No. 19-7064

In The
Supreme Court of the United States

Johanna Beanblossom,

Petitioner,

v.

Bay District Schools,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court of Florida

RESPONDENT'S BRIEF IN OPPOSITION

HEATHER K. HUDSON
COUNSEL OF RECORD
HAND ARENDALL
HARRISON SALE LLC
304 Magnolia Avenue
Panama City, FL 32401
Telephone: (850) 769-3434
hhudson@handfirm.com

D. ROSS MCCLOY, JR.
304 Magnolia Avenue
Panama City, FL 32401
Telephone: (850) 769-3434
rmccloy@handfirm.com

QUESTIONS PRESENTED FOR REVIEW

Question 1

Whether constitutional due process removes all discretion from state courts' application of state rules of civil procedure governing the amendment of pleadings.

Question 2

Whether the United States Constitution demands that a party who contributed to a litigation delay be forever barred from objecting to a futile pleading amendment.

Question 3

Whether a public employee's lawsuit seeking redress against the public employer for the plaintiff's personal employment grievances is unprotected speech on merely private employment matters.

Question 4

Whether facts specific to this Petitioner constituted such an egregious affront to the Due Process Clause that this Court must intervene in weighing factual issues to determine a state law issue.

PARTIES TO THE PROCEEDINGS BELOW

Pursuant to Rule 14.1(b), Respondent states that the parties to this proceeding below were Petitioner, Johanna Beanblossom ("Beanblossom"), and Respondent, the School Board of Bay County, Florida (the "School Board").

Beanblossom has used "Bay District Schools" and "The School Board of Bay County, Florida" interchangeably in this litigation and changed the style of this case on appeal. *Compare*, e.g., Pet. App. 5, 17; and Rep. App. 19a. The School Board continues its consistent use of the proper legal name pursuant to FLA. STAT. § 1001.40 (2019).

TABLE OF CONTENTS

APPENDIX TO BRIEF IN OPPOSITION

Florida Supreme Court Proceedings

First District Court of Appeal Proceedings

Trial Court Proceedings

TABLE OF CITATIONS

Cases

Statutes

Other Authorities

OPINIONS BELOW

The order of the Supreme Court of Florida that is the subject of this proceeding is not yet published in the official reporter, but is available at *Beanblossom* v. *Bay Dist. Sch.*, SC19-455, 2019 WL 3017063 (Fla. July 10, 2019) and in Petitioner's Appendix to the Corrected Petition for Writ of Certiorari ("Pet. App.") at App. 18. The Supreme Court of Florida denied discretionary jurisdiction over Florida's First District Court of Appeal's opinion in case number 1D17-0980, which is published at *Beanblossom* v. *Bay Dist. Sch.*, 265 So. 3d 657 (Fla. 1st DCA 2019), *reh'g denied* (Feb. 15, 2019), *review denied,* SC19-455, 2019 WL 3017063 (Fla. July 10, 2019).

The appeals herein stem from Case No. 13-2018-CA in the Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, Florida, which was styled as Johanna Beanblossom v. The School Board of Bay County, Florida. The following unreported trial court orders, which were subject to appeals, can be found in the Appendix to Respondent's Brief in Opposition ("Rep. App.") as follows:

1. Order Granting Defendant's Motion for Summary Final Judgment as to Count I of Plaintiff's Complaint, dated

December 10, 2015, is found in the Respondent's Appendix at 137a–139a.

2. Order Denying Plaintiff's Motion for Rehearing, dated January 5, 2016, is found in the Respondent's Appendix at 136a.

3. Order Granting Defendant's Amended Motion for Summary Final Judgment as to Count II of Plaintiff's Complaint and Denying Plaintiff's Motion to Amend Complaint, dated January 4, 2017, is found in the Respondent's Appendix at 132a–135a.

4. Order Denying Plaintiff's Motion for Rehearing, dated February 6, 2017, is found in the Respondent's Appendix at 126a.

5. Order Granting in Part Defendant's Motion for Attorney's Fees and Costs, dated April 6, 2017, is found in the Respondent's Appendix at 124a–125a.

Beanblossom instigated multiple appeals in Florida's First District Court of Appeals ("First District") related to this matter. Beanblossom's appeals were given case numbers 1D16-1009, 1D17-1827, and 1D17-

0980, but were each styled a bit differently in Beanblossom's notices of appeal.

First District Case Number 1D16-1009 was styled Johanna Beanblossom v. The School Board of Bay County, Florida. This appeal challenged the trial court's Order Granting Defendant's Motion for Summary Final Judgment as to Count I of Plaintiff's Complaint and was dismissed as premature in an order dated May 20, 2016, which is published at *Beanblossom* v. *Sch. Bd. of Bay County*, 190 So. 3d 699 (Fla. 1st DCA 2016).

First District Case Number 1D17-1827 was styled Johanna Beanblossom v. The School Board of Bay County, Florida. This appeal challenged the trial court's Order Granting in Part Defendant's Motion for Attorney's Fees and Costs and resulted in a per curiam affirmance, which is published at *Beanblossom* v. *Sch. Bd. of Bay County*, 266 So. 3d 156 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 20, 2019). This appeal also resulted in a January 14, 2019 order granting the School Board's motion for attorney's fees and a March 20, 2019 order denying Beanblossom's motions for rehearing en banc and written opinion. (Rep. App. 34a, 40a.)

First District Case Number 1D-0980, the subject of the Supreme Court of Florida petition and this proceeding, was styled as Johanna Beanblossom v. Bay District Schools, Bay County, Florida. This appeal challenged two court orders: (1) Order Granting Defendant's Amended Motion for Summary Final Judgment as to Count II of Plaintiff's Complaint and Denying Plaintiff's Motion to Amend Complaint; and (2) Order Denying Plaintiff's Motion for Rehearing. This appeal resulted in the written opinion reported at 265 So. 3d 657, which was the subject of Beanblossom's petition to the Supreme Court of Florida. Additionally, the First District issued a January 14, 2019 order denying in part, and granting in part, the School Board's motions for attorney's fees and a February 15, 2019 order denying Beanblossom's motion for rehearing in case 1D17-0980. (Rep. App. 33a, 39a.)

INTRODUCTION

Beanblossom has presented no "compelling reasons" within the meaning of this Court's Rule 10 for her Petition for a Writ of Certiorari to be granted, and it should be denied. Beanblossom does not argue that the Supreme Court of Florida's order declining jurisdiction over Beanblossom's petition to review the First District opinion below conflicts

with a decision of another state court of last resort or of a United States court of appeals. Nor does Beanblossom argue that the Supreme Court of Florida decided an important federal question on an emerging issue upon which this Court's guidance is needed.

Beanblossom seeks to constitutionalize her employee grievance. In doing so, she asks this Court to re-examine the record evidence because she believes every Florida court available to her has erred in applying the law to the facts of this case. The decisions below reveal a fact-intensive application of law. Being a notably fact-bound case, this is "the type of case which [this Court is] most inclined to deny certiorari." *Kyles* v. *Whitley*, 514 U.S. 419, 460 (1995) (Scalia, J., dissenting).

PERCEIVED MISSTATEMENTS OF FACT

The School Board does not find many of the facts recited in the Petition to be relevant or material to the question of this Court's jurisdiction. Nevertheless, in accordance with this Court's Rule 15.2, the following misstatements are brought to the Court's attention:

1. Beanblossom inaccurately states that she had been teaching for the School Board since 1985. (Pet. 2.) In truth, Beanblossom's first employment with the School Board was in 1994, but she was only

sporadically employed by the School Board between that time and her final employment in 2013. (R. 201–202.)[1] The employment relationship at issue in this litigation was a probationary teaching contract with a term of January 7, 2013 to June 7, 2013. (R. 148:13.)

2. Beanblossom states that she wrote a letter to her principal and made a report to the District via the discipline referral database in April of 2013, thus staging her alleged protected activities a month prior to her May 2013 dismissal. (Pet. 2.) However, the record shows that these documents are from February 2013. (R. 21, 23.)

3. Beanblossom would have the Court believe that she was exonerated by the Florida Department of Education by stating that the Professional Practices complaint was "determined to be unfounded." (Pet. 3.) However, the investigator did not determine that there was "no credible evidence" and instead indicated that there was "insufficient evidence to support a finding of probable cause." (R. 205.) The School

---

[1] Citations to the record on appeal are to the First District's record, which was not transmitted to the Supreme Court of Florida.

Board's report to the Department of Education was mandatory under Florida law. FLA. STAT. §§ 1001.51(12), 1012.796(1)(d) (2019).

4. Sharon Michalik, the School Board's Director of Human Resources at the time, did not state that it was inappropriate for Beanblossom's lawsuit to be included in her personnel file. Instead, Ms. Michalik stated she was "surprised" to see the lawsuit there and she had intended to consult legal counsel regarding whether it should be. (R. 286:22–25, 287:19–23.)

5. If the Court finds it necessary to assess the futility of Beanblossom's 42 U.S.C. § 1983 action, the School Board would urge this Court to look carefully at the proposed amended pleading (R. 700–722) rather than to Beanblossom's arguments in her briefs. Beanblossom continues to argue on appeal about a myriad of issues that are not pled in her proposed Amended Complaint. (*See, e.g.*, Rep. App. 119a–120a, and Pet. 4, 6–7 (referencing anything to do with Nancy Montague; referencing a copy of a lawsuit inadvertently placed in a personnel file; referencing who the decision maker is for substitute teaching positions.)) None of these issues were addressed in Plaintiff's proposed amended complaint. (R. 700–722.)

ADDITIONAL JURISDICTIONAL FACTS

Johanna Beanblossom initiated this litigation against her former employer, the School Board, in December 2013. *Beanblossom* v. *Bay Dist. Sch.*, 265 So. 3d 657, 658 (Fla. 1st DCA 2019), *reh'g denied* (Feb. 15, 2019). Beanblossom filed a two-count complaint alleging a whistle-blower claim under FLA. STAT. § 112.3187 (2019). and a negligent retention claim. *Id.* The School Board obtained summary judgment against both counts—despite Beanblossom's response filed "on the morning of the hearing" regarding Count I, her "plainly meritless arguments" filed in the days leading up to the summary judgment hearing on Count II, and her 11:34 p.m. motion for leave to amend filed the night before the summary hearing on the School Board's motion as to Count II. *Id.*

The trial court denied Beanblossom's motion for leave to amend her complaint and introduce "an additional defendant and assert four counts, including another negligence claim based on a different factual theory and a claim asserting a First Amendment violation." *Id.* The trial court viewed the motion to amend as "an attempt to circumvent summary judgment and escape the effects of failing to comply with section 768.28

despite being aware of the statute and having time to cure well within the statutory period." *Id.*

Beanblossom appealed the summary judgment against the negligent retention claim and the denial of her motion to amend. On appeal, the First District found no error in the order granting summary judgment. *Id.* at 658 n. 1. Nor did the First District find any abuse of discretion in the denial of Beanblossom's belated motion to amend—the First District found the claims in the proposed amended complaint futile. *Id.* at 659.

The First District noted that Beanblossom's new theory of negligence against the School Board "suffers the same notice defect as her prior claim" and "her First Amendment claim—that she was retaliated against for speaking as a citizen when making complaints to various school district personnel—is futile because she did not speak as a citizen." *Id.* Accordingly, the court held that there was no abuse of discretion in denying proposed amendments that would have been futile and, based upon that finding, there was no need to address whether the amendment would have caused prejudice or constituted abuse. *Id.* at 659 n. 2.

REASONS FOR DENYING THE WRIT

I. Neither the Supreme Court of Florida, nor Florida's First District Court of Appeal, decided the federal questions presented in Beanblossom's Corrected Petition for Writ of Certiorari.

Although traveling under a petition for writ of certiorari to the Florida Supreme Court, Beanblossom is truly asking the Court to review the decision of Florida's First District. The Supreme Court of Florida declined jurisdiction without opinion. *Beanblossom* v. *Bay Dist. Sch.*, SC19-455, 2019 WL 3017063 (Fla. July 10, 2019). Thus, the only opinion to review is that of the First District. *See The Fla. Star* v. *B.J.F.*, 491 U.S. 524, 529 n. 4 (1989) (finding jurisdiction to review an opinion from Florida's First District following the Supreme Court of Florida's denial of discretionary review).

A. Beanblossom's Corrected Petition fails to specify when the federal questions pursued here were raised in the state court proceedings.

Beanblossom failed to comply with this Court's Rule 14.1(g)(i). The Petition does not specify, *inter alia*, "the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised…" Sup. Ct. R. 14.1(g)(i). Beanblossom alone has the burden of showing that the issue was

presented with "fair precision and in due time" below. *See Adams* v. *Robertson*, 520 U.S. 83, 86–87 (1997) (quoting *People of State of New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 67 (1928)) (additional citations omitted). Beanblossom has not met this burden.

B. Beanblossom's failure to timely or properly raise her federal questions in the proceedings below precludes Supreme Court review.

Beanblossom's Petition, which raises issues not properly presented to the state courts below, does not warrant review by this Court. This Court may review final judgements or decrees from a state's court of last resort by writ of certiorari "where any title, right, privilege, or immunity is specially set up or claimed under the Constitution …[of] the United States." 28 U.S.C. § 1257(a).

Whether this Court applies a jurisdictional or prudential standard to § 1257(a), Beanblossom's Petition does not warrant Supreme Court review. *See Exxon Corp.* v. *Eagerton*, 462 U.S. 176, 181 n. 3 (1983) (treating failure to show that federal question was pressed or passed upon below as jurisdictional); *Howell* v. *Mississippi*, 543 U.S. 440, 445 (2005) (noting that despite "the long line of cases clearly stating that the presentation requirement is jurisdictional" rather than prudential, a

small number of exceptions had "previously led [the Court] to conclude that this is 'an unsettled question.'" (quoting *Bankers Life & Cas. Co.* v. *Crenshaw*, 486 U.S. 71, 79 (1988))).

The Petition attempts to address three potential federal questions: (1) fundamental due process under the Fourteenth Amendment; (2) First Amendment retaliation under the Petition Clause; and (3) First Amendment retaliation under the Speech Clause. The record below demonstrates that Beanblossom did not articulate these issues with fair precision or in a timely manner. The parties have been litigating this employment grievance for over six years. Only now, at the Supreme Court of the United States, does Beanblossom even utter the phrase "right … to petition the courts" or argue that "fundamental due process" under the Fourteenth Amendment required Florida's courts to allow the amendment. (Pet. 1 (citing U.S. Const. amend. XIV, § 1; U.S. Const. amend. I.))

(1) Due Process. Beanblossom's first and last mention of due process before any court in the State of Florida came in her response to the School Board's motion for summary judgment on October 21, 2016. (R. 683–690.) Even there, Beanblossom raised the issue of due process

only in the context of her termination and the school principal making what Beanblossom perceives as false statements. (R. 685–687.) Beanblossom's out-of-context mention was insufficient to preserve this issue for Supreme Court review. *See Adams*, 520 U.S. at 88 (holding that citation to federal law amidst unrelated arguments was not sufficient to preserve jurisdiction). Beanblossom had three opportunities to brief the First District and the Florida Supreme Court—in her initial and reply briefs to the First District, and in her brief on jurisdiction to the Florida Supreme Court. Not once, in any of those briefs, did Beanblossom mention due process. (Rep. App. 19a–32a, 41a–48a, 102a–123a.) The School Board, the trial court, and so far two appellate benches, were left to divine the basis of her claims without the aid of well-pled arguments from the plaintiff.

Beanblossom did not cite to even one federal opinion related to a federal issue in her arguments to the First District.[2] The record further

[2] The single federal opinion cited by Beanblossom in her reply brief at the First District was a cursory reference to distinguish a federal trial court

demonstrates that there was not a single federal authority listed in Beanblossom's Table of Authorities before the Florida Supreme Court. (Rep. App. 19a–32a.) Florida's appellate courts were never given an opportunity to address whether Beanblossom suffered any deprivation of a right guaranteed by the Due Process Clause.

(2) First Amendment—Petition. In over six years of litigation, and four separate appeals to Florida courts, Beanblossom's first citation to the Petition Clause of the First Amendment appeared in her Petition to this Court. Below, Beanblossom never clearly framed her First Amendment claim as an argument that the lawsuit itself was protected speech, as Beanblossom's focus remained on alleged retaliation for earlier speech as an employee.[3] Florida's courts were never given an opportunity

---

opinion used in the School Board's answer brief to illustrate a state law issue. (Rep. App. 46a, 93a.)

[3] Beanblossom's Initial Brief to the First District alleged that the School Board had a pattern of "throwing away disciplinary reports written by teachers and punishing teachers for speaking up and complaining in violation of the First Amendment rights to free speech." (Rep. App. 119a-

to address whether the Petition Clause of the First Amendment was violated.

(3) First Amendment—Speech. Although the parties have argued the merits of Beanblossom's free speech complaints below, the futility of Beanblossom's First Amendment claim is still not properly before this Court. Beanblossom has never, even to this Court, argued that her employment lawsuit seeking personal damages and remedies constituted speech on a matter of public concern. Beanblossom did briefly argue, without citation to authority, that some of the speech she claimed as the basis for her proposed First Amendment claim was speech on a matter of public concern. (Rep. App. 46a.) But this passing mention in her amended reply brief to the First District related to her internal

---

120a.) Even when she finally put a finer point on the fact that she was claiming retaliation for filing a lawsuit in her Supreme Court of Florida brief, she noted that the retaliation claim was "very much based on" her factual allegations that she was retaliated against for speaking as an employee. (Rep. App. 27a.)

complaints during her employment, when she was not speaking as a private citizen. *See Garcetti* v. *Ceballos*, 547 U.S. 410, 421 (2006).

Beanblossom's final arguments in pursuit of her personal grievances before the courts of the State of Florida were made in her jurisdictional brief before the Florida Supreme Court. There, Beanblossom merely argued there was a conflict among Florida opinions and the courts below had improperly construed facts in the School Board's favor. (Rep. App. 30a.) Her arguments were entirely fact-bound, based upon Florida law, and devoid of citation to any federal authority save for a passing mention of the First Amendment. (Rep. App. 27a.)

No arguments related to fundamental due process under the Fourteenth Amendment, or First Amendment retaliation under the Petition Clause or the Speech Clause, were presented to Florida's court of last resort. The rule stated by this Court in *Adams* prescribes a denial of Beanblossom's Corrected Petition for Writ of Certiorari:

> With "very rare exceptions," … we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.

Adams, 520 U.S. at 86 (internal citations omitted).

II. This case presents no compelling reason for this Court to grant review.

Beanblossom simply seeks additional review of merits arguments that have rightfully been denied at every possible level of state court review. Beanblossom provides no substantial federal question or emerging national conflict between either federal appellate courts or state courts of last resort. This Court has stated that "achiev[ing] justice in [a] particular case," even if doing so "would seem to be of great practical importance to the[] litigants … is ordinarily not sufficient reason for our granting certiorari…" *Ticor Title Ins. Co.* v. *Brown*, 511 U.S. 117, 122 (1994).

A. The First District's treatment of Beanblossom's proposed First Amendment claim presents no substantial federal question or conflict among the nation's courts meriting Supreme Court review.

Even assuming *arguendo* that Beanblossom adequately presented arguments below to rebut the holding that her First Amendment count in her proposed amended complaint was futile, this issue does not present a substantial federal question meriting consumption of this Court's judicial resources.

This Court has long acknowledged its "duty to decline jurisdiction whenever it appears that the constitutional question presented is not … substantial in character." *Zucht* v. *King*, 260 U.S. 174, 176 (1922). Longstanding caselaw of this Court and the United States courts of appeals demonstrate that no affront to the Constitution or to uniformity between courts has occurred here. This Court made clear in *Pickering* that a baseline consideration to determine whether a public employee's speech is constitutionally protected is whether the employee is speaking "as a citizen" and "commenting upon matters of public concern." *Pickering* v. *Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cty., Illinois*, 391 U.S. 563, 568 (1968).

These threshold considerations have remained constant. *See Garcetti*, 547 U.S. at 421 (holding that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline"); *Connick* v. *Myers*, 461 U.S. 138, 147 (1983) (holding that "when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent

the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision" allegedly taken in response).

This Court and the United States courts of appeals have also uniformly applied these same inquiries when determining whether a public employee's lawsuit or other employment grievances against her employer constitute protected speech. *See Borough of Duryea, Pa.* v. *Guarnieri*, 564 U.S. 379, 398 (2011) (requiring application of First Amendment speech "public concern" test for public employee's claim of retaliation in response to employee's § 1983 lawsuit over personal grievances). This Court's opinion in *Borough of Duryea* resolved the conflict at the time between the Third Circuit and the other circuits that had examined First Amendment retaliation claims predicated on the employee's lawsuit against the public employer. *Borough of Duryea,* 564 U.S. at 385.[4] All but the Third Circuit had already reached the conclusion

---

[4] For the first time in this litigation, Beanblossom's Petition characterizes her First Amendment claim as arising under the Petition Clause, rather than the Speech Clause. (Pet. 1, 12.) In *Borough of Duryea*, this Court

that such a claim required a showing that the lawsuit against the employer was speech on a matter of public concern. *See id*. (citing *Kirby* v. *City Of Elizabeth City, N. Carolina*, 388 F.3d 440, 448–449 (4th Cir. 2004); *Tang* v. *State of R.I., Dep't of Elderly Affairs*, 163 F.3d 7, 11–12 (1st Cir. 1998); *White Plains Towing Corp.* v. *Patterson*, 991 F.2d 1049, 1059 (2d Cir. 1993)).

This threshold requirement is not without sound reason. This Court has steadfastly held that "while the First Amendment invests public employees with certain rights, it does not empower them to

---

considered which standard to apply to a cause brought under the Petition Clause of the First Amendment and held that "[t]he considerations that shape the application of the Speech Clause to public employees apply with equal force to claims by those employees under the Petition Clause." *Borough of Duryea*, 564 U.S. at 389. Thus, the conclusions there, and in the Petition Clause cases cited therein, are equally applicable to Beanblossom's assertions under either the Speech Clause or the Petition Clause. The School Board's analysis of Beanblossom's First Amendment claim is likewise equally applicable under either clause.

'constitutionalize the employee grievance.'" *Garcetti*, 547 U.S. at 420 (quoting *Connick,* 461 U.S. at 154). It is "common sense … that government offices could not function if every employment decision became a constitutional matter." *Connick*, 461 U.S. at 143.

The Court's opinion in *Borough of Duryea* also painstakingly detailed the ways in which a lawsuit against a government employer can cause workplace disruptions sufficient to justify the government's significant interest in disciplining public employees who disrupt the workplace by pursuing lawsuits over private grievances. *Borough of Duryea*, 564 U.S. at 390. "When a petition takes the form of a lawsuit against the government employer, it may be particularly disruptive. Unlike speech of other sorts, a lawsuit demands a response. Mounting a defense to even frivolous claims may consume the time and resources of the government employer." *Id.*

Beanblossom's suit prayed entirely for personal and monetary relief related to Beanblossom's employment conditions. (Pet. App. 5.) Beanblossom has never — either below or to this Court — presented a colorable argument with citation to authority that such a lawsuit is speech on a matter of public concern.

The Petition nearly entirely focuses on re-argument of the state law bases for denying leave to amend and includes only a conclusory statement that it "was certainly not [Beanblossom's] duty as an employee or former employee of the School Board to file a lawsuit against the [School Board], and therefore [Beanblossom's] First Amendment rights were intact …" (Pet. 10.) There is no dispute that Beanblossom was not acting in the course and scope of her employment when she filed her lawsuit and no argument has been made that her lawsuit was speech as a public employee rather than as a citizen. But just as it was below, Beanblossom's analysis here is incomplete. Speaking as a citizen does not end the inquiry. Beanblossom's speech must also relate to maters of public concern. *Borough of Duryea*, 564 U.S. at 398. Beanblossom's personal employment grievance does not meet this threshold burden and she makes no argument to the contrary.

Assuming *arguendo* that Beanblossom had properly framed her claim below as retaliation for filing a lawsuit, Beanblossom simply disagrees with the application of well-settled law to the facts in this case. Beanblossom's request that this Court provide redress for her fact-bound personal grievances does not present a substantial issue of federal law

that requires this Court's attention but is an attempt to constitutionalize her personal employee grievance.

B. The denial of leave to amend Beanblossom's complaint presents no substantial federal question or conflict among the nation's courts meriting Supreme Court review.

Beanblossom's assertion that fundamental due process requires this Court to force Florida courts to abandon Florida's jurisprudence regarding the application of its rules of civil procedure is meritless. Florida's rule, and the state's interpretation of same, are wholly consistent with federal procedural practice and are not in conflict with the Fourteenth Amendment.

According to Fed. R. Civ. P. 15(a), "[t]he court should freely give leave [to amend] when justice so requires." However, leave to amend may be denied when, *inter alia*, the proposed amendment would not cure deficiencies within the pleading and amendment would be futile. *See Foman* v. *Davis*, 371 U.S. 178, 182 (1962) ("In the absence of any apparent or declared reason—such as … futility of amendment, etc.—the leave sought should, as the rules require, be 'freely given.' "). Every United States court of appeals has applied the standard announced in *Foman* to deny leave to amend based on futility. *See, e.g.*, *Crawford's Auto*

Ctr. v. *State Farm Mut. Auto. Ins. Co.*, 945 F.3d 1150 (11th Cir. 2019) (affirming denial of leave to amend as amendment would be futile); *Bonds* v. *Daley*, No. 18-5666, 2019 WL 2647494 (6th Cir. May 17, 2019) (same); *Chunn* v. *Amtrak*, 916 F.3d 204 (2d Cir. 2019) (same); *O'Boyle* v. *Real Time Resolutions, Inc.*, 910 F.3d 338 (7th Cir. 2018) (same); *United States ex rel. Barrick* v. *Parker-Migliorini Int'l*, 878 F.3d 1224 (10th Cir. 2017) (same); *Curry* v. *Yelp Inc.*, 875 F.3d 1219 (9th Cir. 2017) (same); *Rife* v. *One West Bank, F.S.B.*, 873 F.3d 17 (1st Cir. 2017) (same); *Flores* v. *Stephens*, 794 F.3d 494 (5th Cir. 2015) (same); *Plymouth County, Iowa* v. *Merscorp, Inc.*, 774 F.3d 1155 (8th Cir. 2014) (same); *United States ex rel. Schumann* v. *Astrazeneca Pharm L.P.*, 769 F.3d 837 (3d Cir. 2014) (same); *Equal Rights Ctr.* v. *Niles Bolton Assoc.*, 602 F.3d 597 (4th Cir. 2010) (affirming denial of leave to amend as amendment would be prejudicial and/or futile); *James Madison Ltd. by Hecht* v. *Ludwig*, 82 F.3d 1085 (D.C.Cir.1996) (affirming denial of proposed pleading amendment based on futility).

The First District's opinion below merely applied equally well-settled Florida procedural law[5] to conclude that, because amendment of the complaint would be futile, the state trial court did not abuse its discretion in denying Beanblossom's motion to amend. The opinion of the First District, on its face, addressed the futility of Beanblossom's proposed amended negligence claims on state law bases and concluded that her First Amendment claim was futile because, "when making complaints to various school district personnel," Beanblossom did not speak as a citizen. *Beanblossom* v. *Bay Dist. Sch.*, 265 So. 3d 657., 659 (Fla. 1st DCA 2019). Denying leave to amend in this circumstance is entirely consistent with the opinions of this Court and the United States courts of appeals.

The denial of leave to amend Beanblossom's complaint likewise does not present a pressing fundamental due process concern. Beanblossom objects to the way Florida's courts applied the facts to Florida procedural law. But Beanblossom's own Petition makes clear that

---

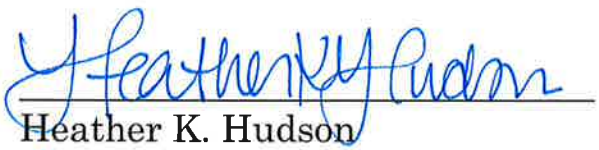
[5] *See Morgan* v. *Bank of New York Mellon*, 200 So. 3d 792, 795 (Fla. 1st DCA 2016).

she could have attempted to raise her First Amendment challenge years sooner because "the underlying facts were exactly the same" as her previous claim. (Pet. 11.) Beanblossom has had many years to state and litigate any and all grievances she has against her former employer. Her failures throughout this litigation to comply with Florida's procedural rules did not create a constitutional crisis requiring this Court's time and resources.

CONCLUSION

The School Board respectfully prays that this Court deny Beanblossom's Petition for Writ of Certiorari.

Respectfully submitted,



Heather K. Hudson
Counsel of Record
D. Ross McCloy, Jr.
Hand Arendall
Harrison Sale LLC
304 Magnolia Avenue
Panama City, FL 32401
Telephone: (850) 769-3434
hhudson@handfirm.com
rmccloy@handfirm.com