

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON DC 20543

MARILYNN M. MCRAE — PETITIONER  
(Your Name)

vs.

DONNIE HARRISON, Sheriff — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES OF APPEALS FOR THE FOURTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

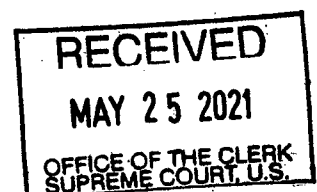
PETITION FOR WRIT OF CERTIORARI

Marilynn M. McRae  
(Your Name)

4233 Birmingham Way  
(Address)

Raleigh, NC, 27604  
(City, State, Zip Code)

(919) 225-8290  
(Phone Number)



## QUESTIONS PRESENTED

1. Whether EEOC have a duty to an employee that come to them for assistance to protect the employee from a discriminatory enacted light duty policy that was changed to include a specific class of employees that was disabled or on light duty with medical issues; and then for EEOC to discard the employee who bought suit by giving a right to sue letter, while EEOC made the employer change back to a new light duty policy that included all of their over 500 employees, but didn't protect the employee job.
2. What and who do the working- class people turn to when employees ask the justice system and the NC State Bar in their areas for assistance with unfair and unjust practices of attorneys to stop their unethical behavior towards a pro se litigant, and the employees receives no assistance and the bad behavior of the attorneys continues, along with the defendant the attorneys represent.
3. Whether or not the Supreme Court can make rules and regulations to ensure the protection of the disabled who want to work and is working, to stop employers from fabricating barriers and allowing their administrators to enact policies and different rules only for specific employees whom legally they have no grounds to terminate their employment.

## LIST OF PARTIES

- ☒ 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

McRae v. Harrison, No. 5:17-cv-23-H, U.S. District Court for the Eastern District of North Carolina. Judgment entered January 28, 2020.

McRae v. Harrison, No. 20-1145 (5:17-cv-00023-H-KS) U.S. Court of Appeals for the Fourth circuit. Judgment entered January 21, 2021.

McRae v. Harrison, No. 20-1145 (5:17-cv-00023-H-KS) U.S. Court of Appeals for the Fourth circuit. Judgment Stay of Mandate entered February 11, 2021.

McRae v. Harrison, No. 20-1145 (5:17-cv-0023-H-KS) U.S. Court of Appeals for the Fourth circuit. Judgment (Order) denies petition for rehearing February 23, 2021.

McRae v. Harrison, No. 20-1145 (5:17-cv-0023-H-KS) U.S. Court of Appeals for the Fourth circuit. Judgment entered Mandate March 3, 2021.

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### APPENDIX A

United States Court of Appeals for the Fourth Circuit No. 20-1145 (5:17-cv-00023-H-KS).

### APPENDIX B

United States District Court for the Eastern District of North Carolina No. 5:17-cv-23-H.

### APPENDIX C

United States Court of Appeals for the Fourth Circuit No. 20-1145-(5:17-cv-23-H )  
Rehearing Petition Denied.

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

- A. Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 122.Ct.681 (2002).
- B. Murphy v. United Parcel Service, 527 U.S. 516 (1999).
- C. Cleveland v. Policy Management Systems Corp., 526 U.S. 795 (1999).
- D. Equal Employment Opportunity Commission v. Waffle House, Inc., No. 99-1823 United States Supreme Court 534 U. S. 279 (2002).
- E. Andrews v. Louisville & Nashville Railroad Co. ET AL., No. 71-300.

### STATUTES AND RULES

- 1. The Americans With Disabilities Act of 1990, as Amended Title 42 . Chapter 126, sec. (12101), sec. (12102), sec. (12103), sec, (12111), (12112)(sec.102).
- 2. Family and Medical Leave Act. (FMLA), 29 USC Ch. 28; from title 29 labor, all sections.
- 3. EEOC; Title 1 of the Americans with Disabilities Act of 1990 (ADA).

### OTHER

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 A 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 B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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 \_\_\_\_\_ 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.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 21, 2021.

☐ 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: February 23, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment of the United States Constitution.

Section 1. 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.

2. Jurisdiction on the federal Courts: Article Three of the United States Constitution. The judiciary Act of 1789.

In our unique judicial system, courts are protected from the influence of other branches of government, as well as shifting popular opinion. This allow the judiciary to make decisions based on what is right under the law, without political or personal consequences.

3. The Seventh Amendment of the United States Constitution.

Jury Trial in Civil Lawsuits: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, them according to the rules of the common law.

4. The NC Constitution: Article 1, Section 1, Section 18, Section 19, Section 21, Section 25.

Article 1 sec. 1: The Equality and Rights of Persons; We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Section 18: Court Shall be Open; All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial or delay.

Section 19: Law of the Land; Equal Protection of the Laws: No person shall be taken imprisoned, or disseized of his freehold, liberties, or privileges, or



outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Section 21: Inquiry into Restraints on Liberty: Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

5. Federal Laws: Americans with Disabilities Act of 1990 (ADA); Family Medical Leave Act (FMLA), The U.S. Equal Employment Opportunity Commission (EEOC).

ADA: To be protected by the ADA, one must have a disability, which is defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

EEOC: The EEOC enforces the federal laws against job discrimination and harassment. Title 1 of the Americans with Disabilities Act of 1990 (ADA), which makes it illegal to discriminate against a person with a disability in private companies and state and local governments.

## STATEMENT OF THE CASE

Petitioner, Marilyn M. McRae worked with the Wake County Sheriff Department for eleven years since September of 2003 and terminated on December 19, 2014. Petitioner was a Master Officer, and her plans were to retire from the sheriff department in five years. Petitioner worked all areas of the housing floors and the control stations in all of the detention centers.

Overtime she started having problems with her knees and acquired medical attention for the problem. She learned in 2010 that she had an onset of Osteoarthritis in both knees. The left knee presented more of a problem. In 2010 she started treatment of cortisone shots and therapy.

Her primary Orthopaedic doctor Kobs refused to take her out of work and informed her that her job does not limit her from going to work. Dr. note dated June 26, 2013. (Appendix H) and (Appendix K)

On July 16, 2013 petitioner received a phone call from Lt. Inscore, who worked in the personnel department and she informed petitioner that she had to come to the sheriff department for a light duty meeting that day. Petitioner was off duty and in the state of Virginia and couldn't return in time for the meeting. Petitioner informed Lt. Inscore that she was out of town and informed Lt. Inscore that she had spoken to Lt. Anastasia and informed him that she had a doctor appointment on July 29, 2013 and that she was going to bring him her doctor note on that day. Lt. Inscore was out on medical leave and was just returning back to work. Lt. Inscore said it was a mandatory light duty meeting. Petitioner explained to her that she wasn't in the state and unable to return in time for the meeting, and that she will be on shift tomorrow. Petitioner called and asked other officers what was the meeting about? They asked me what meeting? They knew nothing about a

mandatory light duty meeting.

Petitioner shift started the next day, July 17, 2013. Petitioner called other officers on light duty and was told they knew nothing about a light duty meeting. Petitioner was the only person called for the meeting. Petitioner asked the attorney for the defendant to provide a list of the other officers that were scheduled for the mandatory light duty meeting through the production procedure. Attorney Jones stated that the WCSO don't keep records of their meeting and as a result the petitioner never received a list or acknowledgement that a mandatory meeting on July 16, 2013 ever existed. The other light duty officers didn't have any knowledge of a meeting on that day. Petitioner was the only officer called for the meeting and the officer was off duty on that day.

Petitioner went to work on July 17, 2013. Petitioner was working that day in the master control station. She had just arrived on duty in the control station when an officer came in to inform her that she had to go to the Administrators office and that they were waiting for me. I knew something was wrong when Lt. Inscore called me when I was off duty to come to a mandatory meeting. We received emails and each shift had mandatory meetings when that shift is on duty. I took a tape recorder to work with me that day. Petitioner arrived at the meeting room as instructed. Director Butler, Assistant Director Higdon, Major Mildred Floyd, and Administrator Patricia Williams were there. Director Butler told me to come in and don't say anything just listen. I took my seat. Director Butler said I was called to come in to a meeting and I should have been there. I tried to tell him that I had talked to Lt. Anastasia and was told to be quiet. Each Administrator took turns telling me that I should have been at the meeting and that it was a disciplinary infraction. I asked them to call Lt. Anastasia. Director Butler got up and said that I was suspended indefinitely for being insubordinate. I asked them why? Director Butler then told Major Floyd and Administrator Williams to walk me out the door.

That mean you're fired. I was escorted to master control to get my belongings and escorted out of the Wake County Detention Center.

Petitioner went to the Public Safety Center another detention facility and where the sheriff's office is located. She informed the sheriff of what happened and gave him the tape recorder to listen too. Prior to going to the PSC petitioner called Sgt. White and told him what happened. Sgt. White came over to also speak to the sheriff. I left and Sgt. White went in to speak to the sheriff.

That night I received a call from Director Butler and was told to return to work the next day. I returned to work on July 18, 2013 and was told to come to the Administrators office and was told to sign a form, and that I was suspended for one day for insubordination. I needed to work and I signed the form. The date on the form was July 19, 2013.

On July 19, 2013 everyone received an email for Detention officers and supervisors with a new light duty policy attached that stipulated that the policy will be effective on August 1, 2013. The new light duty policy is attached in (Appendix H).

The light duty policy dated 2008 was still in effect for all the other sheriff department personnel. They were still allowed to work a 40- hour week on light duty, and work on any shift. EEOC had my case from March of 2014 to October 17, 2016 and petitioner gave her two right to sue letters one for each case. The director of EEOC asked for my tape recorder and kept it until I asked for it back for my case. The request letter is located in Appendix H. EEOC made the sheriff department write out a new Light duty policy for the entire sheriff department staff, and they had to cancel out the discriminatory light duty policy dated August 1, 2013. The new policy was in petitioners FOIA file, dated July 1, 2016. The light duty policy was changed in 2016 and the sheriff department still wouldn't let her return to work.

August 1, 2013 all detention staff that was on light duty went to night shift to work in control stations.

Prior to going to night shift on August 1, 2013 Petitioner was working in dorms, laundry room, general duty, and the control stations. On August 1, 2013 it was made mandatory by Detention Administrators that anyone on light duty had to work in a control station on night shift. (Job assignments, Director Butler Affidavit in Appendix H.)

On July 29, 2013 Office McRae went to her doctor appointment and her physician placed her on an eight- hour workday schedule, which consisted of a 40- hr. work- week and she had to attend therapy. She was given knee injections, along with general instructions of no steps, kneeling, squatting, flexible stand and sit. The problem associated with the instructions were due to working the sixty- hour work week for which she worked two weeks out of an average month and 24 hours out of the average month. Petitioner was still working in other areas of the jail with no problem. The jail have dorms that don't have steps and was very easy in working in them, along with other jobs that petitioner was doing. There wasn't a problem with working with the inmates. My administrators intentionally changed the light duty policy to punish everyone on light duty. They made us work in the control stations.

Director Butler swore with an affidavit that petitioner only worked in the control stations. Director Butler and his attorneys new for a fact that petitioner worked in other areas of the jail and they still perjury themselves by stating that petitioner only and couldn't work in any other areas of the jail. They have the documents where I was working in other areas of the jail until the Administrators ordered us not too and we had no choice but to work in a control station. There were no incidents of any of the light duty workers being injured by working with inmates. They didn't have any incidents associated with petitioner ever being in a situation that she couldn't handle.

Petitioner was placed on an eight- hour work schedule by her physician. Petitioner was assigned to night shift and didn't have a schedule for the shift. Petitioner informed Assistant Director Higdon that she needed a schedule for when she report to work on August 1, 2013. Assistant Higdon informed the Petitioner that she will be on her same rotation of a 12- hr. shift. Petitioner asked what time to report in and her end time. Petitioner was given the time of 6:45 pm to 2:45am a total of 8 hours with no breaks. Petitioner called Assistant Higdon and informed him that she didn't have her breaks included in the hours that he had given her. Petitioner thought the time was going to be a later time that she was to be leaving work and didn't want to leave to soon. Assistant Higdon told her that the time wasn't going to change. Petitioner asked the supervisors on duty for a break when she needed it. The time was never changed.

On August 8, 2013, Petitioner applied for her short- term disability to take the place of losing four hours each day that she lost. Petitioner asked Assistant Director Higdon if she could be placed on a 40- hour work week so that she could still receive her same pay and was told no nothing is changing.

On January 31, 2014 Petitioner received a letter from Director Butler informing her that he was going to backdate her FMLA too October 18, 2013, and change my timesheets to reflex the difference of the eight hours from the 12 hour shift. This would have caused my FMLA time to be depleted. Petitioner contacted Human Resources, Ms. Wallace and informed her about the letter and that I didn't approve of him backdating my FMLA, and that I'm working and don't qualify for FMLA, and I was receiving disability insurance payments. I explained to HR, Ms. Wallace that I was going to have surgery and I would need to use my FMLA then. that they can do that and she will check and let me know. Human Resources never got back with me and they didn't back date my FMLA.

On February 14, 2014, I was home at home preparing to go on shift when I

received a call from Lt. Anastasia who told me not to report in to work. I asked him why was he telling me not to come to work and he said, "because you can't work a twelve-hour shift and it causes problem with me working eight hour days." I informed him that wasn't true, and to email me that information. He didn't email petitioner the information. Petitioner didn't want to get in trouble for not reporting in so she contacted human resources, Karen Wallace and informed her of what Lt. Anastasia had told her and she said that was true Director Butler informed her that morning that I'm not too report to work, because I can't work a 12-hour shift.

Petitioner was informed later that they placed her on FMLA leave and backdated it to February 14, 2014. Petitioner didn't apply for FMLA nor completed any paperwork or received any required notifications or forms. I had explained to Human Resources, Karen Wallace that I needed my time for my upcoming surgery, in 2015. They put me out of work and used up my FMLA and put me on LWOP at the same time. I was still using my leave, sick time and getting donations from officers and deputy's.

Petitioner filed a charge of Disability Discrimination with EEOC on February 18, 2014 and an amended charge on June 9, 2014 for Retaliation. The retaliation charges were for (a) denial of holiday, sick and leave time. (b) Human Resources holding back donated time, (c) Petitioner couldn't get information on yearly mandatory training to stay a Certified Detention Officer. Petitioner continually tried to contact personnel and the detention training staff or checking the website for scheduling to be able to take her mandatory training. Petitioner still had access to the computer system and was checking every day for her name to be listed on an email. Captain Brown placed her name on the list for training for November 2014. Petitioner completed and passed the physical portion and the written part of training and still wasn't allowed to return to work. (Appendix H)

Sheriff Harrison, defendant broke all six (10) of these FMLA rules and laws towards the Petitioner. They showed no regret for what they did. The defendant and his attorneys fabricated the documents of a prior FMLA leave the petitioner had and placed 2014 ledgers of FMLA with documents from an older leave. Attorney Jones entry on the CMF system document 66-16 filed 4/15/2019, pages 1 through 11, Ex. B-8. The petitioner was never given any forms or notices to sign and didn't no that they had put her on FMLA leave. Petitioner was saving her leave time for an upcoming surgery.

1. The Family and Medical Leave Act: The FMLA is a federal law that provides eligible employees of covered employers with unpaid, job protected leave for a specified family and medical reasons. The leave applies to individual for a serious health condition that makes the employee unable to perform the essential functions of his or her job.

2. FMLA requires that employers maintain employee's health benefits during leave. The law sets requirements for notice by both the employees and the employer and provides employers the right to require certification of the need for FMLA leave in certain circumstances. The law protects employees from interference and retaliation for exercising their rights or attempting to exercise their FMLA rights. The law also includes certain recordkeeping requirements.

3. The employer must provide and eligibility notice to the employee informing the employee whether he or she is eligible for FMLA leave, and within five business days. Employers must provide a written Rights and Responsibilities Notice each the employer provides eligible employee the Eligibility Notice, within 5 business days of having notice of the employee need, the notice must be in writing. The notice informs the employee of the right to job restoration and maintenance of benefits. Section 825.121 of the regulations.

4. Designation of FMLA leave and is an Employer's Obligation to Provide Employees with a Designation Notice. The determination of whether leave is FMLA-qualifying must be based only on information received from the employee or the employee spokesperson. Once the employer has enough information to determine that the employee's requested leave qualifies as FMLA leave, the employer must provide the employee with a written Designation Notice within nor more than five business days. Sections 825.301(d) and 825.300 (d) of the FMLA regulations.

5. Restoration after FMLA status have ended the employee must be restored to the same job that the employee held when the leave began or to an equivalent job. All benefits have to be restored to the employee. An employer may



gave her breaks. Petitioner wasn't afforded the luxury of working at her employment at peace as the other employees had the benefit too do.

ADA discrimination (sec.12112)(sec.102)(b)(1)(3)

(b) construction – As used in subsection (a) of this section, the term discriminate against a qualified individual on the basis of disability, includes

1. limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disabilities of such applicant or employee.

3. Utilizing standards, criteria, or methods of administration.

(a) that have the effect of discrimination on the basis of disability; or

(b) that perpetuate the discrimination of others who are subject to

Common administrative control.

Petitioner have all the criteria of being disabled as defined by the ADA. She has also shown and have factual documents of the discrimination that she have had to live with. Petitioner only want the law to be applied in a just and fair manor without impartiality. She have suffered with the unfair treatment and trickery of defendant's counsel, which made it extremely hard when she's fighting for her lively hood that was snatched away from her illegally.

Petitioner want her job back and to be allowed to retire in dignity as she had planned.

offer the employee a light duty position; however, the FMLA does not require the employee to accept the light duty position rather than take FMLA leave. The employee can decline light duty and go on to leave. Section 825.214, 825.210, and 825.220(d) of the FMLA regulations.

6. Record keeping requirements: Covered employers subject to the FMLA are required to make, keep and preserve certain records. Employers must maintain records that include all information relating to the FMLA leave. By Law. Section 825.500 of the FMLA regulations.

7. Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right.

8. Any violations of the FMLA or the Department's regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA. Examples include: Refusing to authorize FMLA leave or Discouraging an employee from using such leave.

9. Interference also includes manipulation to avoid responsibilities under the FMLA.

Sections 825.220 of the FMLA regulations.

10. A letter was sent to petitioner to also back date her FMLA to October of 2013.

The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation , and all public and private places that are open to the general public places.

All employment practices are covered, 1. Reasonable accommodations (a) part-time, or modified schedules, (b)reassignment to a vacant position (c) job restructuring.

1. Petitioner was given an accommodation of allowing her to work on an eight hour work schedule. Which is a reasonable accommodation for the ADA. Then they took it away and changed her schedule to a 12 hour shift. Petitioner was on light duty on an 8 hour a day schedule of 40 hours per week. The administrators of the Wake County Detention had her work on a twelve hour rotation, whereby she lost four hours each day she work. They also didn't give her any breaks when they changed her work hours. Petitioner worked the hours of 6:45pm to 2:45am with no scheduled breaks. Petitioner ask for relief when she needed a break and the supervisors on duty

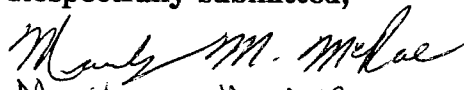
## **REASONS FOR GRANTING THE PETITION**

1. The case presents issues of national importance.
2. To correct and apply the law, whereby the Court of Appeals and District Court overlooked.
3. To possibly enact law that citizens in Civil suits have a right to a jury trial by their peers.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Marilyn M. McRae

Date: May, 2021