No. 20-1500

IN THE

SUPREME COURT OF THE UNITED STATES

MACHIAVELLI FARRAKHAN SIBERIUS

Plaintiff - Petitioner,

v.

AMERICAN PUBLIC UNIVERSITY SYSTEM, INC.; PRESSLEY RIDGE;

WEST VIRGINIA DEPARTMENT OF EDUCATION, et al.

Defendants - Respondents,

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Fourth Circuit

PETITION FOR REHEARING

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August 10, 2021

Machiavelli Farrakhan Siberius,
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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Machiavelli Farrakhan Siberius respectfully petitions for a rehearing of the petition for a writ of certiorari (No. 20-1500), which was denied by the Court on June 21, 2021. Mr. Siberius moves this full nine-member Court to review the procedural due process, the Due Process Clause of the 5th and 14th Amendment, and the infringement of constitutionally protected rights for litigants as defined by the Supreme Court; specifically, when the District Judge and Three-Judge Panel declined to substitute parties in the civil action, as defined in Federal Rules of Civil Procedure 25(d) and Appellant Rules of the Fourth Circuit for the plaintiff-appellant/petitioner.

Considering the many erroneous applied cases in the District Judge's opinion, the liberal and occasionally random application of legal apparatuses, and oversight in applying *stare decisis* that violated the plaintiff's rights that is interceded and explicated in the District Judge's opinion of FLSA and 42 U.S.C. § 1983. In *Gamble vs United States*, 587 U.S. 11 (2019), *stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U. S. 808, 827 (1991). Of course, it is also important to be right, especially on constitutional matters, where Congress cannot override our errors by ordinary legislation. But even in constitutional cases, a departure from precedent "demands special justification." *Arizona v. Rumsey*, 467 U. S. 203, 212 (1984).

Pursuant to Supreme Court Rule 44.2, this petition for rehearing is filed within 25 days of this Court's decision in this case, and within 15 days of the Clerk's compliance orders.

REASONS FOR GRANTING THE PETITION

I. The Procedural Due Process and the Due Process Clause in Motions for Substituting Parties by the Plaintiff.

Intro- Notably, a defendant is listed by its headquarters name in the case caption, because the facility in West Virginia, Pressley Ridge at White Oak was an employer and school that had been shutdown before the year 2018, when the lawsuit was filed. The correct facility of incident was listed throughout the complaint, yet the postal mail and responsibility of a civil action had to be redirected to the headquarters in Pittsburgh, Pennsylvania. In Fed.Rule Civ.Proc. 25(d) is exemplar of using a substitution of parties, due to the connection and circumstance surrounding a defendant. And to Fed.Rule App.Proc. 43(c) states "An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution." The complaint had clearly explained the reasoning for the substitution of parties, the former address of defendant was listed, so for oversight or disregarding these facts and allegations is not only a miscalculation of law but a de novo decision of pure laziness, and further carelessness and prejudicial in examination of this complaint. The party Pressley Ridge at White Oak not being listed in the case caption was one of the primary grounds for a dismissal in *Memorandum Opinion and Order.*

Argument- Federal Rule of Civil Procedure 25(d) and Federal Rule of Appeals Procedure 43(c) are rules that the United States Court of Appeals for the Fourth Circuit have agreed upon and created with their judicial power for rulemaking ability in the administration of their Federal Judiciary. The court's Rules Advisory Committee Members, consisting of an attorney from each of the states constituting the Fourth Circuit, made recommendations and advised the court concerning proposed changes to the local rules. The Supreme Court has the power to prescribe general rules of practice in the Fourth Circuit as advised in Title 28 U.S. Code § 2072, and a copy of those amendments for Federal Rules is served to Congress.

The plaintiff/appellant/petitioner Machiavelli Farrakhan Siberius was not given a procedural due process, which requires a fair procedure, to assure compliance with law, due to the complained about violations involving a breach of the Federal Rule C.P. 25(d) and FR. Appeals Procedure 43(c) (4th Circ.) that was not followed within the procedural rights granted to the plaintiff, which is within the procedural framework defined by the rules for substituting a party in a civil action and proceeding. The Due Process Clause of the 5th and 14th Amendments were infringed upon by the judicial process that was not conformed to on behalf of Mr. Siberius, to the legal framework and process prescribed in the U.S.C.A. Fourth Circuit and Federal Rules of Civil Procedure. See, e.g. *Kwock Jan Fat v. White*, 253 U.S. 454 (1920), ("proceedings [that are] manifestly unfair").

The rights as a plaintiff/appellant suing in this Civil Action was infringed upon by the District Judge and Three-Judge Panel that refused to comply and declined to follow the rules for substituting defendants as requested and justified by the plaintiff in the Amended Complaint [ECF No. 29]. See, e.g., *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), (Court held that a legal cause of action was a kind of property protected by the Due Process Clause). See, e.g., *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Data Processing Svc. Orgs. v. Camp*, 397 U.S. 150 (1970), Syl. Pt. 1(b), "The interest sought to be protected by petitioners is arguably within the one of interests to be protected or regulated by the statute, and petitioners are "aggrieved" persons under § 702 of the Administrative Procedure Act." Pp. 397 U.S. 153-156, 397 U.S. 157.

> In *Mathews v. Eldridge*, 424 U.S. 319 (1976), Syl. Pt. 2(a), (a) "[D]ue process is flexible and calls for such procedural protections as the particular situation demands," *Morrissey v. Brewer*, 408 U.S. 471, 408 U.S. 481. Resolution of the issue here involving the constitutional sufficiency of administrative procedures prior to the initial termination of benefits and pending review, requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. Pp. 424 U.S. 332-335. Syl. Pt. 2(e) "...the prescribed procedures not only provide the claimant with an effective process for asserting his claim prior to any administrative action, but also assure a right to an evidentiary hearing, as well as subsequent judicial review before the denial of his claim becomes final, there is no deprivation of procedural due process." Pp. 424 U.S. 347-349.

Procedural rights address the government's obligation to ensure that legal procedures are carried out in a fair and just manner. The Fifth Amendment's due process clause, applicable as against the federal government, provides that no

person shall...be deprived of life, liberty, or property, without due process of law; This often require procedures to determine the government's compliance with statutory or common law requisites for a deprivation. *See, e.g., Security Trust and Safety Vault Co. v. City of Lexington*, 203 U.S. 323, 325, 333 (1906). Nevertheless, it held that when the state undertakes to restrain unlawful advocacy it must provide adequate safeguards to prevent infringement of constitutionally protected rights. In *Nebbia v. New York*, 291 U.S. 502 (1934) "requirements of due process were not met because the laws were found arbitrary in their operation and effect... judicial determination to that effect renders a court *functus officio.*" P. 291 U.S. 536.

II. The Stare Decisis Legal Doctrine Not Prudently Examined by the District Judge or Panel.

Intro- A Panel for the United States Courts of Appeals for the Fourth Circuit had disagreed with other landmark cases, disregarded adjacent federal jurisdictions with the circuit decisions on equivocal matters, and overruled *Reich v. Shiloh True Light Church of Christ*, 895 F.Supp. 799, 819 (W.D.N.C. 1995) with a case precedent founded in *Lisa Kerr v. Marshall University Board of Governors*, No. 15-1473, (4th Circ., 2016). In *Siberius v. American Public University Sys.* (19-7400), the Fourth Circuit had disagreed with the Eleventh Circuit, Sixth Circuit, and Second Circuit in constitutional matters and case precedence that was founded in numerous cases listed in a writ of certiorari to the Supreme Court. There was a complete disregard for *Stare Decisis* by the District Judge, and an arbitrary sermon on outdated and irrelevant court maxims that was affirmed by an already controversial Panel.

Argument- The U.S. House of Representatives said, "In resolving questions of order, the Speaker and other presiding officers of the House adhere to the jurisprudential principle of stare decisis—a commitment to stand by earlier decisions."—115th Congress, 1st Session, House Document No. 115–62 (2017). In *Gambler v. United States*, 587 U.S. 3 (2019), the Court currently views stare decisis as a "'principle of policy'" that balances several factors to decide whether the scales tip in favor of overruling precedent. *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 363 (2010) (quoting *Helvering v. Hallock*, 309 U.S. 106, 119 (1940)). Among these factors are the "workability" of the standard, "the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo v. Louisiana*, 556 U.S. 778, 792– 793 (2009). *Id.* at 3. It refers to the duty to exercise "judicial discretion" as distinct from "arbitrary discretion." *The Federalist* No. 78, at 468, 471. *Id.* at 4.

People v. Quimby, 381 P.2D 280 (Colorado, 1963) "Stare decisis in its true sense applies to decisions involving the common law." *Frazier v. State of Tennessee (Dissenting)*, No. 06-0350, (Tenn., 2016): "The principle of stare decisis, that the Court should follow precedential decisions, is "a foundation stone of the rule of law." *Kimble v. Marvel Entm't*, LLC, 135 S. Ct. 2401, 2409 (2015) (quoting *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014)) (internal quotation marks omitted); *Harris v. Quinn*, 134 S. Ct. 2618, 2651 (2014) (same). *Daily v. Bechtel Corporation*, 207 S.E.2d 173, (W.Va, 1974), Stare decisis is not a rule of law but is a matter of judicial policy...In the rare case when it clearly is apparent that an error

has been made or that the application of an outmoded rule, due to changing conditions, results in injustice, deviation from that policy is warranted." *Id.* at 173.

In *United States v. Morrison*, 529 U.S. 599 (2000), "The force of the doctrine of *stare decisis* behind these decisions stems not only from the length of time they have been on the books, but also from the insight attributable to the Members of the Court at that time, who all had intimate knowledge and familiarity with the events surrounding the Amendment's adoption. *Kisor v. Wilkie, Secretary of Veterans Affairs*, 588 U.S. 26 (2019), Any departure from the doctrine demands "special justification"— something more than "an argument that the precedent was wrongly decided."

In *Gambler* 587 U.S., When a "former decision is manifestly absurd or unjust" or fails to conform to reason, it is not simply "bad law," but "not law" at all. *Id* at 7. See, e.g., *McDowell v. Oyer*, 21 Pa. 417, 423 (1853); *Guild v. Eager*, 17 Mass. 615, 622 (1822). In *Ramos v. Louisiana*, 590 U.S. 1 (2020), the doctrine reflects respect for the accumulated wisdom of judges who have previously tried to solve the same problem. In 1765, Blackstone—"the preeminent authority on English law for the founding generation," *Alden* v. *Maine*, 527 U.S. 706, 715 (1999)—wrote that "it is an established rule to abide by former precedents," to "keep the scale of justice even and steady, and not liable to waver with every new judge's opinion."

State v. Salamon, 287 Conn. 509, 949 A.2d 1092 (Conn. 2008); "It is the most important application of a theory of decision-making consistency in our legal culture and . . . is an obvious manifestation of the notion that decision-making consistency

itself has normative value." (Internal quotation marks omitted.) *Hummel v. Marten Transport, Ltd.*, 282 Conn. 477, 494, 923 A2d 657 (2007). [S]tare decisis . . . serve[s] the cause of stability and certainty in the law—a condition indispensable to any well-ordered system of jurisprudence." *Conway v. Town of Wilton*, 238 Conn. 653, 680 A.2d 242 (1996). *Id.* at 659. Quoting *People v. Crespo*, Court of Appeals, Chief Judge DiFiore, 06849, No. 27 (N.Y., 2018) Rivera J. (Dissenting), II(B): "Underlying the doctrine is the important role of the Court as a branch of government greater than its members. As the Court has remarked, "[stare decisis] rests upon the principle that a court is an institution, not merely a collection of individuals, and that governing rules of law do not change merely because the personnel of the court changes" (*Bing*, 76 NY2d at 338). *Id.* at 9.

The *stare decisis* factors identified by the Court in its past cases include:

- the quality of the precedent's reasoning;
- the precedent's consistency and coherence with previous or subsequent decisions;
- changed law since the prior decision;
- changed facts since the prior decision;
- the workability of the precedent;
- the reliance interests of those who have relied on the precedent;
- the age of the precedent.

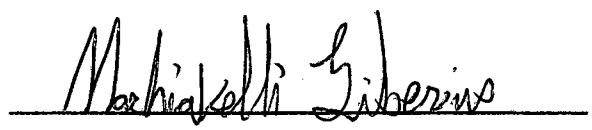
Quoting *Ramos v. Louisiana*, 590 U.S. 7 (2020), in the above chart.**

In the District Judge's affirmed opinion (2:18-cv-01125, 4th Cir. 2019), this has departed from many federal jurisdiction's case precedence on related issues that are relevant to the plaintiff's civil action. The District Judge disobeyed Supreme Court landmark cases, and the legal principles that *stare decisis* would identify that relate to an interpretation, defined meaning(s) and the operation of law in the Fair Labor Standards Act and 42 U.S. Code § 1983.

CONCLUSION

For the foregoing reasons, the petition for rehearing should be granted.

Respectfully Submitted,



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August 10, 2021