No. 21-165

In The

Supreme Court of the United States

In re GRACIE E. MCBROOM,

Relator,

v.

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS,

Respondent.

On Petition for a Rehearing for Extraordinary Writ and a writ of Mandamus to the United States Court of Appeals for the Sixth Circuit

EMERGENCY PETITION FOR WRIT OF MANDAMUS

In re Gracie E. McBroom in
Pro Se

Counsel of Record

636 Koebel Avenue

Columbus, Ohio 43207

(614) 449-8555)

Counsel for Relator

QUESTIONS PRESENTED

1. Was this a reasonable question in the mind of the state Franklin County Court of Appeals on June 20, 1996 in the Memorandum Decision in their agreement with the trial court, stating, "since [Appellant, McBroom] had no legal entitlement to appointment as a presiding judge, or even a judge, under R.C. 3501.22, she had failed to set forth an actionable claim against the Board of Elections, and the complaint must be dismissed." The whole issue started out was the denial of a right to vote and the issue begin to develop by the Respondent that McBroom was not an employee. Which was not true. Yet, in the same Memorandum Decision, on my hiring date being hired as an employee on 1981, the trial court stated, "we agree with the conclusion of the trial court that the board latitude provided to the FCBE, in making appointment of precinct judges precludes any claim by [Appellant] that she was in any way entitled to re-appointment to another annual term as presiding judge; moreover, at the time in question, R.C. 3501.22 made no mention at all of any distinct appointment procedure for the position of presiding judge, although the 1995 amendment to this statute does provide for this position.' "Could it be true that in 1981 there was no such criteria as a distinct appointment according to R.C. 3501.22? Does this set [Appellant] apart from an employee as opposed to an independent contractor?

2. Has Title VII of the Civil Rights Act of 1964 been abolished from the law? If not, was it indicated in the Plaintiff-Appellant' case in the United States District Court and the United States

Court of Appeals for the Sixth Circuit in their judgment in the case of McBroom?

3. Has the "Southern District Court and the United States Court of Appeals decided an important question of Federal law that has been settled rightfully by that Court in favor of McBroom?

4.Has the "Southern District Court of Appeals decided an important federal question in a way that conflicts with relevant decision of the U.S. Supreme Court."

LIST OF PARTIES

Relator Gracie McBroom is the Plaintiff-Appellant in the Court below Respondent HR Director Franklin County Board of Elections was the Defendant-Appellee in the Court below. The Party representing the Appellee in the Court below were Attorneys Jeffrey C. Rogers and Scott J. Gaugler. The Party representing the Appellee in the Court below is Thomas W. Ellis.

TABLE OF CONTENTS

TABLE OF CONTENTS

APPENDIXES

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES

CASES

STATUTES AND OTHERS

PETITION FOR WRIT OF MANDAMUS

Relator Gracie McBroom respectfully petitions this Court for a writ of mandamus to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINION BELOW

The unpublished opinion of the Sixth Circuit was not reported but has been reproduced in the appendix hereto in the opinion at App. 2. Court of Appeals of the Sixth Circuit denied a timely Motion for Rehearing in an unpublished Order April 14, 2015. A copy of the order is attached hereto in the Appendix at App. 3. The opinion of the District Court for the Southern District of Ohio was reported on January 10, 2014, was issued in *McBroom v. HR Director Franklin County Board of Elections*, but has been reproduced at App. 25 thru App. 41.

JURISDICTION

This Court has jurisdiction to consider this case pursuant to 28 U. S. C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amend. 14: provides in relevant part: No State shall 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 law." Section 1391 (b) (2) of Title 28 of the United States Code, governing venue, provide that a civil action may be brought in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of property that the claim occurred or a substantial part of property that is subject of the action is situated.

STATEMENT OF THE CASE

Relator was given a right to sue from the Equal Employment Commission and this lawsuit was commenced The Relator filed the above- styled action against HR Director Franklin County Board of Elections for claims arising out of Respondent engaging in unlawful discriminatory practices. This is a civil case governed under federal law Title VII United States Code, Section 42 U.S.C. § 2000 5 (f)(1) [other federal status giving the court subject matter jurisdiction.] 637 f.2d 1073 1081 (6th Cir. 1980). 431 U.S. 324, 335-36 n.15 (1977; No. c-2-77-89, Opinion and Order (S.D. Ohio June 29, 1982) See also 411 U.S. 792, 802 (1973).

Relator, McBroom has filed suit against Respondent, HR Director Franklin County Board of Elections for illegal discriminatory practice relating to employment due to McBroom's race and color prior to November, 2011 and continuing therefrom. Respondents, Mary Hackett,Manager Precinct Election Official and Deborah Cotner, Precinct Election Coordinator, both are Caucasians demoted Petitioner from her position as a :Precinct Judge. Mary Hackett told Relator that they wanted someone with better skill sets than McBroom and Deborah Cotner cited to Petitioner that McBroom had failed Respondents' test. Upon request, Relator intend to offer into evidence official Computerized Business Poll Worker's records, ("records") which are the legal system's label for reports and documents prepared by the Franklin County Board of Elections to show that what they have stated is not true.

In the Order from **BATCHELDER, GIBBONS and ROGERS,** Circuit Judges of the United States

Court of Appeals, Sixth Circuit, filed January 21, 2015, App. 2," McBroom's complaint indicated that she had worked as a precinct official since 1981, and had been demoted in 2011 based on her race and in retaliation for a similar suit she had filed in 1995. The district court denied McBroom's Motion for a default judgment and granted summary judgment to defendant on the ground that McBroom was not an employee protected by Title VII . . . ' "

Relator filed a charge with the Ohio Civil Rights relation Commission (OCRC) regarding unlawful discrimination and with that came a dual relationship with the Equal Employment Opportunity Commission (EEOC). The (EEOC) issued to Relator a Notice of Suit Rights to file this action in the federal or state Court. Relator will also demonstrate to this Court that McBroom was hired as an employee and not appointed as a precinct official.

Appointment of precinct judges and judge

BOWMAN and CLOSE, JJ, concur,

"At the time in question, R.C. 3501.22 made no mention at all of any distinct appointment procedure for the position of presiding judge, although the 1995 amendment to this statute does provide for this position."

The amendment of this statute of 1995 that provided for this position was adopted after McBroom hired in date of November, 1981. McBroom was hired in as an employee. The United States District Court and the United States Court of Appeals agreed with the Respondent, HR Franklin County Board of Elections in their Opinions thereby

rendering 42 U.S.C. § 2000, et seq inapplicable to McBroom's claim. The Relator was not appointed, and Respondent has no grounds to state that McBroom was not an employee protected by Title VII.

It is well established in the Court and elsewhere that a Petitioner claiming disparate treatment on account of race must prove "by a preponderance of the evidence that the Respondent intentionally discriminated against [her]." *Grano v. Dept. of Development,* 637 F.2d 1073, 1081 (6th Cir.1980). See also *Teamster v. United States* 41 U.S. 32, 335-36 n.15 (1977); *Carter v. Petry,* No. C-2-7-89, Opinion and Order (S.D. Ohio June 29, 1982).

In the report submitted to the Ohio Civil Right Commission dated April 19, 2012, the Respondent stated on page 4 of 5 as follows:

. **Of further note, Charging Party was placed at a different location to avoid potential embarrassment**

This is a racial epithet coming from the Respondents directed to McBroom. "710 FSupp 675 (ND Ohio 1989) *Reeves* v. *Digital Equipment Corp.* A prima facie

case of racial discrimination outlawed by 42 U.S.C. 1981 and 2000e(b) is made proof the Petitioners belongs to a minority race, the Petitioner was treated differently than a similarly situated white employee, and the reason for the difference in treatment was the Petitioner's race." See also McDonnell Douglas at 804-05,U.S. at 256.

REASON FOR GRANTING THE POSITION

In the present case, Petitioner seeks to hold the Respondents liable for intentionally discriminating against McBroom on the basis of race. The evidence with respect to Petitioner's employment regarding the Respondents concerns two fairly distinct period of time. First, Petitioner was discriminated in 1996, against by the Respondents and my demotion was motivated by unlawful discrimination. See Appendix E.

In the present case, Robena Hawkins, who is Caucasians was put in the location where McBroom was working as a Paper Judge by Mary Hackett, Manager, Precinct Election Official and Deborah Cotner, Precinct Election Coordinator both Caucasians for McBroom to train Robena Hawkins. Petitioner was unaware that McBroom was training Hawkins for my position. Mary Hackett and Deborah Cotner stated, that McBroom had failed Respondent's test and they wanted someone with better skill sets than McBroom. Prior to Appellant removal from the position, McBroom was never made aware that there was a problem with my performance or my skills. Plaintiff passed Respondents test and was allowed to work the 2010 and 2011 elections as a presiding judge. McBroom had many years of training with the Respondent Franklin County Board of Elections

and have been awarded Certificates of Appreciation for outstanding work as a voting location Manager. Also, McBroom's work history consisted of a presiding judge and training from 1981 to 1998, at the Franklin County Board of Elections which is not included on the work history obtained from the Ohio Civil Rights Commission. Records were obtained from the Franklin County Board of Elections. (App. 42 ¶ 1). From 1999 to 2011, Petitioner was an employee and had (29) twenty-nine years of employment at the Franklin County Board of Election and had (36) thirty-six years of classes to meet the job specification at the Franklin County Board of Elections.

'Work History: Last worked 11/8/2011

2012/03/06 DEM-PJ-VOTING LOCATION MANAGER

2011/11/08 PAPER BALLOT JUDGE

2010/05/04 VOTING MACHINE JUDGE

2009/08/04 VOTING MACHINE JUDGE

2008/03/05 ZREPUBLIAN – NEW ROSTER JUDGE

Also, the Franklin County Board of Elections mailed to the Ohio Civil Rights Commission the work history of Robena Hawkins, McBroom's replacement.

According to her record the Board of Elections gave Hawkins years of class Work that does not correspond with the years that she had worked.

Below is listed the years of employment of classes that the Franklin County Board of Elections stated that Hawkins attended which are not included in the Work history above. (1) 2007/10/16; (2) 2006/10/25; (3)

2006/05/01; (4) 2006/04/25; (5) 2005/11/03; (6) 2005/04/28; (7) 2004/10/14; (8) 2004/02/26; (9) 2002/10/17; (10) 2002/05/06; (11) 2001/11/05; (12) 2000/10/19; (13) 2000/03/06. ' "

More specifically, according to the above, Petitioner is claiming that differences in treatment by the fact that the Franklin County Board of Elections replaced McBroom for Hawkins a Caucasian based on her qualifications which did not exist. Franklin County Board of Elections, "stated that they wanted someone with better skill sets than McBroom." The Franklin County Board of Elections gave the above record to the Ohio Civil Rights Commission and the Equal Employment Opportunity Commission showing that she had the qualification for better skill sets than McBroom and that it was not her being a Caucasian that qualified her for the presiding judge position. The Ohio Civil Rights Commission, the United States Southern District Court and the United States Court of Appeals for the Sixth Circuit disregarded those facts. See App. 3 and App.10).

Only the Equal Employment Opportunity Commission regarded this fact because they issued to McBroom a right to sue the Franklin County Board of Elections.

Caucasians were given preference over job promotion, hire, tenure, terms, condition, and privileges of employment by Respondents. All things being equal to choose between two people, not regarding race, with the same qualifications is fair. To hire someone with less qualification seem to be unfair and not right. To replace Petitioner, a highly experience qualified Presiding Judge with someone less qualify demand a logical explanation. In addition to the foregoing, Petitioner states that there were a number of incidents following

Petitioner training of Hawkins which indicated racial animus.

The record shows as stated above, that there are additional inconsistencies between statements of the Respondents submitted to the Ohio Civil Rights Commission and testimony of supervisors who signed those statements. The Court must infer that the inconsistencies are the result of an attempt by Respondents to cover up a violation of Title VII. Further an inference of discrimination must be drawn from the totality of circumstances. Whereas, one factor standing alone might not warrant, or nullify, an inference of discrimination, a coalescence of factors may suffice to so demonstrate.

" In Title VII Civil Rights Suits in particular a court is required to be sensitive to all the facts and circumstances surrounding Petitioner's employment insofar as those facts and circumstances may bear on Petitioner's charge of discrimination. See *McDonnell Douglas.* 411 U.S at 804. It is well established in the Court and elsewhere that a Petitioner claiming disparate treatment on account of race must prove by a preponderance of the evidence that the Respondents intentionally discriminated against [her]. *Grano v. Dept. of Development,* 637 F.2d 1073, 1081 (6th Cir. 1980. See also Teamsters v. United 431 U.S. 324, 335-36 N. 15 (1977); *Carter v. Petry.* No. C-2-77-89. Opinion and Order (S.D. Ohio June 29, 1982).

Proving discriminatory intent by direct evidence is an onerous task, however, and it is incumbent upon the Court to analyze a Petitioner's charges in light of all the surrounding facts and circumstances. To facilitate this process, the Supreme Court has developed a tripartite allocation of the burden of proof in all disparate treatment cases: First, the Respondent has the burden

> of proving by the preponderance of the evidence a prima facie case of discrimination.
>
> Second, if the Petitioner succeeds in proving the prima facie case, the burden shifts to legitimate, nondiscriminatory reason for the employee's rejection.' *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)].
>
> Third, should the Petitioner carry this burden the Petitioner must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the Respondent were not its true reasons, but were for discrimination? Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252-253 (1981.
>
> Where, as here, the discrimination arises in the course of Petitioner's employment, a prima facie case can be established simply by showing "that [Petitioner] is a member of a class entitled to the protection of Title VII, and that [McBroom} is accorded treatment different from that accorded persons otherwise similarly situated who are not members of the Class." *Potter v. Goodwill Industries of Cleveland*, 518 F.2d 864, 865 (6th Cir. 1975); Carter v. Petry, supra, at 3.

Once a prima facie case has been established, it is up to the Respondents to introduce evidence showing that there was a legitimate, nondiscriminatory reason for the disparity. Burdine, 450 U.S. at 253. This prong of the Burdine three pronged analysis is set not quite as demanding as one might think. As the court in Burdine made clear: [t]he Respondent need not persuade the court that it was actually motivated by the proffered reasons . . . It is sufficient if the Respondent's evidence raises a genuine issue of fact as to whether it

discriminated against the Appellee . . . If the Respondent carries this burden of production, the presumption raised by the prima facie case is rebutted, and the factual inquiry proceeds to a new level of specificity . . . . Burdine 450 U.S. at 255. likely motivated Respondent of . . . that the employer's proffered explanation is unworthy of credence. See Donnell Douglas, 411 U.S. at 804-05; Burdine, 450 U.S. at 250. The judges in the U.S. Southern District Court and the Judges in the U.S. Court of Appeals, Sixth Circuit decided the final outcome of this case on a nondiscriminatory issue.

The most relevant facts to the determination of this issue are as follows: 1. to reverse what the Respondent stated, "that Petitioner is not an employee of the Franklin County Board of Elections," thereby rendering 42 U.S.C. 2000 et seq. inapplicable to McBroom's case. Petitioner was hired on Nov. 1981, when R.C. 3501.22 made no mentioned at all of any distinct appointment procedure for the position of Presiding judge. The amendment to this statute took place in 1995, regarding distinct appointment procedure for the position of a presiding judge which was far beyond McBroom's hired in date of 1981.

2.The Franklin County Board of Elections gave Respondent Robena Hawkins, McBroom' replacement, years of employment of classes in the area in which she did not work.

3. On November 21, 2012, the U.S. Marshal delivered to Respondent Franklin County Board of Elections a Summons in a Complaint. The Respondent was given instruction as to the time limitation to respond with an Answer. Giving them (21) twenty-one days to respond or, if not, they would be faced with a default judgment. After no response within the time limitation Magistrate **Judge Noah McCann King ORDERED** the defendant to respond, by stating," the time for responding has passed with no appearance on behalf of or response to the

Complaint by **Magistrate Judge King** gave the Respondent a total **of 45 forty-five days with an additional (14) fourteen days to respond when the Summons stated that they had (21) twenty-one days to respond.** The Respondents did not file an Answer to the Complaint until March 4. 2013. Petitioner filed a default judgment against the Respondent in which Magistrate Judge King totally ignored. Alone with the Respondent's Answer to Petitioner's Complaint the Respondent . filed a Memorandum Contra and Motion to Dismiss on June 10, 2013.

The case was **DISMISSED** and was **GRANTED** in favor of the Respondent.

Petitioner filed an appeal in the U.S. Circuit Court and **BATCHELDER, GIBBONS, and ROGERS,** Circuit Judges ruled in agreement with Magistrate Judge Noah McCann King 's decision in favor of Respondent. Since the Respondent were ORDERED to file an answer instanter by Magistrate Judge King on March 4, 2013, and the Complaint was filed on November, 2012, and Petitioner Answer was ordered stricken by Judge King. **King.** McBroom filed the motion, also a motion for Recusal, motion for default judgment, Motion for Judgment on the Pleadings. All of those Motions were **DISMISSED on January 10, 2014, signed by Judge Algenon L. Marbley.**

After Petitioner filed a Notice of Appeal with the Sixth Circuit Court in response, on February 28, 2014, McBroom received from the Court a Briefing Schedule explaining the procedure on all filings submitted to the court. On March 20, McBroom' Brief was to be filed by May 2, 2014, and the Respondent's Brief was due by June 4, 2014. On May 19, 2014, Respondent filed a

Motion to Dismiss Petitioner's case. On June 23, 2014 an **ORDER** of the District Circuit Court from **Chief Judge Batchelder, Circuit Judges Gilman and Griffin** stated that Respondent' motion to dismiss was denied. As a result, the Respondent's Brief that had been originally set for June 4, 2014, was then given an extension until August 5, 2014. In the briefing scheduling it stated that if the brief is filed late, the case is at risk of being dismissed. On August 5, 2014, which was the Respondent's deadline to file his Brief, the Respondent waited until after the deadline of August 11, 2014 to file a Motion to Extend Time to file his Brief. In fact, the Respondent waited (6) six days after the Brief was due to file his motion.

CERTIFICATION

This Petition is restricted according to Rule 44, Point 2, its grounds shall limited to intervening circumstance to other substantial grounds not previously mentioned, that it is restricted to ground presented in good faith and not for delay.

Gracie E. McBroom in Pro Se

STANDARD OF REVIEW

The writ of mandamus has come before this Court infrequently. When it has however, the Court has uniformly upheld its availability under the All Writs Acts to remedy "errors of the most fundamental character." Morgan, 345 United States at 512, quoting United States v. Mayer, 235 U.S. 55, 68 (1914); *Korematsu v. United States*, 584 F. Supp. 1406, 1419-20 N.D. Cal. 1984). Alternatively, as the Petitioner notes, the Court may treat the Petition as a Petition or motion for equitable relief filed with the Court in the McBroom case itself. **The Court, like other federal courts, has the inherent Equitable power "to set aside fraudulently begotten Judgments" and restore the parties to the position they would have enjoyed in absence of the fraud.** *Hazel –Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, 245, 250 (1944). *See* Appendix C Emergency Application for support.

CONCLUSION

For the forgoing reasons, the petition for writ of writ of mandamus should be granted.

Respectfully submitted,

Gracie E. McBroom

Gracie E. McBroom
Counsel of Record
636 Koebel Avenue
Columbus, Ohio 4320
Counsel for the Relator

Date: OCT 25, 2021

Additional material from this filing is available in the Clerk's Office.