

No. 20-5924

ORIGINAL

Supreme Court, U.S.  
FILED

SEP 28 2020

OFFICE OF THE CLERK

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IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
PATRICIA WYNN

— PETITIONER

(Your Name)

vs.

MARK BUTLER

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF GEORGIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PATRICIA WYNN

\_\_\_\_\_  
(Your Name)

1195 WATTS ROAD

\_\_\_\_\_  
(Address)

FOREST PARK, GEORGIA 30297

\_\_\_\_\_  
(City, State, Zip Code)

706-872-6802

\_\_\_\_\_  
(Phone Number)

## **QUESTION PRESENTED**

**Whether the Court below "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."**

## **LIST OF PARITIES**

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

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner respectfully prays that a Writ of Certiorari issued to review the judgment below.

### **OPINION BELOW**

The opinion of the Georgia Court of Appeal. Which was published, was issued on January 8, 2020, and is attached as Appendix A. The Supreme Court of Georgia denied Writ of Certiorari on August 10, 2020 is attached as Appendix B. Opinion of Supreme Court of Georgia denied rehearing of case on September 8, 2020 is attached as Appendix C.

### **JURISDICTION**

The date on which the highest state court decided the case was August 10, 2020. A copy of that decision appears at Appendix\_B

A timely petition for rehearing was there after denied on the following date, September 8, 2020 and a copy of the order denying rehearing appear at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a).

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

*United States Constitution, Amendment 14* provides, "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*."

The Fourteenth Amendment's *Equal Protection Clause* requires states to practice equal protection. Equal protection forces a state to govern impartially. Thus, the equal protection clause is crucial to the protection of civil rights.

*Due process of law* in the [Fourteenth Amendment] refers to that law of the land in each state which derives its authority from the inherent and reserved powers of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their pleasure.



## STATEMENT OF CASE

The petitioner was hired by Fulton County on April 16, 1997, as a Clerk Typist and later upgraded to Administrative Specialist, where she had worked for 21 years. The manager, Ms. Sheila Dennis, and the petitioner agreed on vacation from August 6, 7, 8, of 2018, signed and dated by both individuals on May 21, 2018. (Appendix 30)

The manager began to harass the petitioner to the point that she filed an internal grievance against the manager, Ms. Dennis, on July 20, 2018, *Grievance Case#07-20-18-0034*.

Employee Grievance Policy #309-16-1 which states, “an employee has a right to use the grievance procedure *without fear* of reprisal or *retaliation*, and the filing of a grievance by an employee will not *reflect adversely* on the employees.” (Appendix 31)

“The objective of the grievance procedure is to settle all grievances between management and employees as quickly as possible.” Internal *grievance filed by employee hopes to provide with the opportunity to clear*

*the air with their employer. Shouldn't dismissed the individual for raising a genuine grievance about one of the statutory employments*

“One of the most important job rights is the right to be free from discrimination. These laws also prevent retaliation if you file a complaint against the employer for discriminating against you. It is illegal reasons for firing an employee for *asserting their legal rights*”.

The petitioner took her approved vacation from August 6,7,8 of 2018. “An individual shall not be on vacation *if the employer-employee relationship no longer exists. However, this relationship shall exist if* (b)The individual has a *firm return to work date.* (O.C.G.A 300-2-9-6)

On August 30, 2018, the petitioner received a letter from the Grievance Committee for a hearing on September 13, 2018. (Appendix 32)

On September 10, 2018, the petitioner received a letter rescheduling Grievance meeting for September 27, 2018. (Appendix 33)

In the meantime, the manager, Ms. Dennis, withheld the petitioner's entire paycheck on September 14, 2018, which left her family without an income, which created economic hardship, so the petitioner contacted Ms. Ann Willingham, Human Resource, about her paycheck.

On September 28, 2018, Human Resource, Ms. Willingham, responded to the *petitioner's concern for her paycheck by issuing a Separation Notice* and claiming the petitioner retired on August 8, 2018, the petitioner was on vacation on August 8, 2018. The termination was result of retaliation for filing a grievance against the manager, Ms. Dennis (Appendix 34)

That termination violated the law to penalize the petitioner for *exercising her right*. Title VII makes it an unlawful employment practice for a person covered by the Act to discriminate against an individual "be he or she has opposed any way did an illegal employment

practice.

The petitioner filed for unemployment on October 4, 2018 but denied by the Claim's Examiner. She filed an appeal. The hearing was conducted by Honorable Andromeda O'Neal, commencing November 19, 2018.

Under Georgia law, employers must complete and deliver a separation notice to all employees on the *last day of work*. Failure to provide this notice may *adversely impact an employer's opportunity to contest an employee's unemployment benefits claim*.

The "*strong public policy is favoring payment of unemployment benefits to persons unemployed through no fault of their own*. O.C.G.A. 34-8-2."

According to O.C.G.A. 34-8-256(b), "Any employing unit or any officer or agent of an employing unit or any other person who knowingly *makes a false statement or representation or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to*

*any individual entitled.”*

According to Unemployment Insurance Appeals Handbook reads, “  
“It is important that you present all evidence during the hearing,  
including but not limited to documents, videos, *audio recordings*,  
photographs, etc. that are relevant to your case.” (Appendix 36)

“The Board of Review will review the records of the Appeal  
Tribunal hearing to ensure *due process of law* and the appropriate  
decisions reached.” (Appendix 36)

Also, “Let the Administrative Hearing Officer know that you have  
documents or other evidence that you would like to have *introduced into*  
*evidence.*” (Appendix 36)

*Recordings* may be used and admitted into evidence at the  
hearing. To authenticate a recording, you must: “provide a witness, who  
can *testify that the recording reliably shows the fact or facts to be*

*proven* and that the recording itself indicates the *time and date*.

(Appendix 36)

*“The Administrative Hearing Officer will record the entire hearing.*

The recording is *used if an appeal is filed* to the Board of Review or for other internal purposes. Generally, it can use hearing recording *only for unemployment compensation* purposes, according to O.C.G.A. 34-8-122. (Appendix 36)

On July 31, 2019, the petitioner went to Georgia Department of Labor to get a copy of the Audio CD#24284-18 of hearing from the legal record department. When the petitioner inquired about an audio recording of voicemail message that the *witness, Ms. Kizzy Lewis testified that she heard under oath*. No evidence of audio recording voicemail existed in the *legal record department*.

According to Federal Rule of Evidence 901(b) (5), *voice identification*, through mechanical or electronic transmission or *recording* — based on *hearing the voice* at any time under circumstances that connect it with the *alleged speaker*.

The petitioner seeks judicial review, and after a hearing, the Superior Court denied her. On appeal, the petitioner argues that the Superior Court applied the wrong standard of review considering her denial of benefits and further contends that *the evidence does not support the Board's findings*.

1. The petitioner argues that the Superior Court failed to adhere to the proper standard of review *by making the Board's findings* not made.

“Under Georgia law, Superior Court reviews decision by the Board, “the findings of the [Board] as to the *facts*, if *supported by evidence* and in the *absence of fraud*, shall be conclusive, and it shall confine the jurisdiction of the court to *questions of law*.” (O.C.G.A 34-8-223 (b).

Thus, “the *board's factual* determinations must be affirmed if there is *any evidence to support them*.” (*T.N.S. mills v. Russell*, 213 Ga. App. 107, 107 (443 SE2d 658) (1994) See also *Williams v. Butler*, 322 Ga App. 220, 222 (1) (744 SE2d 396) (2013).

And “the superior court *is not authorized to weigh the evidence* and

substitute its *factual findings* for those of the *administrative trier of fact*.” *McGahee v. Yamaha Motor Mfg. Corp. of America*, 214 Ga. App. 473, 474 (448 SE2d 249) (1994)

Here, the Superior Court *exceeded its review scope* by making its *findings of fact* rather than evaluating whether *any evidence supported the Board’s decision*.

Therefore, the Superior Court *engaged in fact finding*, which it is not permitted to do.

2. The petitioner argues that the evidence does not support the Board's findings; this Court, too, applies any evidence test. *Robinson v. Butler*, 319 Ga. App. 633,634-635(737 SE2d 731) (2013).

Thus, “disqualification is an *exception* to the *statutory* scheme for unemployment benefits and the employer must show by a *preponderance of the evidence* that disqualification is appropriate.” (Barron v. Poythress, 219 Ga. App. 775, 776 (466 S.E.2d 665) (1996).

The claimant for unemployment *benefits entitled* compensation unless the *employer proves by a preponderance of the evidence* that the



claimant caused the termination. *Millen v. Caldwell*, 253 GA. 112, 115 (317 S.E. 2d 818)

According to O.C.G.A 34-8-194 (2)(b)(v) *Except* for activity requiring disqualification under this Code section, the employee was *exercising a protected right* to protest wages, hours, working conditions, or job safety under the federal National Labor Relations Act or other laws.

Therefore, she entitled under the law to unemployment compensation, and the Superior Court erred in affirming the Board's denial of benefits.

611-553-7333 (M-F) 9:00am-5:00pm (Sat-Sun) 10:00am-4:00pm

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611-553-7333

## REASONS FOR GRANTING PETITION

**Whether Court below "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."**

"Everyone shall be guaranteed judicial proceeding of their rights according to Article 2(1), Protection of Rights in Judicial Proceedings, under the Civil Procedure Code of Georgia, Book One, Chapter I Basic Provisions of Legal Proceedings.

The petitioner filed a Discretionary Application document *filed in the drop box on December 4, 2019*, and physically received in the office on *December 5, 2019, at 8:36 a.m.* In *big, bold words*, **FILED IN DROP BOX** is stamped at the bottom of the Discretionary Application cover page. (Appendix 25)

According to the Georgia Court of Appeal, *Rule 4 (b) changed effective December 6, 2019, because the Nathan Deal Judicial Center does not have a drop box. Rule (4) (b) Drop box Paper Filing* "When the office of the Clerk is not open, may *deposit* documents in the *Court of Appeals drop box for filing*. Documents placed in the drop box are removed each morning and *clock stamped* with the *present time* and

date but *shall be deemed filed* on the *prior business day* if the documents *comply with Court rules*. “Any document *without a certificate of service* shall not be accepted for filing.” Court of Appeal Rule 6(f)

“The office of the clerk to refuse to accept for filing papers not conforming to certain requirements imposed by local rules or practice will expose litigants to the hazards of time bars.” (*Federal Rule Civil Procedure 5 (b) (4)*)

“*Acceptance by the clerk*. A clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice”.

“This is an important rule, especially for those who are preceding in a court of record.” Can punish anyone who *conceals* or *removes a document* from the record.

Furthermore, the Court of Appeal returned the petitioner’s documents, dated *December 10, 2019*, didn’t have number 6 as a *deficiency* marked which reads, “*No Certificate of Service accompanied your document(s)*.”

Besides, *Court Staff cannot provide legal advice or interpretations or recommendations about what to do.*

“You *should* provide a copy of your filing to the:

1. *Attorney General*

2. The Certificate of Service must include the same or the mailing address of each opposing counsel and pro se party.” (Appendix 26)

He dismisses view of the District Judge, that the suit not filed until service of process had and to the uniform current of authority, that the filing of the petition under the *Tucker Act* is the filing of a suit for *purposes of limitation and jurisdiction*”. (*Milton v. United States* 105 F. 2d 253, 255 (5<sup>th</sup> Cir. 1939)

Dismissed the petitioner’s case because the Court deemed the document out of *limitation and jurisdiction*. However, the *original filed date concealed, altered, or removed*, filed on time in the Court of Appeal *filed drop box*. (Appendix 22)

The penalties for *document fraud* are unlawful for any person or entity knowingly-to forge, *counterfeit, alter, or falsely make* a document to satisfy a requirement. (See 8 U.S. Code § 1324 (c))

Definition: *falsely make*—"means to prepare or provide an application or document, with the knowledge or in reckless disregard that the application or document contains a false, fictitious, or fraudulent statement or material representation.

According to statute 18 USC 2071 states, "whoever willfully and unlawfully *conceals, removes, obliterates, or destroys* or attempts to do so, or, with intent to do so takes and *carries away any record* proceeding filed with any clerk of any judge shall be fined under this title."

"At that time, and her residence, the Deputy Clerk, marked the complaint, "Filed December 30, 1966, and accepted the filing fee by Check". Made no entry on the *original complaint or records in said Clerk's office* showing that filed said criticism on *any other date* than that written thereon on the night of December 30, 1966. (*Greeson v. Sherman* 265 F. Supp. 340 (D.C. Va. 1967))

On December 17, 2019, the Court of Appeal docketed the

*Application for Discretionary Appeal* and refiled the *Application for Discretionary Appeal*” on the *same date*; court of Appeal *created a new rule* that Governor Nathan Deal didn't change. (Appendix 27)

Conflict with the state and federal court, “When there is an *apparent conflict, the action first filed takes precedence*. A conflict exists when the actions are in courts of *equal priority* was *filed on the same day*.” (Court of Appeals Rule 14 (c) (2) (4))

“The Court, including the judge, the magistrate, Clerk's office personnel, and all court staff, *must always remain impartial*. This basic rule protects everyone coming to Court from *unfairness and injustice*”.

“This rule means that no one connected with the Court can take sides in any matter before the Court. *Court personnel* will give the same types of limited information to people on both sides of a case, but they cannot provide *legal advice to anyone*”.

Also, Court Staff cannot let anyone talk to the judge outside the courtroom. “There shall be no *communications* relating to pending cases to any judge or member of the judge’s staff.” Court of Appeal Rule 2(b)

" I previously informed the Clerk of Court of the Superior Court of Fulton County and all other parties in the action below that Commissioner Butler is a nominal party to this action, named solely to file the administrative record and that he did not intend to participate" (Appendix 28)

"A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside *the presence of the parties* or their lawyers, concerning a pending or impending matter." It must not allow *people with firmly held views* that may result in *decisions based on prejudice*. Rule 2.9 (a) Ex Parte Communication -American Bar Association)

The Supreme Court of Georgia docketed the Writ of Certiorari on January 16, 2020. "*Due within 20 days of the docketing of the petition*, is encouraged but is not mandatory. *Failure file response* shall deem acknowledgment *by the respondent* that the requirement of the *rules for the granting of the petition for certiorari* met." Supreme Court Rule 42 (Appendix 23)



According to Georgia Court of Appeal Rule 38 (b) (2)

2. "*Notice of filing a petition for a writ of certiorari shall be filed in this Court on the same day as the petition is filed in the Supreme Court of the United States.*"

The petitioner *never received a response* from the opposing party.

"Counsel-Submitting documents electronically is not a substitute for service on the opposing party."

If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition submitted under Rule 29.2 no more than 60 days after the Clerk's letter's date will be deemed timely. (United State Supreme Court Rules 29.2, 33, 34)

"Under the Tucker Act of 1887, the United States waived its sovereign immunity as to certain kinds of claims. The Tucker Act

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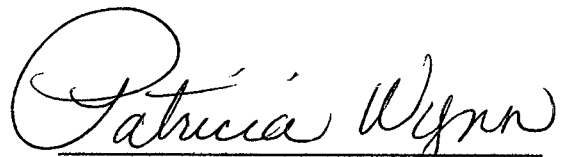
exposes the government to liability for certain claims. Specifically, the Act extended the original Court of Claims' jurisdiction to include claims for liquidated or unliquidated damages arising from the Constitution".

## CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari

This 28 of September 2020

Respectfully Submitted

  
Patricia Wynn