

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

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**In The  
Supreme Court of the United States**

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CAROLINE ROSS,  
Petitioner,

v.

JUDSON INDEPENDANT SCHOOL DISTRICT,  
Respondent,

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

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**PETITION FOR WRIT OF CERTIORARI**

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i.

### QUESTIONS PRESENTED:

1. Petitioner was deprived of due process when the tribunals below materially misapprehended the record. They held that there was no objection to admission of case-dispositive hearsay at the teacher's non-renewal hearing and to the inability to cross-examine the hearsay declarant. There was indeed an eight page objection and an adverse ruling.
2. The state deprived teacher of Fourteenth Amendment due process when its School Board non-renewed teacher without jurisdiction to do so.
3. Consideration by a state's fair employment tribunal is protected by the guaranty of Fourteenth Amendment due process. U.S.CONST.Amend.XIV
4. The state deprived teacher of Fourteenth Amendment due process when its School Board violated its own law (by disregarding its policy that only the superintendent could recommend non-renewal, by disregarding its policy on rules of evidence at its hearings, by disregarding its policy of having to consider the most recent evaluation, by firing her for an action which was not even prohibited until after she was non-renewed, in violation of Texas' "constitutional prohibition against retroactive laws" . Vernon's Ann.Texas Const. Art. 1,sec.16; **Robinson v. Crown Cork & Seal Co., Inc.**, 335 S.W.3d 126,149hn13(Tex.2010) A state's failure to follow its own law violates the guaranty of due process.

U . S . C O N S T . A m e n d . X I V ;            **H i c k s            v .**  
**Oklahoma**, 447U.S.343(1980)

ii.

### INTERESTED PARTIES

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RESPONDENT and Counsel

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Elida Bera\_  
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### **APPENDIX A**

On December 20, 2019 the Clerk's Judgment was signed by the Clerk from the United States District Court for the Western District of Texas, Case No. 5:18-cv-00269 stating the following:

The Clerk's Judgment [Doc. No. 44) states that based upon the foregoing, Ross has failed to demonstrate the existence of a contested material fact, and summary judgment as to her claims is proper. Therefore Defendant's Motion for Summary (Docket Entry 32 is GRANTED, this case is Dimissed. Decided by Judge Henry j. Bemporad  
Clerk's Judgment..... App.1

### **APPENDIX B**

On May 20, 2021 a Judgment was entered in the United States Court of Appeals for the Fifth Circuit No. 20-50250, stating the following:

The cause was considered on the record on appeal and

vii.

was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

#### **APPENDIX C**

On May 20, 2021 a Judgment was entered in the United States Court of Appeals for the Fifth Circuit No. 20-50250, stating the following:

The cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that plaintiff-appellant pay to dependant-appellee the costs on appeal to be taxed by the Clerk of this Court.



## TABLE OF AUTHORITIES

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Employee's right to use the Fair Employment Practices Act's adjudicatory procedures was a species of property protected by the due process clause. [reporter's syllabus, lw]	

**Malloy v. Hogan**, 378 U.S. 1 (1964) U.S.CONST.Amend.XIV. 18  
Fifth Amendment due process and Fourteenth  
Amendment due process protections are congruent.

**Pennoyer v. Neff**, 95 U. S. 714, 733 (1877). . . . . 17  
"Proceedings in a court of justice to determine the  
personal rights and obligations of parties over  
whom the court has no jurisdiction do not  
constitute due process of law." This rule has been  
enforced "since the adoption of the Fourteenth  
Amendment to the Federal Constitution...." **Pennoyer**  
at 733

**Riverside & Dan River Cotton Mills v. Menefee**, 237 U.S.  
189, 196 (1915). . . . . 17  
"Proceedings in a court of justice to determine the  
personal rights and obligations of parties over  
whom the court has no jurisdiction do not  
constitute due process of law."

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126, 149 hn13 (Tex.2010). . . . . i  
Retroactive laws prohibited

***Sylvester and Shirley Larocque V. Aberdeen Area***

***Director, Bureau of Indian Affairs***, 18 IBIA

80\*\*3(1989)1989 WL 265123. . . . . 18

.. . . .

An administrative agency's failure to follow its own rules is a violation of Fifth Amendment due process. U.S.CONST.Amend.V

**TEX.EDUC.CODE 21.203(a)**

"(a) Except as provided by Section 21.352(c), the employment policies adopted by a board of trustees must require a written evaluation of each teacher at annual or more frequent intervals. The board must consider the most recent evaluations before making a decision not to renew a teacher's contract if the evaluations are relevant to the reason for the board's action."

JISD policies "DFBB (LEGAL) EVALUATIONS" (ROA 997), by considering her most recent and material performance evaluation

Texas Education Code 11.201(d)(4)

(d) The duties of the superintendent include:

(4) initiating the termination or suspension of an employee or the nonrenewal of an employee's term contract".

***U.S. v. Boston Ins. Co.***, 269 U.S. 197, 203hn1 (1925).

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When an appellate court misapprehends the record, further review is appropriate.

**U. S. Constitutions**

*U.S.CONST.Amend.XIV.* . . . . . **13, 14-15, 18**

No state deprivation of property without due  
process of law.

*U.S.CONST.Amend.V.* . . . . . **18**

No federal deprivation of property without due  
process of law.

**Criminal Codes**

*Texas Const. Art. 1,sec.16.* . . . . .

Retroactive laws prohibited

**PETITION FOR A WRIT OF CERTIORARI**

Attorney Larry L. Warner, on behalf of Petitioner, Carolina Ross, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. (App. A-C)

## **JURISDICTION**

28USC1254(1) provides jurisdiction for a Petition for Certiorari filed within 90 days of the entry of judgment of a United States Court of Appeals.

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on April 1, 2021. The 90<sup>th</sup> day after the entry of judgment of the United States Court of for the Fifth Circuit is June 30, 2021. This Petition for Certiorari is filed on June 30, 2021.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Pertinent provisions of 42U.S.C.§1983 are set as follows:

### **14<sup>TH</sup> AMENDMENT OF THE US CONSTITUTION**

#### Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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.

#### Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such



state.

### Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

### Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

**42 U.S. Code § 1983. Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of

Columbia shall be considered to be a statute of the District of Columbia.

Those sections protect persons against arrest warrants issued upon affidavits containing material intentionally false or reckless statements.

## **STATEMENT OF THE CASE**

At black, over-40, female Principal's non-renewal hearing, one accusing Principal of dishonesty appeared by document rather than in person. There was an 8-page objection....overruled. Principal was non-renewed.

The hearing was recorded. Counsel had the oral hearing transcribed. FED.R.EVID.1004(3) The school board never produced the original. The school board told the state Commissioner of Education that there was no objection. The United States District Court held that there was no objection. The United States Court of Appeals for the Fifth Circuit held that there was no objection and affirmed the judgment of the District Court.

The state law required the school board to consider

the principal's latest evaluation. It did not. The state law allowed only the superintendent to recommend non-renewal. The superintendent stated that he did not recommend non-renewal.

Principal presents this Petition for Certiorari within 90 days of the entry of the judgment of the United States Court of Appeals for the Fifth Circuit.

## **REASONS FOR GRANTING THE PETITION**

The Supreme Court should grant the writ because both lower courts materially misapprehended the record.

1. Petitioner was deprived of due process when the tribunals below materially misapprehended the record. They held that there was no objection to admission of hearsay at the teacher's non-renewal hearing and to the inability to cross-examine the hearsay declarant. There was indeed an eight page objection and an adverse ruling. The hearsay declaration was material because it imputed malum in se dishonesty to teacher, relied upon for non-renewing teacher.

When an appellate court misapprehends the record, further review is appropriate.

"Upon a re-examination of the record, it becomes plain that we misapprehended the opinion and ruling of the lower court; also that the reason advanced to support our conclusion is insufficient."**U.S. v. Boston Ins. Co.**, 269 U.S. 197, 203hn1 (1925)

When a lower Court misapprehends the record, the Supreme Court of the United States will reverse and remand.

"It appears that the court [of appeals] may have misapprehended significant parts of this record.10\*\*\*"**Continental Ore Co. v. Union Carbide & Carbon Corp.**, 370 U.S. 690, 701hn6 (1962)

In **Continental**, the lower Court misapprehended the character of the substance in issue as well as the ownership.

"As for the 300,000 pounds of 'oxide' which the court said was offered to Continental, the material actually was ore, not oxide. Furthermore, Nisley & Wilson did not own the ore and failed in its effort to buy it from the Government."**Continental Ore Co. v. Union Carbide**



**& Carbon Corp.**, 370 U.S. 690, 710fn10 (1962)

In **Ross** the lower tribunal affirmatively held that there had been no objection to the hearsay allegation of dishonesty and the failure of the declarant to appear and the consequent inability to cross-examine the accuser. The record shows that there was indeed an eight-page objection.

The result in Ross should be the same as in

***Continental:***

"We conclude that the judgment of the Court of Appeals must be vacated and the case remanded to the District Court for further proceedings consistent with this opinion. It is so ordered."

***Continental Ore Co. v. Union Carbide & Carbon Corp.***, 370 U.S. 690, 710 (1962)

2. The state deprived teacher of Fourteenth Amendment

due process when its School Board non-renewed teacher

without jurisdiction to do so.

A state court's rendition of judgment when it is without jurisdiction to do so deprives the litigant of due process. ***Baldwin v. Iowa State Traveling Men's Ass'n***, 283 U.S. 522 (1931) U.S.CONST.Amend.XIV

**Judson Independent School District ("JISD") Board of Trustees ("Board") did not have subject matter jurisdiction to decide to nonrenew Ross' employment on either May 19, 2016, or June 7, 2016.**

The JISD Board did not comply with the condition precedent of statute and policy, TEC 21.203 (a), JISD policies "DFBB (LEGAL) EVALUATIONS" (ROA 997), by considering her most recent and material performance evaluation of June 15, 2016, and failed to establish that

it had considered Ross' most recent and material [performance] evaluation;

Furthermore, *Superintendent Carl Montoya*, **denied** **"nonrenewal" was his recommendation** per Tex. Ed. Code §11.201 (d)(4), and JISD Policy DFBB (LOCAL) RECOMMENDATIONS FROM ADMINISTRATION, and SUPERINTENDENT'S RECOMMENDATION (ROA 1002); per TEC § 11.11.513(2) Superintendent Montoya had **the sole authority** to recommend personnel decisions to the Board for action, therefore violating its own policy "DFBB (LOCAL)-Recommendations from Administration"(ROA 1002), and "Superintendent's Recommendation" (ROA 1002).

3. Consideration by a state's fair employment tribunal is protected by the guaranty of Fourteenth Amendment due

process. U.S.CONST.Amend.XIV

"Employee, who was discharged purportedly because his short left leg made it impossible for him to perform his duties as a shipping clerk, filed timely charge of unlawful termination with Illinois Fair Employment Practices Commission. The Commission denied employer's motion that charge be dismissed due to Commission's failure to hold timely conference. On petition for original writ of prohibition, the Supreme Court, 82 Ill.2d 99, 44 Ill.Dec. 308, 411 N.E.2d 277, held that failure to comply with 120-day convening requirement deprived Commission of jurisdiction to consider employee's charge, and employee appealed. The Supreme Court, Justice Blackmun, held that: (1) employee's right to use the Fair Employment Practices Act's adjudicatory procedures was a species of property protected by the due process clause; (2) employee was entitled to have Commission consider merits of his charge; and (3) availability of post-termination tort action would not provide employee due process.

Reversed and remanded." **Logan v. Zimmerman Brush Co.**, 455 U.S. 422 (1982) [reporter's syllabus, lw]

The School Board denied Teacher due process when

it disregarded its own rules and then considered objected-to hearsay accusing Teacher of dishonesty. The declarant did not appear and consequently was not cross-examined. The Board used the imputation of dishonesty as a reason to non-renew Teacher.

The school board represented to the Commissioner of Education that the Policies of JISD Board precluded use of TRE objections to Hearsay; however, JISD's Board allowed its attorney Russo to make evidentiary objections and violated its own policy that TRE did not apply "DFBB (LOCAL)-Hearing Procedures (3)" (ROA 1003), and yet sustained JISD's TRE objections-even hearsay-against Ross, and denying Ross' TRE objections-even hearsay against JISD Board.

The lower federal courts plainly misapprehended the

record and held that there was no objection.

Attorney Watts obtained a copy of the oral recording of the hearing before the school board.

He had it transcribed. It plainly shows that there was a lengthy objection to consideration of the hearsay imputation of dishonesty.

"Due process" requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment obtained without due process. **Griffin v. Griffin**, 327 U.S. 220, 229 (1946)

"It is, however, unnecessary to pursue the subject from an original point of view, since in **Pennoyer v. Neff**, supra, among other things it was said that 'proceedings in a court of justice to determine the personal rights and obligations of parties over whom the court has no jurisdiction do not constitute due process of law.'" **Riverside & Dan River Cotton Mills v. Menefee**, 237 U.S. 189 (1915)

4. The state deprived teacher of Fourteenth Amendment

due process when its School Board violated its own law.

An administrative agency's failure to follow its own rules is a violation of Fifth Amendment due process. U.S.CONST.Amend.V ***Sylvestor and Shirley Larocque V. Aberdeen Area Director, Bureau of Indian Affairs***,<sup>18</sup> IBIA 80\*\*3(1989)1989 WL 265123

Fifth Amendment due process and Fourteenth Amendment due process protections are congruent. ***Malloy v. Hogan***, 378 U.S. 1(1964)U.S.CONST.Amend.XIV

The School Board's own policy provides that only the superintendent can recommend non-renewal. In Ross, the superintendent denied that he recommended non-renewal. The Board non-renewed Principal.

Here are examples of the school board's not following

its own policies or state law or both:

- (1) violated its own policy "DFBB (LEGAL)-Evaluations"(ROA 997) by *failing to comply or explain its non-compliance* [based on *Tex. Ed. Code § 21.203(a)*];
- (2) violated its own policy "DFBB (LOCAL)-Recommendations from Administration"(ROA 1002), and "Superintendent's Recommendation" (ROA 1002);
- (3) violated its own policy "DFBB (LOCAL)-Hearing Procedures (3)" (ROA 1003);
- (4) violated its own policy "DFBB (LOCAL)-Board Decision" (ROA 1003)-*violated its own policy and denied Ross the opportunity to confront her proposed accuser Lauren Hopkins by selecting to have a hearing which denied to Ross compulsory process and protection by the Texas Rules of Evidence, and from inadmissible hearsay*;
- (5) claimed Ross allowing teachers to be charged for wearing "jeans" on "nonjean" days was against JISD policy in before May 31, 2016 when it was not proscribed by JISD until May 31, 2016 **after the Board decided to nonrenew Ross** (ROA 1673);
- (6) claimed that Ross allowing coaches to charge



students for attending PepRallies during class hours was against JISD policy in before May 31, 2016 when it was not proscribed by JISD until May 31, 2016 **after the Board decided to nonrenew Ross** (ROA 1366 [Depo. Bera (65/10-15, 66/1-10) **76/3-11**];

- (7) used Bera's stale or **pre-2015-2016 Contract** reasons for non-renewal when those inferably historical allegations against Ross "[allegedly] giving her passwords to secretaries and allowing secretaries to sign Ross' name to some checks" (ROA 40/7-20) had been inferably considered and rejected by Superintendent Mackey before Ross' school year contract renewal for the 2015 -2016 school year, and contrary to Texas law (ROA
- (8) violated its own policy to deny Ross the opportunity to have routine retraining of Lauren Hopkins and/or herself in Cash Handling Training for the 2016-2017 school year (ROA 1642), or "retraining for bookkeeping anomalies;

Ross has a greater claim on the Court's attention than Laroque did. The agency in Laroque simply failed to hold a hearing which its own policies required. In Ross

the board's failure to follow its own policies was multifarious and contumacious.

### **CONCLUSION**

The Supreme Court of the United States should grant this Petition for Certiorari.

Respectfully Submitted  
April 21, 2021

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

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**In The  
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CAROLINE ROSS,  
Petitioner,

v.

JUDSON INDEPENDANT SCHOOL DISTRICT,  
Respondent,

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

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**PROOF OF SERVICE**

---

I, Larry Warner, do swear or declare that on this  
date, June 30, 2021, as required by Supreme Court Rule 29,  
I have served the Petition for Writ of Certiorari to the

following parties by depositing a envelope containing the above document in the Unite States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery withing 3 calendar days.

**Honorable Katie E. Payne**

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Respectfully Submitted  
June 30, 2021

A handwritten signature in black ink, appearing to read "Larry Warner", written in a cursive style.

By:

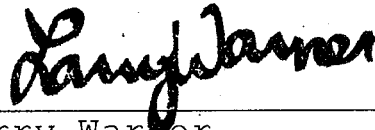
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Member of the Bar of the  
Supreme Court of the United  
States (1984)  
Capital Appellate Counsel,  
5th Administrative Region of  
Texas (2009-present)

**CERTIFICATE OF COMPLIANCE**

As required by the supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 4,056 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I, Larry Warner declare under penalty of perjury that the foregoing is true and correct.



Larry Warner  
Attorney at Law

SUBSCRIBED AND SWORN before me, on this 30<sup>th</sup> day of June, 2021, to certify which witness my hand and official seal.



Maria V. Rodriguez,  
Notary Public  
State of Texas  
My Commission Exp.: 11/21/22

