No. 21-1568

In The

Supreme Court of the United States

AUSTIN ROGER CARTER,

Petitioner,

v.

GENESIS ALKALI, LLC; GENESIS ENERGY L.P.; CODY J. PARKER; FRED VON AHRENS; EDWARD T. FLYNN AND KRISTEN O. JESULAITIS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

REPLY BRIEF

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INTRODUCTION

In accordance with Rule 15.6 of the Supreme Court Rules, Petitioner is addressing the new points raised in Respondents' brief in opposition and the misstatements of facts and laws that Respondents raise.

Petitioner's merits brief established that there is there is an obvious conflict between an Appeal as a Right and what is guaranteed under the Constitutions Fifth and Fourteenth Amendments. While Respondents did not address this Constitutional tragedy in their Brief In Opposition and only chose to lecture on what the United States Supreme Court does not have jurisdiction over, Petitioner believes that this question is a very important question that the citizens of the United States must get clarity on. Respondents also spend a great deal of time trying to convince this Court that Petitioner was a pariah in his job and nearly suggesting that his appeal and his case before the court is of a criminal nature. Petitioner will disprove this. Petitioner believes that the Tenth District Federal Court is treating this case as if adhering to Sarbanes-Oxley and Dodd-Frank are forbidden. Respondents continue their campaign, in the brief, saying that Petitioner never had an attorney-client relationship with them and that he should, apparently, be in charge of monitoring the attorneys as it relates to the ABA Model Rule of Professional Conduct. Petitioner prays that this Court carefully looks at this reply brief where it exposes the deceitful information that Respondents have historically and continually put forward to trying to quash Petitioner's Case and Rights. Contained herein and in

the Court records show the actual performance reviews showing nothing but high marks right up until weeks/days of his termination and correspondence that proves the attorney-client privilege existed. Petitioner is certain that this fits within the parameters of a collateral order as detailed to the Court of Appeals, (Tenth Circuit Court of Appeals Case 22-8009, document 10895337). Petitioner will also point out where it is the Respondents that are presenting the inflammatory allegations and presenting this Court outright misrepresentations and deceptive facts that are meant to cloak the truth from this Court in making its determination. Petitioner will demonstrate to the Court how these facts are pertinent to the core of this case and paramount to the Court's review of the petition. There have been material facts omitted and falsehood that have been presented to this Court that needs to be corrected here.

ARGUMENT

I. Petitioner Replies to Respondents' Lack of Facts, false accusations, misrepresentations and the Non-Response from Respondents pertaining to Violations of Petitioner's Fifth and Fourteenth Amendment Rights.

While Respondents have covered the work history timeline of Petitioner's employment with Genesis Alkali, that pretty much ends any truth of the matter that they represent in their Brief in Opposition.

While Petitioner's employment did end on June 10, 2019, the rendition of what they present is grossly inaccurate, Petitioner will here set the record straight with provable facts instead of the libel statements put forward by Respondents that is intended to further damage Petitioner. Petitioner will clearly demonstrate that Respondents and their attorneys are not credible nor believable in what they have presented to the Courts in this case up to and including their brief. Petitioner is not surprised that Respondents would flat out lie about what is clear in the record of this case, it is reminiscent of the fraud in *Stewart v. Wyoming Cattle Ranche Co.*, where a party that presents false representation or concealment "with intent to deceive, of a material fact which he is in good faith bound to disclose, is evidence of, and equivalent to, a false representation." *Stewart v. Wyoming Ranche Co.*, 128 U.S. 383 (1888).

Respondents stated that: "Even from a cursory review of the record, the inflammatory allegations in Petitioner's filing are provably false." Yet they offer nothing in the record to back up that remark, nor can they, they simply cherry pick the parts that fit their false narrative. Petitioner will expose them here and address what they have presented with facts and documents that are part of the record.

In the year 2018-2019 Petitioner headed the solicitation for the Granger Optimization Project, hereafter GOP, which was a project of approximately $330,000,000 which the Genesis Entities were seeking to gain funding for from GSO Capital Partners LP, later renamed

Blackstone Credit (ECF No.1, page 9 and ECF No.1, pages 43-44). Petitioner had previously led an effort that recovered several million dollars from other contractors that were involved in fraud against the Genesis Entities, which was where the Petitioner and defendant Kristen Jesulaitis worked together under the Legal Hold Notice (ECF No.1, page 4, ECF No.62 exhibit D, page 11, and ECF No.65, page 8). The Genesis Entities properly awarded the project to the successor of Petitioner's solicitation and the project progressed well through phase one. Genesis later pulled the project from that Engineering firm and Leadership and Management awarded the project, in a "no bid" without Petitioner, to another Engineering company. Petitioner started seeing the same pattern of fraud emerging that he had previously identified with the new Engineering firm. Petitioner brought that to the attention of the leadership and management (ECF No.1, page 5). Unlike the prior situation which leadership and management were all involved (ECF No.1-2, page 68), they chose to do nothing and proceed with the Engineering firm's fraudulent misbehavior. On or about May 20, 2019, Genesis auditors conducted an audit of the operation and auditor Michael Kamion urged Petitioner to contact the Genesis Energy Ethics Hotline after Petitioner explained the situation (ECF No.1, page 7).

On May 20, 2019, Petitioner was given his signed annual review by Cody Parker and Terry Harding, like all his past reviews this was an excellent review contrary to Respondents' accusations of poor performance,

please see the actual signed reviews (ECF No.1-2, pages 11-19, exhibit B). This was only days before calling the Genesis Energy Ethics Hotline on May 27, 2019 and is again where Respondents' attorneys have lied to this Court by repeatedly stating that Petitioner was terminated as a result of repeated failure to perform his job duties. Respondents' attorneys do point out that Harding and Parker did make the decision to terminate Petitioner two days after his calling of the Hotline on May 29, 2019, and nine days after his glowing performance review. As the record shows, complete with signatures, Petitioner's other past Performance reviews show that from the time he arrived he never received a poor review and Respondents cannot, and have not, produced anything contrary to Petitioner's performance reviews, which were all excellent. Other than slanderous lies. On June 10, 2019, Petitioner was terminated for complying with the company policies when he called the Hotline and his prior assisting with the internal audit which was exposing the fraud occurring at the GOP project. This would jeopardize the Genesis Entities with receiving the investment of $330 million being sought from investors and stockholders.

Since Terry Harding, Cody Parker, Fred von Ahrens, and Edward T. Flynn, collectively the Leadership and Management, knew that Petitioner was well liked by his employees and fellow associates, and had only been given praise for his performances. They had to come up with a ruse to cover the termination and that came by way of an all-company email which was concocted to cover for the wrongful termination. In the

"Organization Announcement" authored by Cody Parker he writes, "After thoughtful consideration, Austin Carter, Procurement Manager, has elected to seek opportunities out of the area," and then went on to give praise for all the work Petitioner had done; "We appreciate the contribution Austin has made to the success of the business. We wish him well in his future endeavors." And further describing all of the functions I was over including "legal," which further validates his relationship with the attorneys for the Genesis Entities. This Court can judge for itself by reading the original document in the original filing at, (ECF No.1-2, page 60).

While it is true that two of the original defendants Fred von Ahrens and Edward T. Flynn named in the original filing were dismissed by the district court judges from all claims with prejudice. Petitioner brings to the attention of this court the notable part: "Petitioner did not appeal that order." Petitioner would like the court to know that this supports what he maintained, first that Petitioner had no chance of overcoming the relationship that the Judges, the lobbyist and former Governor and the attorneys in the case had with the Genesis Entities, which is a multi-Billion-dollar company. Second that the inflammatory remarks that the Judge delivered in conjunction with and in support of the Defendants, "Defendants responded arguing Plaintiff does not have grounds for reconsideration and pointing out Plaintiff "he has a hair trigger" seeking of reconsideration of sound court rulings if the rulings go against him[.]" (App. 25 and ECF No.69 at

pages 2-3), statement, by both of the judges and the attorneys in the case. This demonstrates that, even when faced with an order that ends a portion of the case, that is obviously supported as stated here and in the initial pleading, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Dodd-Frank Acts 922, that was so obviously present in this case. Petitioner has no "hair-trigger." Petitioner does believe that this demonstrates the how these judges, politicians and attorneys exposed themselves as conspirators to eviscerate Petitioner's case and take away his Rights. Respondents will not be stopped by laws regardless of whether they are violating Petitioner's Fifth and Fourteenth Constitutional Rights as they seemingly own the process and apparently the law.

Respondents have further asserted in their brief that this Court lacks jurisdiction over Petitioner's Fifth and Fourteenth Constitutional Rights, although omitting any reference to the Constitution, as it relates to his Right to Appeal. Petitioner brings to light that the desperation of the Judges and the attorneys to rush through their own agenda to end Petitioner's Rights, all while causing delays that they blame on Petitioner. Since accusing others of what you are actually guilty of is the new norm, please reflect on the above where this started with wrongful termination over three years ago.

Respondents assert that Petitioner did not establish the attorney-client relationship between himself, Petitioner's former employers Corporate Attorneys

and any of the Littler Mendelson attorneys. This is simply incorrect as Petitioner will demonstrate here.

Respondents and their attorneys argue the timeline and engagement of Petitioner and his relationship with Kristen Jesulaitis, Earl Jones and Kelley Edwards. First, it is a fact that Petitioner had an established and attorney-client relationship with attorney Kristen Jesulaitis through his work as is verified by the above-mentioned admission of Cody Parker through his letter to employees (ECF No.1-2, page 60) continuing after the call to the Hotline and during the first months after Petitioner's termination, it is also true that Kristen wrote and signed an affidavit that this relationship never existed (ECF No.58-1, pages 2-3). The Tenth Circuit Court ruled that Petitioner was incorrect in thinking he had a relationship with Ms. Jesulaitis because of her affidavit. Petitioner had first established the relationship through work but then Ms. Jesulaitis was the first to contact Petitioner after the call to the Hotline on May 27, 2019, she advised in that call that she would be assisting in getting resolution the situation and that Petitioner would be able to preserve his job. Petitioner was later contacted by Ellie Sullivan who was to assist with the situation, all prior to the termination of Petitioner. On June 10, 2019, after being terminated, Ellie Sullivan in a phone call advised that Petitioner he should sign the "Separation Agreement, General Release, & Covenant not to sue" (ECF No.1, pages 59-66). In a later conversation Ms. Jesulaitis advised of the same but then advised by phone and email that she would be working with

Petitioner to resolve the issue. In a later conversation she, after advising me to sign the Separation Agreement and Petitioner advising he would not, she advised that she would like me to work with Earl "Chip" Jones so that he could assist me in getting things resolved and retain my position.

Mr. Earl "Chip" Jones first reached out to me around July 25, 2019 where he introduced himself as my attorney and would be assisting me in getting back my position in exchange for meeting with auditors/investigators. During the preliminary exchanges Mr. Jones asked for all the documentation and information that I had so he could continue to assist me on behalf of Genesis Entities. After many phone calls and exchanging of information Mr. Jones had promised to get my pay reinstated and position restored. One of the initial emails Petitioner queried, "As of today (10:30 PM MST), I have not heard anything from Genesis regarding reinstatement of my employment -nor any sort of check in the mail. Honestly, you are the only one that I have had any contact with about the situation -after Kristen directed you to me." to which he responded "I'm back in the office. Let me discuss your requests below with the company and I'll be back in touch asap. Apparently the check did not go out until Friday. Have you received it yet?" Later he wrote, "Austin, Someone is helping with the audit/investigation wants to meet with you Thursday. He will reach out to you on your mobile – 307-705-2159 thanks Chip" (ECF No.53, pages 8-10). The audit/investigation consisted of an interrogation by some hired forensic professional in a

Hotel room in Green River, Wyoming, where Mr. Dan Ramey of Houston Financial Forensics and his assistant interrogated Petitioner in a private meeting room and gathered copies of any communication I had pertaining to the situation, under what they stated was under the direction of Kristen Jesulaitis, as well Mr. Jones whom was to preserve my job, so I detailed and provided everything that I had, and then they grilled me like I was a convict.

Of course there are many other exchanges and conversations but this eventually ended with an email exchange with Kristen Jesulaitis whereas she directed it to Kelley Edwards who reached out to me on behalf of Mr. Jones requesting all of the information we had exchanged, emails, discussions, etcetera so she could continue where Mr. Jones had left off, basically all of the information Mr. Jones had conveniently disappeared and Mr. Jones was no longer competent to relay any information, so believing that Littler Mendelson was still assisting me in retaining my employment Petitioner emailed her the pertinent information about the exchange, but not all (ECF No.53, pages 13-15). Eventually her email stated that she was requesting that I sign a "Tolling Agreement" that Mr. Jones had previously provided me so we could "work out the issues," Kelley Edwards wrote: "Thank you, Mr. Carter, for forwarding the below information. At this point I think the best approach is for us to execute the attached tolling agreement so that Genesis can finish its investigation into your allegations. We will not be in a position to have productive discussions with you until

that time. Please let me know whether you are willing to sign the attached agreement, with or without revisions." AND "Mr. Carter, Attached is one of many decisions finding a tolling agreement to be enforceable in a matter before OSHA, I would encourage you to sign the agreement so that we may have more time to attempt to resolve this matter amicably (ECF No.53, pages 13-15). Thank you, Kelley Edwards" This was at the eleventh hour before Petitioner could file with OSHA/DOL and where Petitioner viewed the ending of the attorney-client relationship, Petitioner filed with OSHA/DOL. Petitioner only ended the attorney-client privilege with the Littler attorneys after it became apparent Mr. Jones had not relayed to Ms. Edwards the nature of the relationship. While Jones was unavailable and incompetent, Petitioner filed for unemployment to which Genesis H.R. advised the Wyoming State agency that Petitioner had not been terminated for cause and that he was eligible for unemployment.

While Petitioner did not disclose all the exchanges and conversations with the Courts, or Littler. Mr. Jones, who had an unknown medical condition and was unable to continue with the case or practice of law, provided the Courts with his Declaration/Affidavit which he describes that "I feel confident that I informed him I represented the Genesis entities and that I was not his personal counsel" (ECF No.58-2, pages 2-5) when it is evident from all of the email exchanges with Kelley Edwards and Kristen Jesulaitis, were the same ones Petitioner provided them, that Mr. Jones used in his Declaration, I know because they were truncated like

I sent. Mr. Jones could not even remember his passwords or where he put his notes or what he had for breakfast that morning. Instead, the Littler attorneys relied on Petitioner to provide them with some, not all, of the information and exchanges. Respondents have no clue what was exchanged or what arrangement Mr. Jones had promised Petitioner and he certainly cannot remember the attorney-client relationship that was arranged.

Unfortunately, it is a commonly known fact among attorneys in the field of employment attorneys dealing with Sarbanes-Oxley and Dodd-Frank cases, that Littler Mendelson operates in the same manner as described above, a playbook if you will. Therefore, any attorney that Petitioner tried to engage with after finding that his relationship with Littler attorneys ended, required upfront payment. All that were contacted would only accept the case on an hourly basis, as the Littler attorneys are known for drawing cases out until the client is penniless, crushed or the length of time has been drawn out so long that it renders the case impotent and futile. It was at this point that Petitioner decided on Pro Se.

CONCLUSION

For the forgoing reasons and proof contained herein of the misrepresentation, false claims and outright lies of Respondents, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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