Plaintiff seems to believe the LARS position was cancelled in retaliation for her prior EEO complaints; she specifically asks for an explanation as to why the position was cancelled."

The magistrate also noted that, although the acceptance letters framing the issues in the administrative process only addressed the AP English position, it would be reasonable to assume that the complaint regarding the cancellation of the recruitment action for the LARS position would be included in the scope of the accepted issue. The magistrate also noted that the Appellant filed her EEO Complaint well within the allotted forty-five-day period after learning of the cancellation of the recruitment for the LARS position.

Consequently, the magistrate recommended that the Appellee's motion should not be granted as to the LARS position due to the fact that the Appellant had, in fact, exhausted her administrative remedies. Likewise, in regard to the AP English position, the magistrate recommended that the Appellee's motion be denied as there was no authority cited for the proposition that "failing to fill a vacant job posting is *per se* not actionable".[5]

It would appear that the Appellee was being less than forthcoming in the *Memorandum in*

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[5] This is somewhat confusing as it would appear that this latter conclusion is more applicable to the LARS position than to the AP English position.

Support of Defendant's Partial Motion to Dismiss as a different series of recruitment actions were described in the subsequently filed *Memorandum in Support of Defendant's Motion for Summary Judgment* (Document No. 96).[6] In this subsequent filing, the Appellee again asserted that following the Appellant interview (for the LARS position), "Mr. Vaswani[7] decided to cancel the RPA for the 0413 LARS position".

However, instead of asserting that the next or "replacement" recruitment action (following the cancellation of the LARS position recruitment action) involved the AP English position, the Appellee asserted that the next recruitment action was to fill a Secondary English position.[8] The Appellee took the position that the Appellant was interviewed for this position and she was simply not the best qualified candidate and was not selected. Instead, Ms. Bonnie Cameron was selected. In addition, the Appellee argued that, procedurally, the Appellant failed to specifically complain about this non-selection during the administrative processing of her EEO complaint.

In this way, the Appellee avoided the argument that the "replacement" recruitment action

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[6] The initial description of the recruitment actions by the Appellee fit its purpose well as the argument could be made that the recruitment action for the LARS position was cancelled, so "no harm no foul", and the Appellant simply didn't qualify for the AP English position.

[7] This individual was the principal of the school to which the Appellant was applying.

[8] More specifically, this position is described as a 0310 Secondary English position, RPA #13JUN7XHEKY015490.

(following the cancellation of the LARS position recruitment) was purposefully done in such a way as to disqualify the Appellant, i.e. as she does not have the AP certification. The Appellee argued that (in regard to the Secondary English position) that the trial court lacked jurisdiction over this issue as it was not raised in the administrative process. The Appellee also argued, that even if there was jurisdiction, the Appellant could not show that she was substantially more qualified than Ms. Cameron.

The Appellee further argued, in the *Memorandum in Support of Defendant's Partial Motion to Dismiss*, that the Appellant was simply not qualified for the AP English position and that it was unrelated to the cancellation of the LARS position. The Appellee again argued that, as the LARS position recruitment action was withdrawn, it was a "no harm no foul" situation vis-a-vis the Appellant.

Now faced with the Appellee's new version of the underlying events, the Magistrate(not the same magistrate who issued the previous *Report and Recommendation*) issued a *Report and Recommendation* (Document No. 117) that made the following findings and conclusions: In regard to the LARS position, the magistrate accepted the "no harm no foul" argument made by the Appellee. Namely, the magistrate found that the Appellant could not show that the cancellation was a "materially adverse action": The magistrate found that "she has offered no evidence that it harmed her in any way" and that she "lost nothing in the LARS position closure". The magistrate continued by

stating that "she retained the opportunity to interview for the same position, now accurately characterized as Secondary English".

In regard to the Secondary English position, the magistrate rejected the Appellee's argument that there was no jurisdiction over the complaint arising out of the Appellant's non-selection for this position. The magistrate observed that "to the extent Hobson's claims regarding the LARS position include her allegations about irregularities in hiring for the Secondary English position, those claims have been found to be before the court".

The magistrate recommended, however, that summary judgment be granted nonetheless in regard to the Secondary English position on the basis that the Appellant was unable to show that the Appellee's explanation for the selection of Ms. Cameron was pretextual. The magistrate found that the Appellant's "subjective belief that (s)he was more qualified....is insufficient to demonstrate pretext".

In regard to the AP English position, the magistrate found that not being referred for the position is an "adverse action", however, the magistrate also found that the Appellant failed to establish that there was a causal connection between her protected activity and the non-referral. The magistrate cited to case law which holds that the protected activity must be a "but-for cause" of the adverse action by the employer. The magistrate found that the Appellant was relying solely on temporal proximity to establish the requisite causal relation.

The magistrate cited to Mickey v. Zeidler Tool & Die Co., 516 F.3d 516 (6th Cir. 2008) for the proposition that, if an adverse action occurs very soon after the protected activity, the "temporal proximity suffices to satisfy a prima facie case....". The magistrate also referenced these cases, however, for the proposition that "where some time elapses....the employee must couple temporal proximity with other evidence of retaliatory conduct".

The magistrate then make reference to (in terms of the underlying factual background) that Ms. McNair, the Human Resources Specialist who prepared the referral list on approximately July 22, 2013, learned of the Appellant's EEO complaints in April, 2010, and November, 2012. The magistrate concluded that the temporal proximity was not sufficiently close.

Finally, the magistrate found that, even if the Appellant had been able to establish a prima facie case, she cannot show that the Appellee's proffered non-discriminatory reason for not referring her for the AP English position was pretextual. Specifically, the magistrate found that the Appellant presented no evidence to support her position which went "beyond her own assertions". The magistrate cited to Arendale v. City of Memphis, 519 F.3d 587 (6th Cir. 2008) and Chen v. Dow Chemical Co., 580 F.3d 394 (6th Cir. 2009) for the basis of his finding that the evidence proffered by the Appellant was insufficient.

The trial court addressed the recommendations of the magistrate in its *Memorandum* (Document No. 142), and the court rejected in part and accepted in part the findings and recommendations of the magistrate which were that summary judgment be granted and the action dismissed. First, in regard to the LARS position, the court accepted the Magistrate's finding (and he Appellee's "no harm no foul" argument) that the Appellant was unable to show that she suffered and adverse employment action when the recruitment action for the LARS position was cancelled. The court observed that "because the withdrawn RPA was immediately replaced by RPA 15490, for which the plaintiff was again referred and interviewed, putting her back in exactly the same position she would have been in if RPA 12377 had not been cancelled".[9]

Likewise, the trial court accepted the Magistrate's recommendation and granted summary judgement as to the non-referral for the AP English position. The trial court went beyond the Magistrate's finding that the Appellant was unable to show that the proffered reasons were pretextual, and found that, "technically", she didn't even apply for the position. Namely, the court accepted the

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[9] Nowhere does the trial court even take notice of, make mention of, or otherwise address the extraordinary change in the Appellee's version of the facts, i.e. the fact that the Appellee initially asserted (in Document No. 15) that the recruitment for the AP English position was the "replacement" action following the withdrawal of the LARS position, and then subsequently maintained a completely different account of the underlying facts in Document 96, i.e. that the recruitment for the Secondary English position was the "replacement" action.

Appellee's explanation that, insofar as the Appellant had submitted her qualifications, preferences, etc. through the EAS, that system would have automatically generated a notice to her and she would have been automatically referred for the AP English position had she been qualified for that particular position. The court observed that the Appellee offered proof that the Appellant "was not referred simply because the qualifications she provided to EAS did not match the requirements for the job as originally posted by the school's administrators". The court then concluded that, "(i)n other words, because her qualifications did not match the job requirements, the plaintiff did not technically even apply for the position".

In regard to the AP English position, the Appellant did offer, however, evidence that went "beyond her own assertions" (contrary to the Magistrate's finding). Namely, the Appellant presented evidence that a candidate (an acquaintance of the Appellant's) for the AP English position was referred and did not have the ostensibly required AP certification. In addition, she presented evidence in the form of email traffic between a selecting official (Dr. Demetrius Thomas, an assistant principal) and her acquaintance which reflects that the AP certification may not have been a requirement after all.

In addition, and most significantly (and not even mentioned in the Magistrate's *Report and Recommendation* (Document No. 117) or the trial court's *Memorandum* (Document No. 142), is the fact that the Appellant presented evidence of her having

received notification through the Employee Application System (EAS) that she had also been referred as qualified for the AP English position. This documentary evidence was presented to the trial court in Exhibit J to the Appellant's *Plaintiff's Written Objections to Discrimination and to the Magistrate's Report and Recommendation* (Document No. 122 and 123). At Page No. 9 of Exhibit J, the Appellant provided a copy of the EAS notification which she received which informed her that she had been "referred to the selecting official along with names of other qualified candidates for the position(s) of 0310 Secondary English at Ft. Campbell under Referral List: 13JUL7XHEKY019211".[10]

It is absolutely astonishing that the trial court took no notice of this fact in granting summary judgment as to the AP English position.[11] This is clearly such an aberration, irregularity, etc. (i.e. the Appellant receiving automated notice of being qualified and referred for the AP English position when, once the actual referral list is prepared by human resources, her name is not included), that it should be seen as easily constituting additional evidence necessary to overcome any lack of a sufficient temporal proximity per the Mickey v. Zeidler Tool & Die Co. case. Likewise, this fact

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[10] See Footnote No. 3 herein. This is the identifying number for the AP English position. The position for which the Appellee insisted (throughout the whole litigation) the Appellant was not qualified.

[11] This could be seen as less astonishing, of course, if the Appellant's assertion of trial court bias is accepted, or it could simply reflect a simple failure to examine all of the Appellant's documentary submissions.

should have been sufficient for the Appellant's assertions concerning her acquaintance (i.e. being qualified and referred without having the AP certification) to be elevated to something beyond "mere assertions" so that neither Arendale v. City of Memphis nor Chen v. Dow Chemical Co. should be seen as preventing the Appellant's claims from being taken at face value.

The bottom line is that, in regard to the AP English position, the trial court got it wrong. It wasn't that the Appellant wasn't qualified and referred for this position. The EAS notification establishes that, incontrovertibly, she was qualified and referred. The pretext here is crystal clear and lies in the fact that the Appellee somehow managed to exclude the Appellant's name from the actual referral list. This is such an irregularity that the requirement to make some showing of pretext should have been found to have been satisfied.

In regard to the LARS position, the Appellee took the position that the recruitment action was cancelled for the reason that the fact that the majority of the candidates did not have the necessary credentials to teach Secondary English. No other reason was cited. It is not disputed that the Appellant does possess the necessary credentials. As the Appellant also pointed out in her *Plaintiff's Written Objections to Discrimination and to the Magistrate's Report and Recommendation*,[12] the individual who was in the position for decades was as Ms. Sheets (with whom the Appellant is well

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[12] See Page 11 of Document No. 122.

acquainted) and she was a LARS teacher prior to her retirement.

II. THE TRIAL COURT ERRED IN PREVENTING THE APPELLANT FROM ASKING A WITNESS ABOUT HIS (THE WITNESS') OWN COMPLAINT OF DISCRIMINATION AGAINST THE APPELLEE AND HIS (THE WITNESS') SUBSEQUENT MONETARY SETTLEMENT. THE TRIAL COURT ALSO ERRED AND DEMONSTRATED A CLEAR BIAS AGAINST THE APPELLANT WHEN PLAINTIFF'S EXHIBIT NO. 91 WAS EXCLUDED FROM EVIDENCE.

The Appellant called Dr. Demetrius Thomas as a witness at trial. Dr. Thomas was the assistant principal at the school where the LARS position and the AP English position were offered and, in this capacity, was involved in the recruitment/selection process. Dr. Thomas is also one of the individuals against whom the Appellant filed a discrimination complaint the previous year, i.e. in 2012.[13] Dr. Thomas had provided (prior to trial) a document to an acquaintance of the Appellant that he had produced in the course of his own discrimination complaint against the Appellee.[14] When he was asked about this document during his testimony he

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[13] Dr. Thomas acknowledged during his testimony that the Appellant had filed several discrimination complaints naming him as the agency official responsible for the alleged acts of discrimination. (Transcript, Document No. 268, Page 76, Line 25, and Page 78, Line 8)

[14] The trial court had previously ruled (in regard to a motion in limine) that this document was admissible (see Document 218).

initially seemed to indicate that he recognized the document: "Yes, this is some of the witness that was listed in my complaint."[15] He also, however, vacillated on acknowledging the document to the point that the trial court cautioned him and reminded him he was under oath: "I'm going to remind you you're under oath."[16]

The importance of introducing this document[17] lies in the fact that Dr. Thomas, in naming the Appellee's attorney as a witness in his discrimination case, stated that the attorney had "(r)equested that I testify against Ms. Faye Hobson after I shared I was not comfortable with moving forward....informed me that they agency would discipline me if I did not testify on their behalf in the Faye Hobson case". (sic) He went on to state (in the document) that the attorney "(r)equested that I still testify while on sick leave even after I explained that I was not doing well mentally and physically". The Appellant's belief is that Dr. Thomas, having had cause to file his own discrimination complaint had a change of heart, so to speak, concerning the validity of the Appellant's numerous complaints of retaliation/discrimination concerning a series of prior non-selections. This had resulted in Dr. Thomas is communicating with the Appellant and her acquaintance, and in the course of these exchanges, he shared the document in question with them. For whatever reason, Dr. Thomas lost his resolve at trial when asked to acknowledge having created the document.

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[15] See Transcript, Document No. 268, Page 94, Line 1.
[16] See Transcript, Document No. 268, Page 94, Line 8.
[17] Plaintiff's Exhibit 91.

At this point, the trial court made comments in front of the witness, Dr. Thomas, which demonstrated a complete lack of judicial restraint and clearly exposed the bias of the trail court toward the Appellant. When the witness began to waiver from what appeared to be an initial acknowledgement of and recognition of the document, the trial court volunteered that "(t)his looks like Ms. Hobson's typewriter to me, Mr. Frank[18]....Did she create this document?"[19] The Appellant denied having authored or having typed the document, however, the damage was done, so to speak, as the witness presumably felt able to completely disavow the document at this point.[20]

This bias demonstrated by the trial court is compounded due to the fact that the Appellant submitted (on the last day of the trial) the entire set of documents that she obtained from Dr. Thomas through her acquaintance. These documents were attached to the Appellant's filing entitled *Memorandum for Record to Judge*. These documents include not only witness lists, but also a detailed chronology of events associated with Dr. Thomas'

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[18] One of the Appellant's court appointed attorneys.

[19] Transcript, Document No. 268, Page 95, Line 2 – 4 n

[20] The trial court's examination of the witness can be characterized as basically rehabilitating him and giving him a basis for unequivocally disavowing the document whereas he was clearly not prepared to do so initially, hence the caution as to being under oath. By the time the trial court was through examining Dr. Thomas, he was stating confidently that he wasn't asked to testify specifically against the Appellant, but only to tell the truth. This is not, however, what the document reflects which is that he was asked to "testify against Ms. Faye Hobson" even "after I shared I was not comfortable with moving forward". (Plaintiff's Exhibit 91)

own case, as well as the Acknowledgment Order in his Merit Systems Protection Board case, and, finally, a detailed analysis of settlement offers and options in settlement which he and his attorney prepared. It is beyond unbelievable to think that the Appellant came up with all of this on "her typewriter".

However, even after being presented with this documentary evidence which should have incontrovertibly demonstrated that the witness was being untruthful in disavowing the document, the trial court took no remedial action. Consequently, not only did the trial court err in expressing her bias in front of a witness, it erred in excluding the document from being admitted into evidence and then did not take action when presented with evidence that showed that the witness was being untruthful. Furthermore, in regard to Dr. Thomas, the trial court also erred in preventing the Appellant from questioning this witness regarding his own discrimination complaint and the resulting monetary settlement that he received.

In regard to questioning Dr. Thomas regarding his case and his settlement, the trial court initially indicated that it found that it would be permissible to question Dr. Thomas as to the fact that he filed a discrimination complaint on his own behalf against the Appellee and that he subsequently obtained a monetary settlement. Although she believes that she should have been permitted to explore this subject more thoroughly with the witness, the Appellant did agree with the trial court that this inquiry went into whether there

was, following the monetary settlement, any bias on the part of the witness against the Appellant. One would think that there may have truly been such a bias since he disavowed the document referenced above, i.e. his witness list in his own complaint.

At any rate, in regard to questioning Dr. Thomas regarding his own case and settlement, the trial court initially decided to allow the Appellant to inquire into this matter: "It does go to bias if he brought a complaint against DoDEA and then has settled it." The trial court went on to observe that "(i)t could go both ways, but it – it does have to do with bias".[21] Then, after reacting in an unjustifiably (as it turns out) biased way to the entry of Plaintiff's Exhibit No. 91, the trial court engages in the proverbial one hundred and eighty degree turn, effectively denying the Plaintiff the opportunity to explore either the possible bias on the part of the witness, or to accentuate the pervasive and discriminatory /retaliatory animus on the part of the Appellee (i.e. in regard to the annotation made by Dr. Thomas on his witness list). The trial court's final ruling on the matter was as follows: "So I don't see how we're going to be showing any bias here, even with getting into his own charges and a monetary settlement." The trial court goes on to state "I'm sorry", and "(w)e're just not going to chase that rabbit".[22]

The Appellant's argument is that there is not only error, but also bias reflected in the trial courts's rulings in regard to Dr. Thomas' testimony. And she

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[21] See Transcript, Document No. 268, Page 81, Line 22.
[22] See Transcript, Document No. 268, Page 100, Line 2.

takes that position that this bias is reflected in other rulings as well. For example, the trial court initially appointed a former U.S. Attorney to her case, an individual who was in office at a point in time at which the Appellant filed an earlier complaint based on discrimination. Once this came to light, the Appellant raised an objection after which this individual withdrew from the case, and two attorneys from his law firm (i.e. the same law firm) were appointed to represent the Appellant. The Appellant eventually discovered, however, that the Judge Trauger is a former member of the law firm in question. Astonishingly, this was not disclosed to the Appellant and, by the time she learned of the connection, it was too late to obtain new legal counsel prior to trial. The Appellant is afraid, however, that the obvious bias demonstrated by the trial court, and the prior relationship between the trial court and appointed counsel, resulted in the failure of her appointed legal counsel to pursue all aspects of her case zealously.[23]

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[23] The conduct of the trial court in the Appellant's case is the subject of a pending Complaint of Judicial Misconduct, Case No. 06-17-90109.

REASONS FOR ALLOWANCE OF THE WRIT

REVIEW IS WARRANTED BECAUSE THERE IS A NEED FOR A CLEAR RULING AMONG THE CIRCUITS IDENTIFYING THE POINT AT WHICH A PRO SE LITIGANT'S (OR ONE WHO HAS PREVIOUSLY PROCEEDED PRO SE) RIGHT TO DUE PROCESS IS VIOLATED BY A TRIAL COURT'S DISPLAY OF OBVIOUS BIAS WHICH CLEARLY RESULTS IN THE ERRONEOUS EXCLUSION OF EVIDENCE AND THE DISCOUNTING OF, OR THE IGNORING OF DOCUMENTARY EVIDENCE SUBMITTED BY SUCH A LITIGANT

This case presents a very specific fact pattern, i.e. a party who proceeds pro se for virtually the entire length of the litigation until practically the eve of trial, at which point legal counsel are appointed. This pro se litigant has proceeded relatively successfully up until that point and has conducted herself honestly and professionally despite her status as a pro se litigant. She nonetheless incurs the ire of the District Court whose bias against the formerly pro se litigant is clearly expressed when she accuses, without any evidence to support her accusation, the litigant (in the middle of trial) of having fabricated an item of documentary evidence when a witness (a former

employee of the defendant) is reluctant to authenticate it.[24]

The level of bias demonstrated by this accusation is then compounded by a subsequent submission of evidence outside of the court proceeding which unequivocally demonstrates that the witness was being untruthful, and the District Court takes no remedial action despite the fact that it is virtually crystal clear that the witness committed perjury in disavowing the document. The document nonetheless is excluded from evidence and the District Court (despite having moments before ruling that this litigant could explore the bias of the witness by inquiring into his own lawsuit and settlement with the defendant) arbitrarily reverses itself and prevents inquiry into the bias of the witness.

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[24] As noted above, the District Court does this in a dismissive and flippant manner unbecoming of a judicial office, i.e. remarking that it looked like something the litigant typed on her own typewriter. This is not the only remark of this nature. Earlier in the proceeding, the District Court remarked that a document reflecting information taken from a website also looked as though it had been produced by the litigant at her typewriter, or words to that effect. The District Court also denied the litigant's motion (made early in the proceedings) for appointment of counsel remarking in a derisive tone that the litigant had represented herself in multiple proceedings (she has filed several complaints against the defendant for a series of retaliatory non-selections) and that she could continue to do so. Then, on the eve of trial, she appoints members of her own former law firm to represent the pro se litigant without disclosing that she has a connection with the law firm as a former member. Then, again in a derisive tone, informs the litigant that the court will no longer accept anything filed by her, but rather would only accept filings from her former law firm.

In addition, the bias of the District Court is most damaging and harmful in that it not only results in the court completely ignoring the fact that the defendant completely changed its account of the facts, but it ignores a document submitted by the pro se litigant that clearly shows that she was qualified and referred for a position (the AP English position) that the defendant says she was not qualified for in the first place. The District Court, despite uncontroverted evidence to the contrary, accepts this argument and grants summary judgment on this completely unfounded basis.

"A fair trial in a fair tribunal is a basic requirement of due process." In Re: Murchison, 349 U.S. 133, 136 (1955) "And a trial's fairness is irreversibly undermined if it is held 'before a judge with .... actual bias ....". Bracy v. Gramley, 520 U.S. 899, 904-905 (1997) Although the 6th Circuit has addressed the issue of judicial bias generally, there is no ruling of which the Petitioner is aware that specifically addresses bias against a litigant because of their pro se status (or former pro se status, or due to the fact that they have filed multiple cases pro se) where there are not only derisive and derogatory comments, tone, etc., but also rulings which are harmful and motivated by the litigant's pro se status.

There is need for such a rule. It is accepted, for example, that a pro se litigant's pleadings are to be taken, construed, read, etc. in such a fashion that takes into account the fact that they are not professionally trained lawyers. The litigant is treated somewhat more leniently in this regard.

Likewise, there should be a rule in the area of judicial bias that addresses the special circumstances of a pro se litigant both as a matter of equity, a matter of public policy, the appearance of fairness, and in the interest of preserving and protecting a pro se litigant's due process rights both procedural and substantive.

The 6th Circuit has produced caselaw that can be expounded upon and expanded to easily encompass this special situation. In McMillan v. EEOC, 405 F.3d 405 (6th Cir. 2005), the court held that judicial bias or impartiality is reviewed as an abuse of discretion issue, and "outright bias or belittling" is "ordinarily reversible error". The court also observed that the "harmless error doctrine is inapplicable in cases where judicial bias and/or hostility is found....".

Although the McMillan v. EEOC decision and other similar decisions appear to be influenced by whether the bias is exhibited in front of the jury, a special rule could be carved out in which, even if not demonstrated in front of the jury, bias is reversible error if (1) a pro se litigant (or formerly a pro se litigant); (2) bias because of his/her pro se status; (3) evidence excluded in error and/or crucial evidence outright ignored and/or wrongfully disregarded; and conduct/decisions by the court are, taken in their totality, such that they contribute to the lack of fairness at the trial (for example, appointing members of former firm to represent litigant without disclosing relationship, and/or ignoring evidence that

witness committed perjury resulting in exclusion of evidence, etc.[25]

CONCLUSION

Thus, certiorari is warranted to clearly define a rule which is tailored to the pro se (or formerly pro se litigant) who's right to a fair trial is compromised due to the bias of the trial court toward the litigant because of their pro se (or former pro se status). Such a rule could be easily carved out of existing law which is easily expanded upon for this purpose. There is historical and traditional precedence for carving out such special rules for application to the pro se litigant such as the recognized need to taken, construed, and/or read leniently.

RESPECTFULLY SUBMITTED this 25th day of September, 2018.

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[25] Another case that produced a rule that could be easily expanded upon is that discussed in U.S. v. Wallace, 597 F.3d 794 (6th Cir. 2010), the second prong of which could be modified to provide that plain and, therefore, reversible error exists when a pro se (or formerly pro se) litigant's rights were likely affected, as opposed to obviously and/or clearly affected.