ORIGINAL

20-6187

No. 19-____

SUPREME COURT OF THE UNITED STATES

ROBIN E. JACKSON, *Plaintiff-Petitioner*

v.

COUNTY OF SACRAMENTO, ET.AL.,
Defendant-Respondents.

ON PETITION FOR WRIT OF CERTIOTARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED Whether a plaintiff who has no available remedy in a ["FMLA"] time limitation violation , through no lack of diligence on her part, she is barred by the Courts of pursuing a willful violation claim challenging the validity of plaintiff 's wrongful termination.

II. QUESTIONS PRESENTED Did Comcast Corporation, Plaintiff v. National Association of African American-owned Media, announce a new rule of constitutional civil procedure, define "but-for causation". as defines 42 U.S.C. § 1981 for ["FMLA"] specifically 29 U.S.C. § 2612(a)(1)(c), violation if it did, was it a watershed rule of procedure subject to full retroactive application.

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V. Petition for Writ of Certiorari

Petition for Writ of Certiorari of plaintiff Robin E. Jackson pro se litigant respectfully petitions this court for a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals of California.

VI. Opinions Below

The decision by the United States Court of Appeals for the Ninth Circuit affirmed the decision of the United States District Court for the Eastern District Court on July 16, 2020 Memorandum is attached at Appendix A ("App.") at 1-3. Ms. Jackson's direct appeal is reported as to the district Court decision to properly granted summary judgment on Jackson's Title VII race discrimination claim, 42 U.S.C. § 1981 race discrimination claim and dismissal of Jackson's claim under ["FMLA"] because Jackson failed to file her {" FMLA"] within the two years and three years limitation period. Memorandum attached at Appendix A ("App.") at 1-3.

VII. Jurisdiction

Ms. Jackson's petition for hearing of the United States Court of Appeals for the Ninth Circuit affirmed the decision of the United States District Court for the Eastern District Court on July 16, 2020 Memorandum is attached at Appendix A ("App.") at 1-3. Ms. Jackson invokes this Court's jurisdiction under 28 U.S.C. § 1291. having timely filed this petition for a writ of certiorari within ninety days of the United States Court of Appeal's judgment.

VIII. Statues and Constitutional Provisions Involved

FMLA Statue Involved

A 29 U.S.C. 2601. et seq

1. § 2611[" FMLA"] Definitions
2. § 2612 Leave requirement
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Statue Involved

42 U.S.C. § 1981

Constitutional Provisions 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 its jurisdiction the equal protection of the laws.

Section § 5 of the 14th Amendment to enacting laws that prevent or remedy violations of rights already established by the Supreme Court. Because the court is the authoritative interpreter of the constitution, not congress.

IX. STATEMENT OF THE CASE

1. The Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, et seq., ["FMLA"] provides that "an eligible employee shall be entitled to a total of 12 workweeks of leave [480 hours] during any 12-month period . . . to care for a parent [b]because of a serious health condition that makes the employee unable to perform the functions of the position of such employee." 29 U.S.C. § 2612(a)(1)(c). The parties do not dispute that Ms. Jackson was eligible for FMLA leave she was a County of Sacramento government employee who had worked for that employer "for at least 12 months" and "for at least 1,250 hours of service . . . during the previous 12-month period and the FMLA was approved. " See Compliance for 29. U.S.C. § 2611(4)(A)(ii)(I) provides that the term "employer" encompasses "any person ECF 20 at ¶¶ 12-24 and 38-65, ECF The County provides a somewhat comprehensive written guidance to all of its employees concerning the rights and obligations under the Family and Medical policy. In this case Ms. Jackson has made a claim under the ["FMLA"] Family and Medical Leave Act, a Federal statute that prohibits an employer from interfering with or discriminating against an employee's exercise of the right granted in the Act. where necessary to care for a parent with a serious health condition, need to move Ms. Jackson's mother from her assisted living facility because of the increase of cost for mother's care. Ms. Jackson claims that the County suspended and then terminated her for taking ["FMLA"] leave. Ms. Jackson made claims of interference, discrimination, and retaliation against her for taking ["FMLA"].

The ["FMLA"] Act makes it unlawful for an employer to "interfere with, restrain, plaintiff believes she established a prima facie case under section 1981(a)1 the existence of a racially segregated employment in Sacramento County The district Court' decision should be reversed because its legal conclusion not based on a fair assessment of plaintiff misconduct. (1) plaintiff treated differently as a Black female including among other, the following: supervisor, Claudia Boyd, comment that all black social workers should work in the fields and white social workers should work only in the office. in law. The legal principle in a disparate treatment case are governed by a § 1981 claim. Race discrimination was a factor in the County decision to terminate Plaintiff . Metoyer, 504 F3d at 930.

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Defendant violated 42.U.S.C. § section 1981(a)(1) I was treated differently and less supportive than a white social worker in relations to taking ["FMLA"] to care for plaintiff mother who suffered from Dementia since 2004.

2. The essence of Ms. Jackson's complaint of her termination because she took approved FMLA leave to care for her mother.
   On or about March 1, 2013, plaintiff mother's facility's staff notified me that plaintiff mother's care cost was increasing because she was no longer walking and it took two people to lift her in and out of bed in the mornings and evenings and she had to be lifted for her weekly baths. The facility plaintiff 's mother resided. In September 2020, Plaintiff just became aware of the fact, Winans, Plaintiff v. Emeritus Corporation, Defend*ant*. United States District Court, N.D. California. July 14, 2014.This case alleges that Defendant Emeritus Corporation ("Emeritus") violated California's Consumer Legal Remedies Act, Unfair Competition Law, and Elder Abuse Act by, among other things, falsely representing that Emeritus' assisted living facilities in California had sufficient staffing to provide the level of care promised. Plaintiff requested ["FMLA"] leave because the above facility staff stated that my mother's care cost would increase but it appears this was not true due the fact, of the lawsuit.

   When plaintiff 's mother was first diagnosed with dementia, and during her being placed at the Emeritus facility plaintiff's mother had approximately $300,000 that was left to her by plaintiff 's stepfather who passed in 2004. Plaintiff 's mother care cost at Emeritus was approximately $60,000 per year times 5 years comes to 300,000.00 dollars, not counting all her personal items, depends, hair and nails, etc. that I had to pay for. Therefore, plaintiff requested and was approved from my mother's physician to take off from work for ["FMLA"] leave from March 18, 2013 through June 8, 2013. Plaintiff stated to the County, that plaintiff could no longer afford to keep her mother in the facility because of the increase cost. Plaintiff needed to look for other housing options during work hours from 8-5pm.
   On or about March 7, 2013, plaintiff asked for 3 months ["FMLA"] to care for my mother.

On March 18 ,2013, plaintiff took 3 months off for ["FMLA"] to care for my mother because her symptoms were getting worse and care cost were going up. I never was able to complete this as my employer put me on leave. Plaintiff was preparing my home for my mother to come home, to having the wall/ceiling repaired. The ceiling was a hazard as it leaked and was coming apart in the living room. Plaintiff had the ceiling repaired in the entire home, as the company hired to repair the ceiling stated because of the age of the home, there could be possible asbestos, plus plaintiff did not want the living room ceiling collapsing on me or my mother's head. I lost my job trying to care for my mother on October 9, 2013 and have not been able to find work since.

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, et seq., ["FMLA"] provides that "an eligible employee shall be entitled to a total of 12 workweeks of leave [480 hours] during any 12-month period . . . to care for a parent [b]because of a serious health condition that makes the employee unable to perform the functions of the position of such employee." 29 U.S.C. § 2612(a)(1)(c). The parties do not dispute that Ms. Jackson was eligible for [" FMLA"] leave: she was a County of Sacramento government employee who had worked for that employer "for at least 12 months" and "for at least 1,250 hours of service . . . during the previous 12-month period." See Compliance for 29 U.S.C. § 2611(4)(A)(ii)(I) provides that the term "employer" encompasses "any person ECF 20 at ¶¶ 12-24 and 38-65 29 U.S.C. § 2615(a)(2) makes it "unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by" the [" FMLA''] leave provisions.

3. Ms. Jackson has made a claim under the ["FMLA"] Family and Medical Leave Act, a Federal statute that prohibits an employer from interfering with or discriminating against an employee's exercise of the right granted in the Act. Where necessary to care for a parent with a serious health condition, need to move Ms. Jackson's mother from her assisted living facility because of the increase of cost for mother's care. Ms. Jackson claims that the County suspended, and then terminated her for taking ["FMLA"] leave. Ms. Jackson made claims of interference, discrimination, and retaliation for her taking ["FMLA"].
4. Plaintiff 's ["FMLA"] claim is to show that the three-year limitations period for a willful violation of the statute applied. Plaintiff is addressing what appears to be that the statute of

limitations for ["FMLA"] claims expired prior to the plaintiff filling her lawsuit in the lower court. The plaintiff pursued her judicial remedies by filing a EEOC complaint attempting to exercise her ["FMLA"] rights. Plaintiff filed an EEOC complaint on or about April 28, 2013 regarding my [" FMLA"] leave, during my administrative leave, further, the Federal government shut down the day of my termination on October 9, 2013.

5. Regarding the race discrimination allegation, the 42 U.S.C. § 1981 Jackson's race discrimination claims to raise a genuine dispute of material fact as to whether the alleged discrimination was the result of an official policy, a long-standing practice or custom, or a decision of a final policymaker.

6. Jackson's ["FMLA"] retaliation claim, Jackson believes sufficiently rebutted the County claimed legitimate, nonretaliatory reason for Jackson's termination. Plaintiff not warned about over usage of county-issued cellular data that did not cause any harm to the County because the social workers shared a network and if that had been a harm to the County by the plaintiff ; the county would have charged plaintiff for the over usages.

7. Section § 5 of the Fourteenth Amendment Due process requirement of Skelly Hearing was not met. The California Supreme Court held that due process entitles to a permanent civil services employee to certain minimal safeguards including notice of proposed action, the reasons therefore, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing before the official charges with the respondent of making the decision. Skelly v. State Personnel Bd., 15 Cal 3d 194, 206-207 (1975). Shepherd v. State Personnel Bd., Cal 2d. 41, 46 307 P. 2d 4 (1975). Here the Defendant violated sections of the 42 U.S. C. § 200e. Seq. (as stated herein) persistence of noncompliance by Defendant and plaintiff who are black the extent to which such noncompliance was intentional. Abels v. JBC, 227 F. R. D. 541, 548 (N. D. Cal. 2005) Barber v. State Personnel Bd. 566 P. 306, 18 Cal 3d, 395, 134 Cal Rprt. Cal. Supreme Court 1976.

8. Thus, either variety of ["FMLA"] violation is time barred (although the willful violation by only a few days)." (Doc. 20 pg 13 ¶ 21-23). Regarding the statues of limitations Plaintiff implied a claim within her amended complaint filed on May 18, 2017 (Doc, 20 pg., 16, ¶49) for a willful breach of the Family Medical Leave Act ["FMLA"] 29 U.S.C.A. § 2617 (c)(2)

X. Direct Appeal

9. On direct appeal, Jackson renewed her argument the statute of limitations for ["FMLA"] claims expired prior to the plaintiff filed her lawsuit in the lower court. Thus, either variety of ["FMLA"] violation is time barred (although the willful violation by only a few days)." (Doc. 20 pg 13 ¶ 21-23). Ledbetter had the right to sue years after the alleged discrimination took place. Ledbetter v. Goodyear Tire & Rubber Co., Inc.550 US 618, 127 S. Ct. 2162, 167 L. Ed. 2d 982 - Supreme Court, 2007

10. Plaintiff filed EEOC complaint on or about April 28, 2013 attempting to exercise her ["FMLA"] rights. during when plaintiff' was placed on administrative leave for misrepresenting ["FMLA"]. According to EEOC pre- complaint processing regulation 29.C.F.R. § 1614.105(a)(1) were met when plaintiff contacted EEOC within 45 days of the matter alleged. Despite Plaintiff's due diligence effort to file complaint the Federal government shut down the day of plaintiff's termination on October 9, 2013 an extraordinary circumstance outside of plaintiff control. Therefore, Plaintiff request consideration under 29,C.F.R. § 1614.105(a)(2). *Baldwin County Welcome Center v. Brown,* 466 U.S. 147, 151, 104 S. Ct. 1723, 1725, 80 L.Ed.2d 196 (1984)

According to EEOC case log plaintiff's case recorded received by EEOC on May 13, 2013. Plaintiff 's EEOC Charge Number 846-2013-02900. According to EEOC regulation 29.C.F.R. 29.C.F.R. § 1614.108(f). EEOC required to complete investigations within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint. Regardless of amendment of or consolidation of complaints, the investigation shall be complete in not more than 360 days, unless there is a written extension of not more than 90 days.

Plaintiff's case transferred to EEOC San Francisco District Office, and assigned to on March 3, 2014, to EEOC supervisor Scott Doughtie's unit and assigned on March 3, 2014, to investigator, Reuben Mesa (415) 522-3040. Plaintiff called on the status of the case according to EEOC case log documented on February 14, 2014, February 19, 2014, August 15, 2014, and February 5, 2016. Plaintiff did not get permission to file civil action

in United States Court in accordance with 29.C.F.R. § 1614.407(b) nearly 3 years later March 18, 2016. Plaintiff's penalized for EEOC 's failure to complete their investigation in a timely manner.

Plaintiff argues that the violations were willful, triggering the three-year statute of limitations Defendant are responsible under ["FMLA"] 29 U.S.C. § 2617 (c)-(2). a Willful violation due to the fact, Defendant knew that they were violating plaintiff 's ["FMLA"] rights ; certain Defendant made knowingly false statements regarding her eligibility (Doc 20. ¶ 48-54); Smith v. Westchester County No. 09-CV-5866 (KMK) (S.D.N.Y. Feb. 14, 2011) violation of the [" FMLA"], a general averment as to willfulness should be sufficient to trigger the three-year limitations period.

Neither the County of Sacramento or Kaiser Permanente Medical Group, Inc. South Sacramento ["FMLA"] policy stated at that time, .a person taking the leave to care for a love one, that the loved one must reside in their home. *In* Gibson v. New York State Office of Mental Health, *No. 6:17-CV-0608, 2019 U.S.*

The County violations were "knowing and willful" because Defendant were "fully aware of ["FMLA"] law and policy, knew they were violating the [" FMLA,"] and nevertheless continued their illegal behavior," Then, when the County did not place Ms. Jackson to either a comparable position, or return Ms. Jackson to her original position as a human Service social with the same pay, the same benefits, worked the same number of hours, and the tasks after ["FMLA"] An employee returning from ["FMLA"] leave is entitled "to be restored by the employer to the position of employment held by the employee when the leave commenced" or to an equivalent position. 29 U.S.C. § 2614(a)(1). adversely affected the terms or conditions of her employment. In *Fialho v. Girl Scouts of Milwaukee Area, Inc.*, No. 06-C-1218, 2007 U.S. Dist. LEXIS 31780 (E.D. Wisc. April 30, 2007) The right to reinstatement guaranteed by 29 U.S.C. § 2614(a)(1) is the linchpin of the entitlement theory because `the ["FMLA"] does not provide leave for leave's sake, but instead provides leave with an expectation that an employee will return to work after the leave ends.'" Edgar, 443 F.3d at 507.

Plaintiff believes she has proven by a preponderance of the evidence that the defendant, without reasonable cause, failed to reinstate her after she took family medical leave.

Thus, evidence that an employer failed to reinstate an employee who was out on ["FMLA"] leave to her original (or an equivalent) position establishes a prima facie denial of the employee's FMLA rights. See 29 C.F.R. § 825.220(b) (2008)

B. claim against a government actor for a violation of Section 1981 can in appropriate circumstances be brought under 42 U.S.C. § 1983. "To state a claim under§ 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins,* 487 U.S. 42, 48 (1988).

Plaintiff asserted A continuing violation of section 1983 can be established by pleading and proving related serial violations or a pattern of discrimination against an individual that enters the limitations period. *Id.* Here, plaintiff alleges acts of discrimination and asserted a continues violation doctrine filed (EFC 30 pg. 5 ¶ 5 2017), case # No.: 2:16-cv-0920 MCE DB which were motivated by endemic racism.

The discussion of this claim. As in any employment discrimination case, we ask whether the evidence would permit a reasonable factfinder to conclude that Jackson was subjected to an adverse employment action based on a statutorily prohibited factor—here, race and Family Medical Leave Act ["FMLA"]. Ortiz v. Werner Enters., Inc., 834 F.3d 760, 765 (7th Cir. 2016). Jackson maintains that the County discriminated against her by her termination from employment, misrepresentation of approved ["FMLA"] when her white, female coworker Georgina Mckemie taking FMLA without completion of appropriate ["FMLA"] 29. U.S.C. § 2613 certification requirements , Georgiana returned to work after her [" FMLA"] leave and worked for Defendant for two years after the ["FMLA"] event.

Plaintiff' termination for approved {"FMLA"] leave is a perfect example of the theory of Section 42. U.S. C.§ 1981 does not specifically refer to causation, it guarantees the same rights as white citizens, which "directs our attention to the counterfactual—"what would have happened if the plaintiff had been white?" and "fits naturally with the ordinary rule that a plaintiff must prove "but-for causation." The original premise of the civil right act of 1866 define citizenship and affirm that all citizens are equally protected by the law. The main

purpose of this civil right act of 1866 to protect black citizens from overt racism such as "cross- burning, epithet-spewing biological racism blacks experienced after the civil war.

(Wilkerson, I (2020) p. 186) Society has transformed from overt racism to a slow boil of unspoken antagonism" Id of blacks people due to the reality black stereotypes are deeply embedded in the United States culture. Id The entitlement of the white privilege to step in and assert their self whenever it chooses, to monitor or dismiss those deemed beneath them as they see fit". Id

Due to Anthony v. Sacramento County Sheriff's Dept., 845 F. Supp. 1396 (E.D. Cal. 1994).The County overt racism not properly resolved. Therefore, plaintiff experienced overt racism and unfair treated thus as the white social worker Georgina Mckemie violated 29. U.S.C § 2613 who did not have approved ["FMLA"] leave and continue to work for the Defendant for two years after her ["FMLA"] event. Comcast Corp. v. Corp. v. National Assn. American Owned Media Comcast Corp. 743 Fed. Plaintiff believes she had established a prima facie case under section 1981 the existence of a racially segregated employment in Sacramento County Demonstrating a Department wide discriminatory system for example, Hunter v. County of Sacramento 662 F. 3d 443 (9th Cir. 2018) plaintiffs in this § 1983 action, sought to prove at the Sacramento County Main Jail pursuant to the County's allegedly unconstitutional custom or practice of using excessive force at the Main Jail. although no formal policy or practice is alleged that the continuing violation theory is not applicable. William v. Owens Illinois, Inc. 6655 F. 2d 918 924 (9th Cir. 1982) The assessment that continuing theory does not apply must be challenged because Blacks have been disproportionately targeted by County of Sacramento for the past twenty five years Anthony v. County of Sacramento, Sheriff's Dept., 845 F. Supp. 1396 (E.D. Cal. 1994).

Plaintiff treated differently as a Black female including among other, the following: a supervisor commend that all black social workers should work in the fields and white social workers should work only in the office. in law. The legal principle in a disparate treatment case are govern by a § 1981 claim. Race discrimination was a factor in the County decision to

terminate Plaintiff. Metoyer, 504 F3d at 930. The continuing violation doctrine potency is in full effect, because, if the plaintiff 's allegations were true, regardless of how long ago, the statute of limitation had not yet begun to run on the FMLA claim. Bodner v. Paribas 114 F. Supp 2d 117, 134-35 (E.D.N.Y. 2000).

1. Plaintiff believes She has stated sufficient facts, to sustain continuing violation claim over the course of her employment with the Defendant. The material adverse actions by the Defendant towards the plaintiff. Plaintiff alleges differences in the way she, a black female, was treated differently in several regards including, among others, the following:
2. Plaintiff s prior Supervisor Claudia Boyd commented, "All Black social workers should work in the fields and white social workers should work only in the office." ECF No. 20 at ¶¶ 13, 19, 20; 34
3. Claudia was demoted and moved to her original position .

Although the supervisor was demoted, the employer knew that the conduct continued, the court said. Because the employer failed to take additional action to end the ongoing harassment, the court held that the plaintiff could establish a continuing violation. Dawson v. State of Tennessee, Dep.'t of Corr., M.D. Tenn., No. 3:17-cv-00800 (July 12, 2018) Richards v. CH2M Hill, Inc. (2001) 26 Cal. 4th 79.8.

4. Plaintiff accidentally received an email from Marina Chambers, sent to her Supervisor Stephen Wallach, which stated, " Hey I know Julie didn't want to call you and ruin your vacation, but you need to know Robin loss her fucking mind on Julie" id. at ¶ 34
5. Plaintiff was treated differently, and less supportive, than a white social worker Paige Jones in relation to the conditions for an ["FMLA"] leave to care for her mother who suffered from dementia, id. at ¶ 17;5 plaintiff again treated differently than Jones regarding excessive county issued iPhone data in that Ms. Jones warned about her over usage in contrast to plaintiff never warned about over usages during ["FMLA"] and terminated for the over usages.

6. Plaintiff was reassigned during a budget cut although she was not on the reassignment list while a white social worker Jennifer Baginski who was on the list was not reassigned when she indicated she did not wish to be reassigned, id. at ¶ 29.
7. A white acting supervisor Julie Kennedy refused to proofread her court reports before they were submitted to the court, id.at 32, shortly after Plaintiff received a Counseling Memorandum for being late with said reports, id. at ¶¶ 31, 32;5.
8. Plaintiff 's, who holds a master's degree, was challenged concerning the Degree, and she learned that other employees in a similar situation were not challenged, id. at ¶ 35.
9. Plaintiff discipline and fired for taking FMLA leave when white social worker ,Georgina Mckemie, in her unit did not complete the eligibility requirement for ["FMLA"] of completion of a physician certification before taking the leave. Georgina Mckemie no longer works for defendant, but her termination did not occur until July 2015 two years after the ["FMLA"] event she violated. id. at ¶ 35
10. Plaintiff has been involved in probate proceedings with the Defendant' department for three years and the judge and court clerk stated to plaintiff, "the only rules in the probate court is what the judge decides " despite the decision being unjust to take the inherited home plaintiff resides in, there was the trust in place as there was power of attorney for my mother, it appears as a black person it irrelevant.

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Plaintiff filing a EEOC complaint and taking ["FMLA".], these acts are related by common motive, theme, target, and function in the workplace. Plaintiff allegations, it believes, establish a continuous violation sufficient to toll the statute on FMLA claim.

Regarding the race discrimination, allegation, the 42 U.S.C. § 1981 race discrimination claims of Jackson to raise a genuine dispute of material fact as to whether the alleged discrimination was the result of an official policy, a long-standing practice, custom, and a decision of a final policymaker utilizing the following:

1. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), is a US employment law case by the United States Supreme Court regarding the burdens and nature of proof in proving a 1981(a)-race discrimination case:

The elements of a Mc Donnell claim for race discrimination as a factor in the plaintiff termination for ["FMLA"] leave and section §5 of the 14th Amendment constitutional rights of enforcement of protective rights. plaintiff analysis in its entirety.

The plaintiff alleges that the Defendant, County of Sacramento, violated 42. U.S.C. 1981(a) race discrimination as a factor in the plaintiff's termination for [" FMLA"] violated section §5 of the 14th Amendment to constitutional right to enforcement of protective rights. To prevail on this claim, each plaintiff must prove by a preponderance of the evidence each of the following elements:

1. First, that one or more of Defendant's employees violated plaintiff entitled rights to take FMLA and section §5 of the 14th Amendment violated, plaintiff believes that 42. U.S. C. 1981(a) race discrimination was a factor in the plaintiff termination for FMLA violated Section §5 of the 14th Amendment constitutional right to enforcement of protective rights.
2. Second, that in so doing, Defendant's employee or employees acted pursuant to a longstanding practice or custom of Defendant of racism toward blacks supported by fact, in the case of Anthony v. Sacramento County Sheriff's Dept., 845 F. Supp. 1396 (E.D. Cal. 1994). where plaintiff filed complaint in part because of harsh derogatory epithet towards her a black person. On or about august 2014, UPE 1 union

Representative Mechele Dews filed a formal grievance regarding African American worker when standing up for their rights and the rights of their peers were placed in hostile work environment. It must be noted that plaintiff was qualified for the position she held, indicated by her being named social worker of the month for March 2011 during her employment with the defendant.

3. Third, that plaintiff was injured for being black for taking approved ["FMLA"] and not getting protection for the entitled rights under ["FMLA"] 42. U.S.C. 2601 seq ; and plaintiff terminated by the defendant for ["FMLA"] termination unlawfully because there is not any County's company policy for plaintiff alleged violation for plaintiff not having parent residing in plaintiff 's home when taking ["FMLA"]. Plaintiff had full power of attorney for my mother who was diagnosed with Dementia in 2004.
4. Fourth, that Defendant's race discrimination against blacks is a longstanding pattern and practice was so closely related to Plaintiff injury that it was the moving force causing plaintiff injury of being black, terminated for unlawful ["FMLA"] and unwarned of over usage of county issued iPhone data. nondiscriminatory reason was in fact pretextual and that unlawful discrimination was the real reason for the adverse action.
5. The plaintiff did not violated the County's [" FMLA"] policy and not warned about over usage of county-issued cellular data that did not cause any harm to the County because the social worker shared a network and if that had been a harm to the County by the plaintiff , plaintiff would have been charged for the over usages.
6. Regarding the plaintiff 's relation claim, the [" FMLA"] prohibits employers from discriminating against an employee for exercising her ["FMLA"] rights. See 29 U.S.C. § 2615(a)(2). As relevant here, "employers cannot use the taking of ["FMLA"] leave as a negative factor in employment actions." 29 C.F.R. § 825.220(c). the Courts have not analyzed FMLA retaliation claims, like discrimination claims brought pursuant to the 42. 1981(a) § race discrimination, under the McDonnell Douglas burden-shifting framework. See cc To establish a prima facie case of FMLA retaliation, a plaintiff must demonstrate that "(1) she engaged in a protected activity; (2) her employer took an adverse employment action against her; and (3) there was a

causal link between the two events." Adams v. Anne Arundel Cty. Pub. Schs., 789 F.3d 422, 429 (4th Cir. 2015). If the plaintiff established a prima facie case, the burden shifts to the defendant to provide a legitimate reason for Jackson's termination.

7. Under the *McDonnell Douglas* framework for proving retaliation in violation of Family Medical Leave Act ["FMLA"] employee must make a three-part showing that: (1) she exercised rights afforded to her under the ["FMLA"]; (2) she suffered an adverse employment action; and (3) there was a causal connection between her exercise of rights and the adverse employment action. Family and Medical Leave Act of 1993, § 105(a)(1, 2), 29 U.S.C.A. § 2615(a)(1, 2). Jelsma v. City of Sioux Falls, 744 F. Supp. 2d 997, 93 Empl. Prac. Dec. (CCH) P 43000 (D.S.D. 2010). Also, retaliation. Interference is defined to include "discriminating or retaliating against an employee . . . for having exercised or attempted to exercise FMLA rights." 29 C.F.R. § 825.220(c)

The United States Supreme Court affirmed with Dept of Human Res. v. Hibbs 538 U.S. 721 held that employees could sue their state employers in federal court for damages for violation of § 2612(a)(1)(C), because: (1) Congress' intent to authorize such suits under the ["FMLA"}was clear in the FMLA's language. (2) In enacting the FMLA, Congress had validly exercised its enforcement power, under section §5 of the Fourteenth Amendment's , to abrogate the states': Family and Medical Leave Act ["FMLA"] provision (29 USCS § 2612(a)(1)(C))- -which entitled some private and public employees to unpaid leave of up to 12 workweeks per 12-month period to care for a family member who had a serious health condition--because: (1) Congress' intent to authorize such suits under the ["FMLA"] (29 USCS §§ 2601 et seq.) was clear, as the ["FMLA"] (a) in 29 USCS § 2617(a)(2)

XI. REASONS FOR GRANTING THE WRIT

A. The Family and Medical Leave Act of 1993 (FMLA or Act) entitles eligible employees to take up to 12 work weeks of unpaid leave per year. An employee may take leave under the ["FMLA"] for: (A) "the birth of a son or daughter . . . in order to care for such son or daughter,"

(B) the adoption or foster-care placement of a child with the employee, (C) the care of a "spouse . . . son, daughter, or parent" with "a serious health condition," and (D) the employee's own serious health condition when the condition interferes with the employee's ability to perform at work. 29 U. S. C. §2612(a)(1). The Act creates a private right of action to seek both equitable relief and money damages "against any employer (including a public agency) in any Federal or State court of competent jurisdiction." §2617(a)(2). As noted, subparagraph (D) is at issue here. This Court considered subparagraph (C) in Nevada Dept. of Human Resources v. Hibbs, 538 U. S. 721 (2003). Subparagraph (C), like (A) and (B), grants leave for reasons related to family care, and those three provisions are referred to here as the family-care provisions. Hibbs held that Congress could subject the States to suit for violations of subparagraph (C), §2612(a)(1)(C). That holding rested on evidence that States had family-leave policies that differentiated on the basis of and sex instead of proposal basis on also race , that States administered even neutral family-leave policies in ways To avoid erroneous deprivations of the right to [" FMLA"] to care for a parent, this Court should clarify the "initiation" standard under ["FMLA"] of time limitation to file a complaint.

XII. CONCULISON

For the foregoing reasons, Ms. Jackson respectfully requests that this Court issue a writ of certiorari to review the judgment of the California Ninth Circuit Court of Appeals.

"I declare and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on

Date: September 30, 2020

Robin E. Jackson

Attorney for Appellant Robin E. Jackson Pro Se Litigant