21-329

In The

SUPREME COURT OF THE UNITED STATES

ROSEMARY GARITY

Petitioner

v

USPS PMG Brennan/DeJoy
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED FOR REVIEW

The questions presented show conflict with Precedent of this Court and all Circuit Courts. The significant practical consequence is promotion of discrimination without remedy and encouragement of Courts to rule contrary to law.

1. Did the Ninth Circuit err in upholding sanctions against pro se, denial of damages and right to a jury trial, when admitting not supported by the record, contrary to the Supreme Court and other Circuit Courts?

2. Did the Ninth Circuit err, in contrast to all Circuit Courts and the Supreme Court, when subtracting a contract grievance settlement from the discrimination award and denying make whole remedy, including front pay/restoration, costs, expenses, promotion, benefits and back pay, for found discrimination?

3. Did the Ninth Circuit err in determining constructive discharge contrary to the undisputed record evidence and the Supreme Court and the other Circuit Courts?

4. Did the Ninth Circuit err in denying expert witness fees to pro se because not an attorney, with expert approved by the Judge? Is this contrary to Fourteenth Amendment, make whole remedy and in conflict with Circuit and Supreme Courts?

5. Did the Ninth Circuit err in upholding order requiring pencil documents in a legal proceeding without copy to petitioner contrary to law and legal practice?

6. Was the denial of recusal, when becoming part of the accusatory process and upon multiple declarations of appearance of bias, contrary to Supreme Court and Circuit Court law?

7. Did the Ninth Circuit err in upholding summary judgment, while prima facie, pretext, disputed material facts and credibility issues all evidenced, against all Circuit Court and Supreme Court law? Is summary judgment eliminating meritorious claims?

8. Did the Ninth Circuit err in "But For" ruling contrary to the Rehab Act and Supreme Court precedent?

9. Is denial of representation by EEOC and DOJ, solely to Federal employees, against the Constitution and is the DOJ action in representing the Agency and coworkers, without providing representation to petitioner, contrary to the law and DOJ regulations?

10. Is the denial of Punitive Damages against the government contrary to the Fourteenth Amendment of the Constitution and is it promoting discrimination?

11. Did the Ninth Circuit err in the treatment of a pro se and discrimination claims, as outlined in all the questions, contrary to this Court and all Circuit Courts?

12. Did the Ninth Circuit err in refusing to address critical trial errors, contrary to precedent, affecting outcome?

13. Did the Ninth Circuit err in refusing to address denied Race Claim, when evidenced, contrary to Supreme Court and Circuit Court established law?

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SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment.

LIST OF ALL PROCEEDINGS IN TRIAL AND APPELLATE COURTS

GARITY v. Brennan, No. 20-15588 (9th Cir. Apr. 27, 2021).

Order affirming: 04/27/2021 at Appendix A

Order denying rehearing: 06/07/2021 at Appendix C

Garity v USPS US District of Nevada 2:11-cv-01805-RFB-CWH

Trial Orders: ECF[1]478, 4/1/2019 at Appendix B

Order pro se sanction 418, 11/27/2017 at Appendix D

Order Summary Judgment: ECF 316, 9/14/2016 at Appendix E

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Order Pencil Documents: ECF 230, 9/25/2014 at Appendix G

Order allowing DOJ Representation at Appendix H

BASIS OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

Date of Judgment: April 27, 2021

Order denying Rehearing: June 7, 2021.

Jurisdiction in Federal District Court is pursuant to Title VII 42 U.S.C. §§2000e et seq., Rehab Act 29 U.S.C. § 701 et seq., and 28 U.S.C. §1331, 1339, 1343, 1367

Jurisdiction at Ninth Circuit was as of right from dismissal 28 U.S.C. § 1291.

[1] Each following ECF (Electronic Case Filing) cite refers to the cited case 2:11-cv-01805

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

Amendment V to U.S. Constitution: Denial of Property Interest in career without due process and Equal Protection

Amendment VII to U.S. Constitution: Right to jury trial

Amendment XIV to U.S. Constitution: Equal Protection

29 CFR § 1614.203 Rehab Act of 1973 as amended, P.L. 114-95

House Report on the ADA Amendments Act of 2008, H.R. Rep. 110-730(I) "Discrimination on the Basis of Disability" (2008). Congressional notes on ADA

CONCISE STATEMENT OF THE CASE WITH MATERIAL FACTS

Courts ruled contrary to law/facts, as cited in their decisions. (*Parts and Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228 (7th Cir. 1989) (wrong with the force of a five-week-old, unrefrigerated dead fish) Due process denied by lack of representation by EEOC and DOJ, while provided to managers/coworkers. 28 extensions, disregarded scheduling order, most all opposed. Garity was sanctioned for trying to get evidence/depose only defendant. Summary judgment granted on failure to accommodate, retaliation and hostile environment while material facts disputed and evidenced and credibility issues abounded. Prima facie and pretext were shown. Law on Retaliation was error. Court required psychiatric exam without adequate protection, ordered sole copy of alterable pencil documents to USPS. Garity was sanctioned, contrary to law, eliminating emotional damages and jury trial. Judge recusal was denied, at bench trial, despite false accusations, multiple declarations on appearance of bias and former associate representing Agency.

Witnesses/testimony/evidence on claims were denied and testimony prevented unless based on grievances. Time limits imposed during trial prevented critical testimony and use of 30(b)(6) during trial was denied. Back pay denied based on grievances. Out of pocket expert fees were denied. Garity was denied make whole remedy and reinstatement and left $30,000 plus in the hole and loss of career, retirement and front pay despite finding of discrimination. Case facts are included. Garity was demoted and treated disparately based on race, as was each similarly situated Caucasian, subjected to retaliation in direct relation to protected activity and in extremely hostile environment, including seven unwarranted personnel actions, including suspensions and firing, unilaterally reduced, and seven false accusations of harm/inclination to murder, including a forced psychiatric exam when already cleared as no risk, a planned in advance lockdown-no threat made or implied, false stalking charges, an unsubstantiated letter signed and passed in workplace by management/workers calling Garity mentally unstable and falsely accusing of inclination to murder and finally constructive discharge due to actions. Management hijacked the union, eliminating rights to grievance process and poisoned environment by talking about Garity with coworkers. Work hours, days and duties were continually eliminated while Garity was closely scrutinized. Management gave false reports to unemployment and OPM, furthering harm. Constructive discharge occurred to prevent death from aggravation to heart condition, cancer and further harm from USPS caused depression and anxiety. At least 63 adverse actions were taken after disabilities evidenced in 2010 thru

constructive discharge on 12/1/11. Garity continually reported actions against her and almost all reports were ignored and remedial mechanisms were blocked, including threat assessment. Weingarten rights were denied ("make-whole relief') *Dupont deNemours & United Steel Workers Local 6992*, 362 NLRB No. 98 (May 29, 2015). Due process rights, "neutral counselor" completing management affidavits, and property interest in career were denied. All violated policy and caused harm to character and reputation. The cumulative effect of the above prevented justice.

REASONS FOR GRANTING PETITION/CONTENTIONS IN SUPPORT

Courts below "so far departed from the accepted and usual course of judicial proceedings, 'and' sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." All questions intertwine to show redetermination is warranted as quality, extensiveness and fairness of procedures followed are in question. (*Montana v. United States,* 440 U.S. 147, 164 n.11 99 S.Ct. 970, 59 L.Ed.2d 210 (1979)) All questions show treatment of discrimination claims, particularly against "the government", summary judgment elimination of claims, pro se treatment, effect of accusatory Judge and extensive rulings contrary to Supreme and Circuit Court law. Arguments are not mooted by partial award of back pay as emotional damages and medical costs were prevented by sanction. Mootness review is de novo. *Ghailani v. Sessions*, 859 F.3d 1295, 1300 (10th Cir. 2017).

> The idea...court's ruling, even if wrong, will not be overturned—"offends a deep sense of fitness in our view of the administration of justice." Maurice Rosenberg, *Judicial Discretion of the Trial Court, Viewed From Above*, Syracuse L. Rev. 641-2 (1971). See also *McLane Co., Inc. v. EEOC*, 137 S. Ct. 1159, 581 U.S., 197 L. Ed. 2d 500 (2017) (`...abuse its discretion if it based its ruling on an erroneous view of the law.')

QUESTION 1 Panel decision at p.3 states "The district court's exclusion of Garity's emotional distress evidence as a sanction for violating the Rule 35 order lacks support in the record." Error was not harmless because disability retirement was not voluntary, emotional damage compensable, evidence critical and jury trial prevented. "Probative value" could not be outweighed by prejudice or confusion, as this was a bench trial. This was not Court's ground for excluding evidence. Extreme exclusion of emotional damages is contrary to the following:

> Dismissal...for disobedience of...order is an exceedingly harsh sanction... imposed only in extreme cases...only after exploration of lesser **sanctions**. *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884 (9th Cir. 2019). *See* 3 Federal Procedure, Lawyers Ed. § 3:212 (2010)); *R & R Sails v. Insurance Co. of Pa.*, 673 F.3d 1240 (9th Cir. 2012) (...particularly harsh... dealt a fatal blow....in practical terms, the sanction amounted to dismissal of a claim....availability of lesser sanctions.); *Cruz v. Maverick County*, 957 F.3d 563 (5th Cir. 2020); *Ayinola V. Lajaunie*, No. 19-2705-cv (L) (2d Cir. May 13, 2021); *Thomas v. Wardell*, 951 F.3d 854 (7th Cir. 2020); *Timbs v. Indiana*, 139 S. Ct. 682, 586 U.S., 203 L. Ed. 2d 11 (2019)(excessive fine)

This is clearly erroneous as a matter of law and fact. Law was not analyzed.

Bad Faith was required and none found. (ECF 298 20:4-5, 19-21, 24-25)

> Because "inherent powers are shielded from direct democratic controls...must be exercised with restraint and discretion." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980). Bad faith *Id.* at 765-66; *see Ray A. Scharer and Co., Inc. v. Plabell Rubber Products, Inc.*, 858 F.2d 317, 321 (6th Cir.1988); *Braley v. Campbell*, 832 F.2d 1504, 1510 n.5 (10th Cir.1987) (en banc); *Adduono v. World Hockey Ass'n*,824 F.2d 617, 621 (8th Cir.1987); *In re Howe*, 800 F.2d 1251-52 (4th Cir.1986); Kleiner v. First Nat'l Bank of Atlanta, 751 F.2d 1193, 1209 (11th Cir. 1985); *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 581 U.S., 197 L. Ed. 2d 585 (2017).

Lesser sanctions, pro se status and mental state were not considered and sanction affected ultimate outcome. (ECF 280, 286, 287)

(whether...court explicitly discussed alternative sanctions, (2) whether it tried them and (3) whether it warned the party about the possibility of dismissal.) *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills,* 482 F.3d 1091, 1096 (9th Cir. 2007)

USPS agreed dismissal of psychological claims not allowed: "Yet, the Motion only addresses the Court's Order that Federal Defendant may seek additional sanctions, less drastic than dismissal of Plaintiff's psychological claims" (ECF 286 3:15-17).

Garity showed prejudice as ruling was after Judge's associate entered case and record states no dismissal or monetary action would be taken. (ECF 298 19:5-8)

> expert report when it moved for summary judgment two years prior "..cannot allow...second...over 700 days after..." Granting ... functional equivalent of ... dismissing... insofar as it sought damages . . . " *Avail Shipping Inc. v. DHL Express (USA) Inc.*, 2015 N.Y. Slip Op 30348 (Sup. Ct. 2015).

Docket shows ECF 338, 348, 418 identified as Motion in Limine. Summary judgment was 2/23/2015, reply 5/20/15 yet this was filed 8/30/2017, over two years later. The above laws should have precluded sanction motion. Independent medical exam was not disputed, but this was defendant medical exam (DME) without adequate protection and refusal of simple request for copy of pencil exams. Why the hiding? All exams and medical providers, over 7, reached exact same conclusion with exception of USPS untruthful examiner. Intentional altering of the record by examiners remains undisputed. (ECF 287) Expert had Garity take one test, MMPI-2. Court determined, without rule or law, expert could not conduct an exam during discovery without permission. This denies treatment and due process.

> "Vigorous cross-examination, presentation of contrary evidence... instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509, 596 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993).

USPS made no objection to MMPI-2 testing report, 9/27/14, almost three weeks prior to DME, 10/16/14. 20 year experienced Psychologist did not find invalid and tested. As it turns out both MMPI-2's and PAI confirmed same results. (ECF: 259-2 p.10-11, 265-1 and 11, 375-2 p.4, 348-1) MMPI by Garity's expert could just as well be used is undisputed. (ECF 286) ECF 375-1, 2 shows validity. Court related who gives test determines outcome, making test invalid. Court stated, ECF 418, 420, no lesser sanctions available when clearly false as ECF 298 p.6-10 verifies further testing appropriate as stated by Court and defendant. Garity readily agreed to further testing yet none scheduled. (ECF 280, 287) Judge stated this was severe sanction and would take testimony from examiner and expert on validation, yet did not. (ECF 504 15:10-16:24) Court two and a half years later removed emotional damages and jury trial. Court ordered data from testing could not be provided. (ECF 230, 238, 258, 348-case history on issue) USPS never requested data from Court and Garity agreed to exchange data, USPS refused. Exclusion of evidence is extreme sanction unwarranted by the facts and prevents full airing of truth of the matter. (*Roadway Express*) Court ordered pro se to know intentions of Judge. (ECF 298 19:13-16, 22:3-13). (failure to consider...status as a pro se...ground for concluding... district court abused discretion.) *Jones v. Blanas*, 393 F.3d 935 (9th Cir.2004); "... pro se, particularly in civil rights cases, to construe...liberally...afford ...benefit of any doubt." *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc). Court's leniency with respect to pro se litigants extends to consideration of appropriate discovery sanctions. See *Lindstedt v. City of Granby*, 238 F.3d 933, 937

(8th Cir. 2000). Garity requested harm regarding actions by USPS regarding ability to trust and way anxiety affects her be considered. Court found to have abused discretion by failing to consider these circumstances *Akhtar v. Mesa*, 698 F. 3d 1202 (9th Cir. 2012). USPS has no Rule 26 expert. (ECF 238 45:18-25, 46, 49, 55) Testing is moot as examiner can only discuss his exam. Jury can easily determine defense hired examiner was up to no good with pencil documents, refusing raw data, upheld by Court, and lies about what occurred. ECF 375 shows other compensatory damages including a myriad of denied rights, e.g. collusion with union preventing ability to expeditiously ascertain rights under CBA and denial of right to call threat assessment when being physically harmed. These damages are jury determinations. *United States v. Hinkson*, 585 F.3d 1247, 1251, 1262 (9th Cir.2009) (en banc) (district court abuses its discretion if it applies an incorrect legal standard)

> Seventh Amendment provides "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury *shall be preserved* ...." U.S. Const. Amendment VII. This..."appl[ies] to actions enforcing statutory rights ..." *Curtis v. Loether*, 415 U.S. 189, 194, 94 S.Ct. 1005, 39 L.Ed.2d 260 (1974)
>
> a jury can offset or minimize the chances of individual biases...Like any... judge is susceptible...may cause unintended prejudice... Jurors...limited access to information...due to their likely lack of involvement in the legal field....possess... independence as fact-finders Judicial Disqualification: An Analysis of Federal Law Second Edition Federal Judicial Center 2010

Judge authorized testing or adverse inference, ECF 279, for non-actions. Two years and seven months later, about six weeks before Trial, statutory right to emotional damages and Constitutional right to jury trial were eliminated without basis in law/ fact. See *Re Tech. Licensing Corp.*, 423 F. 3d 1286, 1288 (Fed. Cir. 2005) (quoting

Beacon Theatres, Inc. v Westover, 359 U.S. 500, 511 (1959) (right to grant mandamus to require jury trial where...improperly denied is settled)

> ("Where statutory and constitutional rights are concerned, 'irretrievabl[e] los[s]' can hardly be trivial... "significant strategic decisions turn on [the decision's] validity and review after final judgment may therefore come too late." *Agster v. Maricopa County*, 422 F.3d 836, 838-39 (9th Cir. 2005). See *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 879 114 S. Ct. 1992, 128 L. Ed. 2d 842 (1994).

Garity was denied this review. (*IN RE Garity*, No. 17-72805 (9th Cir. Dec. 19, 2017))

> Rental, Ltd. v. Hendrix, 565 F.2d 255, 258 (2d Cir.1977). ("It is elementary that the *Seventh Amendment right* to a jury is fundamental...its protections can only be relinquished knowingly and intentionally." *In re Cty. of Orange*, 784 F.3d 520, 528-29 (9th Cir. 2015)

USPS applied for attorney fees, over $8,000-half of Garity's now yearly income, while Order ECF 159 struck motion to be heard. Relevant evidence and deposition of sole defendant should have been allowed. *Trump v. Vance*, 140 S. Ct. 2412, 591 U. S., 207 L. Ed.2d 907 (2020)

> ...goal of extending...to...federal employees was to eradicate " 'entrenched discrimination in the Federal service,' " ... Chandler v. Roudebush, 425 U.S. 840, 841, 96 S.Ct. 1949, 1950, 48 L.Ed.2d 416 (1977) *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980). See *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 88 S. Ct. 964, 19 L. Ed. 2d 1263 (1968).

Garity explained case was chilled as could not afford to risk ten thousands of dollars for attempting to acquire needed evidence that was inexplicably denied.

QUESTION 2 The point of the law is to put petitioner in same place would have been absent discrimination. Law cited by Ninth Circuit is error because *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 94 S. Ct. 1011, 39 L. Ed. 2d 147 (1974) did not prevent back pay award for discrimination. Reference was to discrimination award in contract forum and under Title VII. Garity did not have a discrimination contract

award. *Alexander v Gardner* stands for exact opposite that both contract and discrimination awards are fully compensable. Grievance violations were subtracted from the award in amount of $16,622.87. (ECF 478 and 513) Compensation for contract violation is distinct from discrimination and pay from one does not negate pay from another. (Ninth Cir. Reply Brief p.19-20) *See* (*Ridgell-Boltz v. Colvin*, No. 15-1361(10th Cir. Aug. 10, 2016)*; Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 119 S. Ct. 391, 142 L. Ed. 2d 361 (1998); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 129 S. Ct. 1456, 173 L. Ed. 2d 398 (2009). Grievances did not pay for lost benefits, front pay or discrimination. (Trial EX 1 #140 front pay unavailable) Discriminatory conduct had a multitude of issues and lost hours not fully remedied. Both are allowed in the USPS. (Trial EX 87; ECF 282 EX 2 Albertini 1 at 13:10, 17:9-17; *Id.* Albertini 2 11:1 to13:3) ECF 488:78:18-22 EX 86 paid for EEO and grievance. Decision relates no clear error in compensation but clear error was exactly shown. Benefits, including annual leave, sick leave and Thrift savings plan $21,000-ECF 501 p.7, expert expense, $11,500, return to work or front pay, and tax liability -$3200 were denied. Calculations not supported by Record. (ECF 467-1; Trial EX 114) Loss of promotion, social security, retirement and medical were ignored. Garity is substantially in the red (ECF 467-1) and denied career and retirement. Decision conflicts with the following, and many more laws:

> *Albemarle Paper Co. v. Moody,* 422 U.S. 405, 418, 95 S.Ct. 2362, 45 L.Ed.2.d 280 (1975) "purpose..."to make persons whole for injuries suffered on account of unlawful employment discrimination", and to place... "as near as may be, in the situation...would have occupied if the wrong had not been committed."; *accord, Climent-Garcia v. Autoridad De Transporte*, 754 F.3d 17 (1st Cir. 2014); *EEOC v. KarenKim, Inc.*, 698 F.3d 92 (2d Cir. 2012); *Eshelman v.*

Agere Systems, Inc., 554 F.3d 426 (3d Cir 2009); *Brady v. Thurston Motor Lines, Inc.*, 753 F.2d 1269 (4th Cir. 1985); *Bogan v. MTD Consumer Group, Inc.*, 919 F.3d 332 (5th Cir. 2019); *McClellan v. Midwest Machining, Inc.*, 900 F.3d 297 (6th Cir. 2018); *EEOC v. AutoZone, Inc.*, 707 F.3d 824 (7th Cir. 2013); *Townsend v. Bayer Corp.*,774 F.3.d 446 (8th Cir. 2014); *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1069 (9th Cir. 2004) (reiterated... historic purpose...to secure complete justice,"); *Zisumbo v. Ogden Regional Medical Center*, 801 F.3d 1185 (10th Cir. 2015); Weaver v. Casa Gallardo, Inc., 922 F.2d 1515, 1528 (11th Cir. 1991) ("[P]revailing ...plaintiffs are presumptively entitled to either reinstatement or front pay."); *accord Weatherly v. Alabama State University*, 728 F.3d 1263 (11th Cir. 2013); *United States v. White*, 984 F.3d 76 (D.C. Cir. 2020); *Pirkl v. Wilkie*, 906 F.3d 1371 (Fed. Cir. 2018) ("...most complete relief possible." Quoting *Albemarle*); *Pollard v. EI du Pont de Nemours & Co.*, 532 U.S. 843, 121 S. Ct. 1946, 150 L. Ed. 2d 62 (2001).

Request for fees and costs are not moot. *Cuneo v. Rumsfeld,* 553 F.2d 1360, 1364 (DC Cir. 1977). Expert fees and constructive discharge are outlined below.

QUESTION 3 Garity showed beyond question that she did not voluntarily withdraw from the workplace. Constructive Discharge evidence and testimony were denied as outlined in Reply Brief at p.5-7, OB[2] 36-38, 43-45), e.g. ECF 420 p.7 (No damage testimony); ECF 507 66:6 to 67:1 (letter accusing of inclination to murder right before constructive discharge); ECF 282 EX 2 Reynosa Exhibit 2 p.1, 2-3, 11-13 (bullied chest pain going to die life threatened, bullied for over a year can't continue, bullied off work without pay because the environment too toxic, can't feel safe, constant fear and terror and denied accommodation). Then decision is evidence and testimony not shown. How could it be shown when denied? This is contrary to: *Solomon v. Dept. of Agriculture,* No. 1:07-cv-01590, (D.C. Cir. 12/21/10); *Vaughan v. Department of Agriculture,* 2011 MSPB 61 (June 13, 2011) (...deference when defendant has directly caused or exacerbated the medical conditions that led to the

[2] Ninth Circuit Opening Brief abbreviated OB

seeking of disability retirement); *Cleveland v. Policy Mgmt. Sys., Corp.,* 119 S. Ct. 1597, 1600 (1999); *Smith v. Clark County School Dist.*, 727 F.3d 950 (9th Cir. 2013); *Scudder v. Dolgencorp, LLC*, 900 F.3d 1000 (8th Cir. 2018); *Aubrey v. Koppes*, 975 F.3d 995 (10th Cir. 2020); *Pennsylvania State Police v. Suders*, 542 U.S. 129, 124 S. Ct. 2342, 159 L. Ed. 2d 204 (2004). December 1, 2011 was the culmination of prior year and a half of actions against Garity. Although hostile environment was wrongly eliminated, see below, it is error to preclude testimony on constructive discharge. Limited undisputed record evidence showed environment became so intolerable, due to continual accusations of inclination to murder and aggravation of medical conditions, that Garity could not stay and no effective policy existed for reporting/investigating her multiple complaints. *Burlington Indus., Inc. v. Ellerth,* 524 U.S. 742, 763, 765 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998) accord *Faragher v. Boca Raton*, 524 U.S. 775, 806, 808 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998). She applied for disability retirement because of danger of dying from heart condition and cancer due to found discriminatory actions and aggravation to depression/ anxiety caused by USPS. (Reply Brief p.7-9, OB p.143-45, ECF 501 p.8, e.g. ECF: 507 195:7-12 (DR. Jonak report: Garity heart and cancer particular concern in environment, Trial EX 11 p.791 off to 1-16-12 then only if markedly improved, EX 79 p.99-102 doctor and psychologist removing Garity from work from 11/16/11 to 1/16/12) Garity did not voluntarily retire and record is clear. This is a stipulated trial fact. (ECF 494 5:25 to 6:1) Garity stopped working December 1, 2011 at the advice of psychologist. (EX 35A p.297-298)) The only disability retirement

application and declaration show denied accommodation. (ECF 445-14 p.1-11) Most all accommodation was denied and used to cut hours. All jobs could be done with minimal accommodation so no prohibition to reinstatement yet USPS refused despite finding. (ECF 478 p.5):

> "17.... not medically restricted from performing any clerk duties except for collections...18. Collections was not an essential function...
> 19. ...qualified for, and physically capable of performing, every other duty available...with minimal accommodations.
> 20....consistently was able to perform all of the essential functions of her job with minimal accommodation at all times, including throughout 2011."

See *Teutscher v. Woodson*, 835 F.3d 936, 954 (9th Cir. 2016) Reinstatement was legally permissible but denied by USPS. *Johns v. Brennan*, No. 17-16340 (9th Cir. Feb. 13, 2019) contradicts. Panel decision, stating removal of emotional damages was moot, is incorrect because there is remedy for those damages, voluntary retirement incorrect, and removed jury trial and make whole remedy refused. *See Knox v. Service Employees Intern. Union*, 567 U.S. 298, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012). Jury can award monetary remedy for physical harm.

QUESTION 4 Expert fees/expenses remain unaddressed. This is an issue of first impression. Decision stated not entitled to attorney fees. Attorney fee by definition is not expert fee. They are two distinct expenses. Garity actually incurred the expert fee and must be reimbursed to be made whole. This denies equal protection under the law. Judge explicitly allowed expert witness as necessary. This sets precedent limiting access to court, discourages discrimination claims and slants trial against party without expert. This is contrary to Congressional intent, make whole remedy and contradicts 28 USC § 2412(d)(1)(A), (B)(2) For the purposes of this subsection—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses... See *DeBold v. Stimson,* 735 F.2d 1037, 1043 (7th Cir.1984) (held pro se litigant may, as a prevailing party, recover all costs reasonably incurred); *Clarkson v. I.R.S.*, 678 F.2d 1368, 1371 (11th Cir. 1982); *Cunningham v. F.B.I.,* 664 F.2d 383, 387 n.4 (3rd Cir.1981); *Kokoszka v. Belford,* 417 U.S. 642, 650 (1974)); *Warner-Lambert Co. v. Apotex Corp.,* 316 F.3d 1348, 1355 (Fed. Cir. 2003);

> In *United States v. Feldman,* 788 F.2d 625 (9th Cir.1986),...entitled to the same reimbursement for costs...attorney representing him would have received: "To deny this same right to *pro se* defendants would contradict the spirit of the Act... to bar...from recovering costs would be tantamount to placing an impediment on...right to proceed *pro se.*" *Burt v. Hennessey*, 929 F.2d 457, 459 (9th Cir. 1991).

Ability to obtain an expert can be decisive factor. Attorneys are not willing to take these claims against the government. (OB p.21) Attorney consults and expert fees were costs incurred and part of make whole remedy. This further prevents ability for pro se to properly present civil rights claims. (ECF 483, 484, 499, 503)

QUESTION 5 Pencil documents without copy, forced by Court in a legal proceeding, is error and affected the **whole** case. (Orders, ECF 169, 185, 196, 257, 230, 238, 250, 340, 258, 270, 279, 298, 313, 314, 391, 504, 418, 420) ("black ink" required by Rule 3 of Circuit Court...returned...for correction) *Allen v. Sakai*, 40 F. 3d 1001, 1005, 1006 (9th Cir. 1994) see *Phillips v. Hust*, 477 F.3d 1070, 1084 (9th Cir. 2007); *Thompson v. Foley*, No. 3:18-cv-117 (S.D. Ohio Aug. 31, 2020). Court failed to protect Garity in very adverse (DME), even denying faxing/sending alterable papers to Garity's psychologist. (ECF 257 12:20-25; 17:10-12; 26:14-15) Exam is not valid as it was taken under undue influence, coercion, and duress. Only case law provided

alterable documents immediately at testing. *Greenhorn v. Marriott Int'l, Inc.*, 216 FRD 649, 652 (D. Kan. 2003) *see* ECF 169 22:9-21.

> "..court refused to permit...attorneys to see...raw data or notes...preventing an inquiry into whether...had been contamination, and...significance of...." *Cooper v. Brown*, 565, 596 F.3d 581 (9th Cir. 2009).

"It is the raw material from which legal fiction is forged" *Summerlin v. Stewart*, 341 F.3d 1082, 1084 (9th Cir. 2003). As it turns out Garity was justified in needing protection as Dr. Hall falsified her report, undisputed by Hall (ECF 267-1) and still on record. (ECF 265-1, 277-278-recording denied as moot, in ECF 279, should be reversed. This was used to try to dismiss case. (ECF 259) Garity requested protection. (ECF 153, 169, 171, 196, 203, 220, 229, 230, 233, 236) Pencil documents are order from which denial of damages, jury trial, back and front pay ensued. This illegal order and all stemming from it should be reversed.

QUESTION 6 Refusing recusal when part of accusatory process contrary to:

> "We cannot overlook the fact that this is a non-jury case...[the judge] will be deciding each and every substantive issue at trial... disposition may not have been based exclusively upon the evidence presented at trial... Underscoring ...matters...earlier ruling...not entitled to a jury...the need to preserve the appearance of impartiality is especially pronounced." *Alexanderv. Primerica Holdings, Inc.*,10 F.3d 155, 163, 166 (3d Cir. 1993).

> even if...include *de novo* review, cannot 'cure' bias in the underlying adjudication...Obtaining full relief on...substantive claim does not remedy the initial procedural injury. The right to due process is absolute, and the law recognizes the importance...that those rights be scrupulously observed." *Clements v. Airport Authority of Washoe County*, 69 F.3d 321 (9th Cir.1995)

Judge slandered Garity as "sabotaging" DME, using exact untruthful wording (ECF 259-1, p.6-11, 259-2, p.3-5). This did not occur as verified by record and Ninth Panel decision. (ECF 88, 125, 279, 403, 403-1, 2) DME recording evidenced this exact lie.

Due process requires recusal if judge acts as "part of the accusatory process." *In re Murchison*, 349 U.S. 133, 137, 75 S.Ct. 623, 99 L.Ed. 942 (1955). Magistrate Hoffman brought up Costs for defendant "There something I want to do" "How soon can you get that in?" (ECF 84, 110, 126 5:20-22) He accused Garity of targeting the perpetrator (ECF 87, 204, 214 and 252, 329), blamed Garity for defendant's failure to follow Order (ECF 185, 196), called Garity names and ruled contrary to Main Judge. (ECF 200, 214). Jurors function as safeguard against potential judicial bias. Judge should not ask whether he believes he is capable of impartially presiding but whether impartiality might be questioned from perspective of a reasonable person. Here reasonable people perceived partiality in sworn declarations. (ECF 403-1)

QUESTION 7: (Order ECF 315, 316, 418) Ninth Circuit Order did not really address error at summary judgment. De novo review did not occur, *Nigro v. Sears, Roebuck and Co.*, 784 F.3d 495 (9th Cir. 2015). ECF 317, 320, 282 and exhibits extensively verify summary judgment was granted in direct contradiction to Supreme and Circuit Court law. Each dismissed claim had a multitude of disputed facts/credibility issues and prima facie and pretext were shown. Evidence denied (ECF 123, 358, 362, 371) and then denied to support summary judgment (ECF 262, 262-1, 272, 279). Examples of denied evidence included: manager's prior EEO activity and promotions contrary to *Sprint/United Management Co. v. Mendelsohn*, 552 U.S. 379, 128 S. Ct. 1140, 170 L. Ed. 2d 1 (2008); *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716, 103 S. Ct. 1478, 1482,75 L.Ed.2d 403(1983); discrimination complaints of other employees –normally provided as

noted by Judge Du (ECF 142 6:11-13) and Judge Boulware (ECF 298 p.28) and contrary to *Spulak v. K Mart Corp.*, 894 F.2d 1150, 1156 (10th Cir. 1990); Emails through July, 2012 related to constructive discharge, back pay and arbitration see *United States v. City of Torrance*, 164 F.R.D. 493 (C. D. Cal. 1995); culture and pattern and practice evidence, pattern or practice "supports an inference that any particular employment decision, during the period in which the discriminatory policy was in force, was made in pursuit of that policy." *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 362 (1977). Garity was not allowed to ask at trial. (ECF 488, 507); and depositions. (ECF 78, 79, 83, 86, 147, 150-152, 258, 262, 272, 279, 349, and 367) contrary to FRE 804(b)(1), Rule 32(a)(1)(C), Rule 32(a)(2)(8), FRE: 801(a)(2)(B),(D); 803(1); 804(a), (b); 801(d)(2). When denied relevant discovery it prevents review of necessary evidence. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248,256, 258 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981);

> ...held that Federal courts are to construe civil discovery rules liberally in Title VII cases to provide the plaintiff with "broad access to employers' records." *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 109 S. Ct. 2115, 104 L. Ed. 2d 733 (1989).

A. ACCOMMODATION

Documentation not attached was reason for denial of Failure to Accommodate, (Order ECF 316 p.12-no law), even though listed as a material disputed fact by Judge, *Id.* 316 4:19-26. Documentation is in the record and admitted, (ECF 282 EX 2 Davey 30(b)(6) 287:22 to 289:2 and 293:5-11) and date stamped by the USPS. (ECF 282 EX 2 Davey exhibit 40 pages 20-36 date stamped, (p.25 on 2/1/11 at DRAC diagnosis of heel spur, stress, muscle spasms, labial cancer and heart pain).

Order ECF 478 verifies disability and shows failure to accommodate. Refusal to conform to the evidence was contrary to law. (ECF 456, 462, 474) *Head v. Glacier Northwest Inc.*, 413 F.3d 1053, 1058-59 (9th Cir. 2005).Undisputed testimony at trial was massive. (Reply Brief p.13-15)

B. HOSTILE WORK ENVIRONMENT

Hostile work environment based on disability and retaliation was ignored. ECF 316 9:8-10 is error of law because hostile environment was based on retaliation and disability and included the sex and race. (Ray v. Henderson, 217 F.3d 1234, 1240 n.3 (9th Cir. 2000) This denial is contrary to *National Railroad Passenger Corporation v. Morgan,* 536 U.S. 101, 115-121, 122 S.Ct. 2061, 153 L.Ed. 2d 106 (2002); *United States v. Diebold, Inc.*, 369 U. S. 654, 655 (1962) (per curiam) *Ellerth*; *Richardson v. New York State Dep't of Correctional Serv.*, 180 F.3d 426, 446 (2d Cir. 1999); *Drake v. Minnesota Mining & Mfg. Co.*, 134 F.3d 878, 886 (7th Cir.1998) ("retaliation can take the form of a hostile work environment"); *Gunnell v. Utah Valley State College*, 152 F.3d 1253, 1264 (10th Cir.1998) ("co-worker hostility ... may constitute `adverse employment action' for purposes of a retaliation claim"); *Gowski v. Peake*, 682 F.3d 1299 (11th Cir. June 4, 2012); *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264 (4th Cir. 2015). Seven false accusations of harm/murder without threat or finding including planned lockdown and letter, signed without reading, accusing of inclination to murder, calling mentally unstable and 7 personnel actions, including wrongful termination and multiple wrongful suspensions, based on retaliation and disability show hostile environment. *See*

Bushfield, v. Donahoe, No. 1:11-cv-00251-CWD U.S. District Court, D. Idaho. (December 6, 2012) Jury could easily find environment was hostile. This precluded front/back pay evidence which does not moot finding as it supports eliminated damages. (OB p.27-35 and ECF 282-285, 317, 320/exhibits) Likewise hostile environment was evidenced at trial but refused to conform to the evidence. (Reply Brief p.15-18) Garity and USPS raised retaliation and hostile environment based on disability and retaliation at summary judgment and again in Motion to Conform to ensure issues were considered. (ECF 260, 282, 344, 346, 357, Order 367, 395) Garity stated, ECF 292 9:7-8, "The totality of exhibits (ECF 282) evidenced the hostile environment in which the plaintiff worked." Defendant did not dispute. *See Eddy v. Virgin Islands Water and Power Authority,* 256 F.3d 204, 209-10 (3d Cir. 2001) (Alito, J.); Schwarzer et al., *Federal Procedure Before Trial,* at § 14:27.1

C. RETALIATION

Order ECF 316 4:19-21 "Plaintiff maintains that she received information from numerous sources that the management was intent upon firing her, and was frustrated by her filing Equal Employment Opportunity ("EEO") complaints." This leaves but for the EEO complaints as disputed material fact for the jury. Dismissed retaliation is contrary to *Burlington N. & Sfr Co. v. White,* 548 U.S. 53, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006) in that prima facie and pretext were shown. (ECF 282 15:9 to 20:20, EX 14, EX 11 p.3-4; ECF 317 p.9-10, e.g. EEO complaint on 4-8-11. Response to the EEO on 4-11 to 4-16 and firing starts on 4-20-11; denial of advance sick leave for cancer surgery on 2/18/2011 after response to EEO

investigative questions on 2/15/2011) On top, the pattern and practice of retaliation in USPS verifies. (ECF 282 EX 14 p.33-36)

> *Lopez v. Donahoe* 94 F. Supp. 3d 845 - Dist. Court, SD Texas, 2015 The showing of deviation from policy and procedure coupled with temporal proximity makes a prima facie case of causation.

Garity had no prior discipline on record, employer did not follow policy and procedures in termination and temporal proximity was about 2 weeks. This is contrary to *Agravante v. Potter* Dist. Court, ND Illinois, 2015; *Smith v. Xerox Corp.*, 371 F. App'x 514, 520 (5th Cir. 2010) (discipline record, policy and temporal proximity); *Clark County School Dist. v. Breeden*, 532 U.S. 268, 121 S. Ct. 1508, 149 L. Ed. 2d 509 (2001) (close proximity); *Strong v. Univ. Healthcare Sys., LLC*, 482 F.3d 802, 808 (5th Cir. 2007). Facts starting on p.7 line 27 of Order, ECF 316, are incorrect as there was no transfer and no protected activity against Pahrump Management from 2008 thru August of 2010 with the exception of an informal complaint in June, 2009 that was amicably settled. Others with EEO activity were subjected to adverse actions supporting the "but for" causation. (ECF 282 20:11-15). "But for" is not the standard as discussed in Question 8 below.

Dissembling on above claims include 46 pages of deposition testimony verifying lies about material facts. (ECF 282 EX 20 p.12-25) This dissembling supports the denied claims. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 147 L. Ed. 2d 105, 120 S. Ct. (2000), an employer's "dissembling," can be powerful circumstantial evidence of discrimination. *Burrage v. US*, 134 S. Ct. 881, 571 U.S. 204, 187 L. Ed. 2d 715 (2014) shows *Univ. of Tex. Southwestern Med. v. Nassar*, 133

S. Ct. 2517, 570 U.S. 338, 186 L. Ed. 2d 503 (2013) does not require that retaliation was only "but for" reason for employer's adverse action. *Accord Foster v. University of Maryland-Eastern Shore*, 787 F.3d 243 (4th Cir. 2015).

Pretext on all claims include suspiciously timed decisions, written/oral statements, behavior and comments directed at her, comparator evidence and multiple pretext. ECF 316, 282, 317, 320)

Retaliation and hostile environment were based on disability, protected activity and race. (ECF 282 2:13-15, 344, 346, 357) All facts and inferences were not drawn in light most favorable to the non-moving party. *Gonzalez v. City of Anaheim*, 747 F.3d 789, 793 (9th Cir. 2014). Summary Judgment ruling was completely against weight of evidence and determined credibility and disputed facts. Agency admits it should not have taken removal action by the unilateral reinstatement and by discipline issuers not believing discipline would be upheld, thus admitting reasons as stated cannot be correct reason for termination.Record taken as a whole fully supports claims and would allow rational trier of fact to find for Garity. Summary judgment ruling was contrary to each below law and many more:

> *Animal Legal Def. Fund v. FDA,* 836 F.3d 987, 988 (9th Cir. 2016) (en banc) (per curiam); *Brosseau v. Haugen,* 543 U.S. 194, 195 n.2 [125 S.Ct. 596, 160 L.Ed.2d 583] (2004) (per curiam); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 255 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Tolan v. Cotton*, 134 S. Ct. 1861, 1866. 572 U.S. 650, 188 L. Ed. 2d 895 (2014); *Reeves v. Sanderson* (district court had *not* properly considered the totality of the circumstance; *Faragher*; *Ellerth*; *Suders*; Cerros v. Steel Technologies, Inc., 398 F.3d 944 (7th Cir. 2005); *Schiano v. Quality Payroll Sys., Inc.,* 445F.3d 597, 603 (2d Cir. 2006); *Hunt v. Cromartie*, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999); *Salazar-Limon v. City of constructive Houston, Tex.*, 137 S. Ct. 1277, 197 L. Ed. 2d 751, 581 U.S. (2017); *14 Penn Plaza*; *Biestek v. Berryhill*, 139 S. Ct. 1148, 587 U.S., 203 L. Ed. 2d 504 (2019); *Erickson v. Pardus*, 551

> U.S. 89, 94 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007); *Ahmed v. Johnson*, 752 F.3d 490 (1st Cir. 2014); *Tiffany and Company v. Costco Wholesale Corp.*, 971 F.3d 74 (2d Cir. 2020); *Butt v. United Brotherhood of Carpenters & Joiners of America*, No. 12-1331 (3d Cir. Jan. 31, 2013); *Maracich v. Spears*, 675 F.3d 281 (4th Cir. 2012); *IN RE Bayer Healthcare And Merial Ltd. Flea Control*, 752 F.3d 1065 (6th Cir. 2014); *Williams v. Dart*, 967 F.3d 625 (7th Cir. 2020); *Randolph v. Ind. Reg'l Council of Carpenters*, 453 F.3d 413 (7th Cir. 2006) (Plaintiff's statements must be believed); *Leone v. Owsley*, 810 F.3d 1149 (10th Cir. 2015); *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99-100 123 S. Ct. 2148, 156 L. Ed. 2d 84 (2003) and 76 Wash. & Lee L. Rev. 1567(2019) (Un)Conscious Judging;

Claims here were reported multiple times starting in December 2010 without any attempt to investigate/remedy. Multiple law review journals, ECF 197-75, verify summary judgment is prohibiting meritorious cases to the benefit of discriminators.

> "Too often litigation has become more about resources and expense than about reaching the merits and doing justice." Summary Judgment in Employment Discrimination Cases: A Judge's Perspective 57 N.Y.L. Sch. L. Rev. 671 (2012–2013) Hon. Denny Chin

This affects all discrimination claims and encourages discrimination which is contrary to congressional intent and allows Circuit Courts to issue decisions contrary to law regularly without any oversight or possible remedy.

QUESTION 8 Order ECF 316 7:3 "But-for causation is required..." is error. Facts are misstated as noted in Question 7. This is outlined extensively at OB p.28-29. "But for" is not causation standard for federal employees on retaliation. *See* EEOC and Savage v. Department of the Army (Docket Nos. AT-0752-11-0634-I-2, AT-1221-12-0591-W-1 MSPB September 3, 2015 (Where difference in statutes is laid out explicitly-federal employees fall under section 717 codified at 42 USC §2000e-16(a)). Supreme Court clarified that 42 U.S.C. § 2000e-16 does not in fact incorporate 42

U.S.C. § 2000e-3(a). The Federal sector provision instead "contains a broad prohibition of 'discrimination,' rather than a list of specific prohibited personnel practices." *Gomez-Perez v. Potter*, 553 U.S. 474, 487-88, 488 n.4 (2008). Hence, EEO retaliation claims in the Federal sector do not implicate the statute at issue in *Nassar*. Standard is any discriminatory motive. Cases are supportive:

> ..."but for" standard discussed in...*Nassar* ...does not apply to retaliation claims by federal sector... employees under Title VII or the ADEA because the relevant federal sector statutory language does not contain the "because of" language on which the Supreme Court based its holdings. Donny F. v. Dep't of Homeland Sec., EEOC Appeal No. 0720130035 (October 20, 2015);
>
> carefully examine...statute to determine the appropriate causation standard. Critical to this analysis...text of the statue, and any legislative intent... *Babb v. Wilkie*, 140 S. Ct. 1168, 206 L. Ed. 2d 432 (2020) *accord Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 129 S. Ct. 2343, 174 L. Ed. 2d 119 (2009); Federal Express Corp. v. Holowecki, 552 U.S. 389, 393 (2008).

"But for" is not determined as ADA standard either. Excellent arguments, in *Siring v. STATE BD. OF HIGHER EDUC. EX REL EOU*, 977 F. Supp. 2d 1058 (D. Or. 2013), show motivating factor should be the standard. Disability is a status based claim like race and gender as discussed in *Nassar*. Motivating factor is causation for Rehab Act discrimination and retaliation based on all the above.

QUESTION 9 USDOJ representation in discrimination claims is against policy. (Fully outlined in OB, ECF 300, 302) Right to due process and equal protection concerning representation by EEOC and DOJ to federal employees was denied. See *Chandler*; *Markowicz v. Nielsen*, 316 F. Supp. 3d 178 (D.C. 2018).) In EEO Act of 1972, Pub. L. No. 92-261, 42 U.S.C. § 2000e(a), (f) (1994) responsibilities for litigating cases were divided between EEOC for private sector and DOJ for state

and local employers. Federal employees were unaddressed. To deny rights to a citizen because they became a Postal employee is unconstitutional. It is this exact action that is allowing rampant discrimination and promotion of those who commit these acts, as clearly admitted by USPS. (ECF 282 p.4 & 26) DOJ is not mandated to represent Agencies in discrimination claims (28 U.S.C. 516, 517, 518, 519), especially here where discrimination was found and well evidenced. DOJ advocated against the very laws supposed to uphold and represented Garity's coworkers against her. (ECF 270 8:20-23) DOJ is required to report adoption of formal policy of representing against employee discrimination claims. (28 U.S.C.§ 530D) DOJ is to provide representation to all employees.

> "If conflicts exist between the legal and factual positions of...employees in the same case...inappropriate for a single attorney... may be separated into ...groups as is necessary to resolve the conflict...provided with separate representation....advisable that private representation be provided ...and Justice Department representation be withheld so as not to prejudice particular defendants...procedures of § 50.16 will apply." 28 C.F.R. 50.15

This is required for equal protection. (Amendment XIV - Ratified 7/9/1868) Supreme Court held in *Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954) equal protection requirements apply to federal government through Due Process Clause of Fifth Amendment. It is against public interest to fight against eradicating discrimination in Federal Agencies and thus against the interest of the U.S. USPS waived sovereign immunity in Title VII claims and pays own damages. DOJ should not represent in these circumstances.

> USDOJ Civil Rights Division...representation...only appropriate when the agency's position reflects public policy. Eric Schnapper, *Legal Ethics and the Government Lawyer*, 32 REC. A.B.N.Y. 650 (1977). James R.

> Harvey III, *Loyalty in Government Litigation: Department of Justice Representation of Agency Clients, 37 Wm. & Mary L.* Rev. 1569 (1996), **Error! Hyperlink reference not valid.**
>
> The importance of [DOJ] to the effective enforcement...cannot be overstated...the prestige, expertise, and financial and personnel resources to challenge discriminatory employment practices...As a general rule, private attorneys and public interest organizations lack the financial and personnel resources to act as private "Attorneys General" in... enforcement scheme. The Leadership Conference on Civil and Human Rights/The Leadership Conference Education Fund 2015

Garity was subjected to efforts to eliminate her meritorious claim and "win at any cost". USPS was granted over 30 extensions, ECF 251, including 21 days late, extending years beyond reason. Extensions prevented testimony and protecting against abusive delay is an interest of justice. *Martel v. Clair*, 565 U.S. 648, 132 S. Ct. 1276, 182 L. Ed. 2d 135 (2012); U.S. Code › Title 18 › Part I › Chapter 73; 18 U.S. Code §1505, §1506 §1512. USPS/DOJ called Garity crazy, delusional, paranoid, unintelligible and more, expert witness shopped, obstructed evidence, illegally represented coworkers, quashed valid subpoenas, used multiple underhanded tactics, refused to speak with Garity, and but not limited to, filed frivolous motions without consequence. In contrast Garity was severely sanctioned twice as a pro se for no actual violation. Failure to redact, ECF 266, was allowed without ruling and USPS relates not subject to Court rules. (ECF: 271 5:4-12; 274 and 274-3). ECF 266 and 274 outline DOJ illegal actions.

> "Fraud...egregious offense against the integrity of the judicial system ..." *Wells Fargo Bank, N.A. v. Reeves*, 92 So. 3d 249, 252 (Fla. 1st DCA 2012) ...depends on truthful disclosure...system that depends on an adversary's... uncover falsehoods is doomed to failure... conduct must be discouraged in the strongest...way. *Cox v. Burke,* 706 So. 2d 43, 47 (Fla. 5th DCA 1998).

QUESTION 10 Punitive Damages

> 39 U.S. Code § 409 - Suits by and against the Postal Service (d)
> (1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—
> (A) shall be considered to be a "person", as used in the provisions of law involved; and
> (B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.
>
> [S]uch waivers by Congress of governmental immunity...should be liberally construed. . .when...establishes...an agency, authorizes it to engage in commercial and business transactions with the public...permits it to "sue and be sued," it cannot be lightly assumed that restrictions on that authority are.. implied. FHA, Region 4 v. Burr 309 U.S. 242 (1940). See also *Postal Service v. Flamingo Industries (USA) Ltd.*, 540 U.S. 736, 124 S. Ct. 1321, 158 L. Ed. 2d 19 (2004); *Loeffler v. Frank*, 486 U.S. 549, 108 S. Ct. 1965, 100 L. Ed. 2d 549 (1988).

Statutory immunity is contrary to Constitutional right of equal protection. Any law repugnant to the Constitution is void. This encourages discrimination in USPS even though they are the biggest offender. (OB p.49) USPS is liable just as any other entity. (OB p.15-16, 41) USPS never raised statutory immunity affirmative defense in Answer or Summary Judgment and thus waived it.

QUESTION 11 Pro se consideration, *Jones v. Blanas*, and determination on the merits was contrary to law: Pro se litigants are afforded protection from procedural or technical injustice. *Rand v. Rowland*, 154 F.3d 952, 957-58 (9th Cir. 1998); *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); *IN RE ERIC WATKINS LITIGATION*, No. 20-10408, Non-Argument Calendar (11th Cir. Oct. 1, 2020)(liberally construe *pro se* filings to correspond between substance of claim... underlying legal basis); *Holley v. Department of Veteran Affairs*, 165 F.3d 244, 247-

48 (3rd Circuit 1999) Harsh treatment of pro se trying to eradicate discrimination has become oft-repeated error in District Courts. (ECF 163,163-2, 316; Cynthia Gray, Reaching out or Overreaching: Judicial Ethics and Self-Represented Litigants, 27J. Nat'l Ass'n Admin. L. Judiciary Iss.1 (2007))

This case is one such example for others to forego pursuing discrimination claims.

> The disadvantages of slavery, economically, socially, and educationally, are well known. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 387-90 (1978) (opinion of Marshall, J.)...courts are once again-and this time with the aid of the federal government-"whittling away" the important civil rights acts...."technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process.'" E.g. Love v. Pullman Co., 404 U.S. 522, 527(1972). [It has not gotten better]
>
> ...litigants have a protected interest in a meaningful opportunity to be heard ....analytically distinct from any protected liberty or property interests that... underlie...cause of action...Laurence H. Tribe, American Constitutional Law § 10-18 at 753-54 (2d ed. 1988)... pro se...lack of knowledge... retain its rightful place as a "shield"...and not become a "sword" for the court to use to deter him from suing or to defeat him in court if he does sue. The University of Chicago Law Review Julie M. Bradlow B.A. 1985, Yale University; J.D. Candidate 1988, University of Chicago.

The sword to defeat was clearly used. Courts are becoming closed to civil rights claims. Those rights are eviscerated thru the exact issues and conduct raised in this appeal. The totality of treatment is nothing less than another abuse and violation of rights. See Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 418 (1978); McKennon v. Nashville Banner Pub. Co., 513 U.S. 352, 358-359 (1995).

QUESTION 12 Trial errors prevented full fair hearing on the merits (OB p.35-42; ECF 493, 494). All trial errors were cumulative.

> "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation. See Restatement (Second) of Judgments § 68.1 (c) (Tent. Draft No.

4, Apr. 15, 1977) " *Montana.*

One bad decision after another eliminated damages, front pay-when disability retirement not voluntary, jury trial, career, make whole remedy and further findings. This was just a rubber stamp and not a true well-reasoned opinion, based on full fair review of the record, which Garity was entitled to after 10 years. Garity was removed from her property interest without due process of right to be heard and without remedy. See *Walls v. Central Contra Costa Transit Au*thority 653 F. 3d 963 -9th Cir. 2011; *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 538-39, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985).

Trial errors are outlined in OB p.35-42 and included denial of motion to conform, *see US v. Gila Valley Irr.* 859 F.3d 789 (9th Cir. 2017), FRCP 15(b)(2); denial of pattern and practice of disability discrimination; massive interference of testimony; denying testimony because not a Manager; denial of depositions, *Klune v. Palo Verde Health Care District,* No. 15-56918 (9th Cir. Feb. 14, 2019); denial of 30(b)(6) deposition use at trial; testimony limited based on unfiled motion on grievances with inapplicable law; required to extensively discuss witness questions in front of witnesses before asking; imposed time limits during trial requiring almost no sleep to change questioning to comply; allowing summary exhibit without the background evidence (ECF 487), *Amarel v. Connell,* 102 F. 3d 1494 (9th Cir. 1996) and denial of race claim without factual findings, evidence and testimony All errors affected outcome.

QUESTION 13 Race claim had evidence and testimony prevented from Armendariz/ Albertini (ECF 488, ECF 84, 142) Allowed testimony verified: ECF: 487 172:13-24,

197:24 to 198:7; 488 29:6-20, 32:23-39:7-(EX 11 105-106), 41:20 to 42:9, 44:2-45:6, EX 31, 142:10-25, 145:15-147:5, 152, 158:24-160:3; 161:15 to 170:4, 170:23- 171:1, 172:10-178:22, 183:1-3; 489 108:9-20; 507 77:13-80:12, 184:15-186:12; 282 EX 2 Albertini exhibit 3. Demotion and replaced by Albertini was also shown. ECF 282 13:1-15:8 and EX 13 shows undisputed facts on the discrimination.

CONCLUSION

Each question presented, verified rulings are contrary to established law affecting all discrimination and pro se plaintiffs, particularly against the government. Each and every established law of this Court and Circuit Courts was ignored and violated, apparently because oversight is very rare. Garity asks the case be remanded for a full, including Retaliation, Accommodation and Hostile Environment, fair trial on the merits by jury of peers, with exception of disability discrimination-found, and full testimony on constructive discharge and damages. Each Decision compounded one on another starting with DOJ representation, to denial of evidence, to summary judgment, to removal of damages and jury trial, to failure to recuse after becoming an accuser, to preventing witness testimony/ evidence, to ordering no testimony on damages to final Order. "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation." *Montana*

Denied testimony and evidence prevented full proof of all claims. (ECF: 487 147:22 to 149:1, 212:1-24, 213:5-10, 220:14-18; 488 8:25 to 10:20; 489 189:16 to 190:25; 490 9:25 to 10:20) None of the errors are disputed. Denial of Garity's rights throughout

does not make any of the issues raised moot. Maybe Garity, as a pro se, just wasn't worth the time. This was just another day for the Court and DOJ but it was Garity's career and her life. It is well researched that discrimination plaintiffs do not have fair access to trial courts. Journals verify the civil rights act has basically been eliminated by Trial Court Judges. (ECF 163-2)

> ABA JOURNAL Posner: Most judges regard pro se litigants as 'kind of trash not worth the time' By Debra Cassens Weiss Posted September 11, 2017.

If Federal District Courts are allowed to rule against laws of the Supreme Court and Congress, then the right to be free from discrimination, particularly disability discrimination, is in extreme jeopardy. USPS has lost class action after class action related to Disability Discrimination, retaliation and hostile environment for the exact same conduct in this claim. USPS continues their actions because they believe, and rightfully so, they are untouchable and above the law. Managers/ coworkers falsely accused Garity of inclination to murder because they would likely do so if treated the way Garity was treated. *See* John H. Clark, American Jurist in *Valdez v. United States*, 244 U.S. 432, 450 37 S. Ct. 725, 61 L. Ed. 1242 (1917).

> ...meaningful access to justice for every American is more than just a professional responsibility—it is a moral obligation and a national charge. It is at the very core of what this country stands for...deserves fair treatment from the civil justice system...deserves our best efforts in the service of that cause. June 3, 2015 *Courtesy of Attorney General Loretta E. Lynch*

Garity prays this will not be allowed to stand.

s/Rosemary Garity
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