

No. _____

In the Supreme Court of the United States

BANK OF LOUISIANA, G. HARRISON SCOTT,
JOHNNY C. CROW, and SHARRY R. SCOTT,

Petitioners,

v.

FEDERAL DEPOSIT
INSURANCE CORPORATION,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

G. HARRISON SCOTT
COUNSEL OF RECORD
300 ST. CHARLES AVENUE
NEW ORLEANS, LA 70130
(504) 592-0614
EXECUTIVEOFFICE@BANKOFLouisiana.COM

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COUNSEL FOR PETITIONERS

SUPREME COURT PRESS

◆ (888) 958-5705

◆ BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Where does one seek judicial review in a case alleging discrimination, neither on merits nor on a procedural ground, but for lack of jurisdiction?

PARTIES TO THE PETITION

PETITIONERS

- Bank Of Louisiana
- G. Harrison Scott
- Johnny C. Crow
- Sharry R. Scott

NOTE: G. Harrison Scott is a Member of the Supreme Court Bar (#310170) and is representing all Petitioners.

RESPONDENT

- Federal Deposit Insurance Corporation

CORPORATE DISCLOSURE STATEMENT

The Bank of Louisiana (the “Bank”) is wholly owned subsidiary of BOL Bancshares Inc. which is listed over the counter under the ticker symbol BOLB. No public company owns greater than 10% of the Bank or BOLB.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Bank of Louisiana, G. Harrison Scott, Johnny Crow and Sharry Scott, respectfully request a summary disposition. Supreme Court Rule 16.1.

- (a) Grant a writ;
- (b) Vacate the Fifth Circuit Judgment of March 28, 2019;
- (c) Remand to the District Court.



OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit, dated March 28, 2019, is included below at App.1a. The Opinion of the District Court for the Eastern District of Louisiana, dated January 13, 2017, is included below at App.27a.



JURISDICTION

This case presents an important federal question that conflicts with a relevant decision in this Court. Supreme Court Rule 10(c). This petition is filed within 90 days of the opinion of the Fifth Circuit. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



STATEMENT OF THE CASE

A. *Perry v. Merit Systems Protection Board*

The sole issue: Does the District Court have jurisdiction?

The answer to the question was supplied in *Perry v. Merit Systems Protection Board*, U.S. Supreme Court, June 23, 2017 (App.43a), where it determined that in a mixed case, such as these proceedings are, the District Court has jurisdiction.

In Summary:

Perry recites:

- A. No regulatory rights alleged Only Discrimination Jurisdiction: District Court
- B. Mixed case on merits Jurisdiction: District Court
- C. Mixed case on procedural grounds Jurisdiction: District Court
- D. Where does one seek judicial review in a case alleging discrimination neither on the merits nor on a procedural ground but for lack of jurisdiction?
- E. A nonfrivolous allegation of jurisdiction generally suffices to establish jurisdiction upon initiation of a case.
- F. A clear rule was enunciated in *Kloeckner v. Solis*, 568 U.S. 41 (2012): Mixed cases shall be filed in District Court.

- G. The key to District Court review is a claim that an agency action violates an anti-discrimination statute.
- H. A mixed case is one where both Board action and unlawful discrimination are alleged. In such cases, judicial review lies in District Court.
- I. The Federal Circuit is the proper review forum for regulatory complaints. In mixed cases the District Court is the proper forum for judicial review.
- J. The judgment of the United States Court of Appeals for the District of Columbia Circuit was reversed, and the case remanded for further proceedings consistent with the opinion.

B. Background

On October 22, 2013, FDIC filed a Notice of Civil Money Penalties against G. Harrison Scott, Johnny Crow and Sharry Scott, for making alleged illegal loans to a director and an alleged executive officer. FDIC-12-276k, FDIC 12-277k, FDIC-12-278k.

On November 1, 2013, FDIC filed a Notice of Charges and Hearing, Notice of Assessment of Civil Money Penalty, alleging violations of Risk Management, Bank Secrecy Act and Compliance, including the National Flood Insurance Act. FDIC-12-489b, FDIC-12-479k.

On August 4, 2016, Bank of Louisiana, G. Harrison Scott, Johnny Crow and Sharry Scott filed these proceedings in the U.S. District Court for the Eastern

District of Louisiana alleging the foregoing FDIC notices were based on age discrimination.

On September 23, 2016, FDIC filed a Motion to Dismiss for Lack of Jurisdiction.

On January 10, 2017, the District Court conducted a hearing on the jurisdictional issue.

On January 13, 2017, the District Court rendered a judgment declaring it did not have jurisdiction and noted the allegation of age discrimination should not be taken lightly.¹

On January 23, 2017, the *Bank et al* lodged an appeal.

On May 26, 2017, *Bank et al* filed their brief in support of jurisdiction.

On June 23, 2017, subsequent to District Court ruling and subsequent to Bank's brief, the U.S. Supreme Court rendered a decision on the very same issue in *Perry v. Merit Systems Protection Board*.²

¹ "The plaintiffs make serious allegations that should not be taken lightly. An example of evidence the plaintiffs submit for the age discrimination claim are communications between FDIC employees, dated January 29, 2013 at 8:52 a.m. On that date an FDIC employee states that, "this place will never change until the old man dies, once you work here, you die here." There seems to be no dispute that this statement is referring to G. Harrison Scott and the Bank of Louisiana. It is troubling and merits close judicial scrutiny."

² "This case concerns the proper forum for judicial review when a federal employee complains of a serious adverse employment action taken against him, one falling within the compass of the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 1101 *et seq.*, and attributes the action, in whole or in part, to bias based

On February 6, 2018, case placed in abeyance until July 30, 2018, pending *Lucia et al v. Securities and Exchange Commission* decision.

On June 23, 2018, *Lucia* case decided.

On August 21, 2018, Bank, et al filed a Motion to Remand based on *Perry v. Merit Systems Protection Board*. The motion was denied.

On January 8, 2019, prior to oral argument, Bank, et al filed a Fifth Circuit Rule 28.5 (28.J) letter citing the *Perry* and *Lucia* cases.

On January 10, 2019, at the hearing, Counsel for the *Bank et al* informed the Court that except for the fact that the Court may have some questions, Counsel relied on *Perry*. In rebuttal to FDIC's arguments, Counsel again cited *Perry*.

On January 11, 2019, by means of letter to the Court, FDIC filed rebuttal.

On March 28, 2019, the Fifth Circuit Court rendered a decision affirming the District Court's lack of jurisdiction.

On April 8, 2019, Bank, et al sought a panel review. Denied.

The instant case presents this question: Where does an employee seek judicial review when the MSPB dismisses her civil-service case alleging discrimination neither on the

on race, gender, age, or disability, in violation of federal antidiscrimination laws. We refer to complaints of that order, descriptively, as 'mixed cases.'" *Perry*, 137 S.Ct. at 1979.

merits nor on a procedural ground, but for lack of jurisdiction?

Id. at 1982.

—we hold: (1) the Federal Circuit is the proper review forum when the MSPB disposes of complaints arising solely under the CSRA; and (2) in mixed cases, such as *Perry*'s, in which the employee (or former employee) complains of serious adverse action prompted, in whole or in part, by the employing agency's violation of federal antidiscrimination laws, the district court is the proper forum for judicial review.

Id. at 1988.

On May 22, 2019, Bank, et al sought an out-of-time En Banc review. Denied.



REASONS FOR GRANTING THE PETITION

Enforcement Counsel for the FDIC contend the controlling issue in the *Perry* case is employment.³

Petitioners contend the controlling issue in the *Perry* case is discrimination.

The March 28, 2019 Judgment does not address.

As this Honorable Court can readily perceive, the resolution of this disagreement is crucial as it dictates whether the proper venue in these proceedings,

³ G. Harrison Scott is an employee of Bank of Louisiana.

as in all discrimination cases, is the District Court or the Court of Appeals.

To adopt Enforcement Counsel's argument would:

- a. Deny District Court jurisdiction, contrary to statute. 29 U.S.C. § 626(c)(1)
- b. Deny a Jury Trial, contrary to the statute. 29 U.S.C. § 626(c)(2)
- c. Eviscerate Petitioner's right to file a claim of age discrimination, which it has actually done herein.

This is not esoteric.

On May 29, 2019, the Board of the Federal Deposit Insurance Corporation (FDIC) in FDIC 17-0086k, notwithstanding age discrimination, motions for recusal and consolidation, and without a ruling on Summary Disposition, adopted an Administrative Law Judge's Recommended Decision; *i.e.*, guilty of not complying with the National Flood Insurance Act. Does the Bank file its appeal in the United States District Court for the Eastern District of Louisiana, or does it file in the United States Court of Appeals for the Fifth Circuit?



CONCLUSION

Since this Honorable Court has already spoken, it is requested the Court issue a summary disposition:

- Granting the Writ
- Vacating the March 28, 2019 Fifth Circuit Judgment, and
- Remanding to the District Court

Respectfully submitted,

G. HARRISON SCOTT
COUNSEL OF RECORD
300 ST. CHARLES AVENUE
NEW ORLEANS, LA 70130
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EXECUTIVEOFFICE@BANKOFLouisiana.COM

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