No. 20-56

SUPREME COURT OF THE UNITED STATES

Wen Chiann Yeh
Peititon
v.
North Carolina State University et.al
Respondent

ON PETITION WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL
FOR THE FURTH CIRCUIT

Petition For a Writ of Certiorari

Petition
Per Se
102 EcKlin Lane
Cary, NC 27519
Phone: 6145894291
Email: hollyyeh@gmail.com

Respondent
Nora F. Sullivan, as Attorney
Department of Justice, attention :
Education Section. P. O BOX : 629,
Raleigh, North Carolina 27602- 0629

QUESTIONS PRESENTED

I. Weather, as the Second, Fourth, and Ninth Circuits have held, the *Faragher* and *Ellerth* "supervisor" liability rule (i) applies to discrimination, harassment by those whom the employer vests with authority to direct and oversee their victim's daily work, or (ii). Is limited to those harassers who have the power to "hire, fire, demote, promote, transfer, or discipline" their victim.

II. Whether discrimination against an employee because of racial orientation constitutes prohibited employment discrimination 'because of ... sex, nationality, race' within the meaning of Title VII of the Civil Rights Act of 1964."

III. Whether The Court decided that an employer may be liable for sexual and racial discrimination and wrongdoing caused by a supervisor, but liability depends on the reasonableness of the employer's conduct, as well as the reasonableness of the plaintiff victim's conduct.

IV. Whether this court enacted in the Civil Rights Act of 1866 to allow Plaintiff to recover by showing that race was merely a "motivating factor" in a defense decision.

V. Whether Discovery evidences are sufficient intervening circumstance of case that allows the use of evidence found in accordance with the law.

VI. Whether The Court enacted the so-called "equal protection clause" of the 14th Amendment, which holds that no state can "deny to any person within its jurisdiction the equal protection of the laws."

VII. Whether The Court enacted the Judges recuse themselves by "The Due Process clauses of the United States Constitution" and "judges' bias taints a case", "has a financial interest in the case's outcome".

VIII. Whether twice now in the context of Federal anti-discrimination laws, this court has instructed that the rule of but-for causation is the "default rule []" against which Congress is presumed to legislate.

PARTIES TO THE PROCEEDING

In addition to the party identified in the caption,
Respondent- Appelles also including:
Alice Warren individual in her official Capacity as Vice Provost Continuing Education of North Carolina State University.
Dan O'Brien individual in his official capacity as Human Relation Manager of North Carolina State University Human Resource Department.
David Elrod individual in his official capacity as EEO officer, Of North Carolina State University at EEO division.
and Yevonne Brannon individual in her official capacity as Director of Urban Affairs and Community Services at North Carolina State University.
Randy Craver individual in his official capacity as Assistant Director of Urban Affairs and Community Services at North Carolina State University.

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RELATED PROCEEDINGS

1. In November 2017, after receiving advice from two lawyers, it was terminated by North Carolina State University for omitting one employment information in a resume. Because of a lawsuit against this employer.
2. In December 2017, filed complaint to North Carolina State University EEO officer Mr. David Elrod who malicious delayed response over 82 days.
3. In May 17, 2018 received Right-To-Sue letter from EEOC, instructed by EEOC, directly file to Federal Court.
4. In August 15, 2018, filed complaint No: 5:18-CV-397-D, Wen Chiann Yeh v. North Carolina State University et al. and also provided all evidences. Judge Dismiss Plaintiff complaint without prejudice.
   On August, 2018 filed Motion of default to dismiss Defendant because Defendant did not answer within 20 days after issue complaint and subpoena. But Court dismiss Plaintiff without prejudice.
5. On January 2019, filed No: 5:18-CV-397-D, again at the same Court and same Judge, and request to discovery for evidences give Defendant a chance to prove defendant terminate plaintiff is no discrimination or retaliation or harassment, but defendant did not response and answer interrogation that can proof Defendant commit terminated Plaintiff is based on discrimination, retaliation and harassment. Judge also filed motion to compel but still no response and no answer interrogation from defendant. Judge dismiss plaintiff again without prejudice.
6. On June 2019 again at the same court and at the same Judge, filed No: 5:19-CV-00279-D, after filed, Census came to my house I remembered this guy asked me "do you have cockroaches in your house?" I know this census is fake, after that when I go to District Court filing office, three ladies are sitting there, not willing to provide service for me even there is no other customer. I am not stupid, I know Judge and upstairs legal clerks told those three ladies to do some investigation against me because I have good case because defendant terminated me based on discrimination, retaliation and harassment but Judge dismiss with prejudice complaint and grant defendant motion to dismiss with prejudice due to Fed. R. Civ. P. 12(b)(1)(b).)
7. United State Fourth Circuit File:19-2456, Court affirm District Court decision due to Fed. R. Civ. P. 12(b)(1)(b).
8. United State Fourth Circuit should affirmed District Court Judge the *Code of Conduct for United States Judges recuse himself* the *Code of Conduct for United States Judges because of "financial interest" and "bias taint".*

9. Respondent's motion is untimely and should be denied and court should be rejected as Respondent' no meritless, no argument and no judgment.

TABLE OF AUTHORITIES

CASES:

Thompson v. North Am. Stainless, LP, 562 U.S. 170 (2011)
Vance v. Ball State Univ., 570 U.S. 421 (2013)
Young v. St. James Mgmt., LLC, 749 F. Supp. 2d 281 (E.D. Pa. 2010
Zielonka v. Temple Univ., No. CIV. A. 99-5693, 2001 WL 1231746 (E.D. Pa. Oct. 12, 2001)

STATUTES:

Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e-2(a)(1).....passim
42 U.S.C. 2000e-3(a)
42 U.S.C. 2000e-5(a)
42 U.S.C. 2000e-5(f)(1)
29 U.S.C. 2601

RULES:

Fed. R. App. P. 29(a)

MISCELLANEOUS:

Equal Employment Opportunity Commission, Compliance Manual (2006)
Equal Employment Opportunity Commission, Enforcement Guidance on Retaliation and Related Issues (Aug. 25, 2016), https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeal from the Fourth Circuit opinion stated "Wen Chiann Yeh appeals the District Court's order granting Defendants' motion to dismiss her complaint under Fed. R. Civ.P. 12(b)(1), (6). ...and deny motion to recues the District Court Judge." The Order of District Court is unpublished. Circuit Court of the Fourth Circuit judges affirms. .The district court's unpublished memorandum and order granting the respondent's motion for dismiss without prejudice two times and dismiss with prejudice to grant Respondent's motion.

Petitioner Opinion

For Petitioner opinion, on a motion under Rule **12(b)(6)** or **12**(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. (e) Motion for a More Definite Statement.

STATUTORY PROVISIONS INVOLVED

TITLE VII of the Civil Rights Act of 1964 provides in pertinent part:
It shall be an unlawful employment practice for an employer –

(a). to fail or refuse to hire or to discharge any individual, or to otherwise Discriminate against any individual with respect to his terms, conditions, Or privileges of employment, because of such individual's race, color, Religion, sex, or national origin.

42 U.S.C. § 2000e-2(a).

The Equal Employment Opportunity Commission ("EEOC") guidelines provide in pertinent part:

An individual qualified as an employee's "supervisor" if :

- The individual has authority to undertake or recommend Tangible employment decisions affecting the employee; or
- The individual has authority to direct the employee's daily work activities.
- The individual has the right to check the education level and employment status of each employee.
- The individual has to resign because of omitting education, omitting employment, or falsely employment.
- The individual must prove an employee "supplied incorrect information with the intention of defrauding the agency." FitzGerald v. Dept. of Homeland Security, #CB-7121-07-0014-V-1, 2008 MSPB 17, 107 MSPR 666, 2008 MSPB Lexis

- Arbitrator sustains the termination of a county employee who, in her job application, omitted the fact that she had resigned from a criminal justice job, while under suspension. Multnomah County and M.C. Employees L-88, AFSCME C-75, 115 LA (BNA) 1499 (Calhoun, 2001). [2001 FP 173-4].
- Florida appellate court sustains termination of sheriff's employee for intentionally omitting his prior employment as a police officer in N.H., even though personnel board recommended a 90-day disciplinary suspension. Philbrick v. Co. of Volusia, 668 So.2d 341 (Fla.App. 1996). {N/R)
- Equal Emp't Opportunity Com'n Enforcement guidance: Vicarious Employer Liability for unlawful Discrimination and Harassment by Supervisors (1999), 1999 WL 33305874, app., infra,81a.
- To prove an employer engaged in fraud, an employee must show: Employers made false representations Superior knew of false misrepresentation, Employer showed intent to deceive, Employee accepted and relied on misrepresentation as truth, Employee suffered damages for reliance on employer misrepresentation

STATEMENT OF ISSUE

In *Faragher v. City of Boca Raton*, 524 U.S. 775(1998), and Burlington Industries, Inc. v. *Eellerth*, 524 U.S. 742 (1998), this Court held that when an employees subject to severe or pervasive sex or race based workplace discrimination or harassment sues employer under Title VII, the employer is vicariously liable for the discriminatory, retaliation, harassment conduct of the worker's "supervisors," proof of employer willful knowing and willful negligence. *Faragher, 524 U.S. at 807; Ellerth, 524 U.S. at 765.*

Because after three times asking the "supervisor" to provide a discovery request, the "supervisor" terminated me, not based on discrimination or harassment and retaliation. However, on October, 2018 and December, 2018, "supervisor" did not respond to the discoverers, nor did it answer to interrogation.

Since then, the lower federal courts have staked out starkly divergent rules for when the *Faragher and Ellerth* vicarious liability rule applies. Following circuit precedent, the decision below held that it applies only to a subset of supervisors, those with authority to alter the victim's formal employment status, i.e., to hire, fire, promote, or discipline, and that an individual who has the title of manager, functions as the plaintiff's boss, oversees my work, and assigns my daily tasks is, for these purposes, a mere "co-worker." While other federal Courts of appeals have adopted the Fourth Circuit's rule, along with district court.

In Federal Merit Board sustains the termination of a government employee who falsely stated in his job application that he had earned a master's degree and also misrepresented his military duty status. Crump v. Dept. of Veterans Affairs, #CH-0752-06-0820-I-4, 2010 MSPB 119.

Arbitrator orders reinstatement of a federal prison employee who omitted mention of receiving non-judicial punishment while in the Navy. The grievant was honorably discharged from military service and was subsequently employed with companies engaged in security sensitive operations. Fed. Bur. of Prisons and AFGE L-3969, 126 LA (BNA) 201, FMCS Case #08/54183 (Riker, 2009).

The Court should grant review here to settle the acknowledge conflict over this important questions of federal law and correct the entrenched but spurious misreading of all files.

A. Statutory Background

Title VII protects employees from, *inter alia*, workplace discrimination on the basis of race or sex. 42 U.S.C. § 2000e-2(a). In *Meritor Savings Bank, FSB v Vinson, 477 U.S. 57 (1986)*, this Court first recognized that sex-based and race-based discrimination and retaliation and harassment in the workplace is actionable under Title VII. Id. At 67. The Court explained, "Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult." Id. At 66. In *Harris v Forklift Systems, Inc., 510 U.S. 17 (1993), and Oncale v Sundowner Offshore Services, 523 U.S. 75*

(1998), the Court laid out the principal requirements for a hostile work environment claim: (1). that the race- or gender- based harassment be "severe or pervasive", (2). That a reasonable person in the plaintiff's position would find the environment either hostile or abusive; and (3). That the plaintiff perceived it as such. *Harris*, 510 U.S. at 21-22.

In *Faragher and Ellerth*, the Court considered the standards that should govern "employer responsibility" in such case. The Court established three distinct rules. First, for cases where a supervisor's discrimination or harassment of a subordinate is accompanied by a tangible adverse employment action, the Court held, in agreement with most of lower courts that strict liability should apply. Faragher, 524 U.S. at 790-791; Ellerth, 524 U.S. at 762-763. Second, for case where no tangible action is taken and the harassing employee is the victim's co-worker, the Court likewise endorsed the view of most lower courts – that employer liability requires proof of negligence, a combination of "knowledge and inaction." Faragher, 524 U.S. at 789, 806-807; Ellerth, 524 U.S. at 760. Third, and most notably, the Court held that a different rule governs when no tangible adverse action was taken but the discrimination and harassment and retaliation was that of the victim's "supervisor." Faragher, 524 U.S. at 807-808; Ellerth, 524 U.S. at 764-765. Rejecting lower court decisions that had imposed a negligence standard, the Court looked to the agency principle that Congress intended to inform Title VII generally, and in particular, the "aided in authority" principle of the North Carolina State University, was subjected in my workplace.

Whether the district court erred when it determined that allow managers and coworkers intention omitting former employment information, or false education and terminated Petition that is adverse treatment due to discriminate, harass, and retaliated Title VII Civil Act.

> Whether the Fourth Court erred when the Judge James C. Dever III teaching at Campbell University Law school should have recused himself is that the *Code of Conduct for United States Judges* mandates recusal for any judge who teaches at a law school. Section 3.4-3(a) of the *Code* provides:

A judge who teaches at a law school should recuse from all cases involving that educational institution as a party. The judge should recuse (or remit) from cases involving the university, as well as those involving the law school, where the judge's impartiality might reasonably be questioned in view of the size and cohesiveness of the university, the degree of independence of the law school, the nature of the case and related factors.

STATEMENT OF THE CASE

1. Factual background

I am an Asian American, female, and worked as business technology analyst from North Carolina State University (NCSU) in North Carolina on November 6, 2017.

From November 6, 2017 to November 21, 2017, these colleagues were very rude and impolite. I know their educational and employment background. I am surprised that they have worked in the department for more than 10 years, but still have no basic technical knowledge, such as database or network co-workers does not even allow users/employees to change their own passwords because network co-worker cannot view and control these employees. This not only violates the privacy of employees, but also shows that they lack skills. But I didn't say anything because I knew they added a false of education and false work experience to their resume or State application.

On Monday, November 20, 2017, everyone was running in the corridor, and it seemed that something bad happened. I believe this is not my business, even if I don't know what happened. But I am sad about why managers change their attitude towards me. Before, they treated me well. Today, the manager followed me to see what I was doing, which was really strange to me. I believe this may be related to this disaster. It seems that they think I did something wrong. But even if I cannot access the production site, I have done nothing wrong. If anything happens, it has nothing to do with me.

On the same day around 2:00 pm, a colleague in charge of the test site walked into my office and talked with another female colleague. He said: "The date he closed the test site was before Saturday. This is reason that cause all teachers could not log in to the test site. He will tell the manager this is his fault." But I glad to know what is happening because no one tell me anything. But I am happy to know what happened, because no one told me anything.

And also they knew that managers are going to fire me, because mangers already determined this disaster is all my faults, because they knew, that I am brand new employee without any authorities to access production testing website, how and what is happened, this is not my business.

I am very impressive Mr. Barbour's honesty but why he talked to my roommate female co-worker who already knew about this issue. I can feel and smell something wrong. I believe he is talking to me instead of talking to female co-worker. He knew something bad thing will be happened to me soon because his made mistakes.

Now, I realized that it's no wonder that everyone is running in the corridor, because from November 18th to 20th, 2017, teachers in Wake County complained to the managers because

during weekend they couldn't log in to the test site. I believe that all the teachers complained to the managers Ms. Brannon and Mr. Randy Carvern in an angry tone.

I have worked in the private sector, the state government and the federal government for many years, and I know this is not my problem. I will not participate unless the manager asks me to resolve this issue.

Moreover, this login problem is easy to solve, there is neither prefect program nor prefect human being. There is no reason to panic. Once the teacher calls managers about the problem, the manager should immediately contact the testing website team members and request them to correct this problem immediately. Don't wait until Monday. Accused me of messing up the procedure to dismiss me. I am a new Asian woman who has just joined the group for a few days. Even, I don't know where the program is, how to mess it up?

This can prove that I was discriminated against, harassed and retaliated against by colleagues Mr. Kevin Stover and Mr. Chad Simon and managers Ms. Brannon and Mr. Randy Cavan Even, they maliciously omit a large amount of employee's information and falsfuly employers information in the resume and North Carolina State University job application, but they were not fired. This proves that managers are retaliating against me because of their teachers' anger, because of their discrimination, harassment and revenge.

I also think that a colleague who is working on Testing website co-worker Mr. Kenneth Barbour, came to my room and talked to another female colleague Ms. Amy Whitfield who already knew the reason of teacher log in testing website issue. I have reason to believe that both of colleague already knew that the manager would fire me because of this login issue, this is his fault has nothing to do with me.

On November 21, 2020, I was expelled and accused me of not posting an employer on my resume. I was shocked and surprised, because before taking this position, I already knew the entire managers, colleagues, even human resources management, EEO officials... and so on. Not only forged education degrees in the curriculum vitae and NC State job application, but also forged employers, and I also received suggestions from two lawyers to omit one employer. And I saw a lot of lawyers, and judges are also omitted previous employer information, they still are working on as Department of Justice or District Court as Judge who dismiss my case without justice.

B. Facts and Proceedings Below

This case arises from a decision of the Fourth Circuit holding, as matter of law, that employer did not response here, North Carolina State University could not be liable for the racial discrimination, harassment, retaliation, and intimidation to which petitioner Wen Chiann Yeh, the sole Asian-American employee in the NCSU Urban Affairs and Community Services, was subjected in my workplace at North Carolina State University.

Although the termination letter indicated that an employer's information was missing from my resume, the information was misleading and false. NCSU employees have missed previous information, or added false employment information or fraudulent education to their resumes and NCSU job applications, have they been fired? No, they didn't, this can prove that I was discriminated , retialation and harassment by NCSU.

For example: Alice Warren individual in her official Capacity as Vice Provost Continuing Education of North Carolina State University, she has omitted her agent before working at North Carolina State University. While working for NCSU, she bought 8 houses and paying tax would cost her $38,622.14 dollars. Mr. Dan O'Brien Human Relation manager who add one more false degree to get job from NCSU as Human Relation Manager, David Elrod individual in his official capacity as EEO officer who put false employment in his resume and Yevonne Brannon individual in her official capacity as Director of Urban Affairs and Community Services at North Carolina State University, she put false employment such as wake county commissioner and also has k-12 company that is interest conflict with NCSU. And Chad Simon and Kevin Stover are also omitted and put false employers information from their resume and NCSU job application were not get fired before me. That cause misleading all applicants , also can proved NCSU is discrimination, harassment, retaliation against victim only. (all evidences are in District Court file).

I sued, alleging discrimination, harassment, hostile environment and retaliation claims under Title VII. The district court granted NCSU motion to dismiss my case, ignored my evidences. The Fourth Circuit affirmed District Court judgment for Fed. R. Civ. P. 12(b)(1)(b). My claim is a short and plain statement of the grounds for the court's jurisdiction, unless the court, under *Rule* 8(e)(2)'s "whether based on legal, equitable, ...District Court must fairly respond to the substance of the allegation... The Court rejected the argument, evidence and explain of law standard that supervisors with the "authority" *** to hire, fire, demote, promote, transfer ...[their victim].'"

As to negligence, the court upheld the lower court's conclusion, but did not identify lower court errors that is did not considering the discrimination, retaliation, and harassment evidence against Petition, and also did not considering the evidences of all employees false education and false employment claim, did not considering employer's liability that is at issue, not liability of particular employees." App., infra, 14a. Again emphasizing that a discrimination, retaliation, harassment workplace environment claim is premised on the "cumulative effect of individual acts" *National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 115 (2002),* the court also rejected the conclusion that the post filing evidence could be treated as " a disguised Rule 15(d) submission." *App., infra, 9a.* Despite this, the court declined to remand, observing that the district court had discretion to exclude the evidence "in the interest of keeping [the case] moving forward." *Id. At 10a-11a.*

REASONS FOR GRANTING WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

I. THE LOWER COURT ARE SHARPLY DIVIDED AS TO WHEN THE FARAGHER/ELLERTH VICARIOUS LIABILITY RULE APPLIES

Although Faragher and Ellerth announced that significantly different rules should apply to discriminatory harassment by "supervisors" and "co-employees" (and held the cases before the Court governed by the "supervisor" rule), they did not define "supervisor" or explicitly instruct lower courts as to when vicarious liability is triggered. "The definition of the term 'supervisor' for Title VII purposes is a question that has divided the courts." Browne v Signal Mountain Nursery, L.P. 286 F. Supp. 2nd 904, 912 (E.D. Tenn. 2003); accord App., infra, 12a-13a; Griffin v. Harrisburg Property Serus., Inc., 421 Fed. Appx. 204, 208 n.6 (3d Cir. 2011) (same); Joens v. *Jone Morrell & Co., 354 f,3d 938, 940 (8th Cir, 2004)* (same). The Fourth Circuit and other s have held that only a subset of supervisors --- those with the ower over the formal employment status of the subordinate they harass – are governed by the *Fargagher/Ellerth* rule. Other courts have expressly rejected that restriction as incompatible with the result and reasoning of this Court's decisions and have instead held that the *Faragher/Ellerth* rule governs when the harasser has authority to direct and oversee his/her victim's daily tasks, irrespective of whether he is empowered t take ultimate action on the company's behalf. The split is sharp and widespread and shows no sign of abating.

A: These decisions clearly show that the supervisor only discriminated, retaliated and harassed one victim, but abused the power of the supervisor to hide omitting or false resumes or false education status of themselves or other employees, and contained false information and material omissions of fact which means misleading victim an alternative liability rule. Supervisors are violating the either intentionally or inadvertently of The National Labor Relations Act and a variety of statutes overseen by the U.S. Equal Employment Opportunity Commission protect employees from hostile work environments, discrimination and unfair labor practices. And unfair and deceptive practices under California's Unfair Competition Law and *False* Advertising Law.

B: The petition omitting of a two-month job because of the suggestions of two lawyers, and also sees that NCSU managers and employees get jobs from NCSU and put untrue academic degrees and work experience, which is not only a false statement , and also mislead all applicants. The court should reverse the petition to

terminate the case, resume paid work, and pay a student loan for the petition. Illegal discrimination, retaliation, harassment, or dismissal of employees on the grounds of dishonesty to cover up the employer's wrongdoing. U.S.A.A. and Williams #12-CV-21735, 2003 NGRB Lexis 666, 173 LRRM(BNA 1331, 340 NLRB No. 90 (NLRB 2003).[2004 FP Feb].

C: Three Circuits, Second , Fourth , and Ninth Circuits and Tenth Circuit in an unpublished opinion, and district court of the Fifth and Eleventh Circuits have holding that harassment by personnel overseeing the victim's daily work assignments and performance, not just power over her formal employment status, warrants vicarious employer liability. In Mack v. Otis Elevator Co., 326 F.3d 116 (2d Cir.), cert.

II. Introduction

Petitioner submits the following in support of writ of certiorari to review the decision of the Fourth Circuit Court of Appeals affirming the District Court, Eastern District of North Carolina, granting respondent's Motion for Dismiss with Prejudice.

In granting Motion for Dismiss with Prejudice, the lower court departed from the accepted standard of review set by this Court in fed. r. civ. p. 12(b)(1), (6). This departure was affirmed by the Fourth Circuit Court of Appeals.

In addition, the trial judge failed to recuse himself from the case because discrimination, bias, injustice, and prejudice, and also trail judge has financial intent.

Further, the decision of the Fourth Circuit Court of Appeals conflicts with the decisions of the Third and Ninth Circuit Courts of Appeals on the issue of whether a negative job reference by an ex-employer is an adverse employment action in a retaliation claim under Title VII. For these reasons, the petition for writ of certiorari should be granted.

III. Standard of Review for Motion of Dismiss with Prejudice

In reviewing Defendant Motion of Dismiss with Prejudice, the court must view the evidence presented in light most favorable to the party opposing the motion. *Rhodes v. Guiberson Oil Tools*, 75 F.3d 959 (5th Cir. 1996). In the recent case of *Reeves v. Sanderson Plumbing Products, Inc.*, the unanimous U.S. Supreme Court reaffirmed that "the standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that the inquiry under each is the same." *Reeves*, at 2110. This Honorable Court held that, although all of the evidence should be reviewed by the court, not all evidence should be given weight.

The trial judge's decision on the party's motion in the court tried to exclude all evidences presented by the party and ruled on the party's pre-trial memorandum regarding the admissibility of its own evidence. The scope of the ruling may be Greatly

determined. . The jury will be allowed to listen and watch the content. The defendant did not provide any evidence to support their accusation." *Reeves*, at 2110.

In the present case, there is no jury. The question is present because the petitioner presented evidence that, when taken as a whole, created a fact issue as to whether the negative reference letter was discrimination, harassment and retaliatory and/or defamatory.

IV. **The district court judge abused her discretion in not recusing himself for discrimination, bias, injustice and prejudice, and financial intent.**

District Court Judge James C. David III rejected the petition twice without affecting his will. The third time, before waiting for the judge to make a decision, the census suddenly came to my house in December 2019. The census will begin on April 1, 2020. The census asked: "Do you have cockroaches at home?" I know this is a fake census. And went to the district clerk's office to file a motion, the three ladies sat on the chairs and ignored, I saw two women staring at the laptop and seemed to be waiting for permission from upstairs to allow me to file motion or not. This experience is strange, weird, and unpleasant, even if no one is in the waiting area. I believe that the three ladies did investigate under the order of the judge. This can prove that the judge acting as the defendant's lawyer did some investigations for the defendant and also can prove Judge is discrimination, bias, injustice, and prejudice and potential to please defendant to dismiss my case. Under 28 U.S.C. §455(a), a justice, judge, or magistrate of the United States is required to recuse himself in any proceeding in which his impartiality might reasonably be questioned.

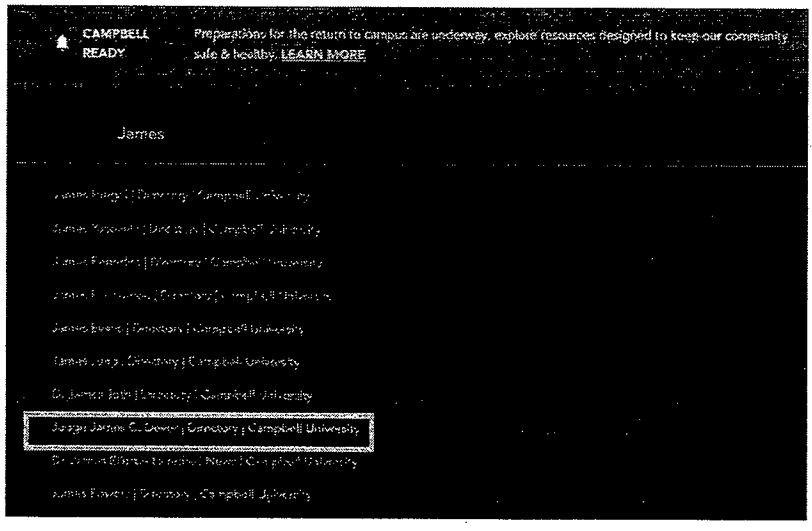
Because 28 U.S.C. Section 455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street.

The second reason that Judge James C. Dever III teaching at Campbell University Law school should have recused himself is that the *Code of Conduct for United States Judges* mandates recusal for any judge who teaches at a law school. Section 3.4-3(a) of the *Code* provides and The recusal statute, Title 28 US Code Section 455:
Judges teaching in law schools should recuse himself from all cases involving that educational institution as a party.
The judge should recuse (or remit) from cases involving the university, as well as those involving the law school, where the judge's impartiality might reasonably be questioned in view of the size and cohesiveness of the university, the degree of independence of the law school, the nature of the case and related factors. Similar factors govern recusal of judges serving on a university advisory board. (EXHIBIT # A – James C. Dever III teaching at Campbell University law school.)

V. **The district court erred in concluding that under *Mattern v. Eastman Kodak Company*, 104 F.3d 708 (5th Cir. 1997), the negative reference letter is not an adverse employment action in a claim for discrimination, retaliation and harassment under Title VII of the Civil Rights Act of 1964.**

"When evidence indicates that an employer's proffered reason for taking an adverse action is false, a factfinder can decide that the employer was lying to mask its truth unlawful purpose." Wells v. Colorado Dept. of Transp., 325 F.3d 1205, 1217 -18 (10th cir. 2003) "the jury can conclude that an employer who fabricates a false explanation has something to hide; that "something" may well be discriminatory intent." Colbert v. Tapella, 649 F.3d 756, 759 (D.C.Cir. 2011) (quoting aka c Washington Hosp. Ctr., 156 F.3d 1284, 1293 (D.C. Cir 1998) (en banc).

EXHIBIT # A – James C. Dever III teaching Campbell University Law School.



CONCLUSION

For the above reason, a writ of certiorari should issue to review the judgment and opinion of the Fourth Circuit. Alternatively, the petition for a writ of certiorari should be granted and the judgment below summarily reversed.

Respectfully Submitted date July 14, 2020

Wen Chiann Yeh /petitioner
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