No. 20-458

In the Supreme Court of the United States

MICHAEL B. BROWN,

Petitioner,

v.

U.S. DEPARTMENT OF LABOR,

Respondent.

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

PETITION FOR REHEARING

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REASONS FOR GRANTING REHEARING

At least 14 counts of egregious conduct "error" to undermine the substantial evidence of Petitioner's pleadings which rises to the level of fraud on the court that abridged Petitioner's First, Fifth, and Sarbanes-Oxley rights. Petitioner informed the 11th Circuit that his rights had been abridged and in similar manner informed the Labor Department using "another way of saying" the point.

Out of an abundance of caution, Petition for Rehearing was submitted on December 31, 2020 but without a Rule 44 Certificate which is included in this revision. There was also a misunderstanding regarding the limitation requirements due to Petitioner's October 2020 brain injury and other problems stemming from the October 2020 biking incident requiring multiple hospitalizations for Petitioner reported to this Court on November 12, 2020 which included details of associated Petitioner's hospitalizations and continuing hospitalizations of Petitioner's relative. Correction sent today on January 4, 2021 is within the 25-day due date and Petitioner demonstrates how the public benefits from correction because of the national impact affecting every deponent or witness in any type of case in America.

As in Amber, this Court has made departure from the practice of denying rehearing petitions without discussion were certain facts were omitted from the "transcript certified to [the] court." *See Ambler v. Whipple*, 90 U.S. (23 Wall.) 278, 282 (1874).

Instead of relying and commenting chiefly on the workpaper reported information Petitioner provided to

his only supervisor S. Weekley to meet the Sarbanes-Oxley requirement, the judge primarily relied on deposition testimony which he; himself, falsified, and overrode Petitioner's actual testimony, as the primary basis to deny an "objective belief" standard that is lacking in the language of the law. The judge then continuously repeated his testimony change actions throughout his judgment order demonstrating intent to deprive Petitioner of his First and Fifth constitutional rights as well as Petitioner's rights under Sarbanes-Oxley.

Since December 7, 2020, there have been at least 5 court rulings that are intervening circumstances regarding Petitioner's first amendment, fifth amendment, and Sarbanes-Oxley rights whereby this Court can develop and maintain consistency in rulings to correct problems in the law for the public particularly as they relate to the injustice of permitting judges to override sworn testimony of any party, deponent or witness.

I. PETITIONER MADE FIRST AMENDMENT AND FIFTH AMENDMENT DUE PROCESS ARGUMENTS IN A DIFFERENT MANNER THAT CAN BE FAIRLY INTERPRETED AS "ANOTHER WAY OF SAYING" THE POINT WITHOUT FORFEITURE.

A party clearly needs his own testimony and the availability of his own; actual, words in court records. These are preserved First and Fifth Amendments.

"A party waives a claim by 'knowingly and intelligently relinquishing' it, particularly when shown by record evidence, and forfeits a claim by merely fail[ing] to preserve it." *Cradler v. United States*, 891 F.3d 659, 665 & n.1 (6th Cir. 2018) (quoting *Wood*, 556 U.S. at 470 n.4). But if a party makes the argument in a different manner that can be fairly interpreted as "another

way of saying" the point, it likely did not forfeit the claim. *Haywood v. Hough*, 811 F. App'x 952, 959 n.1 (6th Cir. 2020). "*See Donald W. Ogle, Betty Ogle, Tony Korley, Mark T. Whole, and John C. Schubert, dba High Bridge Development Partnership v. Sevier County Regional Planning Commission and Sevier County*, Tennessee (6th Cir. December 9, 2020).

"Establishing a substantive or procedural due process violation requires first showing the existence of a constitutionally-protected property or liberty interest that was taken or infringed. *Silver v. Franklin Zoning Appeals*, 966 F.2d 1031, 1036 (6th Cir. 1992). The party claiming the interest must demonstrate a legitimate claim of entitlement to the benefit-that is, more than an abstract need or desire for it and more than a unilateral expectation of it. *Board of Regents of State Coll. v. Roth*, 408 U.S. 564, 571 (1972). Court acknowledged that claims could be included if they were "like or reasonably related" to the relevant charge" and petitioners claims here are like or reasonably rated to the relevant charge. *See Moore v. Vital Prod. Inc.*, 641 F.3d 253, 256 (7th Cir. 2011).

A. Judge Bergstrom's Fraudulent Changes to Petitioner's Testimony Abridged His First, Fifth, and Sarbanes-Oxley Rights and Permeate Through Subsequent Agency and Rulings in This Court Future Witnesses Giving Any Type of Type of Future Testimony

This matter particularly demonstrates fraud on the court in violation of Petitioner's first and fifth amendment rights since the manner in which the judge overrode Petitioner's sworn testimony was the primary basis

used to deny an "objective belief" standard that is lacking in the language of the law.

Lower court rulings demonstrate admissions that Petitioner's First and Fifth constitutional amendment rights have been abridged and that this Court's acceptance of lower court rulings creates circuit breaks that requires rehearing to address and to clear up matters in regards to 1) a party's first and fifth amendment rights in regards to free speech and the ability to testify for oneself without summary changes to sworn deposition testimony that contradict the substantial evidence and 2) Sarbanes-Oxley Act "reasonable belief" requirements regarding what the Petitioner reasonably believes and submits to others who can do something about a petitioner's belief of what a petitioner believes to constitute a violation such that others can review the information and make a reasonable determination; as the Petitioner's belief is reasonable.

B. Petitioner's Claims Are "Like or Reasonably Related to the Relevant Charge" and May Be Included.

In *Dan Williams v. Board of Education of City of Chicago* (7th Circuit, December 8, 2020, the plaintiff in that case "claims that the district court erred in declining to consider allegations of discrimination that post-dated his last charge of discrimination filed on December 18, 2015. The district court did not consider these allegations (or the evidence in support of them) on the ground that "a plaintiff may not bring claims under Title VII what were not originally included in the charges made to the EEOC . . . (quoting *Moore v. Vital Prod. Inc.*, 641 F.3d 253, 256 (7th Cir. 2011). The Court acknowledged that claims could be included if

they were "like or reasonably related" to the relevant charge; however, the allegations from 2016 through 2018 did not implicate" the same conduct and . . . same individuals" and consequently, were not reasonably related." *Id.* (quoting *Moore*, 641 F.3d at 257.

C. "The Fifth Amendment's Due Process Clause, Like the Fourteenth's, Is Designed to Protect Individuals by Providing Them with Fair Notice. . . . "

In *Securities and Exchange Commission v. Carla Marin*, Nos. 19-13990 and No. 19-14871 (11th Cir. December 14, 2020), the 11th Circuit stated, "when, as here, a federal statute provides the basis for jurisdiction, the constitutional limits of due process derive from the Fifth, rather than the Fourteenth, Amendment." *BCCI Holdings*, 119 F.3d at 942. . . . "The Fifth Amendment's Due Process Clause, like the Fourteenth's is 'designed to protect individuals by providing them with fair notice that their activities will render them liable to suit in a particular forum." *BCCI Holdings*, 119 F.3d at 945 (citation omitted). "This fair warning requirement is satisfied if the defendant has purposefully directed his activities at resident's of the forum." *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)) . . . " The U.S. Department of Labor administrative law judge Bergstrom failed to provide fair notice of its activities wherein the judge was permitted to change Petitioner's deposition testimony according to *Burger King v. Rudzewicz*, 471 U.S. 462, 472, (1985)). To determine whether a person has purposely directed activities at the forum, we ask whether the individual has sufficient minimum contacts with the forum." *See e.g. Carillo*, 115 F.3d at 1542.

See Moore, 641 F.3d at 257. "Where an affidavit suffices, so too does sworn hearing testimony subject to cross examination.

MULTIPLE COUNTS OF EGREGIOUS CONDUCT AND "ERROR" RISES TO THE LEVEL OF FRAUD ON THE COURT

At least fourteen (14) agency and court acts and/or admissions of egregious conduct "errors" in Petitioner's numerous and considerable attempts to pursue his rights demonstrate that Petitioner's rights have been abridged such that a fair opportunity to be heard is lacking.

Count 1) Administrative Review Board (ARB) admitted "particularly egregious conduct by the attorney in this case" [Petitioner's former attorney Mr. Keegan]; *See* App.28a, but as part of ARB's construction construed Petitioner's Rule 60(d)(3) motion into a late-filed petition for review whereby ARB effectively hid and buried the U.S. Department of Labor Judge Bergstrom's actions by means of a late-filed petition for review such that the ARB's admission of egregious conduct was solely directed at Petitioner's former attorney while improperly shielding Labor Judge Bergstrom who committed the fraudulent actions upon which the Rule 60(d)(3) motion was based.

Count 2) The 11th circuit's May 4, 2020 decision; App.2a, and July 11, 2018; App.11a decisions erred by accepting the Review Board's construction and subsequent June 19, 2019 decision; App.14a " . . . Brown learned on January 14, 2017, that his attorney had not filed an appeal, Brown did not file an appeal within 14 days from that date; instead, Brown waited over three months to file his motion. Brown filed a *pro se* motion for reconsideration requesting that the Board

entertain an independent action to reconsider its decision and to set aside the ALJ's order for fraud on the court." *See* App.10a.

On one hand, the ARB stated, "the Board has consistently held that equitable tolling is generally not appropriate when a complainant is represented by counsel because counsel is presumptively aware of whatever legal resource may be available to [his or her] client." App.28a. But then, on the other hand, the ARB used the situation of the Petitioner's newfound lack of attorney; pro se status, to liberally construe case matters against him considering Brown as having been presented by an attorney. *See* Petitioner's Petition for a Writ of Certiorari, App.28a.

The July 11, 2018 11th Circuit recognized Petitioner's status as pro se in the April 6, 2017 filing of the Motion to Set Aside the Order; *See* App.9a.

Count 3) The 11th Circuit erred in stating "there is no authority for Brown's argument that the Board is required to follow the Federal Rules of Civil Procedure .... *See Henrich v. Ecolab, Inc.*, ARB Case No, 05-030, 2007 WL 7143174 at *5 (May 30, 2007)("Adopting the entire Federal Rules of Civil Procedure would prevent the Board from exercising the greater authority it possesses as the decision-maker for the Department of Labor." *See* Petitioner's Writ App.11a paragraph 2. But Brown merely cited and asked the Board to follow its own rules in regard to its rule 29 C.F.R. 18.1a which defaults back to Federal Rules of Civil Procedure that 29 C.F.R. Part 18 Subpart A says "If a specific Department of Labor regulation governs a proceeding, the provisions of that regulation apply.." *See* Petitioner's Petition for a Writ of Certiorari, App.102a. So the 11th Circuit's ruling clearly wrong.

Count 4) The 11th Circuit erred in stating that "Brown knew of the alleged fraud at the time of the ALJ's decision. He knew what was in the ALJ's order and what was in his deposition." *See* Petitioner's Petition for a Writ of Certiorari; App.6a ¶ 2. The 11th Circuit's decision is clearly wrong since "at the time of the ALJ's decision" since party's in a summary judgment ruling where they are not present can only know of the rulings disposition after the ruling has been made.

Count 5) Chief Administrative Law Judge Johnson essentially admitted "even assuming that Judge Bergstrom improperly found the facts and misapplied the law, his actions (a) are not fraudulent, do not rise to the level of fraud required for Rule 60(d)(3) relief, and (c) clearly are not fraud on the court" *See* App.20a which demonstrates (1) and open acceptance and by Labor of a pattern of multiple "errors" made by the agency to deny Petitioner his First Amendment, Fifth Amendment, and Due Process Rights to ultimately deny Petitioner his rights under the Sarbanes-Oxley Act.

Count 6) The Administrative Review Board stated that Petitioner "Mr. Brown points out that there is no time limit for bringing a Rule 60(d)(3) motion and that is true." *See* Petitioner's Petition for a Writ of Certiorari, App.19a. However, the ARB then incorrectly stated, "Had he discovered for the first time almost three years after the Decision and Order, that there had been fraud, he might be able to bring such a motion.

Count 7) The ARB incorrectly assumed that Petitioner was represented by counsel after January 14, 2017 particularly since the Petitioner's filings with the ARB's were all done pro se with admission from the ARB that "Brown admitted that he learned on

January 14, 2017, that his attorney had failed to file the petition for review". Even if Petitioner informed the ARB that he "continued to attempt work with Keegan after January 14th to get 'as much information as he could from counsel' and that he filed a grievance with the state bar of Georgia", ARB's May 17, 2017 ruling to deny the "petition for review" to was incorrect since the petition for review denials were improperly based on a presumption that Petitioner was represented by counsel even though Brown's filings and contact with ARB were all done pro se. So the ARB's May 17, 2017 decision to deny tolling was incorrect based on a presumption of counsel after January 14, 2017 even if Petitioner stated he attempted to work with counsel. All of Petitioners filings with ARB were pro se.

Count 8) Egregious conduct by ALJ Bergstrom who repeatedly and obsessively kept referring the "fraud", "violation", and "intentional misrepresentation" as if these words were required while at the same time citing the law which specifies that these words are not required to establish reasonable belief. *See* Petitioner's Writ for Certiorari, App.42a.

Count 9) Egregious conduct by an ALJ who permitted perjury as demonstrated by the contradictions of the sworn declaration by Keith Greene; *See* App.72a ¶ 2, as compared to his sworn deposition App.105a. and his ratings of Petitioner; *See* App.109a-111a, 113a-114a.

Count 10) The 11th Circuit specifically repeated fraud in stating its own ruling that in making his decision, the ALJ relied in part on Brown's deposition testimony that he was "terminated before he could report the fraud." *Brown v. United States DOL*, No. 19-13120 (11th Cir. May 4, 2020) (2020 U.S. App. LEXIS 14135).

The 11th Circuit's acceptance of the ALJ Bergstrom's fraud creates problem within the U.S. legal system by permitting fraud to infiltrate, infect, and perpetuate itself within the U.S. judicial system affecting anyone who provides any type of deposition or sworn testimony in any type of case going forward.

Count 11) The U.S. Department of Labor administrative law judge Bergstrom failed to provide fair notice of its activities wherein the judge was permitted to change Petitioner's deposition testimony as part of satisfying the fair warning requirement as specified in *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985)). The judge; without simply mis-finding the facts, actually changed the facts on the only document available to the public to be used for citation in other cases to harm others. Party's in a summary judgment are not there with the judge at the time of the decision, do not know and cannot know; even constructively of whatever a judge's decision may be.

Count 12) The June 19, 2019 incorrectly stated "the ALJ properly concluded that the motion failed to allege proper grounds for fraud on the court. The ALJ correctly concluded that Brown seeks to relitigate his case in the form of a motion for relief. Accordingly, we adopt and attached the ALJ's Order." But this decision erred for the same reasons demonstrated in the other counts.

Count 13) ALJ Bergstrom made a specific point to note and comment about Petitioners education and certification qualified erred by failing to document the same for K. Greene and R. Cellino to demonstrate that they met Sarbanes-Oxley Act reasonable person requirements.App.44a ¶2

Count 14) Judge Bergstrom continuously undermined Petitioner's testimony.

1. App.48a ¶ 4 through App.49a ¶ 1
   App.49a ¶ 2 through App.50a ¶ 1

"He declined to say if he told S. Weekley, Mr. Cottle, Mr. Sawyer or the general counsel, of his belief of intentional misrepresentation /fraud in the ETR workpaper.

He did not notify the audit committee through the general counsel's office and did not notify representatives through the 24/7 help line about fraud reported in the ETR.

The Complainant testified that "I was terminated before [reporting the fraud to the supervisor, general counsel's office, the audit committee, HR Department or help line] could have been done while I was working." He asserted that filing his report in "Paisley" was a way all the necessary people got the report of fraud. But notifying the audit committee or general counsel is not a Sarbanes requirement over reporting to a supervisor which Petitioner did.

2. App.50a

"He declined to say if he told S. Weekley, Mr. Cottle, Mr. Sawyer, or the general counsel, of his belief of intentional misrepresentation.

3. App.50a

The Complainant testified that I was terminated before [reporting the fraud].

4. App.50a

"He declined to say if he told S. Weekley, Mr. Cottle, Mr. Sawyer, or the general counsel, of his belief of intentional misrepresentation.

5. App.85a

"The Complainant testified he was terminated before he could report the fraud to the supervisor, General Counsel's office, the audit committee, HR Department or the Helpline."

6. App.86a

"The Complainant did not . . . . fraud against shareholders"

CONCLUSION

The cited cases give rise intervening circumstances that demonstrate that Petitioner's Petition for Rehearing is warranted and due to be granted in the interest of justice.

Respectfully submitted,

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JANUARY 4, 2021

RULE 44 CERTIFICATE

I, Michael B. Brown, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

Executed on January 4, 2021

Additional material from this filing is available in the Clerk's Office.