

19-817

No,                   

IN THE  
**Supreme Court of the United States**

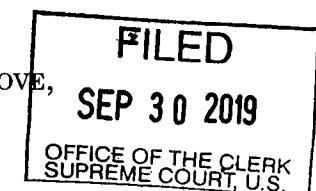
ANNETTE SHANDS

*Petitioner*

V.

LAKELAND CENTRAL SCHOOL DISTRICT, DR. TAMMY COSGROVE,

ASSISTANT SUPERINTENDENT OF HUMAN RESOURCES



*Respondents*

On Petition For Writ Of Certiorari

To The United States Court of Appeals for the Second Circuit

**PETITION FOR WRIT OF CERTIORARI**

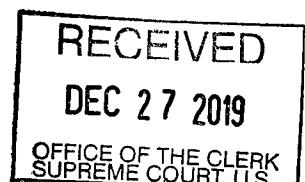
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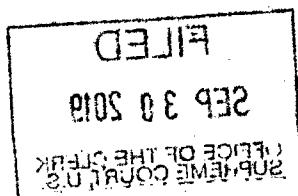
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18-2128



## **QUESTION PRESENTED FOR REVIEW:**

Whether the guarantee of the Fourteenth Amendment applicable against Lakeland Central School District in Shrub Oak, New York, and its Assistant Superintendent of Human Resources with patterns and practice of age, race and gender employment discrimination requires a finding in favor of the Petitioner – where **the panel of judges mistakenly concluded** that there was **a lack of evidence to show** that the School District and its Assistant Superintendent of Human Resources “**intentionally created obstacles** to prevent her [the Petitioner] from filing a successful application,” where it appears that **the District has a policy of regulating the older African American woman such as the Petitioner to low-paying substitute positions**, where **the articulated strategy was to deny the Petitioner relief**, where the Lakeland Central School District **denied the Petitioner’s superior qualifications** and hired a less qualified and less experienced person, and where **prohibitive pattered responses stayed in effect over a ten year period or longer** and where information and belief indicate that Copper Beech Middle School has been without African American teachers and/or administrators with the possible exception of substitutes since it opened its doors in 1966?

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

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18-2172

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July 30, 2019

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18-2172

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United States District Court, Southern District of New York

15-cv-4260 (KMK)

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15-cv-4260 (KMK)

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## Appendix G

United States Equal Employment Opportunity Commission

Charge 520-2014-02948

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February 26, 2015

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Filed on July 22, 2014

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Lakeland Central School District

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Lakeland Central School District

LAKV00651980056

Letter to Annette Shands in response to her application for employment

July 2, 2014

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Putnam/Westchester Board of Cooperative Education Services’ Online Application System

LAKV00651

Letter to Annette Shands confirming a timely application

May 20, 2014

## Appendix L

Internet

E-mail from Shands to Cosgrove

E-mail with letter of May 16, 2014, to Cosgrove with attachments of cover letter of May 20, 2014, and resume from Shands

May 20, 2014

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University of the State of New York

Control Number 608054951 and Certificate Number 5636

Permanent Certification as School District Administrator and Permanent Certification as English Teacher (7-12)

Effective Dates February 1, 1995 and February 1, 1969

## Appendix N

New York University

Doctor of Philosophy Degree

February, 1979

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Master of Arts Degree

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## CONSTITUTIONAL PROVISION

### Section 1 of the Fourteenth

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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.

## **PETITION**

### **Opinions Below**

The Petitioner lost to Summary Judgement rendered by District Judge Kenneth M. Karas in White Plains on July 5, 2018. *See Appendix E.*

The Petitioner appealed. Oral argument was held before the panel on June 27, 2019. The Petitioner's appeal in the United States Court of Appeals for the Second Circuit at Foley Square in Manhattan was denied by Circuit Judges Dennis Jacobs, Debra Ann Livingston and Susan I. Carney on July 2, 2019. *See Appendix D.* The Petitioner moved for rehearing *en banc* on July 26, 2019. Her motion was rejected for filing and returned to her on July 30, 2019, with the explanation "Appeal is closed, and this Court no longer has jurisdiction." *See Appendix A.*

### **Jurisdiction**

The United States Court of Appeals for the Second Circuit of New York's Southern District issued its judgment on July 2, 2019. Subsequent to that judgment, this petition comes before the Supreme Court of the United States in accordance with 28 U.S.C. § 1253.

### **Constitutional Provision Involved**

Section 1 of the Fourteenth Amendment provides:

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.

### **Statement of the Case**

In 2004 and in 2014, the Petitioner, in seeking employment as an administrator, presented at the Lakeland Central School District Office and heard:

“You are not on our list.”

“We only hire from our list.”

“We cannot hire you.”

She remembered that in 1957, during the Eisenhower Administration, African American applicants seeking employment at Borg-Warner Corporation in Muncie, Indiana, also heard:

“You are not on our list.”

“We only hire from our list.”

“We cannot hire you.”

At that time, letters were written to President Eisenhower who had the Equal Job Opportunity Committee probe into the matter resulting in the company's practices being ruled “discriminatory” and “unconstitutional,” and Borg-Warner being given the ultimatum to either hire the qualified African Americans or lose its government contract.

This Petitioner filed a complaint (Charge 520-2014-02948) with the Equal

Employment Opportunity Commission (EEOC) on July 22, 2014. *See Appendix H.* After its investigation, EEOC sent this petitioner a “Dismissal and Notice of Rights” letter dated February 26, 2015. *See Appendix G.*

On May 26, 2015, the Petitioner filed a complaint against Lakeland Central School District *et al.* claiming discrimination based on age, race and gender pursuant to the Age Discrimination in Employment Act (“ADEA”) 29 U.S.C. § 621, the New York State Human Rights Law (“NYSHRL”), New York Executive Law § 296 and the Fourteenth Amendment. The School District claimed that Shands was not hired because she lacked experience with middle school students and knowledge of common core learning standards and that a better-qualified person was hired.

### **Reasons for Granting the Writ**

The panel erred in concluding that the sum total of Shands’s relevant work experience consisted of being “a pastor and schoolteacher.” Shands’s work experience has also been identical to the work experience being sought, focusing on middle school students and New York State’s common core learning standards as an Administrator, Assistant Principal and/or Administrative Intern at the Graham School in Hastings-on -Hudson and as a multi-level educator over a ten-year period at both Mercy College and Lehman College where she helped recent high school graduates develop skills for success in college level courses, and also worked in an administrative capacity with middle school students simultaneously enrolled in public schools and in the *Science Technology Entry Program (STEP)* at Mercy College and with middle school students simultaneously enrolled in public school and in the summer courses created, developed and implemented by the *Search for Education, Elevation and Knowledge (SEEK)* Department at Lehman College.

For the plus ten years that Shands was involved with common core learning standards and middle school students her duties and responsibilities were inclusive of all those undertaken by a middle school principal or assistant principal or as an administrator in education.

The Summary Judgment mistakenly builds on the claim that the changes the State made to common core learning standards in 2012, made Shands's involvement which was prior to 2012, not "up to speed" and of little or no benefit to the students in the School District. However, changes which appeared in 2012, were approved in 1996 and scheduled to be made in 2012, ([www.engageNY.org](http://www.engageNY.org)) and based on studies conducted prior to 1996. Proposals had to be written and evaluated. Grants were issued. A large cadre of persons, one of whom was Shands, employed by colleges and universities throughout the State held discussions to assess and improve learning standards to better address the strengths and weaknesses of students. They ran pilot programs, designed a variety of courses, offered solutions to problems, provided differing learning situations, wrote grants, monitored student progress and responses to impact positive change, having a direct impact on the changes of 2012. This same cadre of persons initiated the dialogue that led to the development of common core learning standards in public schools and colleges in response to open enrollment, for the driving force behind common core learning standards is to help public school students and the non-traditional student succeed in college.

The Summary Judgement fails to take into consideration that Shands who was not hired by the School District has more involvement with common core learning standards and more administrative experience with middle school students enrolled in public schools than Francesco Ruolo, the person who was hired with three years of experience as a

middle school administrator at the time of the vacancy, with all of his other experience at the elementary level. As an Educational Consultant in African American history for the John C. Hart Memorial Library, Shands proved herself successful with Copper Beech Middle School students who were so enthusiastic about the African American History Month Program that she administered that they requested a two week extension to which Lakeland's Superintendent of Schools gave written approval. Plus Shands is permanently certified as a School District Administrator in the State of New York and as a middle school English teacher, *See Appendix M*. However, Ruolo is certified in elementary education. Shands earned degrees from the nation's two most highly prized institutions for educators and has sixty (60) credits beyond those required for the position at Copper Beech Middle School. In her deposition of November 28, 2017, Congrove admits that Shands is better qualified. *See 127:9-13 of Cosgrove's Deposition of 11-28-17.*

The panel also mistakenly concluded that there was "no evidence that defendants [or Respondents] intentionally . . . prevent[ed] her [Shands] from filing a successful application. . . ." Such evidence does exist. It can be found in the "*Response*" and "*Verification*" dated December 11, 2014, which the School District and Assistant Superintendent of Human Resources sent to EEOC's Deputy Director Judy Keenan. *See Appendix I.* The "*Response*" makes no mention of Shands's cover letter of May 20, 2014, which Shands submitted with her application, nor of her letter of May 16, 2014, which Shands sent to Cosgrove in an email dated May 20, 2014. Instead the "*Response*" makes mention of a letter having the date November 19, 2008. *See "Response," page 3.* The November letter makes reference to substituting and is without any phraseology that the Petitioner would use and without any reference to the position being sought. Such action

- made it no longer possible for the Petitioner to be considered among those interested in vacancy LAKV0065198-0056, for such an action discredited the Petitioner's application. It actually made her application "null" and "void."

As the "*Response*" shifts the petitioner's search for an administrative position to that of a substitute with the presentation of the letter of November 19, 2008, an employment hierarchy comes into existence and with it a historical context that reserves the lower part of that hierarchy or its lower echelons for African Americans and particularly for the older, African American female as one who cares for children. From this comes a policy steeped in stereotyping as the School District veers away from its prohibitive patterned responses whenever the Petitioner has an inquiry regarding substituting. In so doing, the School District is actually trying to put the Petitioner in a particular job – that of a substitute without any benefits. Such practices within the School District treat the African American female that presents as if she were a stereotype of one who is suited to being a babysitter/substitute. *See McGarry v. Pielech*, 2010 R.I. Supp. LEXIS 84. *See also Hastings v. Ariz. Dep't of Econ. Sec.*, 2013 Ariz. App. unpub. LEXIS 199. According to *Back versus Hastings-on-Hudson Union Free School District*, 365 F. 3d 107, \*107; 2004 U.S. App. LEXIS 6684, \*\*1, "Stereotyping of women as caregivers can by itself and without more be evidence of an impermissible, sex-based motive." Plus, given the historical context of the older African American woman as caretaker, herein the stereotyping has both gender and racial carry-overs. The stereotype of the older applicant that emerges from Cosgrove's deposition of 11-28-17 is of one who is a sedentary employee who will "sit behind a desk and push papers" (52:24-25), one who is considered outdated and unable to handle recently revised guidelines and simply not "up to speed"

(145:15) with insufficient stamina for the position and not “a lot of energy,” (52:19-21).

Such stereotyping with respect to age, race and gender on the part of the School District and its decisionmakers is not in keeping with employment equality. For “stereotyping is discriminatory and gives evidence that can enter into an adverse decision,” in violation of the Equal Protection clause of the Fourteenth Amendment. *See Back v. Hastings-on-Hudson Union Free Sch. Dist.* 365 F.3d 107, \*107; 2004 U.S. App. LEXIS 6684, \*\*1. “

Moreover, the Summary Judgment makes false statements. ***It falsifies the record regarding the Petitioner’s testimony and the interaction between Davis and Shands.*** The Petitioner did not contradict herself when speaking of Davis’ having told her that perhaps she (the Petitioner) had provisional rather than permanent certification. The Petitioner’s remarks about not remembering everything that Davis said to her or that she said to Davis was in response to a different question. It came when the Petitioner was being pressed to say “***what more***” or “***what else***” could she recall about her conversation with Davis. Another false statement on the record is that Davis gave Shands the phone number to contact the State Department of Education on May 16, 2014. That did not happen. Davis and Shands did not converse about The New York State Department of Education, only about the certification that the State Department issues. What Davis gave Shands was a photocopy of Vacancy LAKV0065198-0056 which Shands requested. ***Secondly, the Summary Judgment mentions applications that the Petitioner did not make.*** The Petitioner only made one online application for which she received confirmation upon doing so on May 20, 2014. *See Appendix K.* The e-mail that the Petitioner sent to Dr. Cosgrove was not an application, but rather a letter requesting support of her online application. She has no memory of

amending her online application on May 28, 2014, nor at any other time. Nor can she conceive of any reasons for wanting to make changes. Nor did she receive a print out from the online application system (OLAS) for having done so. Nor did she request that the OLAS Supervisor make any changes or adjustments to her application. ***Thirdly the Summary Judgment denies the Petitioner's superior qualifications.*** The Petitioner holds a Doctor of Philosophy degree from New York University's School of Education. *See Appendix N.* Plus, she has two master degrees: One is from Teachers College, Columbia University and the other is from Drew University. ***Fourthly, the Summary Judgment seeks to cover up the fact that Lakeland Central School District disregarded the Petitioner's LAKV0065198-0056 application.*** The Summary Judgement maintains that Shands, the Petitioner, was recognized as an applicant and considered along with over 300 applicants for the LAKV0065198-0056 position, but not chosen. However, there is evidence to the contrary: on May 16, 2014, the Petitioner was told that she would not be hired. *See Appendix H;* the July 2, 2014, letter from the School District addressed to the Petitioner evidences a complete lack of consideration of her candidacy. *See Appendix J;* the District's "Response" to EEOC does not acknowledge the Petitioner's experience with middle school students, nor does it acknowledge the Petitioner's knowledge of common core learning standards. *See Appendix I.* The District's "Response" to EEOC makes no mention of the Petitioner's cover letter of May 20, 2014, but substitutes a letter of November 19, 2008, which makes no reference to Vacancy LAKV0065198-0056, making the Petitioner's application a mute issue. Cosgrove gave high praise to the employee who told the Petitioner that she (the Petitioner) would not be hired and there was no mention of a reprimand nor of further, more complete training in connection with not finding the

Petitioner's certification in the District's database, *See 13:15-23 of Cosgrove's deposition of November 28, 2017*; Cosgrove's deposition also refers to this Petitioner's resume as "unsolicited" (68:21) and "unwanted paper" (67:20) even though Cosgrove acknowledges that she does accept paper applications, *See pages 69-72 of Cosgrove's deposition of November 28, 2017*. In her affidavit of February 14, 2018, Cosgrove's assertion that she did not know the Petitioner was over the age of forty, as stated in Item 8, indicates a lack of familiarity with and/or a complete dismissal of Shands's resume which presents work experience spanning forty-eight years. In that same affidavit, Cosgrove also asserts that she realized that the Petitioner was over the age of forty upon learning of the "Charge of Discrimination" against the School District. Here again is further indication that Cosgrove only reviewed the Petitioner's resume after hearing from EEOC. The School District's failure to respond to items nine (9) and ten (10) in the Petitioner's *Freedom of Information Request* sent in May of 2017. is further proof that the Petitioner was not considered as an applicant.

*See Items 9 and 10:*

9. Any and all records, documents, papers, notes, emails or other records regarding the application of Annette Shands, including any evaluation, record searches, records or notes of conversation regarding her qualifications for the position of assistant principal for the Copper Beech Middle School regarding Vacancy Announcement  
LAKV00651980056
10. Names of any individuals consulted by the School District regarding the qualifications of Annette Shands

Plus, with the possible exception of an occasional substitute, it is highly likely that the records will show that there have been no African American teachers or administrators at Copper Beech Middle School since its doors opened in 1966, even though approximately six percent or more of the student population is African American according to County records. For all of these reasons it becomes clear that Local Rule 56.1 was actually used as an evasion technique to effect discrimination against the Petitioner and deny her relief as set forth in her "Revised Privilege Log." *See Appendix O.*

"In the context of the McDonnell Douglas burden-shifting analysis, unless the defendants' [or Respondents'] proffered nondiscriminatory reason is dispositive and forecloses any issue of material fact, summary judgment is inappropriate." *See Back versus Hastings-on-Hudson Union Free School District*, 2005 U.S. App. LEXIS 28973 (2d. Cir. Dec. 28, 2005).

This case presents the Court with the following challenges:

- 1 To rectify the erroneous decision of the United States Court of Appeals for the Second Circuit in the Southern District of New York,
- 2 To re-evaluate the use of Summary Judgment in connection with matters of employment discrimination,
- 3 To approach and affirm equal justice for all those who, like the Petitioner, sometimes function within the courts without legal representation and
- 4 To intervene on behalf of American citizens who cannot protect their civil rights or contend against the many forms and instances of discrimination and injustice without the Court
- 5 To stand in defense and as a bulwark when any entity, especially a school district seeks to perpetuate patterns, practice and evasion techniques of discrimination and injustice
- 6 To challenge those who serve the public to uphold truth, honesty, justice and impartiality
- 7 To guarantee Fourteenth Amendment protection against the deprivation of the Petitioners right to relief and to grant such relief as may be

appropriate, including injunctive orders, damages and costs as follows: that the Lakeland Central School District and its Assistant Superintendent of Human Resources be required to pay damages for the wages and benefits the Petitioner would have earned in a fair evaluation and her lost opportunity from 2014 to 2026 due to the patterns and practice of employment discrimination established by the repeated use of an evasion technique to adversely impact her Fourteenth Amendment constitutional rights in both 2004 and 2014, and for such other and further relief as the Court deems just and equitable.

**FOR ALL THE AFORE MENTIONED REASONS CERTIORARI SHOULD BE  
GRANTED**

## CONCLUSION

**Therefore, I petition the Court to grant a Writ of Certiorari in this matter for all of the foregoing reasons.**

**Dated: December 7, 2019**

**Respectfully Submitted,**

Shuette Shands