No. 19A – 108

In the Supreme Court of the United States

Mark Thompson

Petitioner,

v.

Board of Education City of Chicago, *et al.*

Respondents.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition for A Writ of Certiorari

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I. Questions Presented

1. Did the lower federal courts err in not permitting *petitioner's* claims for injunctive relief against a state branch if the ongoing state proceedings violate his U.S. constitutional rights?
2. Can the *Seventh Circuit* rule a *pro se* Title VII claim appeal frivolous, fine him $21,350, and impose a filing bar preventing him from litigating an ongoing Title VII Right to Sue claim if the grounds upon the dismissal include disputable judicial noticed facts without an opportunity to be heard, juxtaposes a prior state court ruling, and ignores material errors?
3. Did the lower federal courts err in dismissing an ongoing injunctive relief claim required by state statute to be filed in a court of competent jurisdiction relating to an ongoing Title VII post-harassment claim and unchallenged in a motion to dismiss?
4. Did the lower federal courts err in dismissing a Title VII claim on the same state procedural grounds a state court previously used to deny a motion to amend to add the Title VII claim?
5. Can the dismissal of state claims in state court be used for *res judicata* purposes to dismiss a separately filed related Title VII claim removed to federal court after the state court used its own rules and procedures to deny adding the related Title VII claim?
6. Does a defendant acquiesce to Title VII claim-splitting by agreement, litigating separate cases, or arguing against a motion to amend to add a Title VII claim citing state court procedures before removing the Title VII claim to federal court?
7. Did the lower courts err in denying *petitioner* the right to sue a judicial hearing officer for injunctive relief presiding over a state administrative dismissal hearing being used outside its statutory authority to violate *petitioner's* U.S. constitutional and Title VII rights?
8. Does *petitioner's* complaint warrant a complete reset upon learning the presiding judge has a former law firm partner who'd be a material character witness had he not dismissed the case?

II. Parties to the Proceedings and Other Relevant Cases

Petitioner - Plaintiff

Mark Thompson ("*petitioner*") – A United States ("U.S.") African-American citizen of 55 years, U.S. Army veteran of six years, and former teacher of 18 years who privately coached numerous high school and grade school athletes including a 16/17-year old recipient of mental health services in Lake County, Illinois from August 2009 to April 2010 who was not living or coached under of the jurisdiction of his employer located in Cook County, Illinois.

Respondents - Defendants

Board of Education City of Chicago ("Board") – *Petitioner's* former employer located and operating in the jurisdiction of Cook County, Illinois.

Illinois State Board of Education – ("ISBE") State agency for education overseeing a *hypothetical* administrative dismissing hearing against *petitioner.*

Northshore University HealthSystem – Employer of Dr. Claudia P. Welke.

Harold Ardell – Former Board investigator.

Linda Brown – Board Inspector General investigator.

Forrest Claypool – Former Board Chief Executive Officer ("CEO").

Jane Doe – Non-Board mental health recipient the Board solicited to file false rape claims against *petitioner* in retaliation for filing a lawsuit against the Board. Doe also filed a motion for sanctions against *petitioner* after filing a third lawsuit against her relating to new conduct after the first two lawsuits were filed.

Jane Doe's Mother – parent of Jane Doe residing in Lake County, Illinois.

Reginald Evans ("Evans") – Former school principal and supervisor of *petitioner.*

Thomas Krieger – Former Board attorney for labor related grievances.

Dan Nielsen – Former ISBE Hearing Officer presiding over a *petitioner's hypothetical* hearing.

James Sullivan – Former Board Inspector General.

Claudia P. Welke – Jane Doe's therapist.

Alicia Winckler – Former Board Human Resources Officer.

Relevant Cases

	Case #	Date Commenced	Date Concluded	Disposition
1 -	**10-L-14372**	December 20, 2010	March 11, 2011	Removed to Federal Court

Cook County Circuit Court. *Mark Thompson v. Board, Deborah Edwards-Clay, Reginald Evans, Harlan High School, Piccolo Specialty School*

11-cv-1172	March 11, 2011	February 15, 2015	Settlement

U.S. District Court Northern District of Illinois. *Thompson v. Board, Keith Brookshire, Deborah Edwards-Clay, Reginald Evans.* Case involved Title VII retaliatory 14-days suspension without pay claim related to a coerced PED accusation.

2 -	**13-L-879**	November 21, 2013	February 5, 2015	Dismissed with Prejudice

Lake County Circuit Court. *Mark Thompson v. Board HS District 113, Board, Village of Deerfield, Harold Ardell, Linda Brown, Reginald Evans, Audris Griffith, Jane Doe's Mother, Jane Doe, Jane Doe's Sister, Stephanie Locascio, James Sullivan, Ed Wong III.*

Illinois Appellate Court 2nd Dist.	March 15, 2016	Affirmed
Illinois Supreme Court	September 28, 2016	Leave to Appeal Denied

Case involved Jane Doe rape claims leading to *petitioner's* suspension without pay prior to his unrelated employment termination on August 16, 2013.

3 -	**13-ch-26625**	December 2, 2013	August 19, 2014	Dismissed with Prejudice

Cook County Circuit Court. *Mark Thompson v. Claudia Welke, PhD, Stephanie Locascio, M.S. NCC, LPC, Northshore University HealthSystem – Highland Park Hospital and Jane Doe.*

Illinois Appellate Court 1st Dist.	April 29, 2016	Affirmed
Illinois Supreme Court	September 28, 2016	Leave to Appeal Denied

Case involved injunctive relief for an *in-camera* review of Jane Doe's relevant mental health records related to her rape claim against *petitioner.*

4 -	**N/A**	December 9, 2013	Continuing/Stayed	**Continuing/Stayed**

Cook County Circuit Court Jurisdiction. ISBE Administrative Dismissal Hearing. *In the Matter of the Charges for Dismissal Preferred Against Mark Thompson, Respondent, by The Chief Executive Officer of the Board of Education of the City of Chicago.* Case involves charges related to Jane Doe's rape claims against *petitioner.*

5 -	**14-cv-6340**	August 14, 2014	March 22, 2018	Dismissed with prejudice

U.S. District Court Northern District of Illinois. Consolidated. *See above for parties.*

Seventh Circuit of Appeals	October 24, 2019	Affirmed
Seventh Circuit Court of Appeals	November 25, 2019	Rehearing En Banc Denied
United States Supreme Court	TBD	TBD

Case originally involved Title VII claim for retaliatory termination. When consolidated it involved two other Title VII claims from Case #6 and Case #10.

6 - **14-L-606** August 26, 2014 September 29, 2014 Removed to Federal Court
Lake County Circuit Court. *Dr. Mark Thompson v. Board.* Case involved Title VII retaliation suspension without pay claim related to Jane Doe's rape claim.

14-cv-7575 September 29, 2014 December 11, 2014 Consolidated with Case #5
U.S. District Court Northern District of Illinois. *Dr. Mark Thompson v. Board.* Case involved Title VII retaliation suspension without pay claim related to Doe's rape claim.

7 - **14-cv-6838** September 4, 2014 December 11, 2014 Consolidated with Case #5
U.S. District Court Northern District of Illinois. *Dr. Mark Thompson v. Board, Harold Ardell, Linda Brown, James Sullivan, Alicia Winckler.* Case involved new Jane Doe rape claims related to ISBE dismissal hearing commenced on December 9, 2013 in Cook County after Doe claims were originally filed Lake County. Illinois Personnel Record Review violations statutorily required to be filed in either Cook County or federal court.

8 - **14-cv-6929** September 8, 2014 December 19, 2014 Dismissed with prejudice
U.S. District Court Northern District of Illinois. *Mark Thompson v. Jorge Ortiz.* Case involved injunctive relief for using state procedures to deny a motion to amend a complaint to add a related Title VII claim (14-cv-7575, Case #6).

9 - **14-ch-15697** September 29, 2014 N/A* **Dismissed *without* prejudice**
Cook County Circuit Court. *Dr. Mark Thompson v. Board and Dr. Byrd-Bennett*
Illinois Appellate Court 1st Dist. June 10, 2016 Affirmed
Illinois Supreme Court September 28, 2016 Leave to Appeal Denied
Case involved injunctive relief related to the Board using an ISBE dismissal hearing without subject matter jurisdiction since the Board no longer employs *petitioner* and was required by statute to be filed in Cook County, Champaign County, or federal court; but not Lake County where old Jane Doe claims had already been filed.

* Three of four counts were dismissed *without* prejudice on February 25, 2015 pending a final adjudication of Case #4 above: ISBE Administrative Dismissal Hearing. *In the Matter of the Charges for Dismissal Preferred Against Mark Thompson, Respondent, by The Chief Executive Officer of the Board of Education of the City of Chicago.* The following appeals were to challenge the dismissal *without* prejudice pending the ISBE Hearing with arguments petitioner should not have to wait to challenge subject matter jurisdiction.

10 - **16-cv-7933** August 8, 2016 March 23, 2017** Withdrawn
U.S. District Court Northern District of Illinois. Claims refiled with Case #5
Dr. Mark Thompson vs. Board, ISBE, Forrest Claypool, Jane Doe. Case involves an ongoing Title VII claim related to Case #4 (ISBE dismissal hearing) that is intertwined with Case #9 of which neither has reached a final adjudication.

** Lawsuit originally withdrawn on March 23, 2017 and dismissed without prejudice. Claims were refiled with Case #5 (consolidated) and dismissed with prejudice.

III. Table of Contents

IV. Table of Authorities

Federal Cases

Federal Statutes

Illinois State Cases

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V. Petition for A Writ of Certiorari

Mark Thompson respectfully petitions this court for A Writ of Certiorari to review the judgments of the *United States Court of Appeals for the Seventh Circuit ("Seventh Circuit")* and rulings of the *United States District Court for the Northern District of Illinois (Eastern Division)* ("*District Court*") the *Seventh Circuit* did not address.

VI. Opinions Below

The *Seventh Circuit's* Order denying *pro se petitioner's* appeal, Order denying Petition for Rehearing *En Banc*, Sanction Order, and other relevant documents from the *Seventh Circuit* are located in Separate Appendix A. Other federal court, state court proceedings and other proceedings are located in separate B or A.

VII. Jurisdiction

The *Seventh Circuit* denied *petitioner's* Petition for Rehearing *En Banc* on November 25, 2019, making the *A Writ of Certiorari* original due date Monday, February 24, 2020. On February 11, 2020, *petitioner* timely filed with the United States Supreme Court ("Supreme Court") an Application for a 60-day extension of time to file a petition for a Writ of Certiorari. On February 18, 2020, Supreme Court justice Brett Kavanaugh granted Thompson's application for a 60-day extension with a new due date of Thursday, April 23, 2020. The jurisdiction of this Honorable Supreme Court rests upon 28 U.S.C. § 1254.

VIII. Constitutional and Statutory Provisions Involved

United States Constitutional Amendment XIV, Section 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 2000e-2(a)(1)

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-3(a)

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor--management committee controlling apprenticeship or other training or retraining, including on—the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

28 U.S.C. § 455(a)(b)(2)

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding . . . [w]here in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it.

IX. Statement of the Case

In February 2010, *petitioner's* 10-year and still continuing saga began when his high school supervisor, principal Evans, purportedly attempted to help the new football coach obtain *petitioner's* Physical Education ("PE") teaching and coaching positions by soliciting a teacher to file a false sexual harassment claim against the *petitioner* and then coercing a 16-year old student to falsely claim *petitioner* provided him performance enhancing drugs ("PED"). The teacher refused to engage in staging a false sexual harassment claim but *petitioner* was removed from his coaching position pending Department of Children and Family Services ("DCFS") and Board investigations into the PED allegations. In May 2010, after the DCFS investigation was "Unfounded," principal Evans handed *petitioner* an "Excellent" evaluation citing he had followed Board rules and informed him no disciplinary action was going to be taken against him relating to the Board's PED investigation. But a month later a co-worker tipped *petitioner* Evans was going to eliminate the male PE department to get rid of him so he could later install a new PE position for the football coach under the guise of budgetary causes. After learning the football coach falsified his student teaching, *petitioner* went to the next school board meeting and made a complaint against Evans and the football coach. Evans retaliated by transferring *petitioner* from PE to U.S. History the next day – never transferring him back to PE despite positions reopening. In August 2010, *petitioner* filed his first U.S. Equal Employment Opportunity Commission ("EEOC") charge against the Board based on the elimination of the male PE department and subsequent transfer. After the Board received *petitioner's* EEOC charge in September 2010, they retaliated again by suspending *petitioner* for 14 days without pay based on the Board's PED investigation, despite Evans prior notification to petitioner that no disciplinary action would be taken – prompting another EEOC charge against the Board.

On December 20, 2010 *petitioner* filed his first lawsuit against the Board in Cook County circuit court (10-L-14372) before removal to federal court on March 11, 2011 (11-cv-1712, Case #1)[1]. A Second Amended Complaint ("SAC") included the retaliatory 14-day suspension without pay EEOC charge in April 2011. The Board retaliated again by soliciting Jane Doe, an 18-year old recipient of mental health services, to make false claims to her therapist, Dr. Claudia P. Welke, that *petitioner* raped her at one of his private coaching practices in March 2010 when she was 17-years old. Dr. Welke contacted DCFS in Cook County to report Jane Doe's rape claims under the guise she was a student at *petitioner's* school while withholding personal knowledge the rape claim was not only false but solicited by the Board. The Board then obstructed DFCS investigators from notifying *petitioner* of Jane Doe's false rape claim by confiscating his DCFS notification mail and falsely claiming he was unavailable for an interview. The Board then covertly subpoenaed AOL *petitioner's* private emails from AOL without his permission or knowledge,[2] including confidential email communications with the attorneys who were representing him in his federal lawsuit (11-cv-1712, Case #1) against the Board.

In late January 2012, an investigator with the Board's Office of the Inspector General ("OIG") interviewed *petitioner* seeking his training schedule with Jane Doe from 2010. *Petitioner* could not recall exactly from memory and inadvertently provided the OIG investigator an incorrect schedule. The OIG investigator then relayed the incorrect training schedule to Jane Doe for the purpose of submitting to law enforcement a false story that put *petitioner* at the time, day, and scene of her false rape claim. Jane Doe then used an inaccurate training schedule to create a fantastical rape story to the Vernon Hills Police Department ("VHPD") detailing how

[1] See Procedural Case History Flowchart on page 11 for a list of all ten cases.
[2] Because *petitioner's* case was dismissed at the pleadings stage, discovery has never commenced far enough to determine if Board officials actually received any of *petitioner's* emails. *Petitioner* suspects the Board did indeed receive copies of his private emails.

she remembered it was just getting dark before a 6 PM practice start on March 18, 2010 and *petitioner* supposedly got mad after she wasn't running fast enough during practice, lured her to his car to get equipment, forced her into the car from behind, punched her in the face, and raped her in the back seat of his car after telling her, "I'm going to show you what a *black* man is all about." Jane Doe then told police she came back to practices for another month pretending nothing happened but couldn't explain why no mark was left on her face. Before the VHPD investigated *petitioner* as to Jane Doe's rape claims, *petitioner* had constructed an indisputable accurate training schedule from his I-PASS electronic toll records indicating all of *petitioner's* practices in 2010 were completed prior to 6 PM and did not even practice on the day Jane Doe claimed she was raped. *Petitioner* also passed a lie detector test three times and a copy of all text messages and emails exchanged between them clearly reflected a professional relationship. As such, *petitioner* was never arrested or charged with any crime against Jane Doe.

On May 23, 2012 the Board retaliated again when Evans issued *petitioner* a pretextual "Unsatisfactory" evaluation for U.S. History[3] after inputting the "Unsatisfactory" rating two days before the actual evaluation – a violation of the Board-Chicago Teacher's Union ("CTU") contract. The Board retaliated again days later by removing him from his school related to Jane Doe's Board-solicited false rape claim in May 2011 – the Board ensuring *petitioner* received an "Unsatisfactory" evaluation before he was removed from student contact. In August 2012, the Board retaliated again by charging *petitioner* with forcibly raping Jane Doe when she was 17-years old in March 2010 and suspended him without pay pending an ISBE administrative dismissal hearing – despite having already been cleared by statutory authorized DCFS and police

[3] Earlier in the school year an ISBE audit uncovered that *petitioner* was never qualified to teach U.S. History through federal standards the school was required to follow. The Board threatened to terminate *petitioner's* employment if he didn't become qualified for U.S. History instead of moving him back to PE where he had seniority over the male teacher in the position.

investigations. In September 2012, *petitioner's* attorney withdrew from his case upon becoming pregnant, leaving *petitioner* without an attorney and forcing him to argue his case *pro se* for ten months. When *petitioner* amended his federal complaint (11-cv-1712, Case #1) in December 2012 to add new claims related to Jane Doe's solicited false rape claim, the then presiding judge ordered the Board to turn over the investigative file related to *petitioner's* suspension without pay, citing the Illinois Personnel Review Act ("IPRRA"), 820 ILCS 40/10(g) – where an investigative file becomes a part of the personnel file once disciplinary action is taken. After it was discovered the judge's partner was a material witness in the case and recused himself, a new judge struck *petitioner's* Fourth Amended Complaint and ordered him to correct it after noting deficiencies or the case would be dismissed in its entirety. Instead of attempting to litigate a more complicated case that involved Jane Doe's mental health records, the *petitioner* and the Board agreed to litigate Jane Doe's false rape-related claims separate from all other claims at the state level. As such, *petitioner* withdrew all Jane Doe false rape related claims from his Fifth Amended Complaint. The judge also issued a statement that no more extensions will be granted in the case. Two months later in July, the Board retaliated again against the *petitioner* by terminating his employment effective August 16, 2013 – citing budgetary reasons. A CTU grievance process discovered that *petitioner's* termination was related his "Unsatisfactory" evaluation after a Board attorney directed the dates of his pretextual evaluation be changed to falsely reflect the evaluation was performed in accordance with the Board-CTU contract.

On November 21, 2013, in good faith reliance with *petitioner's* agreement with the Board to split claims, *petitioner* refiled the Jane Doe false rape related claims in a second lawsuit (13-L-879, Case #2) against the Board, Jane Doe, and others in the 19th Judicial Circuit Court in Lake County, Illinois – a limited court of jurisdiction as to the Board's Cook County jurisdiction.

Petitioner filed the lawsuit in Lake County because the Board's investigative file indicated the Board rape solicitation misconduct with Jane Doe occurred in Lake County – and the only damages *petitioner* had incurred at that time were monetary. On December 2, 2013, a statutory required lawsuit[4] (13-ch-26625, Case #3) was filed by *petitioner's* CTU attorney against Jane Doe and Welke in Cook County to compel an *in-camera* review for relevant mental health records after ISBE Hearing Officer Dan Nielsen issued a pre-dismissal hearing ruling they were relevant to Jane Doe's rape claim. Nielsen ruled the Board relied upon therapist statements provided to Board investigators to form the basis of the Board's charges against the *petitioner*.

On December 9, 2013, despite no longer employing the *petitioner*, the Board retaliated again by filing formal charges related to Jane Doe's false rape claim in an ISBE dismissal hearing against the *petitioner* in Cook County (*Board v. Petitioner*, Case #4) – prompting new Title VII-related claims in the Cook County jurisdiction against the Board, Jane Doe, and others for retaliation and conspiracy. At the onset of the ISBE hearing, the Board acknowledged they no longer employed the *petitioner* but the hearing proceeded *hypothetically* to determine if he'd be entitled to back pay had the Board still employed him. After three days of testimony, on December 12, 2013, the dismissal hearing was *stayed* with two witnesses left to call and Jane Doe on standby pending litigation of the *instant* matter.

On May 29, 2013, *petitioner* received his 90-day Right to Sue notice from the U.S. Justice Department relating to *petitioner's* Jane Doe false claim related 11-month suspension without pay that needed to be joined with his Lake County case (13-L-879, Case #2); and *petitioner's* retaliatory termination based on the Board's falsified "Unsatisfactory" evaluation unrelated to Jane Doe's false rape claim. The EEOC informed *petitioner* his Right to Sue notice

[4] Illinois statute 740 ILCS 110/10 requires a court order for the disclosure of mental health records if the therapist or mental health recipient objects to disclosure, which was the case upon Jane Doe and Welke receiving Nielsen's subpoenas.

could be used for both Title VII claims in separate lawsuits. After *petitioner* hired an attorney for his federal case (11-cv-1712, Case #1) and a global settlement did not materialize, *petitioner* filed a motion in Lake County circuit court on August 1, 2014 to address the issues of adding the related Title VII claim to his complaint (13-L-879, Case #2).

In a good faith agreement with the Board to litigate Jane Doe-related claims separate and the judge in the first case stating no extensions, *petitioner* filed his fourth lawsuit (14-cv-6340, Case #5) on August 18, 2014 in federal court related to the Board falsifying *petitioner's* "Unsatisfactory" evaluation to terminate his employment. On August 26, 2014,[5] *petitioner* had his motion heard relating to adding a Title VII claim to his complaint (13-L-879, Case #2) in Lake County state court. The judge expressed anger that *petitioner's* case was transferred to him and denied his motion to amend completely unrelated to federal procedures. *Petitioner* was then involuntarily forced to file his related Title VII claim as a separate stand-alone lawsuit (14-L-606, Case #6) to meet the 90-day Right to Sue deadline. On September 4, 2014, *petitioner* had to file a sixth lawsuit (14-cv-6838, Case #7) against the Board in federal court relating to the new Jane Doe claims after the Board filed related charges against the *petitioner* in the *hypothetical* ISBE dismissal hearing (*Board v. Petitioner*, Case #4). On September 8, 2014, *petitioner* filed a complaint for declaratory and injunctive relief against the Lake County judge for using state procedures to deny *petitioner's* motion to amend his case to add his Title VII claim (14-cv-6929, Case #8). The case was later dismissed for lack of jurisdiction to grant relief when the Lake County case went to the Appellate court on appeal. On September 29, 2014, the Board removed the Lake County Title VII lawsuit (14-L-606, Case #6) to federal court (14-cv-7575, Case #6) before *petitioner's* motion to withdraw it could be heard.

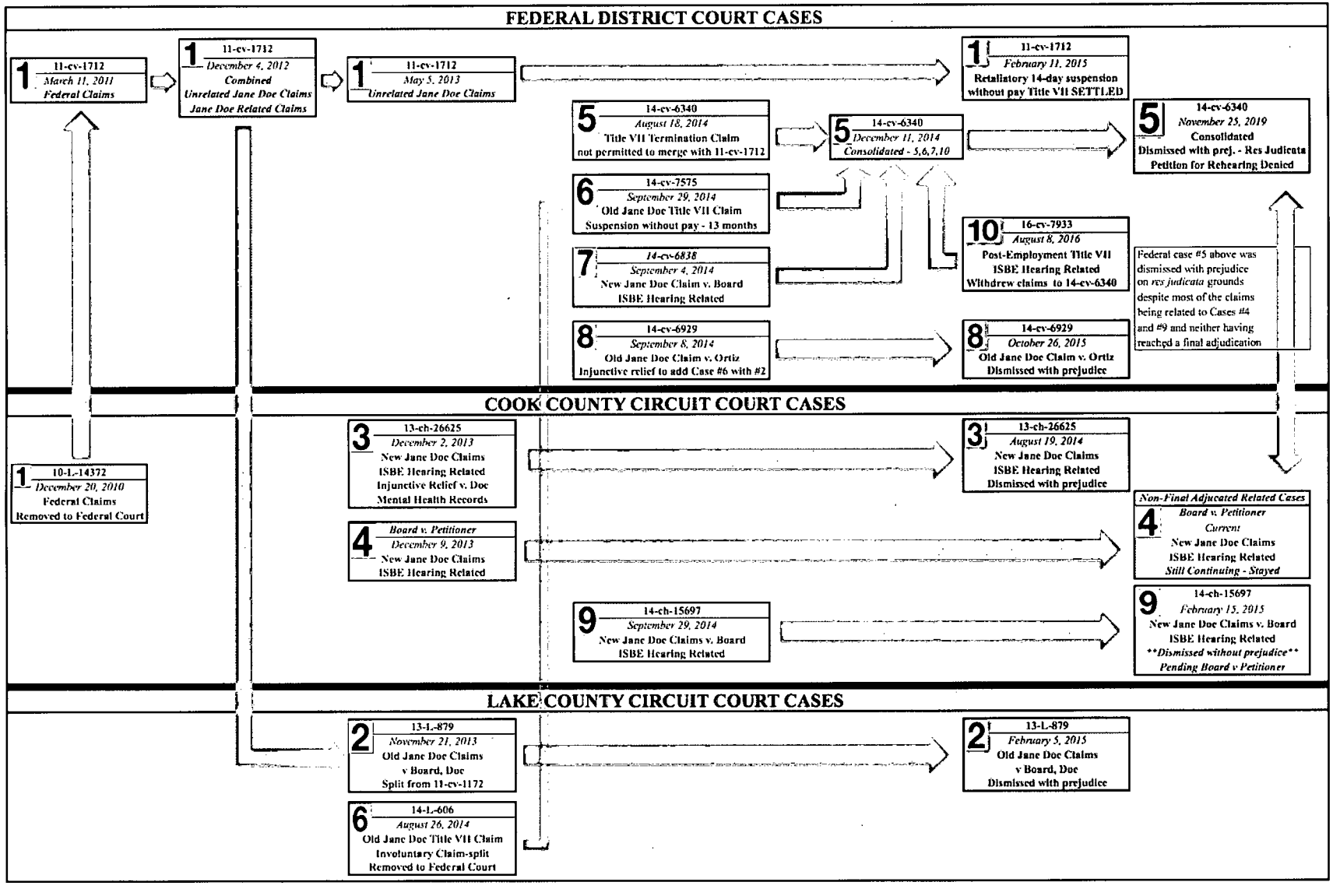
[5] Due to no fault of his own, *petitioner's* motion related to his Title VII claim needing to be added was not acted upon by the state court until August 26, 2014, just one day prior to the 90-day Right to Sue notice expired, because the judge was in a trial and the acting judge did not want to rule in his place.

Petitioner's eighth lawsuit (14-ch-15697, Case #9) was filed on September 29, 2014 in Cook County after research supported a state administrative agency such as the ISBE cannot conduct a dismissal hearing without subject matter jurisdiction over a party being charged. Since the Board had already terminated *petitioner's* employment as a tenured teacher due to an "Unsatisfactory" evaluation, Illinois statutes and case law supported *petitioner's* argument that the Board lost jurisdiction to bring dismissal hearing charges against him in an ISBE hearing (*Board v. Petitioner*, Case #4). However, the circuit court judge's ruling in the case (14-ch-15697, Case #9) ignored pleadings the Board no longer employed the *petitioner*. The Appellate court added that *petitioner* waived subject matter jurisdiction when he voluntarily participated in the dismissal hearing. *Petitioner's* case was dismissed *without* prejudice, ruling that *petitioner* must first exhaust his administrative remedies in the dismissal hearing first (*Board v. Petitioner*, Case #4) before challenging the Board and ISBE's subject matter jurisdiction over him.

In December 2014, the district court consolidated three of *petitioner's* four then pending federal cases (14-cv-6340, Case #5; 14-cv-7575, Case #6; 14-cv-6838; Case #7) against the Board despite presenting written documentation supporting a prior agreement with the Board to litigate Jane Doe rape related claims separate from other claims. In February 2015, the Board settled the other pending federal case (11-cv-1712, Case #1) after *petitioner* was successful in advancing it to pre-trial. On April 16, 2015 the Board filed a motion to dismiss *petitioner's* consolidated case (14-cv-6340, Case #5) where 11 counts proceeded pending a SAC. However, the judge later *stayed* the case on February 17, 2016, citing potential *res judicata* implications on the pending Lake County court case. While the consolidated case (14-cv-6340, Case #5) was *stayed,* and over a year after his Lake County case was dismissed, *petitioner* received another Right to Sue Title VII notice on May 9, 2016 relating to the *stayed* ISBE dismissal hearing and

timely filed the corresponding federal lawsuit on August 8, 2016 (16-cv-7933, Case #10). *Petitioner* later withdrew the lawsuit (16-cv-7933, Case #10) and refiled the claims with a SAC in the consolidated lawsuit (14-cv-6340, Case #5). The district court did not permit the *petitioner* to file for prospective relief against the ISBE and others, claiming the underlying statutes being violated do not give rise to a private cause of action. In May 2017, after the Lake County case (13-L-879, Case #2) had exhausted its appeals, defendants filed motions to dismiss on *res judicata* grounds against all counts except Count VIII - related to the Board's use of an "Unfounded" DCFS report in the *stayed* ISBE hearing (*Board v. Petitioner)* – required to be filed in Cook County, Champaign County, or federal court by statute. Defendants also formed the basis of their *res judicata* argument that the Cook County case (14-ch-15697, Case #9) had been dismissed *with* prejudice – when it was really dismissed *without* prejudice pending final adjudication of the ISBE dismissal hearing (*Board v. Petitioner*, Case #4). On March 21, 2018, the district court proceeded to dismiss all of *petitioner's* claims, relying upon thirteen disputable judicially noticed facts without giving *petitioner* the opportunity to dispute them and ignored the argument Count VIII was never challenged for dismissal against the Board. The *Seventh Circuit*, under the jurisdiction of 28 U.S.C. § 1291, hammered *petitioner* in his appeal, ignored *petitioner's* arguments concerning the district court's disputable thirteen statements and Count VIII not being challenged against the Board, and then claimed his appeal was frivolous, sanctioned him $21,350 with a filing ban until its paid – despite the fact that most of the dismissed claims were related to the two not yet adjudicated cases – the ISBE hearing (*Board v. Petitioner*, Case #4) and Cook County case (14-ch-15697, Case #9) that was dismissed *without* prejudice pending final adjudication of Case #4. (The Statement of the Case is a compilation from the pleadings and proceedings from the ten cases listed on pages iii and iv of this petition).

PROCEDURAL CASE HISTORY FLOWCHART



X. Argument to Grant the Writ

Introduction

Petitioner, who is an African-American citizen in a federally protected class, is poised to become the first citizen in U.S. history to be *hypothetically* dismissed from an employer who no longer employs him (seven years and counting) as a result of ongoing unconstitutional post-employment retaliation and harassment through a an ISBE dismissal hearing that *petitioner* cannot be a legal party to. If the current lower court rulings were to stand, the *Seventh Circuit's* monetary and filing bar sanction in response to *petitioner's* efforts to stop the Board's post-employment harassment would leave *petitioner* unconstitutionally defenseless to prevent the Board from continuing to misuse the ISBE hearing that the U.S. constitution and other applicable laws were designed to prevent.

Besides U.S. constitutional violations, the center of the Board's persistent and continuing acts of lawlessness is The Civil Rights Act of 1964 ("Act") signed into law by former President Lyndon B. Johnson upon Congressional approval. The Act prohibits discrimination in a broad array of private conduct including public accommodations, governmental services and education. One section of the Act, referred to as Title VII, prohibits employment discrimination based on race, sex, color, religion and national origin. 42 U.S.C. § 2000e-2(a)(1). Title VII of the Act created the EEOC – whose mission is to eliminate unlawful employment discrimination. The Act also prohibits discrimination in recruitment, hiring, wages, assignment, promotions, benefits, discipline, discharge, layoffs and even retaliation for filing an EEOC charge or Title VII-related lawsuit. 42 U.S.C. § 2000e-3(a).[6]

[6] www.eeoc.gov/eeoc/history/35th/thelaw/index.html

Petitioner has received at least six 90-day Right to Sue notices from the U.S. Department of Justice since 2010 due to the Board's obsessive Title VII employment and current post-employment misconduct that even crossed back and forth between two state county jurisdictions. As a result of new federal and state claims between two jurisdictions and a prior agreement to litigate Jane Doe rape-related claims separately that split the first federal case into a second case litigated in Lake County state court, numerous amended complaints and new lawsuits followed in three court jurisdictions. Three Title VII claims were erroneously dismissed on *res judicata* grounds after state claims in Lake County circuit court were dismissed. One Title VII claim was misinterpreted as a dismissal by the federal court using the same state court procedures used to deny a motion to add the Title VII claim to his related state claims before removal to federal court. A second Title VII claim was dismissed despite no relation to the dismissed Lake County claims. A third Title VII claim was dismissed despite its relation to an ISBE dismissal hearing that continues today. As *petitioner* arguments will show, he has never had a full and fair opportunity to have any of these three Title VII claims litigated before they were dismissed on *res judicata* grounds – making the EEOC Title VII Right to Sue notice non-legit, subject to arbitrary dismissal, and a trap for sanctions after citing clearly erroneous errors upon appeal.

A Writ of Certiorari is therefore warranted to uphold the legitimacy of *petitioner's* U.S. constitutional and Title VII employment and post-employment Right to Sue notices, hold individuals and organizations accountable for soliciting teenagers to file false rape claims against employees as an despicable and evil act of retaliation, and to ensure *petitioner* has constitutional rights to the courts to litigate a still ongoing Title VII claim after the *Seventh Circuit* placed a filing bar sanction on *petitioner* for pursuing his rights under the U.S. constitution and the Act to try to stop continued Title VII harassment and identifying dismissal errors on appeal.

Argument

A. The federal courts erred in not permitting *petitioner* to add claims for prospective relief that violate his 14th Amendment U.S. Constitutional rights

The 14th Amendment of the U.S. Constitution provides in part that:

> "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

On September 29, 2014, *petitioner* filed a four count complaint for declaratory judgment and permanent injunctive relief in Cook County court against the Board and then CEO Barbara Byrd-Bennett (14-ch-15697, Case #9). The case challenged subject matter jurisdiction after the Board brought charges against *petitioner* in a *hypothetical* ISBE dismissal hearing (*Board v. Petitioner*, Case #4) without statutory authority under Illinois School Code (105 ILCS 5/34-85) and in violation of the Equal Protection Clause of the Illinois Constitution Article I, § 2. The Cook County court dismissed three of four counts *without* prejudice,[7] ruling *petitioner* must first exhaust his administrative remedies regarding the ISBE hearing (*Board v. Petitioner*, Case #4) before challenging subject matter jurisdiction – ignoring pleadings the Board no longer employed *petitioner*. (App. B, 310-A313). This absurd ruling in effect implies harassed citizens are required to fully participate in sham hearings they can't be a legal party to until it's been fully adjudicated. In the absence of supporting statutory authority, this ruling most certainly gives rise to prospective relief under 42 U.S.C. § 1983. Subject matter jurisdiction challenges in Illinois state court requires *immediate* due process to address the matter – regardless of how insufficient the pleadings are (*Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 340 (2002)) – and a party is not required to exhaust his administrative remedies before seeking relief

[7] The circuit court dismissed one count *with* prejudice related to Abuse of Power.

if he does not fall under the definition of a party to an administrative proceeding. *Office of the Lake County State's Attorney v. Human Rights Commission,* 235 Ill. App. 3d 1036, 601 N.E.2d 1294 (Ill. App. Ct. 1992). The Appellate court sidestepped the ISBE hearing's non-party status issue by ruling when *petitioner* "elected to proceed with a discharge hearing, the ISBE had subject matter jurisdiction over the matter." (App. B, A-327, ¶ 15). However, the appellate ruling actually relates to "personal jurisdiction," as subject matter jurisdiction cannot be waived. *Jones v. Industrial Comm'n*, 335 Ill. App. 3d 340, 343, 780 N.E.2d 697, 700 (2002). No court to date has ever cited any statutory authority that gives the Board legal subject matter jurisdiction in an ISBE dismissal hearing over a person they don't employ as a tenured teacher – required by Illinois School Code (105 ILCS 5/34-85). The Illinois Supreme Court denied hearing *petitioner's* appeal, thus leaving the federal court system as the only option to address state courts making up rulings that impose upon a citizen's U.S. Constitutional rights. *Allen v. McCurry*, 449 US 90 (1980) at 101; *Lumen Const., Inc. v. Brant Const. Co., Inc.*, 780 F. 2d 691 (7th Cir. 1985) at 697.

Petitioner's operating SAC included Counts XV-XVIII (App. B, A53-A61) for prospective relief relating to the Board's misuse of an ISBE dismissal hearing (*Board v. Petitioner, Case #4*) after Jane Doe's rape claim was already "Unfounded" by DCFS, and also charging someone they don't employ, both without statutory authority and actionable under 42 U.S.C. § 1983. The judge denied the four counts *sua sponte,* ruling the statutes cited by *petitioner* do not provide a private cause of action. (App. B, A335, ¶ 3 – A336, ¶ 10). But *petitioner* doesn't need a private cause of action if the conduct alleged violates his U.S. constitutional rights. ". . . this Court long ago recognized that federal injunctive relief against a state court proceeding can in some circumstances be essential to prevent great, immediate, and irreparable loss of a person's constitutional rights." *Mitchum v. Foster*, 407 US 225 (1972) at

242. Even though *petitioner* did not cite 42 U.S.C. § 1983 in his pleadings, *petitioner* was not provided an opportunity to correct deficiencies before dismissing *with* prejudice. "In particular, no heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly in order to state a claim." *Johnson v. City of Shelby, Mississippi*, 135 S. Ct. 347. The *Seventh Circuit's* ruling ignored *petitioner's* arguments regarding this issue. (A1-A6). *Petitioner* prays this Writ be granted so that his guaranteed U.S. Constitutional rights under the 14th Amendment are actually finally upheld.

B. The *Seventh Circuit* erred in ruling *pro se's* appeal is frivolous, charging him $21,350, and imposing a filing bar until fees are paid since the grounds upon its dismissal ruling juxtaposes a prior state Appellate and no opportunity was given to dispute any judicially noticed facts

A party is entitled to be heard upon judicial notice, even after a dismissal. *See* Federal Rules of Evidence Rule 201. *Judicial Notice of Adjudicative Facts*. After the district court dismissed *petitioner's* case on *res judicata* grounds using disputable judicially noticed adjudicated facts ("disputable facts") without providing the *petitioner* an opportunity to dispute them (A65-A82), the *Seventh Court* ignored *petitioner's* arguments citing thirteen disputable facts (A32-A52) before affirming dismissal, claiming his appeal was frivolous, and then imposing monetary ($21,350) and filing bar sanctions on him (A7-A9). However, only one of the thirteen disputable facts needs to be highlighted here for the purpose of this issue. The lower federal court's *res judicata* ruling was based on the erroneous notion that the Cook County court case (14-ch-15697, Case #9) had been dismissed *with* prejudice (A3, ¶ 5; A77, footnote). However, the district court's ruling juxtaposes the rulings of both the state circuit and Appellate courts that the case was actually dismissed *without* prejudice pending administrative exhaustion of the ISBE dismissal hearing (*Board v. Petitioner,* Case #4). On June 10, 2016, the Appellate

court, in confirming the Cook County court's four-count dismissal ruling (A310-A313), stated in a footnote, "Only count two was dismissed with prejudice." (App. B, A-324, footnote 3). *Petitioner's* CTU attorney confirmed on April 10, 2020 there's been no change in the status of the ISBE hearing (*Board v. Petitioner,* Case #4) since it was *stayed* on December 12, 2013. (A-83; App. B, A-323, footnote 1; A97). A requirement for *res judicata* to be applicable is the finality on the merits of related claims. *Montana v. United States*, 440 US 147 (1979). Since most of the claims in *petitioner's* consolidated lawsuit (14-cv-6340, Case #5) relate to pending intertwined cases (*Board v. Petitioner*, Case #4; and 14-ch-15697, Case #9), where neither has reached a final adjudication, it was improper to dismiss the consolidated case (14-cv-6340, Case #5) on *res judicata* grounds. Furthermore, it is an abuse of discretion for the *Seventh Circuit* to assert an appeal is frivolous, ordering $21,350 and filing bar sanctions, after *petitioner's* appeal cited thirteen disputable judicially noticed facts, including one that juxtaposes prior state court rulings that 14-ch-15697 (Case #9) was dismissed *without* prejudice – in effect sanctioning the Board's harassing conduct in violation of *petitioner's* U.S. constitutional and Title VII rights without further use of the courts to remedy. As such, *petitioner* prays this Writ be granted so his sanctions can be reversed and *petitioner* has rightful access to the courts with a full and fair opportunity to litigate his ongoing U.S. constitutional and Title VII claims against the Board.

C. Lower federal courts erred in dismissing a claim not challenged for dismissal; occurred in and was required to be filed in court of competent jurisdiction

In the Board's first motion to dismiss *petitioner's* consolidated case (14-cv-6340, Case #5) on April 16, 2015, its challenges to dismiss Count VIII were based upon legal deficiencies (which *petitioner* corrected later in his SAC); and time-barred – which the district court rejected in its ruling on January 29, 2016. On February 14, 2017, the Board never challenged Count VIII

for dismissal in its Response in Opposition to Plaintiff's Motion for Leave to File SAC. (App. B, A207-A218). In its second and final motion to dismiss on May 26, 2017, the Board only challenged dismissing individual Board employees Claypool and Winckler from Count VIII – arguing it was redundant to sue individuals in their official capacity when the Board was already being sued. (App. B, A-122). As such, the Board voluntarily intended for Count VIII to proceed to discovery and the federal court assisted the Board in a partial fashion by dismissing it anyway without any explanation in a blanket *res judicata* ruling. The *Seventh Circuit's* ruling also ignored *petitioner's* argument the Board never challenged Count VIII to be dismissed. (A1-A6). The *Seventh Circuit* then claimed *petitioner's* appeal was frivolous and sanctioned $21,350 with a filing ban despite clarifying Count VIII was never challenged for dismissal against the Board. (A7-A9). Had the court not ignored *petitioner's* argument surrounding Count VIII's dismissal, *res judicata* would not have been applicable to the entire case.

Count VIII included injunctive relief relating to the Board's violations of the IPRRA, 820 ILCS 40/13, which requires employers to expunge documents upon written notification that a DCFS investigation was "Unfounded." 820 ILCS 40/13 reads:

> Sec. 13. An employer shall not gather or keep a record identifying an employee as the subject of an investigation by the Department of Children and Family Services if the investigation by the Department of Children and Family Services resulted in an unfounded report as specified in the Abused and Neglected Child Reporting Act.
>
> An employee upon receiving written notification from the Department of Children and Family Services that an investigation has resulted in an unfounded report shall take the written notification to his or her employer and have any record of the investigation expunged from his or her employee record. (Source: P.A. 87-400.)

DCFS indicated Jane Doe's rape claim against *petitioner* was "Unfounded" on June 10, 2011. *Petitioner* provided the Board proper written notification on March 12, 2013 for DCFS and all related documents to be expunged from his personnel file. Expunging *petitioner's* personnel file would likely include the Board's entire investigative file and subsequent charges against

petitioner in the ISBE dismissal hearing (*Board v. Petitioner,* Case #4). However, the Board has refused to adhere to the IPRRA statute nine years and running and instead has continued using "Unfounded" rape charges against *petitioner* in an ISBE dismissal hearing (*Board v. Petitioner,* Case #4). On December 9, 2013, when the Board advanced Jane Doe's false rape claim as ISBE dismissal hearing charges in the jurisdiction of Cook County despite no longer employing him, it generated a new IPRRA claim requiring a new lawsuit to be filed in a court of competent jurisdiction. The IPRRA statute strictly prohibited *petitioner* from amending his Lake County complaint (13-L-879, Case #2) filed weeks earlier to add an IPRRA claim. The IPRRA statute under 820 ILCS 40/12(c) states the only jurisdictions to file a personnel file claim is:

> "The circuit court for the county in which the complainant resides, in which the complainant is employed, or in which the personnel record is maintained shall have jurisdiction in such actions." (Source: P.A. 84-525.)

Because the new Jane Doe claims in Cook County related to personnel file violations and conspiracy against Doe and others, *petitioner* was statutorily required to file a new lawsuit in either Champaign County (where *petitioner* resided), Cook County (where personnel files were maintained), or federal court. The lower courts rulings (A1-A6; A65-A82) ignored *petitioner's* limited jurisdiction arguments that the new IPRRA claim could not be filed in Lake County court in an amended complaint (A29, ¶ 3; A43, ¶ 3). "There is an alternative basis for not treating the first judgment as *res judicata* - that the second (that is, the present) suit challenged unlawful acts committed after the first suit, and hence is based on different facts..." *Creek v. Village of Westhaven*, No. 95-1465 (7th Cir. 1996); *LaSalle National Bank v. County of DuPage*, 856 F.2d 925, 931-33 (7th Cir. 1988). "But if the supposedly wrongful events are separated by time and function, multiple suits are permissible (even though not desirable)." *Perkins v. Board of Trustees of the University of Illinois*, 116 F.3d 235, 236 (7th Cir.1997).

The survival of the IPRRA claim (Count VIII) against the Board should not only have ended the unlawful ISBE dismissal hearing (*Board v. Petitioner, Case #4*) but would have rendered *res judicata* inapplicable on all counts. The *Seventh Circuit* (A1-A6) and district court (A65-A82) rulings ignored every argument, statute, and case law precedence *petitioner* offered in his favor on Count VIII (A30-A31) and was sanctioned $21,350 with a filing bar for doing so.

D. The lower courts erred in dismissing all three Title VII claims at the pleadings stage and thus denied *petitioner* a full and fair opportunity to be heard

1. The court erred is dismissing a new and continuing Title VII post-harassment claim

Petitioner received his latest Title VII Right to Sue notice on May 9, 2016, related to the *stayed* but still ongoing *hypothetical* ISBE dismissal hearing (*Board v. Petitioner,* Case #4) the Board is using without statutory authority against *petitioner* as post-employment harassment. The Lake County case (13-L-879, Case #2) the court used for *res judicata* purposes was dismissed with prejudice on February 5, 2015 - 15 months prior to *petitioner* receiving his Right to Sue notice based on an ongoing Title VII post-harassment claim. The court clearly erred in dismissing Count XIII (A47-A50) related to ongoing post-employment harassment, which is permissible under Title VII. *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997). The *hypothetical* ISBE dismissal hearing is currently *stayed* and in the discovery phase with Jane Doe on recall standby, two more witness to call including Jane Doe's sister and the presiding judge's former law partner (assuming the ISBE hearing is continued and both of Jane Doe's therapists are not permitted to testify. Title VII claims are never precluded related to ongoing or unreviewed administrative hearings. *University of Tennessee v. Elliott*, 478 U.S. 788, 795-96 (1986). And claims that have not reached final adjudication cannot represent a final judgment on the merits – a prerequisite of *res judicata*. *Nevada v. United States*, 463 U.S. 110, 129-130 (1983). Both the lower courts ignored this issue in dismissing this Title VII claim. (A1-A6, A65-A82).

2. The lower federal courts erred in dismissing a Title VII claim on identical state procedural grounds used to deny a motion to amend to add the Title VII claim

Title VII "specifies with precision" the only two statutory prerequisites for filing a lawsuit alleging a Title VII claim. *Alexander v. Gardner-Denver,* 415 U.S. 36, 47 (1974). A plaintiff seeking to pursue a claim of retaliatory discharge under Title VII must first file a charge with the EEOC that fairly encompasses the claim in question. In a state like Illinois, which has a state law prohibiting retaliatory discharge, this charge must be filed within 300 days of the alleged retaliatory discharge. 42 U.S.C. §§ 2000e-5(c), (e). A plaintiff must also obtain a right-to-sue notice from the EEOC or the U.S. Department of Justice (if against a government agency) and file a Title VII claim in court no later than ninety days thereafter. 42 U.S.C. § 2000e-5(f)(1). These are the only administrative requirements that a private-sector plaintiff such as *petitioner* must satisfy before bringing a retaliatory claim under Title VII. See *Alexander*, 415 U.S. at 47 (the two prerequisites for filing a Title VII claim are the filing of a timely charge and receipt of a notice of a right-to-sue); See also *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 798-99 (1973) (prerequisites to Title VII suit are filing a timely charge and receiving and acting upon a notice of right-to-sue).

On August 26, 2014 in Lake County circuit court (13-L-879, Case #2), a hearing was held on *petitioner's* motion to amend his complaint to add a Title VII claim (App. B, A-272) with the Right to Sue notice he received on May 29, 2014.[8] However, the Lake County court judge would not permit an amended complaint to add the Title VII claim citing arbitrary reasons. (App. B, A-99). The Lake County judge was angry *petitioner* filed a motion for substitution of judge that forced him to read the case file when it was reassigned to him and felt this particular

[8] The EEOC allowed petitioner to use the same Right to Sue notice for two separate Title VII claims (Jane Doe-related suspension without pay and retaliatory termination) in two separate jurisdictions (Lake County and federal court).

delay in the case was the result of *petitioner's* conduct – and another delay to amend the complaint would prejudice the defendants. The judge also stated the motion to amend was procedurally deficient because *petitioner* did not timely propound on defendants the proposed amended complaint.[9] But both of these rulings were arbitrarily created and related to state procedures, as a motion for substitution of judge has no relation with amending a complaint to add a federal Title VII claim, nor did anyone cite a time requirement he allegedly violated to propound a proposed amended complaint when the Title VII Right to Sue 90-day time requirement had not yet expired. Complicating matters more due to no fault of the *petitioner*, the judge was in a trial and nearly four weeks had passed before the Title VII issues could be addressed from petitioner's initial motion on August 1, 2014. *Petitioner* had also previously informed the court several months prior during litigation that he still had a Title VII claim he needed to add in the future. Neither the prior judge nor defendants had objected to such an amendment before the Right to Sue notice arrived but the new judge seemed to have no interest in judging *petitioner's* case impartially – giving the Board immunity for statutory violations.

No argument has ever been presented by anyone that any of *petitioner's* three dismissed Title VII claims failed to meet the statutory prerequisites as required by *Alexander* and *McDonnell Douglas Corporation.* These two Supreme Court cases are precedent in prohibiting state and lower federal courts from arbitrarily adding Title VII prerequisites to bar a plaintiff from having his properly filed Title VII claim heard. *Id.* As such, the lower federal courts erred in using the same Lake County court's state procedures used to deny a motion to amend to dismiss the same Title VII claim (14-cv-7575, Case #6) after the Board removed it from Lake County court to federal court when it was filed as a one-count lawsuit. (A5, ¶ 1; A79 ¶ 1).

[9] The Lake County judge also ruled that he did not have authority to extend the time to file the Title VII claim but this issue is moot because the 90-day Right to Sue notice had not yet expired and was filed timely as a stand-alone lawsuit.

3. The lower federal courts erred in using dismissed state court claims to dismiss a Title VII claim after state court procedures were used to deny the Title VII claim to be joined with the later dismissed state claims

Besides the federal court dismissing *petitioner's* Title VII claim from Lake County court (13-L-879, Case #2) based on solely on state court procedures to deny a motion to amend to add a related Title VII claim, it also proceeded to use the dismissed state counts from Lake County court to dismiss the related Title VII claim (14-cv-7575, Case #6) on *res judicata* grounds after the Title VII claim was removed to federal court. But as earlier argued, the Lake County judge used state procedures (App. B, A-99) to deny *petitioner's* motion to amend his complaint to add the Title VII claim and *petitioner* was therefore forced into involuntary claim-splitting to meet the EEOC's 90-day filing requirement upon receipt of a Right to Sue notice. The court erred in dismissing *petitioner's* claims in this rickety "musical chairs" process because *res judicata* only applies when *petitioner* has a full and fair opportunity to have his claims heard. *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation et al.*, 402 U.S. 313. It is *petitioner's* position that using state procedures to deny adding a Title VII claim does not evoke a full and fair opportunity to litigate the Title VII claim if the related dismissed state claims are subsequently used to dismiss the same Title VII claim on *res judicata* grounds. There is simply no procedural requirement under *Alexander* for *petitioner* to have a state claim survive as long as the related Title VII claim was filed properly before all the related state claims were dismissed.

4. The lower federal courts erred in using unrelated state claims dismissed in state court to dismiss a retaliatory dismissal Title VII claim in federal court after the Board acquiesced to claim-splitting by prior agreement, litigated cases separately, and removed a Title VII claim after arguing against an amended complaint

When *petitioner* removed the Jane Doe rape related claims from his Fifth Amended Complaint in his first case (11-cv-1712, Case #1) against the Board on May 6, 2013, it was based

on a good faith agreement between the *petitioner* and the Board to litigate the false rape-related claims at the state level separately. (App. B, A272, ¶ 2). In fact, it was the Board's idea to litigate the Jane Doe claims separately (A-89, ¶ 6-11). Then the Board terminated *petitioner's* employment on August 16, 2013 using a falsified "Unsatisfactory" evaluation. *Petitioner* refiled the Jane Doe related false rape claims in Lake County court (13-L-879, Case #2) on November 21, 2013. *Petitioner* later filed his Title VII retaliatory termination lawsuit in federal court (14-cv-6340, Case #5) on August 18, 2014 after receiving his Title VII Right to Sue notice on May 29, 2014. Both cases were filed in good faith accordance with the *petitioner* and Board's claim-splitting agreement and why two separates cases between federal court (11-cv-1712, Case #1) and Lake County court (13-L-879, Case #2) were litigated separately for 14 months.

The federal court dismissed *petitioner's* Title VII retaliatory termination claim and the *Seventh Circuit* affirmed in error, reasoning that *petitioner* could have filed the Title VII termination claim with the Jane Doe claims in Lake County court back on November 21, 2013 or with the last operating SAC on January 29, 2014. First, the lower courts had ignored prior agreement arguments between the *petitioner* and the Board to split Jane Doe rape related claims from all other claims – litigating two cases separately for 14 months. Claim-splitting is permitted if the adverse party agrees or acquiesces to it. *Walczak v. Chicago Board of Education*, 739 F.3d 1013, 1018 (7th Cir. 2014). The district court gets around this argument by claiming the Board didn't acquiescence to claim-splitting when they raised it in 14-cv-6340, Case #5. But there was no termination of the acquiescence agreement prior to *petitioner's* filing of any of the new complaints. In fact, before the Board removed *petitioner's* Title VII claim from Lake County state court (14-L-606, Case #6) to federal court (14-cv-7575, Case #6), it argued against adding the Title VII claim to an amended complaint by stating, "There is nothing stopping Plaintiff from

filing a separate lawsuit in the U.S. District Court for the Northern District of Illinois alleging Title VII retaliation based on the EEOC Charge." (A277, ¶ 1). As such, the Board arguing in support of claim-splitting and removing the claim to federal court, they had acquiesced to claim-splitting. Acquiescence is an exception to *res judicata* under Illinois case law, which governs preclusive issues. ". . . the rule against claim-splitting does not apply to bar an independent claim of part of the same cause of action if: the parties have agreed in terms or in effect that plaintiff may split his claim or the defendant has acquiesced therein . . ." *Rein v. David A. Noyes & Co.*, 665 N.E.2d 1199, 1207 (Ill. 1996). Therefore, the Board acted in bad faith by raising *res judicata* arguments before the district court unfairly applied it to dismiss *petitioner's* claims.

Second, *petitioner's* retaliatory termination was not related to the Jane Doe related rape claims but rather an "Unsatisfactory" evaluation in U.S. History. These are two completely separate causes of action based on completely different facts. In order for *res judicata* to be applicable, there has to be an identity of the causes of action. *Cooney v. Rossiter*, 2012 IL 113227, ¶ 18, 986 N.E.2d 618, 621. Further, the reinstatement relief requested in a Title VII retaliation claim could not have been granted in a court of limited jurisdiction as Lake County.

Third, Title VII claims require an administrative process that includes the EEOC and the U.S. Department of Justice Civil Rights Division (for educational institutions like the Board) prior to filing a claim in court. *McDonnell Douglas Corporation*. Because the Board's dismissal notice emailed to *petitioner* on August 16, 2013 only mentioned the termination was for budgetary reasons, it was not until late October 2013 before a CTU grievance process could confirm *petitioner's* termination was related to his falsified "Unsatisfactory" evaluation. *Petitioner's* operating Lake County court SAC was January 29, 2014. *Petitioner* did not receive his Title VII 90-day Right to Sue notice regarding the retaliatory termination until May 29, 2014.

Fourth, the Lake County judge denied *petitioner's* motion to amend his complaint to add a Jane Doe related Title VII suspension without pay claim anyway. So the court erred in dismissing *petitioner's* Title VII retaliatory termination claim based on a mythical requirement it had to be filed with an amended complaint when there is no guarantee an amended complaint motion will be granted. As explained earlier in *Alexander*, the EEOC has two requirements before a Title VII claim can be filed in court. The lower federal courts ignored the prerequisite Title VII administrative arguments (A35, ¶ 3 - A38; A78) before dismissing *petitioner's* Title VII retaliatory termination and Jane Doe rape-related suspension without pay claims.

5. Summary of the three Title VII Right to Sue dismissals

The grant of a Writ is needed in this case to prevent arbitrary dismissals by state and federal courts for reasons outside the only two prerequisites identified in *Alexander* – and thus rendering the EEOC Right to Sue process a crapshoot for litigants. But sorely as in this case, the Writ is needed also to prevent the EEOC Right to Sue process from becoming an credulous trap for aggrieved litigants who end up having their Title VII claims arbitrarily dismissed and subsequently punished with large monetary sanctions for appealing blatant errors in the dismissal of their claims. In the *instant* matter, the rulings were so erroneous that the *Seventh Circuit* has in effect permitted the *petitioner's* former employer to continue post-employment harassment against him with charges in a dismissal hearing without any judicial recourse to stop it due to a filing bar sanction. These types of rulings, if allowed to stand, would end up encouraging and rewarding employers who persist in harassing employees or ex-employees who are already litigating claims against them and most certainly discourage citizens like *petitioner* in a protected class from pursuing their constitutional and Title VII rights in the judicial system – if the end result is $21,350 in sanction fees and a filing ban.

E. Judicial officers can be sued if acting outside their scope of authority by presiding over a *hypothetical* administrative dismissal hearing

When the district court approved *petitioner's* claims in the consolidated SAC (14-cv-6340, Case #5) (App. B, A19-68) before it was dismissed on *res judicata* grounds, it approved a due process violation for injunctive relief under the 14th Amendment against the ISBE dismissal hearing officer based on pleadings he lacked statutory authority to convene a dismissal hearing to investigate rape claims that were already "Unfounded" by DCFS, and also under 105 ILCS 5/34-85 which require a party to the proceedings to be a "tenured teacher." (App. B, A50-A53) The district court ruled and the *Seventh Court* affirmed (A5, ¶ 3) that the ISBE hearing officer had absolute judicial immunity for civil liability. (A80-A82). However, neither ruling analyzed how the ISBE hearing officer was acting within the statutes citied in *petitioner's* pleadings that limit his authority as a fact-finder and recommender as to whether a tenured teacher should be dismissed or not. Supreme Court precedence has established that judicial officers can be sued under 42 U.S.C. § 1983 for injunctive relief they are acting outside the scope of their statutory authority. *Pulliam v. Allen,* 466 U.S. 522 (1984).

The Board's investigative file has already been established as fact that their investigation was prompted by DCFS notifying principal Evans they were investigating a report made through their office *petitioner* raped Jane Doe when she was 17 years old.[10] The Child Reporting Act under 325 ILCS 5 *et seq.* does not give the Board or the ISBE Hearing Officer statutory permission to conduct an independent investigation or fact find rape claims like this when they are initiated through DCFS. The Child Reporting Act under 325 ILCS 5/7.3 states:

> "The Department shall be the sole agency responsible for receiving and investigating reports of child abuse or neglect made under this Act."

[10] Jane Doe was never a student with the Board in the jurisdiction of Cook County, but rather another school district in Lake County.

The only other agencies that have statutory authority to investigate reports made through DCFS are the state police, local law enforcement, and private social service agencies designated by the Department prior to 1980. *Id.* The Child Reporting Act does not list the Board or the ISBE as an authorized agency to investigate reports made through DCFS. 325 ILCS 5/7.3. Because the Child Reporting Act does not list the ISBE as an authorized agency to independently investigate reports made through DCFS, neither the ISBE hearing officer nor *petitioner's* attorney were able to secure an *in-camera* review of Jane Doe's mental health records through a court order, which was necessary to make due process constitutional since the Board relied upon therapist statements to form the basis of their charges.

325 ILCS 5/7.4(d) further states:

> (d) If the Department has contact with an employer, or with a religious institution or religious official having supervisory or hierarchical authority over a member of the clergy accused of the abuse of a child, in the course of its investigation, the Department shall notify the employer or the religious institution or religious official, in writing, when a report is unfounded so that any record of the investigation can be expunged from the employee's or member of the clergy's personnel or other records. *Id.*

This part of the statute is consistent with the IPRRA under 820 ILCS 40/13 cited earlier on page 18 of this *petition* requiring employers to expunge related documents gathered prior or after an "Unfounded" DCFS report.

325 ILCS 5/7.14 further states:

> ". . .Notwithstanding any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action except for proceedings under Sections 2-10 and 2-21 of the Juvenile Court Act of 1987 involving a petition filed under Section 2-13 of the Juvenile Court Act of 1987 alleging abuse or neglect to the same child, a sibling of the child, or the same perpetrator . . ." *Id.*

The Board's use of the DCFS report as the initiator of its investigation is clearly prohibited from being used in an ISBE dismissal hearing. Every single charge made against the *petitioner* stemmed as a result of the Board's illegal independent investigation of Jane Doe's rape

claim initiated by Dr. Welke's report to DCFS. Therefore, neither the "Unfounded" report or any documents that relate to it, which would include the Board's entire investigative file and subsequent charges, cannot therefore be admissible in an ISBE dismissal hearing.

Illinois statute 105 ILCS 5/34-85 (A145-A148) requires a party to be a tenured teacher employed by the school board bringing charges. (A113). The statute also requires an employee be made whole for lost earnings if he is not dismissed based on the ISBE charges. (A114). *Petitioner's* dismissal was related to an "Unsatisfactory" evaluation on August 16, 2013. As such, the ISBE does not have statutory authority to conduct a *hypothetical* dismissal hearing to determine if *petitioner* would have been entitled to his back pay if the Board still employed him. In fact, the Board recently admitted in a recent ISBE administrative dismissal hearing[11] that the Illinois school code does not give the ISBE Hearing Officer any other authority than to recommend a penalty other than a dismissal (A139, ¶ 3 – A140, ¶ 2) – which is clearly applicable to this matter. The Hearing Officer in that matter declined to make any recommendations that exceed his statutory authority. (A140, ¶ 2). In the *instant* matter, the ISBE hearing officer chose to proceed with the dismissal hearing outside his statutory authority limited to recommending or not recommending dismissal. 105 ILCS 5/34-85(a)(6). (A148).

The lower court rulings ignored how the ISBE hearing officer's judicial functions weren't in violation of these statutes and only cite he has judicial immunity for civil liability – which was not pled. If the Writ is not granted, a new ISBE hearing officer will reconvene the *hypothetical* dismissal hearing without statutory authority and with the Board will continue to violate *petitioner's* U.S. constitutional and Title VII rights– especially knowing *petitioner* has no judicial recourse due to a filing ban in effect until he has paid $21,350.

[11] *In the matter of the Charges Preferred Against:* Erika Stevens, Respondent, by: The Chief Executive Officer of the Board of Education, Petitioner. Dated March 14, 2019.

F. Federal judge who dismissed *petitioner's* lawsuit had a former law partner who would have been called to testify as a material character witness

After the district court erroneously dismissed *petitioner's* claims through *res judicata*, *petitioner* learned that district court judge John Z. Lee had a former law firm partner of eight years whom *petitioner* used to coach for several years when she was a teenager. Character witness testimony is material in rape allegations when there are no direct witnesses. *Petitioner* would need to call upon a few former athletes to testify as to his coaching character to counter Jane Doe's solicited claims that *petitioner's* coaching character including hitting and forcibly raping her as a 17-year old because she didn't run fast enough. Out of several hundred athletes *petitioner* coached from 1991 to 2011, Judge Lee's former law partner is only one of 17 teenagers *petitioner* coached for multiple seasons beyond two. And out of those seventeen athletes, Judge Lee's former law partner is only one of two who currently work in the Chicago area and would be immediately available to testify as a character witness. Had Judge Lee followed applicable laws and not dismissed *petitioner's* case, this conflict would have eventually come to light and he would have had to disqualify himself under 28 U.S. Code § 455(b)(2). 28 U.S. Code § 455(b)(2) reads:

> (b) He shall also disqualify himself in the following circumstances: (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or *the judge or such lawyer has been a material witness concerning it.* (emphasis added).

It is unknown if Judge Lee had prior knowledge that one of his former law partners would be called as a material witness had he acted as an impartial judge and the case had proceeded, nor does it matter. Who knows? Maybe Judge Lee became aware of the material witness conflict and for whatever reason decided it was best to dismiss the case by any means necessary. The *Seventh Court* ignored this issue on appeal.

XI. Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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