20-7116

No._____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ISABEL DEL PINO ALLEN,
PETITIONER

VS.

THE BOARD OF TRUSTEES OF MIAMI DADE COLLEGE

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORDIA THIRD DISTRICT COURT OF APPEAL

PETITION FOR A WRIT OF CERTIORARI

Isabel del Pino Allen, *pro se*
pro se , in forma pauperis
4371 SW 15 St.,
Miami, Fl. 33134
(305) 491-9225

Luke Savage,
Counsel of Record for
Board of Trustees of Miami Dade College
Allen, Norton and Blue
121 Majorca Ave. # 300
Coral Gables, Fl. 33134
(305) 445-7801

QUESTION(S) PRESENTED

Whether Title VII and other Civil Rights and EEO-related federal decrees can be invoked by a publicly-funded college in an effort to "jump-start" a process to ultimately terminate a tenured professor's employment for matters unrelated to any previously alleged EEO violations, and whether the EEOC should compel employers to comply with the employer's written EEO rules and criteria when an employer accepts and effectuates internal EEO-related charges against an employee.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

THERE ARE NO RELATED CASES, SINCE THE ISSUE OF WHETHER IT IS PERMISSIBLE FOR TERTIERY EDUCATIONAL INSTITUTIONS (OR ANY EMPLOYER, FOR THAT MATTER) TO INVOKE VIOLATION OF EEO RULES TO JUMP START" THE FIRING OF A TENURED PROFSSOR (OR ANY EMPLOYEE, FOR THAT MATTER) FOR MATTERS UNRELATED TO THE ALLEGED EEO VIOLATION, HAS NOT BEEN ADJUDICATED, HENCE THE IMPORTANCE AND NECESSITY OF THIS HONORABLE COURT'S OPINON

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A(ii) to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Florida's Eleventh Judicial Circuit court appears at Appendix A (iv) to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was November 12, 2020. A copy of that decision appears at Appendix A(i).

[X] A timely petition for rehearing was thereafter denied on the following date: November 6, 2020, and a copy of the order denying rehearing appears at Appendix A(ii).

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

Jurisdiction is sought per 28 U.S. Code § 1257(a). The unelaborated per curiam affirmance by Florida's Third District Court of Appeal, the State's highest court allowed by Florida statutes to render an opinion - since the Florida Supreme Court declined adjudication on November 12, 2020 on the basis of the appellate court's ruling was unelaborated - implies that it is valid for an employer to invoke and apply EEO-related rules for reasons other than what Title VII and the Civil Rights Act dictate. The ruling invalidates EEO related statutes and for this reason, the appellate court's ruling is repugnant to the laws of the U.S.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TITLE VI, VII AND VIII, 1964 CIVIL RIGHTS ACT; TITLE IX EDUCATION AMENDMENTS OF 1972 AS AMENDED; CIVIL RIGHTS ACT OF 1991; TITLE IV OF THE CIVIL RIGHTS ACT OF 1964 ("TITLE IV"), 42 U.S.C. § 2000C-6

STATEMENT OF THE CASE

Petitioner, a tenured associate professor at Miami Dade College, a Florida public community college, disclosed to *The Miami Herald* and *The Chronicle of Higher Education* on August 14, and August 19, 2014 respectively, the College's acceptance of plagiarized information by a fellow professor, in a textbook co-written by Petitioner, the alleged plagiarist and three other professors. On September 4, and September 11, 2014 the alleged plagiarist and another co-author charged Petitioner with sexual harassment, harassment based on religion, harassment based on sexual orientation and EEO-related retaliation. The accusers stated in their respective EEO-charge forms (filed within the College's EEO office) that they were directed by an associate provost to file the EEO charges, after Plaintiff was cited in the media in reference to the plagiarism allegation. Appendices B(ii) and B(iii) are copies of the EEO charges against Petitioner.

When informed of the charges, and after perusing the College's EEO-related rules, Petitioner noted to the College's EEO Coordinator and the faculty union president that the EEO charges did not comply with the criteria in the College's EEO Rule I-21 and Procedure 1665, which cite as its statutory reference Title VI, VII and VIII, 1964 Civil

Rights Act; Title IX Education Amendment of 1972; Civil Rights Act of 1991 Title IV of the Civil Rights Act, and other federal laws. Neither responded to justify the breach.

Since ***all*** of the allegations were either untrue (e.g. an allegation of harassment based on religion claimed that a quote Petitioner had attributed to former Israeli Prime Minister Golda Meir could not have possible have been said by Meir, Appendix B(ii)), or did not pertain to EEO matters (e.g. an allegation of EEO-related retaliation by the alleged plagiarist, who did not belong to a protected group or had previously filed an EEO-related charge, pertained to Petitioner having contacted a book representative about a book contract, Appendix B(iii)) Petitioner felt certain that the College-investigation would exonerate her of ***all*** charges. On December 10, 2015, during a College-taped interview, Petitioner presented verifiable proof to the College's EEO coordinator the charges were either false or misplaced.

The faculty union's failure to object to the College's misuse of its EEO-related rules when charging a union member, prompted Petitioner to peruse public records which revealed that the Union president had been receiving a taxpayers-funded sinecure which allowed him to work as a private sector attorney and collect a professor's salary without teaching or managing the Union. This verifiable fact told Petitioner that the Union's collaboration with the College to castigate Petitioner for having denounced the College's acquiescence to plagiarism in the media involved a *quid pro quo*.

On April 23, 2015, days after Petitioner wrote a second whistle-blowing letter to the College's president categorizing the sinecure to the Union chief as a "gross waste of public funds," Petitioner received an "Intent to Terminate Employment" letter warning

Petitioner of the intended firing based on the 2014 investigation. (Appendix B(i)) The letter did not mention the EEO charges; it exclusively cited Petitioner's plagiarism complaint and her having gone to the media. On May 15, 2015 Petitioner was fired.

Petitioner sued the College alleging, *inter alia*, violation of Florida's Whistle-blower's Act. After succumbing to indigence due to having lost her sole source of income and exhausted all her savings, Petitioner was forced to continue her legal action *pro se.*

On February 25, 2020, Florida's Eleventh Judicial Circuit Court granted the College's motion for summary judgment on the bases that Petitioner's two letters "concerning the same subject [the College-granted sinecure] do not contain information protected by [Florida's Whistle-blower's Act]" and that the "decision to terminate [Petitioner's] employment [was] for misconduct stemming from an internal investigation that commenced in September 2014." (Addendum A(iv)) Petitioner appealed.

In her Initial and Reply Briefs before Florida's Third District Court of Appeal Petitioner (as she had done in filing with the lower court) reiterated that the EEO charges which had spearheaded the campaign to fire Petitioner, had never been never mentioned by the College or by its attorneys and thus were a misuse of EEOC rules to strip Petitioner of her tenure. The Third District Court of Appeal issued an unelaborated per curiam affirmance on October 14, 2020 (Appendix A(iii)) and denied Petitioner's motion for rehearing and a written opinion on November 6, 2020. (Appendix A(ii)) The Florida Supreme Court denied Petitioner's appeal on November 12, 2020 (Appendix A(i))

Petitioner notified the adulteration of EEO rules by the College to the U.S. EEOC. On May 11, 2016, Petitioner sent a certified letter to EEOC Chairperson Jenny Yang, and

a second on July 14, 2015 with copies to other Commission member and the Commission's General Counsel, (Appendix C(i) where Petitioner referenced EEOC Miami employee Nitza Wright's verbal assertion to Petitioner that while it was unfortunate that EEO laws were being abused by the College in retaliation for Petitioner's having gone to the media, the EEOC could not intervene since the charges were filed internally and not with the EEOC itself. Petitioner addressed the EEOC a third time on December 1, 2018 with a letter to Chairperson Victoria Lipnic outlining how the EEO rule had been abused. (Appendix C(ii)) Therefore, the EEOC's stance was to ignore the misuse of EEO rules. se.

The state of Florida Department of Education took a similar stance. On September 27, 2018 Petitioner sent a certified letter to an Office of Equal Educational Opportunity representative after a telephone conversation with the representative. (Appendix C(iii)) On October 18, 2018, the Florida's Director of Equity and Civil Rights Compliance responded to Petitioner's letter with a seemingly "form letter" directing Petitioner to contact the EEOC if Petitioner felt she had been discriminated against. Petitioner continued contacting entities responsible for the fair and proper application of Title VII and other EEO rules to no avail.

REASONS FOR GRANTING WRIT

Petitioner, *pro se* and *in forma pauperis,* respectfully proffers that the issues that the instant case presents, **which have never been previously addressed by any court** to the best of Petitioner's knowledge and based on Petitioner's thorough research, are of **overwhelming importance beyond what happened to Petitioner.**

This petition for writ of certiorari to the US. Supreme Court aims to demonstrate that the Florida appellate court-implied (the Court denied a written opinion) verdict that it is proper for a public college to "jump-start" a tenured professor's dismissal by adulterating and compromising its EEO process and firing the professor for objecting to plagiarism, can have dire repercussions to academia and make vulnerable thousands of college professors around the country, as well as employees who are not in an "at-will" employment situation where a pretext is needed to terminate employment.

While it is conceivable that the U.S. Equal Employment Opportunity Commission disregarded Petitioner's repeated pleas that the Agency address Miami Dade College's adulteration of its EEO-related rules (perhaps reasoning that it doesn't matter if it happens to just one person), the odious misuse of sacrosanct EEO rules for purposes other that than those of their intended function not only makes a mockery of Civil Rights legislation, but also makes any at-will employee susceptible to abuse.

In its January 1998 issue of the "The Digest of Equal Employment Opportunity Law," (Volume XI, No. 3) the EEOC asserted that it has "the authority to protect its administrative process from abuse by either party," as well as the "inherent power to prevent such abuse of its orders, processes and procedures" *Hooks v. United States Postal Service*. EEOC Appeal No. 01953852 (November 25, 1995).

The EEOC's unconcern about the adulteration of EEO rules by a public entity, as demonstrated by Petitioner in this request for writ of certiorari, substantiates that only this Honorable Court can adjudicate whether the drafters of Civil Rights legislation

intended that EEO laws be invoked and enforced to protect workers, of if they envisioned other purposes, including providing a mechanism through which an employer could dismiss an employee, even if the dismissal violated a contract.

In the same issue of "The Digest of Equal Employment Opportunity Law," the EEOC reiterated that EEOC's complaint process "was designed to protect innocent individuals from discriminatory practices." *Card v. United States Postal Service*. EEOC Request no. 05950568 (October 25, 1996). **Petitioner asserts that the strict process the EEOC applies to charges filed within the EEOC ought to be applied to charges filed within entities that must (by federal laws) abide by EEO-related laws.**

Petitioner further asserts that the EEOC's turning a blind eye on the misuse of EEO-related rules for specious purposes, made it possible for the trial court and later the appellate court to disregard the fact that Respondant never addressed Petitioner's alleged sexual harassment, harassment based on religion, harassment based on sexual orientation and EEO-related retaliation in the letter justifying Petitioner's firing[1].

In *Fort Bend County, Texas v. Davis*, 139 S. Ct. 1843 (2019) the late Honorable Justice Ruth Ginsburg referenced *Envtl. Prot. Agency v. EME Homer City Generation, L. P.*, 572 U.S. 489 (2014) to note that "Title VII's charge-filings provisions 'speak to... a party's procedural obligations," thus suggesting that a party accepting EEO complaints must follow its rules and/or procedures.

[1] Petitioner contacted the EEOC in 2016, shortly after initiating her legal action against Respondent; the lower tribunal court granted Petitioner's motion for summary judgment in 2020. Petitioner did not contact the EEOC when she was first internally charged with EEO-related violations believing the she would be eventually vindicated.

The verifiable fact that the College's Rule I-21 and Procedure 1665 cite Title VII as an statutory reference, incontrovertibly suggests that the College EEO's Coordinator - who accepted and later prosecuted the charges of sexual harassment, harassment based on religion, harassment based on sexual orientation, and EEO-related retaliation filed against Petitioner by two of Petitioner's co-worker following the request of a College associate provost - had the "procedural obligation" to abide by its EEO-related rules[2].

The lower tribunal judge, whose ruling the appellate court confirmed, stated that Petitioner was fired "for [or "because of", or "based on"] misconduct stemming from an internal investigation that commenced in September 2014." (Appendix A(iv)). As Appendices B9(ii) and B(iii) confirm, the "investigation that commenced in September, 2014" pertained to the EEO-related charges outlined in these appendices.

In *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), this court clarified that "because of" is tantamount to "by reason of, on account of." In *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47 63-64 (2007) this Honorable Court further stated that: "In common talk, 'based on' indicates a but-for causal relationship and thus a necessary logical condition." Therefore, the lower tribunal's ruling that Petitioner was fired for misconduct stemming from a 2014 investigation points to a "but-for causal relationship and thus a necessary logical condition." In other words, Petitioner would not have been fired "but- for" the investigation prompted by the charges of sexual harassment,

[2] Petitioner was told that Miami Dade College had, on two previous occasions, accepted false sexual harassment charges against two male professors whom the College and the faculty union wanted fired. Petitioner was not able to ascertain the veracity of the claim or learn who the two professors were and whether the professors challenged the allegations.

harassment based on religion, harassment based on sexual orientation, and EEO-related retaliation.

If any credence is to be paid to what the EEOC stated in *Hooks v. United States Postal Service*, any entity (most certainly Miami Dade College) had to have "protect[ed] its administrative process" as well as "prevent[ed] such abuse of [EEO-related] orders, processes and procedures." *Ibid*

By suggesting that Petitioner was justly fired, (thus her continuing contract rightfully terminated) the lower tribunal and the appellate court implied that Petitioner's firing complied with Florida Administrative Rule 6A-14.0411(7)(a) which states that Florida public insitutions' faculty members with continuing contract may be fired "for cause in acordance with college policies and procedures."

However, in its "Notice to Terminate Employment" letter, (Appendix B(i)) the College does not match the alleged misconduct (e.g. defining plagiarism as repugnant) to the College's policy or procedure that prohibits the action; the letter merely implies that Petitioner violated so many rules[3], and thus merited dismissal.

As stated in Appendices C(i), C(ii) and C(iii), the College did not follow its procedures when implementing EEO-related rules. As stated in the College's "Notice of Intent to Terminate Employment" letter to Petitioner, the College cited as a basis for termination Petitioner's actions pertaining to her allegation of plagiarism (e.g. speaking with the media, contesting the College's opinion as to what constitutes plagiarism, and making analogies and historical references)

[3] Ironically, the letter cites Academic Freedom as a rule that Petitioner allegedly violated.

The letter does not reference any incident of sexual harassment, harassment based on religion, harassment based on sexual orientation, or EEO-related retaliation. (Appendix B(i))[4]

Imminent Danger to Academia

The U.S. Department of Education's National Center for Education Statistics (NCES) notes that in 2018, the last year for which information is available, there were 719,728 full-time instruction staff with faculty status in the U.S. tertiary educational institutions, and of these 299,228 had tenured status.

The American Association of University Professors, (AAUP) states on its website (www.aaup.org) that: "When a professor has gained tenure, he or she can only be terminated for a ***justifiable cause*** or under extreme circumstances, such as program discontinuation or severe financial restraints." While sexual harassment, harassment based on religion, harassment based on sexual orientation and EEO-relate retaliation are certainly justifiable causes for the termination of a tenured professor, Petitioner

[4] The letter, not only fails to match Petitioner's alleged "misconduct" to any rule that prohibits the action, but also misquotes the College's Policy I-21 subsection H(2)b, **by purposely omitting what the rule calls for the basis an EEO-related harassment charge: Unwelcome conduct, based upon sex, color, age, disability, national origin, race, religion, marital status, veteran's status, ethnicity, pregnancy, sexual orientation or genetic information that impacts either a condition of working or learning (quid pro quo) or creates a hostile environment.** The College's letter deviously states that "Hostile Environment Harassment consists of unwelcome conduct when: 1) Such conduct has the effect of unreasonably interfering with an individual's work or academic performance." (Appendix B(i), pg. 4)

Respectfully proffers that stating that a professor has engaged in "the gamut"[5] as it pertains to EEO violations, and later dismissing the professor for stated-reasons that do not involve EEO violations, is an affront to the sanctity of Civil Rights-related laws.

Another group which, as professors who have proven their value and because of this have been granted tenure, are federally appointed magistrate judges. As noted in 28 U.S. Code § 631, these judges can be removed. However, subsection (i) states:

> Before any order or removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge, and he shall be accorded by the judge or judges of the removing court, courts, council, or councils an opportunity to be heard on the charges.

While Petitioner's purpose is not to compare herself to a judge, the above citation points to the fairness of the above-cited process. Unlike tenured judges facing removal who, per 28 U.S. Code § 631(i), must be furnished with a "full specification of the charges" and "accorded an opportunity to be heard on the charges," Petitioner was told in November , 2014 that she had been charged by two co-workers with sexual harassment, harassment based on religion, harassment based on sexual orientation and EEO-related retaliation. However, reasons cited in the April 23, 2015 "Notice of Intent to Terminate Employment" letter are extraneous to the EEO charges, instead the letter exclusively referenced Petitioner's plagiarism allegation. (Appendix B(i))

[5] The mere fact that Petitioner was accused of practicably every EEO violation there is, should indicate that the charges were false or ill-placed and that they were accepted for some ulterior motive

Allowing a public college (or any employer, for that matter) to usurp, for nefarious purposes, what the drafters of EEO-related laws intended, poses a threat to society as a whole. This Court, in *Park 'N Fly, Inc.* v. *Dollar Park & Fly, Inc.*, 469 U. S. 189, 194 (1985) noted that "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." This petition for writ of certiorari would give this Honorable Court the opportunity rule regarding the role and purpose of Civil Rights/ EEO rules and to state whether it is permissible to bastardize EEO-related rules and allow their being used to castigate an employee the employer wishes fired.

EEOC "Explicit" Requirements vis-à-vis Employers

The EEOC-listed legal requirements with respect to employers is that they keep records of the number of employees who are members of protected groups; that they submit a yearly EEO-1 Report relating information about employees' job categories, ethnicity, race and gender to the EEOC and Department of Labor, and that they acquaint employees about EEO rules pertaining discrimination and harassment.

The EEOC also is specific in that an EEO Complaint is an "allegation of discrimination because of race, color, religion, national origin, sex (including sexual harassment and sexual orientation), age, physical or mental handicap." In other words, the EEOC reiterate that an EEO allegation is one in which the claimant attributes the alleged discrimination (or harassment) to his/her race, religion, national origin, gender,

national origin, etc. A perusal the allegations against Petitioner (Appendices B(ii) and B(iii)) reveals that neither accuser claimed that the alleged "harassment and discrimination" by Petitioner was based on the accuser's race, color, religion, etc.

EEOC disseminated information states that the EEOC seldom applies the "doctrine of abuse of power," which the EEOC defines as "a clear pattern of misuse of the EEO process for ends other than that which it was designed to accomplish." *Buren v. U.S. Postal Service*, 861 F.2d 716 (5th Cir. 1988). *Kleinman v. United States Postal Service*, EEOC Appeal No. 01943637 (September 22, 1994)

The EEOC's stated reason for its abstemious stance with regard to chastising those who "misuse the EEO process for ends other than that which it was designed to accomplish," is due to the EEOC's "strong policy of preserving a complainant's EEO rights whenever possible" (https://www.eeoc.gov/federal-sector/dismissals-abuse-process).

The preceding statement implies that a complainant would be one who claims discrimination or harassment due his/her race, gender, sexual orientation, etc., and that the perpetrator of the prohibited action is an employer and/or someone protected by the employer; the statement further suggests that the "misuse of EEO process for ends other than that which it was designed to accomplish," would involve an employee raising false EEO-related charge against an employer to "get back" at the employer.

This petition for writ of certiorari demonstrates that the EEOC's possible assumption is short-sighted. Perhaps it never occurred to the EEOC, or to the drafters of EEO-related legislature, that someone other than a person claiming to

have been discriminated or harassed could "misuse the EEO process for ends other than that which it was designed to accomplish," as is the situation in the instant case.

While it is unconscionable that the EEOC did not deem Petitioner's observance that the EEO charges of which she was accused did not meet the College's EEO rules was meritorious of its scrutiny, the verifiable fact that it happened makes a compelling argument for the need of a writ of certiorari and **for this Honorable Court to adjudicate whether EEO rules are strictly intended to protect the abused, or if it is permissible for employers to use EEO-related rules for deceptive motives.**

CONCLUSION

In addition to the 299,228 tenured professors who teach in American tertiary educational institutions, there are thousands of other employees who work under contracts (that can only be broken if the employee engages in despicable behavior) who would be negatively affected if employers realize that they can have subordinates charge the employee whom they want dismissed with EEO-related violations and then dismiss the charged employee for "misconduct" without citing the EEO charges that provided a reason for the dismissal.

Petitioner proffers that this is precisely what would happen (if it hasn't already happened), if the courts decline to grant writ of certiorari to later adjudicate on the merits of this case.

While it is undeniable that Civil Rights legislation (including EEO rules) were enacted for noble purposes, it is shameful that sacrosanct laws can be invoked for less than noble purposes, hence Petitioner's request for writ of certiorari.

For the reasons cited here, Petitioner *pro se* and *in forma pauperis,* requests that the writ of certiorari be granted.

Respectfully submitted,

Isabel del Pino Allen

Petitioner *pro se* and *in forma pauperis*

Date: February 4th, 2021