

No. 20-

387

Supreme Court, U.S.

FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

Lewana Howard  
Petitioner

vs.

Gabriel Defrates, 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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**ORIGINAL**

I. Question Presented

(1) When state employees acting in their personal capacity rather than agents of the state, violate the 14<sup>th</sup> Amendment Equal Protection rights of a citizen who is a member of a protected group established under the Age Discrimination and Title VII Retaliation laws, can the civil action 42 U.S.C. 1983 be used as a private remedy in federal court for violation of their 14<sup>th</sup> Amendment Equal Protection Clause right?

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IV. Petition for Writ of Certiorari

Lewana Howard, a Pro Se Petitioner for the Northern District of Illinois, respectfully petition this court for a Writ of Certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit.

V. Opinion Below

The decision by the U.S. Court of Appeals for the Seventh Circuit affirming the District Court dismissal of Howard's Second Amended complaint was decided on July 1, 2020. That order is attached at Appendix A dated July 1, 2020.

VI. Jurisdiction

Lewana Howard invokes this court's jurisdiction under 28 USC 1257, having timely filed this petition for a writ of Certiorari within 90 days of the U.S. Court of Appeals for the Seventh Circuit Order.

1.

## VII Constitutional Provision Involved

### United States Constitution, Amendment XIV:

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 the jurisdiction the equal protection of the laws.

## Federal Laws

### Age Discrimination Act of 1967

The Age Discrimination in Employment Act of 1967 is a US labor law that forbids employment discrimination against anyone at least 40 years of age in the United States. The ADEA prevents age discrimination and provides equal employment opportunity under conditions that were not explicitly covered in Title VII of the Civil Rights Act of 1964.

### Title VII Retaliation

Title VII protects employees who report or bear witness to discriminatory conduct. More specifically, employers cannot retaliate by taking disciplinary action against employees for making discrimination charges, making a statement to the EEOC or administrative agency, or giving testimony in a discrimination case.

Cooper v. Salazar Injunction  
IDHR Credibility Notice

The Illinois Department of Human Rights IDHR is under a federal-court injunction that among other things, orders the IDHR:

'To cease permanently from relying on credibility determinations made without affording the rights of confrontation and cross-examination'. The order is dated November 1, 2001 at p. 26 P. 1 (2<sup>nd</sup> Amended Complaint, Exhibit 5).

### VIII. Statement of the Case

Over 50 years ago, the Supreme Court held in *Monroe v. Pape* 365, US 167, (1961) that the civil action 42 USC 1983 a statutory provision from 1871 could be applied to sue municipal employees in their personal capacity. The Plaintiff believed their civil rights had been violated and sued for a private remedy based on the violation of their constitutional rights. 42 USC 1983 was a relatively obscure and little used statute, but since *Monroe v. Pape* has become a central part of the United States civil rights law.

In *Monroe v. Pape* the Supreme Court held individuals acting "under the color of law" can be sued under 42 USC 1983 as a federal remedy and the federal remedy was supplementary to any state remedy and the latter need not have been first sought and refused before the federal one was invoked.

This case presents the question of whether the civil action 42 USC 1983 a statutory provision from 1871 is satisfied when state employees acting in their "personal capacity," rather than agents of the state violate the constitutional rights of an individual during a neutral fact finding investigative process. "White v. Trew, N.C. 736 S.E. 2d of 168-169 (2013 quoting dicta in Mullis v. Sechrest 347 N.C. 548, 495 S.E. 2d 721 (1998). Howard was seeking punitive and compensatory damages.

1. Filing of IDHR Complaints and Lack of Substantial Evidence Findings

In the year of 2015, Lewana Howard filed 2 complaints with the Illinois Department of Human Rights. The 1<sup>st</sup> complaint was filed in June of 2015 alleging age discrimination by a CVS pharmacy manager. The 2<sup>nd</sup>

complaint was filed in September 2015 for retaliation after being terminated by the same CVS pharmacy manager. Howard at the time of filing both complaints was in a federally protected class.

In the year of 2016 both of Howard's complaints were assigned to a 2<sup>nd</sup> investigator Defratts. Because of a professional misconduct complaint filed by Howard regarding the 1<sup>st</sup> investigator both IDHR complaints were reassigned to Defratts., (2<sup>nd</sup> Amended Complaint, Exhibit 1). Howard received a Lack of Substantial Evidence Finding for both the Age Discrimination and Title VII Retaliation IDHR complaints investigated by Defratts. Because Defratts is employed by a state agency that investigates individual civil rights complaints against employers. It can be inferred

Defratls is familiar with the 14<sup>th</sup> Amendment Equal Protection Clause, the Age Discrimination Act, Title VII Retaliation, IDHR procedures and requirements, the federal injunction Cooper v. Salazar and that malicious deliberate indifference is not characteristic of a neutral fact finding investigation. During the 5/4/2016 fact finding conference Defratls demonstrated malicious deliberate indifference when inquiring about what the employment status of the Respondent would be if she was found guilty of the complaints filed against her? The Employee Relations Manager who attended the conference via telephone responded "she would be terminated", (2<sup>nd</sup> Amended Complaint dated 6/17/19, pg. 3, #11 and Exhibit 4).

Defrat's supervisors Williams and Glenn reviewed and signed off on both of the Lack of Substantial Evidence Findings issued by Defrat's, (Plaintiff Opposition to Defendants Motion to Dismiss (dated 10/31/2018, Exhibit G ). Both Williams and Glenn had the authority to overrule Defrat's findings. Williams was the Supervisor of Defrat's and Glenn at the time was the Acting Director of the IDHR agency.

Howard was originally advised by the district court to seek legal advice from the Northern District of Illinois Hibbler Memorial Pro Se Assistance Program. Because Howard accepted the legal advice received from the Pro Se Assistance Program a court appointed lawyer was refused when offered by the court at a later date.

The district court granted the Defendant's motion to dismiss the 2<sup>nd</sup> Amended Complaint for failing to state a claim. (Appendix B dated May 21, 2019).

In deciding, Goulding v. Osceola Gold, Inc. No 16C 4890 (N.D. Ill., decided 2/21/2017) "failing to state a claim" was denied by the district court citing Rule 12(f) of the Federal Rule of Civil Procedure that authorizes a trial court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent or scandalous matter, (page 1, para 1)."

## 2. Direct Appeal

On Direct Appeal, Howard renewed her concern that her 14<sup>th</sup> Amendment under the Equal Protection Clause had been violated. In a published opinion the US District Court of Appeals for the Seventh Circuit wrote that even if "Howard allegations in the

complaint were true she failed to state a claim under the Due Process Clause or Equal Protection Clause".

The US District Court of Appeals affirmed the district court order of failing to state a claim.

Howard reasons the Equal Protection Clause takes precedence during a Illinois Department of Human Rights complaint investigation and not due process because during the investigation Howard was in a protected class as defined under the Age Discrimination Act of 1967 and Title VII Retaliation, (2<sup>nd</sup> Amended Complaint, Pg. 2, Para 1-3). Also, the U.S. District Court of Appeals for the 7<sup>th</sup> Circuit in its order stated regarding due process : "Howard then had the option of seeking review with the Illinois Human Rights Commission (the adjudicatory arm) or bring an action

in Illinois Circuit Court", (Appendix A, pg. 2, para 1).

The US District Court of Appeals stated "to the extent that proper procedures were overlooked, the court concluded that Howard's allegation did not plausibly suggest anything beyond negligence, which did not rise to the level of a federal constitutional claim", (Appendix A, pg. 2, para 3).

Stated on the IDHR website: [www2.illinois.gov](http://www2.illinois.gov) under the IDHR Fairness Equality Campaign heading, "IDHR promotes fairness and equality."

A petition for a rehearing en banc was not submitted to the U.S. Court of Appeals for the Seventh Circuit.

IX. Reason For Granting the Writ

A. To avoid erroneous deprivation of constitutional rights, "under the color of law". This court should clarify the application of the civil action 42 USC 1983 that applies when state employees acting in their personal capacity rather than agents of the state during a neutral fact finding investigation violate a civil right established by the 14<sup>th</sup> Amendment Equal Protection Clause.

Justice Douglas in delivering the Monroe v. Pape opinion of the US Supreme Court stated:

This case presents important questions concerning the construction of 42 USC 1983, which reads as follows:

"Every person who, under the color of any statute, ordinance, regulation, custom or usage, of any state or territory, subjects or causes to be subjected, any (365 US 167, 169) citizen of the United States or other person within the jurisdiction thereof to be deprived 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."

The complaint alleges during an IDHR investigation of two civil rights complaints against an employee of CVS Pharmacy. Defendants acted with deliberate indifference that was malicious towards Howard, during the 5/4/2016 fact finding conference. Defendants, et al ignored Howard's 14<sup>th</sup> Amendment Equal Protection Clause rights, a permanent federal court injunction and IDHR procedures and requirements that caused a violation of Howard's protected class constitutional rights. The actions of Defendants, et al

resulted in a lack of substantial evidence findings for both IDHR complaints.

The US District Court of Appeals for the Seventh Circuit erroneous decision circumvents the premise of 42 USC 1983, discouraging the use of a federal civil action remedy. More or less permitting IDHR employees to be negligent in their investigative process, embrace individualized assessment procedures rather than adhere to constitutional laws, disregard a permanent federal injunction, dismiss IDHR policy and requirements and/or commit to a neutral fact finding investigation.

This case presents the US Supreme Court with an opportunity to further clarify 42 U.S.C. 1983 "civil action" standard when it applies to the Equal Protection Clause in the face of deprivation of rights under the color of

law by state employees acting in their own capacity rather than as agents of the state. The purpose of the civil act is to provide a private remedy for violations of federal laws. Section 1983 is not, and of itself, a source of substantive rights. It provides a method for the resolution of rights already conferred in the U. S. Constitution and federal Laws. Absent intervention by this court, the US District Court of Appeals for the Seventh Circuit published decision will work to undermine the civil action for Deprivation of Rights Act.

X. Conclusion

For the foregoing reasons, Lewana Howard respectfully request that this court issue a writ of Certiorari to review the order of the U.S. Court of Appeals for the Seventh Circuit.

Dated: 8-28-2020

Respectfully Submitted,



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