

NO. 21-7311

IN THE
SUPREME COURT OF UNITES STATES

Linda Baldwin,

Petitioner,
V.

Office of Injured Employee Counsel,

Respondent,

APPLICATION FOR REHEARING A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Linda Baldwin, *Pro se*
7029 Villada Street
Las Vegas, NV 89084
(702) 779-0483
Itistime3@yahoo.com

PARTIES TO THE PROCEEDING

1. Petitioner, Linda Baldwin, *pro se*, individually, on review, were the plaintiffs-appellant.
2. Respondent, Office of Injured Employee Counsel, through their Counsel, Assist Attorney General, Daniel Coolidge review for the defendants- Respondent.
3. Counsel, Blair C. Dancy is the Attorney for the Carrier, Zurich American Insurance Company is not a party to this Appeal but were the Appellee for the Defendant.

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NO. 21-7311

IN THE
SUPREME COURT OF THE UNITED STATES

Linda Baldwin,
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v.

Office of Injured Employee, Counsel ,
Respondent.

PETITION FOR REARING

To Justice Samuel Alito and the Associate Justices of the Supreme Court: Petitioner, Linda Baldwin *pro se*, respectfully petitions for Rehearing a writ of certiorari to review the final order of the United States Court of Appeals for the United State Court of 5th Circuit, denying Jurisdiction

PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner Pro Se Linda Baldwin , Respectfully Petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit's *en banc* opinion upheld the Texas sovereign immunity.

The Article VI allows the U. S Government power under Section 42 U.S. C 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia. The decision in Monroe v. Pape that state government officials can be sued under Section 1983 was expanded in a case called Monell v. New York City Dep't of Social Services, 436 U.S. 658 (1978), In that case, the Supreme Court allowed for 1983 claims against municipal and city governments. (App. 20-50284.244) A petition for rehearing should present intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. See Rule 44.2.

Petition For Rehearing

The Petitioner, Baldwin original certiorari asked this Court to resolve four issues of first impression: 1. Under 42 U.S.C. § 1983, is a public official, whose reckless conduct proximately injured another violate a plaintiff 's federally protected right's, liable for the plaintiff 's injuries, even though the State official is entitled to qualified immunity?

2. When a public official violates clearly established law through his conduct, and the conduct caused pain, suffering and mental anguish, is the official protected by qualified immunity? *Albright v Oliver*, 510 US 266, 271 (1994). *Id* at 273. *Texas Dept. of Transp. v. Jones*, 8 S.W.3d 636 (Tex. 1999)

3. Under 42 U.S.C. 1983, which provides relief to those deprived of civil rights?

4. Accordingly of the 14th Amendment 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 and should have been reverses.

Reason for Rehearing

Petitioner Baldwin invokes the Causes of Action 42 U.S.C Deprivation of Rights People of Color of American Disability Act of Title II. A petition for rehearing should present intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. (20-0284.437) See Rule 44.2.

On or about March of 2008, Petitioner Baldwin applied for services to be a participant in Respondent Program Office of Injured Employee Counsel but was denied Assistant and services under the program after she had suffered several injuries that prevented her from working on her job and later terminated by her employee extended Stay America and pronounce as disable by the Social Disability administration in her sworn Affidavit (App. 39).

January 12, 2012, a letter was sent to the Attorney General's office expressing the mistreatment under the ombudsman program. Ms. Baldwin never received a response from the former Attorney General Office asking why she was denied the quality

care and denied services by the Division of Worker's Compensation, Injured Employee Counsel. (App. 24)

On June 14, 2012 a Contested Case Hearing was held to resolve a dispute between both parties Linda Baldwin, Claimant vs. Zurich American Insurance Company, Carrier but accordingly, the Ombudsman was a No-Show at the hearing under claims number 11148351 and 08103562 Section 202 of Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132 (emphasis added) September 4, 2012 Ms. Baldwin received two letter from Texas Department of Insurance Division of Workers Compensation and that her Injury Claims has become Final under the Section 410.169, a notice untimely appeal is enclosed.

(App. 38-1). Accordingly Petitioner Baldwin was deprived and filed a formal complaint on August 5, 2019 against Respondent the in her Second Amended Complaint of Causes of Action 42 1983 People of Color, under the American Disability Act (ADA), Title II, and the Privacy Act 5 U.S.C. § 552 a 1974, In the united states District Court. (20-0284.437)

The article VI of the United States governs Section 42 U.S.C 1983 deprivation Causes of Action of the people's Rights in of all states concerns the relationship between the requirement which violate of the Fourteenth Amendment, and the requirement of action "under color of state law" to establish a right to recover under 42 U.S.C. § 1983 under the American Disability Act, which provides a remedy for deprivation of constitutional rights when that deprivation takes place "under color of any statute, ordinance, regulation, custom, or usage" of a State. The District Court held that the alleged actions of the Petitioner Baldwin did not constitute an action as required by the Fourteenth Amendment, and that the complaint therefore did not state a valid claim under § 1983.

The Court of Appeals of the fifth circuit affirmed, but on the basis that the complaint failed to allege conduct under color of state law for purposes of § 1983 because there was neither usurpation or corruption of official power by a private litigant nor a surrender of judicial power to the private litigant in such a way that the independence of the enforcing compromised to a significant degree. But the accordingly the Conduct allegedly causing the deprivation of a constitutional right protected against due process by a State must be fairly attributable to the State. In determining the question of "fair attribution," (a) the deprivation

must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by it or by a person for whom it is responsible, and (b) the party charged with the deprivation must be a person who may fairly be said to be a state actor, either because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.

Insofar as Petitioner Baldwin said she was deprived of alleged only by Respondents of Texas law, that she did not state a cause of action under § 1983 in which she did state a causes of action under 1983 , but challenged only private action. Such challenged the conduct as ascribed to any governmental decision, nor did respondents have the authority of state officials to put the weight of the State behind their private decision. However, insofar as Petitioner's complaint challenged the state statute as being procedurally defective under the Due Process Clause, she did present a valid cause of action under § 1983. (20-50284.194),

The statutory scheme obviously is the product of state action, and a private party's joint participation with state officials is sufficient to characterize that party as a "state actor" for purposes of the Fourteenth Amendment. Respondents, Office of Injured Employee Counsel were, therefore, acting under color of state law in participating in the deprivation of petitioner's claims when she was denied her due process at the contestant hearing under the American disability Act.

Petition Baldwin was not represented by Attorney, in which the state of Texas policies say's do not discriminate, " which caused Baldwin injuries and mental anguish. The Fourteenth Amendment of the Constitution provides in part: "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." Because the Amendment is directed at the States, it can be violated only by conduct that may be fairly characterized as "state action."

The Title 42 U.S.C. § 1983 provides a remedy for deprivations of rights secured by the Constitution and laws of the United States when that deprivation takes place "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory. . . ."1 This case concerns the relationship between the § 1983 requirement of action under color of state law and the Fourteenth Amendment requirement of state action. Petitioner

Baldwin subsequently brought this action under 42 U.S.C. § 1983 American Disability Act against Office of Injured Employee Counsel and Zurich American Insurance Company the carrier misrepresentation of the Insurance claims number 1148351 and number 08103562, under consolidated No. 20-50293 after both parties signed the agreement. Baldwin's workers' compensation was filed with Division of Workers' Compensation Division without her knowledge. The agreed Workers' Compensation claim with Carrier Zurich American Insurance Company and Petitioner Linda Baldwin are stated in the Judge's Order dated August 17, 2013. (App. 24 a.). The lower courts construed the complaint as alleging a due process without Jurisdiction after she sought for her compensation claims and punitive damages for specified financial losses.

The District Court held that the alleged actions of Petitioner Linda Baldwin did not constitute state action as required by the Fourteenth Amendment and that the complaint therefore did not state a claim upon which relief could be granted under § 1983 under the American Disability ADA claims. The Petitioner Linda Baldwin appealed; the Court of Appeals for the Fifth Circuit, sitting en banc, affirmed, with three dissenters Before are Hiffinbotharn, Jones, and Costa . "Whether the mere institution by a private litigant of presumptively valid state judicial proceedings, without any prior or subsequent collusion or concerted action by that litigant with the state officials who then proceed with adjudicative, administrative, or executive enforcement of the proceedings, constitutes action under color of state law within contemplation of § 1983."

The court distinguished between the acts directly chargeable to respondents and the larger context within which those acts occurred, including the direct levy by state officials. While the latter no doubt amounted to state action, the former was not so clearly action under color of state law. The court held that a private party acts under color of state law within the meaning of § 1983 only when there is a usurpation or corruption of official power by the private litigant or a surrender of judicial power to the private litigant in such a way that the independence of the enforcing officer has been compromised to a significant degree. Because the court thought none of these elements was present here, the complaint failed to allege conduct under color of state law, in which there where a conduct of behavior. See the Supreme grated at 452 U.S. 937, 101 S.Ct. 3078, 69 L.Ed.2d 951 (1981).

As it determined that it could ignore all of them because the issue in this case was not whether there was state action, but rather whether respondents acted under color of state law. As we see it, however, the two concepts cannot be so easily disentangled. Whether they are identical or not, the state-action and the under-color-of-state-law requirements are obviously related. Indeed, until recently this Court did not distinguish between the two requirements at all.

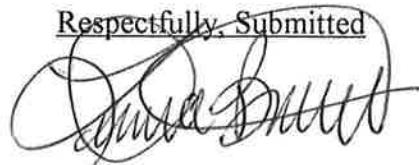
The Action in Baldwin cases have accordingly insisted that the conduct allegedly causing the deprivation of a federal right be fairly attributable to the State. Baldwin's cases reflect a two-part approach to this question of "fair attribution." First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible. Without a limit such as this, private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions with the community surrounding them. Although related, these two principles are not the same. They collapse into each other when the claim of a constitutional deprivation is directed against a party whose official character is such as to lend the weight of the State to his decisions. See *Monroe v. Pape* 365 U.S. 167 (1961), 39,

The two principles diverge when the constitutional claim is directed against a party without such apparent authority, *i.e.*, against a private party. The difference between the two inquiries is well illustrated by comparing *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972), with *Flagg Brothers, supra*. In summary, Petitioner was deprived of her a fair hearing under the American Disability ACT (ADA) because she was not represented by of attorney of worker compensation claims through state action; Respondents were, therefore, acting under color of state law in participating in that deprivation to her disability. Petitioner did present a valid cause of action under § 1983 insofar as she challenged the constitutionality of the Texas statute; she did not insofar as she alleged only misuse or abuse of the statute but a recovery under recover under 42 U.S.C. § 1983 .

CONCLUSION

For the reasons set forth in this Petition, Michael Skidmore respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

Respectfully Submitted



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v.

Office of Injured Employee Counsel

Respondent,

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Petition for Writ of Certiorari contains 2,314 words, excluding the parts of the Petition that are exempted by Supreme Court Rule 33.1(d). I declare under penalty of perjury that the foregoing true and correct. Executed on May 10, 2022.

Linda Baldwin, *Pro se*
7029 Villada Street
Las Vegas, NV 89084
(702) 779-0483
Itistime3@yahoo.com

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Vs.
Office of Injured Employee, Counsel

Respondent,

CERTIFICATE OF SERVICE

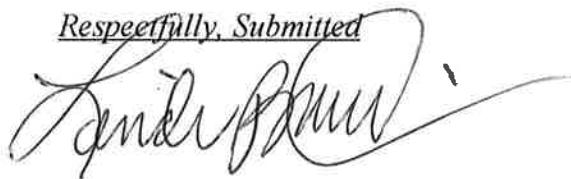
I, Petitioner, Linda Baldwin, *pro se*, hereby certify that on this 10th day of May, 2022, I caused a copy of the of Certiorari Brief which were served to the Respondent, Office of Injured Employee, Counsel to be delivery by certified mail on the following counsel:

Assistant Attorney General
Daniel Coolidge
P.O. Box 12548
Austin, Texas 78711
512-463-2120

Linda Baldwin, *pro se*
7029 Villada t.
North Las NV
Zip Code 89084
(512) 779-0483
itistime3@yahoo.com

I further certify that all parties required to be served have been served.

Respectfully Submitted



IN THE
SUPREME COURT OF THE UNITED STATES

LINDA BALDWIN

- - - - - PETITIONER

VS.

OFFICE OF INJURED EMPLOYEE COUNSEL - RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

D The appointment was made under the following provision of law: _____, or _____

a copy of the order of appointment is appended.



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, LINDA BALDWIN, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 1,692.38	\$ __ -	\$ __ -	\$ __ -
Self-employment	\$ __ N/A -	\$ __ -	\$ __ -	\$ __ -
Income from real property (such as rental income)	\$ __ -	\$ __ -	\$ __ -	\$ __ -
Interest and dividends	\$ __ N/A -	\$ __ -	\$ __ -	\$ __ -
Gifts	\$ __ N/A -	\$ __ -	\$ __ -	\$ __ -
Alimony	\$ __ N/A -	\$ __ -	\$ __ -	\$ __ -
Child Support	\$ __ N/A -	\$ __ -	\$ __ -	\$ __ -
Retirement (such as social security, pensions, annuities, insurance)	\$ 233.30	\$ __ -	\$ __ -	\$ __ -
Disability (such as social security, insurance payments)	\$.,1816.00	\$ __ -	\$ __ -	\$ __ -
Unemployment payments	\$ __ N/A -	\$ __ -	\$ __ -	\$ __ -
Public-assistance (such as welfare)	\$ __ N/A -	\$ __ -	\$ __ -	\$ __ -
Other (specify): _____	\$ __ N/A -	\$ __ -	\$ __ -	\$ __ -
Total monthly income:	\$ 3,741	\$ __ -	\$ __ -	\$ __ -

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Pinnacle	Las Vegas, NV	2-7-2022	\$. 5
N/A			\$.
N/A	MN.		\$.

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$.
N/A			\$.
N/A			\$.

4. How much cash do you and your spouse have? \$25.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
SAVING	\$0	\$.
CHECKING	\$0	\$.
N/A	\$.	\$.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value N/A

Other real estate
Value N/A

Motor Vehicle #1 N/A
Year, make & model
Value N/A

D Motor Vehicle #2
Year, make & model N/A
Value

Other assets N/A
Description
Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 1,836 -	\$ _____ -
Are real estate taxes included? D Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input checked="" type="checkbox"/> Yes D No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 128.00 -	\$ _____ -
Horne maintenance (repairs and upkeep)	\$ <u>N/A</u> -	\$ _____ -
Food	\$ 460.00 -	\$ _____ -
Clothing	\$ 150.00 -	\$ _____ -
Laundry and dry-cleaning	\$ 0 -	\$ _____ -
Medical and dental expenses	\$ 171.00 -	\$ _____ -

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 00.00 \$-----	\$-----
Recreation, entertainment, newspapers, magazines, etc.	\$ 19.00 \$-----	\$-----
Insurance (not deducted from wages or included in mortgage payments)		
Home owner's	\$ 19.00	\$_____
Life	\$ 158.00	\$_____
Health	\$ 146.00	\$_____
Motor Vehicle	\$ 00.00	\$_____
Other:	\$ N/A	\$_____
Taxes (not deducted from wages or included in mortgage payments)		
(specify):	\$ N/A	\$_____
Installment payments		
Motor Vehicle	\$ N/A	\$_____
Credit card(s)	\$ 678.00	\$_____
Department store(s)	\$ N/A	\$_____
Other:	\$ N/A	\$_____
Alimony, maintenance, and support paid to others	\$ N/A	\$_____
Regular expenses for operation of business, profession or farm (attach detailed statement)	\$ N/A \$-----	\$-----
Other (specify): -----	\$ N/A \$-----	\$-----
Total monthly expenses:	<u>3,746</u>	\$-----

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next **12** months?

Yes No

If yes, describe on an attached sheet.

N/A

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? **N/A**

If yes, state the attorney's name, address, and telephone number:

11. Have you paid-or will you be paying-anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? **N/A**

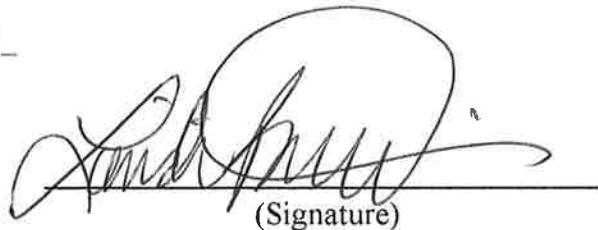
If yes, state the person's name, address, and telephone number: **N/A**

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am indigent and cannot make the payment

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

Executed on: May 10, 2022, 2022



(Signature)