No.

In The Supreme Court of the United States

JOE W. AGUILLARD,

Petitioner,

v.

LOUISIANA COLLEGE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the "participation" clause contained in Section 704(a) of Title VII of the 1964 Civil Rights Act protect an employee who has filed an EEOC Complaint from a "retaliatory" defamation suit filed by the employer based, in part, upon allegations contained in the EEOC charge?

2. Does the "opposition" clause contained in Section 704(a) of Title VII of the 1964 Civil Rights Act protect an employee from a "retaliatory" defamation suit filed by the employer based, in part, upon allegations made by the employee to SACSCOC, the auditing agent of the employer?

3. Did Petitioner "abandon" his claims of a "retaliatory hostile work environment" under Title VII and ADA by failing to attach that label to specific facts alleged in his complaint, as amended, and supported in his affidavit submitted in Opposition to Respondent's Motion for Summary Judgment?

PARTIES TO THE PROCEEDING

Petitioner Joe W. Aguillard was the plaintiff in this action in the United States District Court, Western District of Louisiana, Alexandria Division, and was the appellant in the United States Fifth Circuit Court of Appeal.

Respondent Louisiana College was the defendant in this action in the United States District Court, Western District of Louisiana, Alexandria Division, and was the appellee in the United States Fifth Circuit Court of Appeal.

RELATED PROCEEDINGS

"Joe W. Aguillard vs. Louisiana College," Civil Action No. 1:17-CV-01671, United States District Court, Western District of Louisiana, Alexandria Division.

"Joe W. Aguillard vs. Louisiana College," Docket No. 19-30941, United States Court of Appeals, Fifth Circuit.

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PETITION FOR A WRIT OF CERTIORARI

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OPINIONS BELOW

Per Curiam by King, Graves and Odham, Circuit Judges of the United States Court of Appeal for the Fifth Circuit, entered September 10, 2020. Also see Appendix.

STATUTORY PROVISIONS INVOLVED

Section 704(a) of Title VII, 42 U.S.C.A.§ 2000e-3(a), provides in pertinent part:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees … because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

The ADA (42 U.S.C.A.§12203) declares, in pertinent part:

§ 12203. Prohibition against retaliation and coercion.

(a) Retaliation

> No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.
>
> **(c) Remedies and procedures**
>
> The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section ... .

See 42 U.S.C.A.§12203.

JURISDICTIONAL STATEMENT

This is an action by Plaintiff Joe W. Aguillard ("Aguillard") against Defendant Louisiana College ("LC") for relief under Title VII of the Civil Rights Act of 1964, 42 U.S.C.A.§2000e, as amended, and the Americans With Disabilities Act of 1990, 42 U.S.C.A.§12101, et seq, and a state claim to recover damages for the intentional infliction of emotional distress, over which the District Court had supplemental jurisdiction. See 28 U.S.C.A. §1367(a). The District Court rendered interlocutory judgments in favor of LC on a series of motions for partial summary judgment culminating with the entry of a final judgment dismissing all of Plaintiff's claims on October 24, 2019 [ROA.3527-3532]. Plaintiff filed a Notice of Appeal pursuant to Rules 3 and 4 of the Rules of Appellate Procedure on November 14, 2019 [ROA.3538]. The Fifth Circuit Court of Appeal affirmed the District Court's judgment in a *per curiam* opinion handed down on September 10, 2020. This application for a writ of certiorari is timely under 28 U.S.C.A. §2101.

STATEMENT OF THE CASE

Aguillard served as President of LC from January 17, 2005, through July 31, 2014 [ROA.230]. As a result of the continuous attacks of the Calvinists upon him during his Presidency and upon the recommendation of his attending physicians, Aguillard decided in 2014 to step-down as President because of the stress of the job and the threats to his health and physical well-being [ROA.1413]. Aguillard had been previously diagnosed with PTSD and advanced coronary artery disease [ROA.1411-12]. He suffered a massive heart attack in 2011 [ROA.1411] . LC was intimately familiar with Aguillard's health problems.[1] However, LC recognized the value of Aguillard's prior services and contributions and it wanted to maintain a relationship with Aguillard [ROA.1532-33]. Accordingly, it entered into an Employment Agreement with Aguillard dated April 15, 2014, pursuant to which LC employed Aguillard as "President Emeritus" of LC and as a fully tenured professor. *Id*. LC selected Brewer as President of LC in March, 2015. Brewer assumed his duties as President of LC on April 7, 2015 [ROA.1716].

On May 3, 2015, Aguillard filed a "workplace safety" complaint when his wife discovered that LC had hired Kyle Johnston, a Calvinist who had threatened Aguillard's life during his Presidency.[2] See ROA.1412, 1416, 2077. On May 6, 2015,

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[1] PTSD and coronary artery disease are both recognized disabilities under the ADA. As to PTSD, see 29 C.F.R.. §1630(j)(3)(iii); *Johnson v. JPMorgan Chase & Co.*, 2017 WL 1237979 (W.D. La. 2017). As to coronary artery disease, see *Snyder v. Norfolk Southern Railway Commission*, 463 F.Supp.2d 528 (E.D. Pa. 2006).

[2] Kyle Johnston, a student at LC at the time, threatened Aguillard's life on or about March 25, 2014. ROA.1412. The threat was serious enough that the Louisiana State Police were notified, provided

Brewer met with Ingrid Johnson, an attorney for LC, to discuss and seek advice as to how to break Aguillard's Employment Agreement. ROA.1416-17. At a meeting on May 20, 2015, Brewer told Aguillard that he "couldn't be President Emeritus, it just wasn't going to work"[3] and "to never, ever contact any of his vice-presidents again!" ROA.1417. He was also instructed not to contact any of LC's donors. ROA.3042. Aguillard left this meeting visibly shaken and in tears. ROA.1417.

After this meeting with Brewer, Aguillard was "isolated" at LC. ROA.1417. He was never invited to attend any faculty functions or to attend any functions attended by the faculty in academic regalia, such as graduations. *Id.* He was not appointed to serve on any faculty committees, even though his Employment Agreement and the Faculty Handbook provided for it. *Id.*

Johnston cropped up again in August of 2015. ROA.1418. This time, Johnston appeared on the cover of a recruiting brochure distributed nationally by LC. *Id.* It was posted all over the campus at LC, including the Lyn Alumni Hall, where Aguillard's office was located. The poster served as a daily reminder of Aguillard's harrowing prior experience with Johnston. *Id.*

On September 28, 2015, Aguillard received a telephone call from one Donald B. Connor, Sr., a stranger, who asked to meet with him. ROA.1418-19. They agreed

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plain-clothes State Troopers and took special security measures. *Id.* Johnston was then expelled from LC for his conduct.

[3] This was an anticipatory repudiation of Aguillard's Employment Agreement. The clear inference from all of the relevant facts is that Brewer settled on a plan to force Aguillard to resign. See *Wilson v. Monarch Paper Co.*, 939 F.2d 1138, 1145 (5th Cir. 1991).

to meet later that evening at Aguillard's office. ROA.1419. Suspicious of the circumstances, Aguillard arranged for Rev. Dark to go with him. ROA.3042. At the meeting, Connor told Aguillard that he had been engaged by Brewer to investigate him. ROA.1419. Aguillard telephoned Brewer to verify the engagement and Brewer told him that the Board of Trustees had unanimously authorized him to hire Connor,[4] that Connor "spoke for him," and to do whatever Connor suggested. *Id*.

Connor proceeded to demand that Aguillard resign his employment at LC and threatened Aguillard and his family with "ruin" if he did not. *Id*. Connor put his finger in Aguillard's face multiple times and told him he had better "confess" to undisclosed crimes. Connor posed as a "law enforcement" officer and threatened to read Aguillard his "Miranda Rights." ROA.3042-43. When Aguillard tried to leave the room, Connor blocked his way. *Id*.; ROA.3232.

When Aguillard refused to resign on the spot, Connor followed Aguillard back to his truck, where he seized Aguillard's computers, slamming one of the computer covers on Aguillard's right hand.[5] ROA.3043, 3232-33. During his encounter with Connor, Aguillard involuntarily urinated in his pants. ROA.3044, 3233. After the incident, Aguillard drove to the Rapides Regional Hospital, where he waited outside to allow his blood pressure and stress to abate. ROA.3044, 3233. With Brewer's authorization, Connor took Aguillard's computers to Baton Rouge where they were

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[4] This was a lie. Brewer has produced no Board resolution or minutes showing that he was authorized to hire Connor.

[5] Aguillard sent Brewer an email the next day (September 29, 2015), demanding the return of his computers. ROA.3044, 3096, 3097.

searched and "hacked" by Teknarus.[6] ROA.590, 903. According to Connor, Teknarus found the "Anonymous Package" on one of the computers and he subsequently returned a copy of that document to LC,[7] along with the computers. ROA.590, 903.

By letter to Brewer dated October 7, 2015, counsel for Aguillard requested a meeting with Brewer to discuss Aguillard's disabilities and possible accommodations. ROA.3044, 3098-3104. Aguillard (and his counsel) ***never*** received ***any*** reply from Brewer. ROA.3044.

As a direct result of his September encounter with Connor and Brewer, Aguillard spent three (3) weeks in the Trauma Center in New Orleans in November of 2015, and an additional eight (8) days in January of 2019, undergoing treatment for his emotional distress. ROA.3044, 3105-3111.

Recognizing that Aguillard was not going to voluntarily resign, Brewer then changed his tactics: he would ***fabricate*** evidence of a breach by Aguillard of his Employment Contract and then attempt to terminate his employment. On

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[6] The "hacking" of Aguillard's computers by Teknarus and LC was a crime under the Electronic Communications Privacy Act, 18 U.S.C.A.§2510. LC itself "hacked" Aguillard's computers and obtained "confidential" information and documents stored on the computers, including drafts of EEOC and "whistleblower" complaints on behalf of his faculty colleagues, which were used against Aguillard at the FAAC hearing.

[7] The "Anonymous Package" was a publication assembled and circulated anonymously which suggested that Brewer had failed to fully disclose his views on Calvinism to LC's representatives when they were interviewing him for the position of President. ROA.743-753. The focal point of the package was a newspaper article written by Tony W. Cartledge and Steve DeVane while Brewer was still at Charleston Southern University. ROA.744. Brewer mistakenly believed that Aguillard was the author and publisher of the "Anonymous Package." He was not. It was Rev. Jerry Dark, who acted independently of Aguillard. ROA.3232.

December 2, 2015, Brewer and Clark met with Dr. Camacia Smith-Ross, Aguillard's faculty supervisor. ROA.1420, 1512-13. They attempted to get Smith-Ross to sign a written statement that Aguillard had failed to adequately perform his teaching responsibilities at LC. Smith-Ross refused to do so. ROA.1512-13. During the meeting, Brewer informed Smith-Ross that he was having Aguillard followed (knowing that she would tell Aguillard). ROA.1513.

Clark, at the direction of Brewer, then wrote Aguillard a letter dated January 22, 2016, advising him that his Employment Agreement did not have a "term" and that he was an "at-will" employee who could be terminated at any time for any reason. ROA.590, 2087-2091, 3045. This "advice" was false. LC's records clearly showed that its Board of Trustees had ***agreed*** to a ***restriction*** on a $10 million anonymous donation that Aguillard would remain "President Emeritus" of LC for at least five (5) years. ROA.1421, 1451.

The January 22 letter offered Aguillard the opportunity for a hearing before a Faculty Affairs Advisory Committee ("FAAC") instead of arbitration under the Employment Agreement. ROA.2087-2091. Aguillard accepted the offer, ***reserving*** all rights to arbitration. A hearing before the FAAC was scheduled for February 23, 2016. However, two (2) significant events occurred before the hearing, both directed and controlled by Brewer: First, on January 29, 2016, Brewer suspended Aguillard from his teaching responsibilities without any justification and placed him on

"administrative leave" – a "position" nowhere previously recognized by LC,[8] despite the fact that there was no suggestion that he had failed to perform his teaching responsibilities. ROA.3045-46, 3113.

In addition, Aguillard's students were not officially notified that he had been relieved of his teaching responsibilities. For approximately 2 months after his suspension, Aguillard's students continued to contact him in connection with their course requirements. ROA.2290. Aguillard had to tell his students that he had been suspended, that he was no longer their professor. His *de facto* suspension necessarily implied to his students, his professional teaching colleagues, and the public that Aguillard was not capable of teaching his students. That was not only embarrassing and humiliating but outrageous and beyond the pale.

Second, Aguillard was locked out of his office at the direction of Brewer on February 17, 2016. Brewer had the locks changed on the Lyn Alumni House, where Aguillard's office was located, as well as the locks on Aguillard's office.[9] ROA.1422-23. This was done without ***any*** advance notice or warning to Dr. Aguillard and without providing him with any keys. The shock and humiliation of being locked out of his own office caused Aguillard to experience severe chest pains and difficulty

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[8] This was clearly an "adverse employment action." See, e.g., Ellis v. Houston, 742 F.3d 307 (8th Cir. 2014); Atkins v. Egan, 2019 WL 182498 (N.D. Ala. 2019) ("... [A]ctions without economic consequences may be materially adverse in the context of a retaliation claim if the action could dissuade an employee from challenging discriminatory conduct ... .").

[9] Aguillard had filed a "whistleblower complaint" with Dr. Randy Harper on February 9, 2016. Ironically, Aguillard received a reply from Harper assuring him (Aguillard) of no "retaliation" on the very same day that he was locked out of his office. Aguillard's Employment Agreement expressly provided that he would be provided with an office.

breathing. He promptly called Dr. Westley Davis, his cardiologist, who agreed to see him immediately to avoid a full-blown myocardial infarction. ROA.3045. In doing so, Brewer deliberately and intentionally denied Aguillard access to all of his records, impairing his ability to prepare for the FAAC hearing. Brewer also confiscated and converted Aguillard's private property located in his office, including his priceless heirlooms, many of which have never been returned, together with his confidential medical and financial records.

The hearing before the FAAC was held on February 23, 2016. ROA.709-17. Prior to the FAAC hearing, Aguillard requested that LC provide him with a copy of any documents it planned to introduce at the hearing. ROA.1421, 1519. LC failed and refused to do so. At the hearing, Brewer and LC introduced false evidence, i.e. the Employment Agreement, without disclosing the restricted donation showing that there ***was*** a term on the Employment Agreement. They further introduced "confidential" documents (which they had obtained by "hacking" Aguillard's computers) showing that Aguillard had actively assisted his fellow faculty members (i.e., Drs. Sharp, Shamblin, Smith-Ross, and Spears) and the Schmidleys (based upon national origin discrimination) in drafting "whistleblower," EEOC, and SACSCOC complaints, all of which were "protected activities" under Title VII and LC's Faculty Handbook. ROA.743-753, 796-899, 1535-43, 1887-95.

On the basis of those "protected activities," the FAAC found that there was "substantial evidence" that Aguillard had acted contrary to the best interests of LC, despite the fact that there was no evidence showing that any of the complaints had

been published to third parties. ROA.907. Brewer then wrote Aguillard a letter dated March 16, 2016, advising him that his employment as a faculty member would be terminated effective March 31, 2016. ROA.914. Brewer – who had a ***personal animus*** against Aguillard – was the decision-maker – not the FAAC, which only made ***recommendations***. ROA.908. Aguillard appealed his dismissal to the Executive Committee, but his appeal was denied on March 11, 2016. *Id*.

As Brewer's March 16, 2016 letter made clear, his actions did not purport to affect Aguillard's position as "President Emeritus" of LC. ROA.908, 2093.[10] On April 12, 2016, the Board adopted a resolution relieving Aguillard of his position as "President Emeritus." ROA.3047-48, 3135. The Board did not bother to notify Aguillard of its action or provide him with an opportunity for a hearing. *Id*. In doing so, the Board ignored the fact that on December 16, 2014, it had approved a restriction on a $10 million anonymous donation that Aguillard would remain "President Emeritus" for at least five (5) years from that date. ROA.3048, 3070.

In addition, LC issued a "press release" on April 12, 2016 [ROA.3135], disclosing the contents of Aguillard's confidential "personnel file" in violation of the Faculty Handbook. ROA.3136. The intentional publication of confidential personnel records as well as the false and malicious statement that "school policy and procedures were meticulously followed throughout the dismissal and appeal proceedings" ignored the fact that the Employment Contract required arbitration of

[10] LC nevertheless stopped paying Aguillard his salary as President Emeritus effective March 31, 2016, as well. See ROA.2093.

any "employment dispute." ROA.741.

Aguillard filed a complaint with the EEOC on April 1, 2016, charging that LC had discriminated against him in violation of his rights under Title VII and the ADA and in retaliation for engaging in his "protected activities" under Title VII and the ADA. ROA.40-48. Aguillard expressly included in his EEOC charges and claims the fact that LC had intentionally inflicted emotional distress upon him. On February 18, 2016, Aguillard filed a follow-up "whistleblower" complaint of federal regulatory violations with Randy Harper, Chairman of the Board. ROA.1520-28. He also filed a second "retaliation" claim with the EEOC against LC, Brewer and Clark on July 8, 2016, due to the malicious and false press releases in which his confidential personnel files were published on the internet. ROA.49.

LC, Brewer and Clark then filed a defamation suit against Aguillard on May 25, 2017. ROA.2454-2468. However, the suit was not served on Aguillard until August 3, 2017, at the request of plaintiffs' attorneys. ROA.2351. On that same day, Aguillard filed a supplemental complaint with the EEOC charging that the defamation suit was filed in retaliation for his EEOC complaint. ROA.2481-2508. The allegations in the defamation suit show on their face that the defamation suit was based upon Aguillard's EEOC and SACSCOC complaints. Aguillard filed a special motion to dismiss the defamation suit in the state court under Article 971 of the Louisiana Code of Civil Procedure, which was denied on the ground that it was untimely. ROA.2890. The defamation suit against Aguillard is still pending against Aguillard in the state court.

REASONS FOR GRANTING THE WRIT

1. This Case Presents Issues Of Vital Importance To The Administration Of Title VII and ADA.

The decision of the Fifth Circuit is contrary to and undermines the purpose and functions of Section 704(a) of Title VII of the Civil Rights Act of 1964, which provides that:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor--management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

This provision prohibits employers from retaliating against employees who ***participate*** in Title VII proceedings or who ***oppose*** practices that are unlawful under Title VII. The ADA, 42 U.S.C.A. §12203 contains similar provisions.

As this Court held in *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 126 S.Ct. 2405 (2016), Section 704(a) prohibits "employer actions that are likely to deter discrimination victims from complaining to the EEOC, the Courts, and employer." *Id.* at p. 2415. The primary purpose of the anti-retaliation provision is "maintaining unfettered access to statutory remedial mechanisms." *Burlington*, *supra*, p. 64, 67. Section 704(a) was, and is, intended to be construed and applied broadly. See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 546, 117 S.Ct. 893

(1997); *Pettway v. American Cast Iron Pipe Co.*, 411 F.2d 998, 1009-1007 (5th Cir. 1969); *Deravin v. Kerek*, 335 F.3d 195 (2d Cir. 2003); *Clover v. Total System Services, Inc.*, 176 F.3d 1346, 1353 (11th Cir. 1999); *Benuzzi v. Bd. of Educ. Of Chicago*, 647 F.3d 652, 665 (7th Cir. 2011) ("... context is a crucial consideration in Title VII retaliation actions"). See also *Burlington*, *supra*, 548 U.S. at 69, 126 S.Ct. at 2415.

A. The Fifth Circuit Erroneously Failed To Hold That LC Violated The "Participation" Clause Of Section 704(a) By Filing A State Court Defamation Suit Against Petitioner In Retaliation For Petitioner's EEOC Charges.

The undisputed evidence shows that Petitioner was ostensibly terminated on March 31, 2016. Petitioner filed a charge with the EEOC on April 1, 2016, which he amended and supplemented on July 8, 2016, and again August 3, 2016. LC was served with a copy of Petitioner's EEOC charge on April 9, 2016.[11] LC jointly with Richard K. Brewer, its President, and Cheryl Clark, a Vice-President, filed a state court suit on May 25, 2017, against Petitioner claiming that Petitioner had defamed them in his EEOC charges and his prior communications with the Southern Association of Colleges and Schools Commission on Colleges ("SACSCOC").

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[11] The defamation suit was filed in violation of 42 U.S.C.A. §2000-5(b) which provides that "... [n]othing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or ***used as evidence in a subsequent proceeding without the written consent of the persons concerned.***" (Emphasis added.) Petitioner never consented to the LC's public disclosure of his EEOC charges. See *Pettway*, *supra* at 1007 ("... In Title VII, Congress sought to ***protect the employer's interest*** by directing that ***EEOC proceedings be confidential*** and by imposing severe sanctions against unauthorized disclosure. Sections 706(a), 709(e), 42 U.S.C.A. §§ 2000e- 5(a), 2000e-8(e). The balance is therefore struck in favor of the employee in order to afford him the enunciated protection from invidious discrimination, by protecting his right to file charges.") (Emphasis added.).

Petitioner was not served with the defamation suit until August 3, 2017, and on the same day he filed a supplemental charge with the EEOC alleging retaliation. The "participation clause" of Section 704(a) expressly protects an employee's conduct in "filing a charge, testifying, asserting, or participating" in any manner in "an investigation proceeding or hearing" under Title VII. LC's retaliatory defamation suit was filed ***after*** Petitioner's EEOC charges. Thus, the "participation" clause is clearly involved.

There is no doubt that there is a causal connection between Petitioner's EEOC charges and Respondents' defamation suit: The defamation suit expressly sets out, incorporates, and alleges statements taken from Petitioner's EEOC charges and SACSCOC complaints. It references Petitioner's EEOC charges no less than ninety (90) times. More specifically, the defamation petition is allegedly based upon or arises out of Aguillard's activities as follows (Pet., ¶19):

* * *

b. Ghostwriting faculty member grievances against Brewer's administration;

c. Providing information to and counseling and encouraging dissident faculty and third parties to prepare potential legal claims against LC:

d. Providing information to, and counseling and encouraging, dissident faculty and third parties to make complaints to certain accrediting agencies about the College and/or its programs and faculty; ...

* * *

All of these alleged events or incidents clearly point to protection under the "opposition" clause. The defamation petition (¶18) further expressly identifies the

source documents of the alleged defamatory communications to include "(2) First EEOC Charge of Discrimination; (3) Second EEOC Charge of Discrimination; (4) the "Original SACSCOC Complaint" and (6) Supplemental SACSCOC Complaint." Finally, any doubt about the defamation suit being a retaliation based upon Petitioner's EEOC complaint is eliminated by the simple review of LC's allegations in support of its First Cause of Action, i.e., "Defamatory Statements Regarding Aguillard's Dismissal" (¶¶22-31). As previously noted (*supra*, p. 9), Aguillard's dismissal was predicated upon documents obtained by LC through its illegal "hacking" of Aguillard's computers showing that he had assisted his colleagues in opposing the discriminatory practices of LC which were clearly protected under the "opposition" clause. That was also highly relevant to SACSCOC's auditing inquiry.[12]

Notwithstanding these crucial facts, LC represented to the District Court that its EEOC allegations were "merely background" information. That is ***not*** what the defamation complaint says or what it does. LC's disingenuous attempt to re-cast its defamation complaint in and of itself creates a material issue of fact that defeats its motion for summary judgment. It is obvious that Petitioner's EEOC

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[12] In its Fourth Cause of Action in its defamation suit, LC claims that it was defamed by Aguillard's report in connection with student who was wounded on campus as a result of gunshot fired by another student. Aguillard correctly reported the incident under 20 U.S.C.A. §1090. LC retaliated against Aguillard in its defamation suit in violation of Section 1090's implementing regulations. See 34 C.F.R. 668.46(m) which provides: "Prohibition on retaliation. An ***institution***, or an ***officer***, employee or agent of an institution, may ***not retaliate***, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision in this section. [79 FR 62783, Oct. 20, 2014] (Emphasis added.)

charges were the "precipitating causes" of LC's defamation suit. SACSCOC's investigation of LC was ***closed*** before LC ***filed*** its defamation suit without any loss of its accreditation or probation. The harm imagined by LC in its defamation suit never occurred. The information provided to SACSCOC was ***confidential***, just as was Plaintiff's EEOC charge. Petitioner's colleagues on the faculty at LC (Dr. Spears, Dr. Smith-Ross and Rev. Dark) filed substantially similar charges with SACSCOC. Had LC been concerned about its reputation, it would also have sued them as well. It did not. It is impossible, therefore, to see how LC can maintain a defamation suit based on Plaintiff's communications with SACSCOC.

Incredibly, the District Court accepted LC's spurious excuse and erroneously held that the defamation suit was not "retaliatory" in violation of the "participation" clause. The Fifth Circuit erroneously affirmed this conclusion, ignoring the EEOC allegations and focusing solely upon Aguillard's alleged communications with SACSCOC. See Ruling, p. 1, where the Court of Appeal states: "After he was fired by LC, Joe Aguillard sent misconduct allegations to the college's accrediting body. ***Those accusations*** prompted LC to sue Aguillard in state court for defamation." As this Court recognized in *Bill Johnson's Restaurants, Inc. v. National Labor Relations Board*, 461 U.S. 731, 740-41, 103 S.Ct. 2161 (1961), "It is certainly true that a lawsuit ... may be used by an employer as a powerful instrument of coercion or retaliation" and that such suits can create a "chilling effect" on the pursuit of discrimination claims.

B. The Fifth Circuit's Holding That The "Participation" Clause

Does Not Protect Petitioners Against A Retaliatory State Defamation Suit Conflicts With The Decisions Of Other Courts Of Appeal.

The Fifth Circuit's decision holding that Petitioner is not protected under the "participation" clause of Section 704(a) from LC's retaliatory state defamation suit conflicts with the decisions of other Courts of Appeal and district courts. See, e.g., *Sias v. City Demonstration Agency*, 588 F.2d 692, 695 (9th Cir. 1978)*; General Motors v. Mandicki*, 367 F.2d 66, 70-71 (1st Cir. 1966); *Equal Employment Opportunity Commission v. Virginia Carolina Veneer Corp*.,495 F.Supp. 775, 778 (W.D. Va. 1980), *aff'd sub-nom, Cassidy v. Virginia Carolina Veneer Corp*., 652 F.2d 380 (4th Cir. 1981); *Equal Employment Opportunity Commission v. Hobson Bearing Int'l, Inc.*, 2016WL 4618760 (W.D. Mo. 2016); *Equal Employment Opportunity Commission v. Outback Steakhouse of Florida, Inc.*, 75 F.Supp.2d 756, 757 (N.D. Ohio 1999); *EEOC v. Levi Strauss*, 515 F.Supp. 640 (N.D. Ill. 1981). As the Ninth Circuit concluded in *Sias* (*id*. at 695):

> But this Court believes that appropriate informal opposition to perceived discrimination must not be chilled by the fear of retaliatory action in the event the alleged wrongdoing does not exist. It should not be necessary for an employee to resort immediately to the EEOC or similar State agencies in order to bring complaints of discrimination to the attention of the employer with some measure of protection. The resolution of such charges without governmental prodding should be encouraged.

The Fifth Circuit eschews any reference to these cases in its *per curiam*; it makes no attempt to distinguish these cases. The Court similarly ignores any mention of its own decision in *Pettway v. American Cast Iron Pipe Company, 411*

F.2d 998, 1004-5 (5th Cir. 1969). As the Fifth Circuit concluded in *Pettway* (*id*. at 1007):

> We hold that where, disregarding the malicious material contained in a charge ..., ***the charging party is exercising a protected right under the Act. He may not be discharged for such writing. The employer may not take it on itself to determine the correctness or consequences of it. Nor may the court either sustain any employer disciplinary action or deny relief because of the presence of such malicious material***. ... (Emphasis added.)

The Fifth Circuit purported to limit *Pettway* in *Wilson v. UT Health Center*, 973 F.2d 1263, 1268 (5th Cir. 1992), by holding that *Pettway*:

> ***only*** applies to misrepresentations ***made in documents or statements in EEOC proceedings***. Pettway's rationale entirely depends on EEOC's function in the administration of Title VII, so we cannot extend Pettway's holding to extra ***EEOC proceedings*** without a reason to do so. (Emphasis added.)

That limitation clearly conflicts with the "opposition" clause; the "opposition" clause ***is*** a valid reason for extending *Pettway*. Furthermore, *Wilson* does not apply here in any event: LC's defamation claims are clearly predicated upon Petitioner's EEOC charges, as supplemented, which includes his complaints to SACSCOC.

The Fifth Circuit itself has recognized that its approach to retaliatory actions is far more restrictive than other circuits. See *Hernandez v. Crawford Bulding Material Co.*, 321 F.3d 528 (5th Cir. 2003), relying heavily upon its decision in *Mattern v. Eastman Kodak Co.*, 104 F.3d 702 (5th Cir. 1997), which was expressly overruled by this Court in *Burlington Northern*, *supra.* See also 5 Emp. Coord. Employment Practices, §10.31 stating:

> Although recognizing it has taken a stricter approach than other courts, the Fifth Circuit has concluded that, given its interpretation of retaliation claims and requirement of an ultimate employment action, a counterclaim filed by an employer after the employee has been discharged cannot support a claim of unlawful retaliation under Title VII, the ADEA, or Section 1981 ...

The Court in *Hernandez* also expressly declined to follow *Beckham v. Grand Affair of N.C., Inc.*, 671 F.Supp. 415 (W.D. Va. 1980), and *EEOC v. Va. Carolina Veneer Corp.*, 495 F.Supp. 775 (W.D. Va. 1980), noting (*id.* at 532) that:

> ... However, this circuit has taken a more skeptical view, remarking that '[i]t is not obvious that ***counterclaims or lawsuits filed against a Title VII plaintiff ought to be cognizable as retaliatory conduct under Title VII***. After all, companies and citizens have a constitutional right to file lawsuits, tempered by the requirement that the ***suits have an arguable basis***.' (Citations omitted.) (Emphasis added.)

The Fifth Circuit has also ruled that a suit filed by an ***employee*** of the employer cannot be regarded as "retaliatory," retaliation must be by the ***employer***. See *Scrivner v. Socoro Independent School Dist.*, 169 F.3d 969, 972 (5th Cir. 1990). Unlike *Scrivner*, LC – the employer here – ***is*** one of the plaintiff's in the retaliatory defamation suit and the conduct of the individual plaintiffs is attributable to LC. It would be disingenuous, to say the least, to allow an employer to avoid or defeat a claim for retaliation by collusively joining its President (Dr. Brewer) and its Vice-President in Charge of Academic Affairs (Dr. Clark), who were ironically Petitioner's principal protagonists during his tenure as President Emeritus and their defamation claims are based solely upon and arise out of Petitioner's complaints against LC.

Title VII expressly defines the term "employer" to include "agents." §2000e(b). Brewer and Clark, by virtue of their positions, are clearly "agents" of LC. See *Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S.Ct. 2275 (1998); *Burlington Industries v. Ellerth*, 524 U.S. 742, 118 S.Ct. 2257 (1998). The fact that Drs. Brewer and Clark have collusively joined in LC's defamation suit does not mean that the suit is not retaliatory. It is significant in this connection that LC agreed in its Employment Agreement with Aguillard to ***indemnify*** him against any third-party suits. Moreover, the spurious "bad faith" claims of defamation by Drs. Brewer and Clark substantially increases the risk that a "reasonable employee" will not make or support a charge of discrimination. Petitioner had absolutely nothing to gain personally by making his report to SACSCOC. LC and its co-conspirators are clearly estopped under the provisions of the Faculty Handbook, *supra*, from asserting a damage claim.

C. The Fifth Circuit Erroneously Failed To Hold That Petitioner's Communications With SACSCOC And His Assistance To His Faculty Colleagues In Opposing LC's Discriminatory Practices Were Protected By The "Opposition" Clause Of Section 704(a).

1. The SACSCOC Communications Were Protected By The Opposition Clause.

The Fifth Circuit's erroneous holding that Petitioner's confidential communications with SACSCOC are not protected by the "opposition" clause is directly contrary to the decisions of this Court and other Courts of Appeal. Unlike the "participation" clause, the "opposition" clause in Section 704(a) does ***not*** require a Title VII proceeding. This Court found in *Crawford v. Metro Gov't of Nashville*,

555 U.S. 271, 277, 129 S.Ct. 846 (2009) that "[t]he term 'oppose,' being left undefined by the statute, carries its ordinary meaning." Quoting from the EEOC Compliance Manual [citing 2 EEOC Compliance Manual §§8-II-B(1), (2), p. 614:0003 (Mar. 2003)], this Court concluded that (555 U.S. at 276, 129 S.Ct. at 85) 'When an employee communicates to her employer a belief that the employer has engaged in ... a form of employment discrimination, that communication' virtually always 'constitutes the employee's opposition to the activity.'"

The protection afforded by the "opposition" clause is not limited to communications to the employer. As the Sixth Circuit concluded in *Johnson v. University of Cincinnati*, 215 F.3d 561, 580 (6th Cir. 2000):

> In short, the only qualification that is placed upon an employee's invocation of protection from retaliation under Title VII's opposition clause is that the manner of his opposition must be reasonable. Of critical import here is the fact that there is no qualification on who the individual doing the complaining may be or on the party to whom the complaint is made known — i.e., the complaint may be made by anyone and it may be made to a co-worker, newspaper reporter, or anyone else about alleged discrimination against oneself or others; the alleged discriminatory acts need not be actually illegal in order for the opposition clause to apply; and the person claiming retaliation need not be the person engaging in the opposing conduct.

The "opposition" clause thus protects an employee's complaint made to **HUD**, which provided the funding for the project on which he was employed, about the alleged discriminatory practices of the employer. *Hicks v. ABT Associates, Inc.*, 572 F.2d 960, 969 (3d Cir. 1978). Similarly, "writing one's legislator is protected," *Pearson v. Mass Bay Transp. Authority*, 723 F.3d 36, 42 (1st Cir. 2019), as is assisting a

colleague in filing an EEOC discrimination charge. *Gogel v. Kia Motors Manufacturing of Georgia, Inc.*, 904 F.3d 1226, 1234 (11th Cir. 2018), *reversed on rehearing en banc*, 967 F.3d 1121 (2020). See also *Cardenas v. Massey*, 269 F.3d 251, 260 (3d Cir. 2001); *McDonnell v. Cisneros*, 84 F.3d 256, 260 (7th Cir. 1996); *Armstrong v. Index Journal Co.*, 647 F.2d 441, 448 (4th Cir. 1981); *Equal Employment Opportunity Commission v. Crown Zellerbach Corporation*, 720 F.2d 1008 (9th Cir. 1983); *Hobgood v. Illinois Gaming Board*, 731 F.3d 635, 642 (7th Cir. 2013); *Heath v. The Metropolitan Transit Commission*, 436 F.Supp. 685, 688-89 (D. Minn. 1977). The Fifth Circuit's decision is in direct conflict with these decisions.

Petitioner's communications to SACSCOC complaining of LC's discriminatory practices are thus clearly protected by the "opposition" clause. SACSCOC is the regional body for the accreditation of degree-granting higher education institutions in the Southern Region of the United States. It is one of six regional accreditation organizations recognized by the United States Department of Education and the Council for Higher Education Accreditation, as authorized by 20 U.S.C.A. §1099. See 34 C.F.R. §602.1. See https://en.wikipedia.org/Southern_Association_of_ Colleges_and_Schools. SACSCOC serves a federal purpose; it is the gatekeeper for federal financial aid – the lifeblood of secondary educational institutions, including LC. SACSCOC conducts periodic audits or evaluations of its member schools to fulfill its federal responsibilities.

Petitioner had a duty to report his "opposition" to SACSCOC. LC's Faculty

Handbook, Section 830.8 provides that:

> POLICY:
> It is the ***responsibility of*** all trustees and ***employees*** to comply with these standards and to report violations or suspected violations in accordance with this Whistleblower Policy.
>
> GUIDELINES:
> 1. It is ***important for all College trustees and employees*** to feel free to report facts which may indicate unethical or illegal behavior by the College administration, Board of Trustees or other College Employees without fear of any form of reprisal or retaliation. Examples of unethical or illegal behavior include violation of local, state or federal law, unauthorized disclosure or use of protected confidential information and fraudulent financial or operational reporting. ***To ensure good faith reporting, it is the policy of the College that no one who, in good faith, reports a suspected violation of policy, practice, regulation, or activity will suffer any form of retaliation or any adverse employment consequence on account of such report.*** It is understood that without this protection employees may be reluctant to report any violation or suspected violation. ... (Emphasis added.)

Thus, LC not only ***consented*** to the Petitioner's communications with SACSCOC, but it placed a ***duty*** on Petitioner to make the communications. Consequently, there was no "un-privileged publication" of the alleged defamatory communications to a third party – an essential element of a cause of action for defamation. See, e.g., *Costello v. Hardy*, 864 So.2d 129, 139 (La. 2004); *Kosmitis v. Bailey*, 685 So.2d 1177, 1180 (La. App. 2d Cir. 1996). SACSCOC provided a copy of the Petitioner's communications to LC (again, ***not*** a publication). It required LC to reply to Petitioner's complaints during the course of its investigation. This shows that Petitioner's communications to SACSCOC were made in "good faith," even though SACSCOC ultimately did ***not*** suspend or otherwise sanction LC. SACSCOC

closed its investigation on March 24, 2017, and notified Petitioner accordingly." LC filed its defamation suit on May 25, 2017.

In addition to his "no publication" argument, Petitioner also contended in both the District Court and the Court of Appeal that his communications to SACSCOC were absolutely privileged as a matter of federal law.[13] The Court of Appeal summarily dismissed this contention, erroneously noting (Ruling, fn. 3, p. 5) that "... if such a privilege exists, it would ***merely provide a defense*** that Aguillard could assert in state court against LC's defamation claims."[14] (Emphasis added.) While the "privilege" does provide a defense to the state court suit, that does not exhaust its relevance. Whether on a theory of "no publication" or "privilege," the federal courts have the power and authority to order an employer to dismiss a state court retaliatory defamation suit prohibited by Title VII. See *Sias*, *supra*;[15] *Mendicki*, *supra*; *Virginia Caroline Veneer Corp*., *supra*; *Hobson*, *supra* (stipulation). LC's defamation suit lacks a reasonable basis in fact or law; it has no

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[13]Congress provided for ***exclusive*** federal jurisdiction of any suit by a school or college protesting the denial or withdrawal of accreditation by "an accrediting agency or association by the Secretary of Education." See 20 U.S.C.A.§1099b(f). This implies an absolute privilege. See *Chicago School of Automatic Transmissions, Inc. v. Accreditation Alliance of Career Schools and Colleges*, 44 F.3d 447 (7th Cir. 1994).

[14] Petitioner filed a special motion to dismiss the state court defamation suit under La. Code Civ. Pro. art. 971 which the state court denied on the grounds that it was not timely, despite the provision that "[t]he special motion may be filed within ninety days of the service of the petition, or in the Court's discretion, at any later time upon terms the Court deems proper." The state court denied Petitioner's motion on May 21, 2018. LC has taken ***no steps*** to prosecute the state court defamation suit, implicitly showing that the suit was filed to simply "shut up" Petitioner – not to repair any damage to its reputation. Unfortunately, the defamation suit is still pending.

[15] *Sias* was cited approvingly by the Fifth Circuit in *Payne v. McLemore's Wholesale & Retail Stores*, 654 F.2d 1130, 1139(5th Cir. 1981).

federal right to maintain the baseless state court defamation suit. See, e.g., *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 103 S.Ct. 2161 (1983), holding that "baseless suits brought with a retaliatory motive could be enjoined."

2. Petitioner's Assistance To His Faculty Colleagues In Opposing LC's Discriminatory Practices Were Protected By The "Opposition" Clauses.

On the evening of September 28, 2015, Petitioner was contacted by Don Connor, a private investigation, hired by Dr. Brewer. Petitioner met with Connor at Petitioner's office. Connor, speaking on behalf of Brewer, demanded that Petitioner resign immediately and threatened Petitioner and his family with ruin if he did not. When Petitioner refused, Connor forcibly took possession of Petitioner's computers over Petitioner's objections.[16] LC subsequently "hacked" Petitioner's computers and found a draft of an EEOC complaint that Petitioner was preparing on behalf of Dr. Carolyn D. Spears[17] and other documents assisting his faculty colleagues which Petitioner had drafted on behalf of Drs. Shamblin and Sharp and Mrs. Schmidley in protesting LC's discriminatory practices.

In retaliation for Petitioner's refusal to resign, LC commenced administrative proceedings to terminate Petitioner's employment. At the hearing before the

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[16] In emails to Dr. Brewer the next day, Petitioner demanded that his computers, which also contained confidential information, be returned, to no avail. By letter from his counsel dated October 7, 2015, Petitioner requested accommodations for his PTSD and cardiac disabilities pursuant to the provisions of the ADA. Petitioner never received a reply to this request; Brewer refused to even discuss the request - a blatant violation of the ADA.

[17] Dr. Spears subsequently filed her EEOC complaint and her case is now pending before the Fifth Circuit. See Docket No. 1:18-CV-00387.

Faculty Committee, LC offered and introduced confidential documents it had discovered on Petitioner's computers to show that Petitioner had acted against the best interests of LC. Based upon that evidence, the Faculty Committee found there was substantial evidence that Petitioner had acted against the best interests of LC. Accordingly, Dr. Brewer notified Petitioner that his position as a member of the faculty was terminated effective March 31, 2016. Petitioner's appeal to the Board of Trustees was denied. The Board of Trustees terminated Petitioner's position as "President Emeritus" at a meeting on April 12, 2016, without notice to Petitioner or a hearing.

Those actions by LC were a plain violation of Petitioner's protected rights under the "opposition" clauses of both Title VII and the ADA, which the courts below ignored. See *supra*, at pp. 2-14. LC not only failed to "reasonably accommodate" Petitioner's known disabilities (i.e., PTSD and advanced coronary artery disease), it affirmatively took advantage of and ***used*** those disabilities in attempting to wrongfully force Petitioner to resign and ultimately in wrongfully terminating him and then filing a defamation suit against him. See *Flowers v. Southern Regional Physician Services, Inc.*, 247 F.3d 229, 232 (5th Cir. 2001).

3. Petitioner Did Not Abandon His Claims Of A "Retaliatory Hostile Work Environment."

Incredibly, the Court of Appeal erroneously refused to consider Petitioner's claim of a "hostile-work environment" caused by LC's numerous retaliatory actions. The Court ostensibly rejected that claim "because ... Aguillard's 'failure to pursue

[that] claim beyond [his] complaint constituted abandonment.'" Ruling, p. 4 fn. 2. Rule 8(a) of the Federal Rules of Civil Procedure requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." As this Court found in *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' ***requires more than labels and conclusions***, and a formulaic recitation of the elements of a cause of action will not do." (Emphasis added.) Accord: *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009). See also *Hatmaker v. Memorial Medical Center*, 619 F.3d 741, 743 (7th Cir. 2010), where the Court found:

> ... Although *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), require that a complaint in federal court allege facts sufficient to show that the case is plausible, see, e.g., *Phillips v. County of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008), ***they do not undermine the principle that plaintiffs in federal courts are not required to plead legal theories***. [Citations omitted. (Emphasis added.)

Petitioner's Complaint, as supplemented and amended, alleges numerous retaliatory actions taken by LC against Aguillard resulting in a hostile work place, as clearly shown by the facts contained in the Statement of the Case. See *Huri v. Office of Chief Judge of the Circuit Court of Cook County*, 804 F.3d 826 (7th Cir. 2015).

The District Court erroneously ***never addressed*** this fundamental issue in any of its rulings. See Rulings, ROA.1376-1389, 1670-1687, 1688, 2155-2158,3016-3029, 3030, 3397-3408, 3409, 3527-3532. It simply dismissed Petitioner's claims

with prejudice. The first issue listed under "Issues Presented For Review" presented in Petitioner's original brief in the Fifth Circuit was: "Did the Trial Court erroneously reject Plaintiff's claims that LC created and maintained a continuing 'retaliatory' hostile environment." Similarly, Petitioner's first assignment of error on its appeal was:

> The Trial Court erred in failing to find that LC (and Dr. Richard K. Brewer ['Brewer']) created and maintained a continuing 'retaliatory' hostile work environment in its relationship with Aguillard.

It is impossible to understand how this can be treated as an "abandonment" of this issue by Petitioner.[18]

The Fifth Circuit has not formally recognized a valid cause of action for a "retaliatory hostile work environment." It has acknowledged, however, that "the Second, Sixth, Seventh, Ninth and Tenth Circuits have adopted the cause of action." *Bryan v. Chertoff*, 217 F.Appx. 289, 293 n. 3 (5t Cir. 2007) (citing cases). The Fifth

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[18] This is not the only issue which the Fifth Circuit erroneously found to be "abandoned" by Petitioner. The Court also erroneously found that Petitioner "abandoned" his argument that "causation," short of "temporal proximity," could be demonstrated by a "pattern of antagonism." See, e.g., *Kachmar v. Sungard Data Systems, Inc.*, 109 F.3d 173, 177 (3d Cir. 1997), recognizing that it is causation, not temporal proximity, that is the issue. The phrase "pattern of antagonism" is simply a short hand label describing the circumstantial evidence relevant to causation. Accord: See *Lettieri v. Equant, Inc.*, 478 F.3d 640, 650 (4th Cir. 2007); *Dixon v. Gonzales*, 481 F.3d 324 (6th Cir. 2007); *Porter v. California Dept. Of Corr.*, 419 F.3d 885, 895 (9th Cir. 2005); *Richmond v. Oklahoma Univ. Bd. Of Regents*, 162 F.3d 1174 (10th Cir. 1998); *Ward v. United Parcel Service*, 580 Fed. Appx. 735 (11th Cir. 2004); *Carlson v. ESX Transp., Inc.*, 758 F.3d 819, 829 (7th Cir. 2014). See also *Marra v. Philadelphia Housing*, 497 F.3d 286, 302 (3d Cir. 2007) (holding, among other things, that a vandalized computer was evidence of a pattern of antagonism); *Reardon v. Herring*, 201 F.Supp.3d 782 (E.D. Va. 2016). The Seventh Circuit uses a different label for describing the relevant circumstantial evidence, i.e., a "convincing mosaic." See *Hobgood v. Ill. Gaming Board*, 731 F.3d 635, 642 (7th Cir. 2013). How Petitioner's failure to use the label "pattern of antagonism" initially can be construed as an "abandonment" when he repeatedly contended before the District Court and the Court of Appeal that the District Court has failed to consider ***all*** of the relevant circumstantial evidence is beyond incredible.

Circuit re-affirmed its position as late as June of 2020. See *Montgomery-Smith v.George*, 810 F.Appx. 252, 258 (5th Cir. 2020), noting that "twelve circuits have now accepted the cause of action." A "reasonable" person, especially with Aguillard's serious medical vulnerabilities, which were clearly known to both Brewer and LC, would undoubtedly have felt that the environment was "hostile" throughout the period forming the basis of Petitioner's claims. See *Waltman v. International Paper*, 875 F.2d 468, 475 (5th Cir. 1989).

It is clear from the undisputed facts recited *supra*, pp. 2-14, that LC (and Brewer) created a hostile work environment as a result of their "retaliations" for Aguillard's "protected activities." The courts below failed to address this fundamental issue and erroneously granted summary judgment in favor of LC. In determining this issue, a Court must consider ***all*** of the relevant evidence in the light most favorable to the non-moving party. *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 116, 122 S.Ct. 2061 (2002). The District Court and the Fifth Circuit erroneously ignored the "pattern of antagonism," including the personal animus of Brewer, that shows that a "causal" connection between Aguillard's "protected activities" and LC's repeated retaliations, including the filing of the defamation suit. The "pattern of antagonism" in this case began on May 3, 2015, when Aguillard filed his "work place" safety complaint, which was, in substance and effect, a request for an "accommodation." A request for an "accommodation" is plainly a "protected activity. *Tabatchnik v. Continental Airlines*, 262 Fed. Appx.

674, 676 & 676 n. 1 (5th Cir. 2008); *Jones v. U.P.S., Inc.*,502 F.3d 1176, 1194 (10th Cir. 2007); *Wright v. CompUSA, Inc.*, 352 F.3d 472, 478 (1st Cir. 2001). Then, at the meeting on May 20, 2015, Brewer refused to discuss any "reasonable accommodations." Brewer told Plaintiff that he (Aguillard) "could not be President Emeritus, that it was just not going to work;" to "never, ever contact any of his vice presidents again; and not to contact any donors of LC." ROA.1417. That was the beginning of the period of antagonism.

It would be difficult to imagine a more hostile work environment than that which existed ***after*** Aguillard's encounter with Connor in late September, 2015, resulting in Brewer's demand (through Connor) that Aguillard resign immediately or face ruination of his career and Connor's forcible confiscation and "hacking" of Aguillard's personal computers. By letter dated October 7, 2015, Aguillard again requested, among other things, "reasonable accommodations" for his PTSD and advanced coronary artery disease. ROA.1412-13. Brewer – and LC – never made any effort to consult with Aguillard (or his counsel) in an effort to reach a "reasonable accommodation."

Brewer, however, did not relent; instead, he turned up the heat. Among other things (see *supra* at pp. 5-8), Brewer attempted to get Aguillard's supervisor to sign a false statement that he was not performing his teaching responsibilities; suspended Aguillard from his teaching responsibilities without any justification and placed him on "Administrative Leave," and then locked Aguillard out of his office on February 17, 2016. This series of retaliatory acts following the encounter with

Connor culminated in the sham FAAC hearing on February 23, 2016 [ROA.26, 1423], at which Aguillard was charged with "misconduct" for assisting his faculty colleagues in making "whistleblower" complaints (to both LC and SACSCOC) and in filing EEOC complaints – activities which are clearly "protected" under Title VII of the Civil Rights Act of 1964, 42 U.S.C.A.§ 2000e, as amended, and the Americans With Disabilities Act, as amended [42 U.S.C.A.§12101], as well as the Faculty Handbook, Policy 830.8 – evidence of which was obtained by LC's unlawful "hacking" of Aguillard's computer [ROA.1423-24, ROA.2591-97. Petitioner never abandoned his claims of a retaliatory hostile work environment, as the Fifth Circuit erroneously found.

4. The Decision Of The Fifth Circuit Will Seriously Impede The Administration Of Title VII.

The Fifth Circuit in this case has held that the anti-retaliation provisions in Section 704(a) of Title VII and Section 12203 of ADA do not protect an employee who has been sued by his employer for defamation in retaliation for filing an EEOC charge and who has "opposed" his employer's discriminatory practices by complaints to a third party (in this case, SACSCOC) and who has assisted his fellow employees in protesting his employer's discriminatory practices. The EEOC construes Section 704(a) in precisely the opposite manner. The EEOC has advanced its interpretations of Section 704(a) by instituting litigation in support of its position. See *supra*, at 17. The Fifth Circuit failed to consider the consequences of its decision. Consequences matter, particularly where they affect the public interest,

as here. This issue is vital to the implementation of Title VII.

CONCLUSION

For all of the reasons assigned, this Court should grant Petitioner's Application for Certiorari and set this case for hearing.

Respectfully submitted,

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