

NO. 22- \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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RUTH FALLS-MILLER AND DR. HOWARD J. MILLER

*Petitioners-Pro Ses*

vs.

SAVANNAH-CHATHAM COUNTY  
PUBLIC SCHOOL BOARD AND DR. THOMAS B. LOCKAMY

*Respondents*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eleventh Circuit

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**MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***


The petitioners, Ruth Falls-Miller and Dr. Howard J. Miller asks leave to file the attached petition for a writ of certiorari without payment of costs and to proceed *in forma pauperis*.

Petitioners has previously been granted leave to proceed *in forma pauperis* in the following court(s): Superior Court of Chatham County, Georgia Court of Appeals, Supreme Court of Georgia and the Magistrate Court of the U.S. District Court of the Southern Division of Georgia.

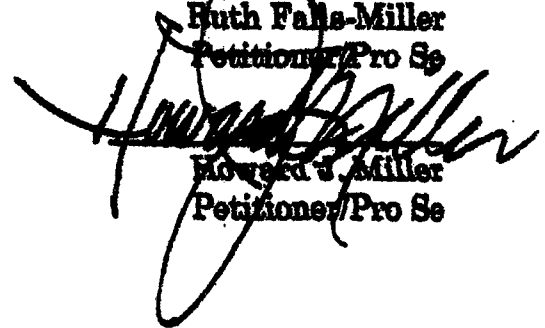
Petitioners have not previously been granted leave to proceed *in forma pauperis* in either the U.S. District Court of the Southern Division of Georgia, nor the U.S. Court of Appeals for the Eleventh Circuit.

Petitioners affidavit or declaration in support of this motion is attached hereto.

Executed on: March 29, 2022



Ruth Falls-Miller  
Petitioner/Pro Se



Howard J. Miller  
Petitioner/Pro Se

IN THE  
SUPREME COURT OF THE UNITED STATES

RUTH FALLS-MILLER AND DR. HOWARD J. MILLER

*Petitioners-Pro Ses*

vs.

SAVANNAH-CHATHAM COUNTY

PUBLIC SCHOOL BOARD AND DR. THOMAS B. LOCKAMY

*Respondents*

**PETITIONERS' DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

We, Ruth Falls-Miller and Howard J. Miller, are the petitioners in the above-entitled case. In support of our motion to proceed *in forma pauperis*, we state that because of our poverty as retired educators with exhausted retirement earnings, unemployed and living on fixed Social Security income below the poverty line for two people, we are unable to pay the cost of this case or give security therefor; and we believe we are 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, semi-annually, or annually to show the month rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average month amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ 0	\$ 0	\$ 0
Self-Employment	\$ 0	\$ 0	\$ 0	\$ 0
Income from real property (such as rental income)	\$ 0	\$ 0	\$ 0	\$ 0
Interest and dividends	\$ 0	\$ 0	\$ 0	\$ 0
Gifts	\$ 0	\$ 0	\$ 0	\$ 0
Alimony	\$ 0	\$ 0	\$ 0	\$ 0

Child Support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>1039</u>	\$ <u>1247</u>	\$ <u>1039</u>	\$ <u>1247</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public Assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify) _____	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly income:				
	\$ <u>1039</u>	\$ <u>1247</u>	\$ <u>1039</u>	\$ <u>1247</u>

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
<u>NA</u>	_____	_____	\$ _____
<u>NA</u>	_____	_____	\$ _____
<u>NA</u>	_____	_____	\$ _____

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
<u>NA</u>	_____	_____	\$ _____
<u>NA</u>	_____	_____	\$ _____
<u>NA</u>	_____	_____	\$ _____

4. How much cash do you and your spouse have? \$132 (for preparation & mailing of legal pleadings and document preparation)

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

Employer	Address	Dates of Employment	Gross monthly pay
<u>NA</u>	_____	\$ _____	\$ _____
<u>NA</u>	_____	\$ _____	\$ _____
<u>NA</u>	_____	\$ _____	\$ _____

Laundry and dry-cleaning \$ 30 \$ 0

Medical and Dental Expenses \$ 48 \$ 26

	You	Your Spouse
Transportation (not including motor vehicle payments)	\$ 30	\$ 30
Recreation, entertainment, newspapers, magazines, etc.	\$ 40	\$ 25

Insurance (not deducted from wages or included in mortgage payments)

Homeowner's or renter's	\$ 0	\$ 36
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Life	\$ 25	\$ 38
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Health	\$ 0	\$ 0
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Motor Vehicle	\$ 0	\$ 0
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Other: Cell Phone	\$ 6	\$ 0
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Taxes (not deducted from wages or included in mortgage payments)

(specify):	\$ 0	\$ 0
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Installment payments

Motor Vehicles	\$ 0	\$ 0
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Credit card(s)	\$ 0	\$ 0
----------------	------	------

Department store(s)	\$ 0	\$ 0
---------------------	------	------

Other: MRI/Medical	\$ 0	\$ 40
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Alimony, maintenance, and support paid to others	\$ 0	\$ 0
--	------	------

Regular expenses for operation of business, profession, Or farm (attach detailed statements)	\$ 0	\$ 0
---	------	------

Other (specify): Pro Se Legal Expenses	\$ 30	\$ 30
--	-------	-------

Total monthly expenses:	\$ 1029	\$ 1230
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5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home  
Value \_\_\_\_\_

☐ Other real estate  
Value \_\_\_\_\_

☐ Motor Vehicle #1  
Year, make & model  
Value \_\_\_\_\_

☐ Motor Vehicle #2  
Year, make & model  
Value \_\_\_\_\_

Other assets  
Description  
Value \_\_\_\_\_

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
0	\$ 0	\$ 0
0	\$ 0	\$ 0
0	\$ 0	\$ 0

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
NA		
NA		
NA		

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

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? Is property insurance included?	\$ 500	\$ 700
Utilities (electricity, heating fuel, Water, sewer, and telephone)	\$ 120	\$ 120
Home maintenance (repairs and upkeep)	\$ 20	\$ 20
Food	\$ 130	\$ 145
Clothing	\$ 50	\$ 20

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.

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

If yes, how much? \_\_\_\_\_

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 typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much?

If yes, state the person's name, address, and telephone number.

\_\_\_\_\_

12. Provide any other information that will help explain why you cannot pay the costs of this case. *Rising cost preparing, typing, and mailing legal documents and paying filing fees.*

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

Executed on: March 29, 2022

*Ruth Falls-Miller*

Ruth Falls-Miller  
Petitioner/Pro Se

*Howard J. Miller*

Howard J. Miller  
Petitioner/Pro Se

NO. 22- \_\_\_\_\_

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RUTH FALLS-MILLER and DR. HOWARD J. MILLER

*Petitioners-Pro Ses*

vs.

SAVANNAH-CHATHAM COUNTY PUBLIC SCHOOL BOARD,  
and DR. THOMAS B. LOCKAMY

*Respondents*

---

On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

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RUTH FALLS-MILLER  
*Pro Se - Petitioner*

HOWARD J. MILLER  
*Pro Se - Petitioner*  
1 Ashleigh Lane  
Savannah, GA 31407  
(912) 323-8880



## **I. QUESTION PRESENTED**

Within this *Petition for Writ of Certiorari* the petitioners, Ruth Falls-Miller and Howard J. Miller here now present to this honorable Court the following question:

Can the filing of a § 1983 state law claim for breach of contract under Georgia's O.C.G.A 9-3-24, by a teacher who asserts not a personal injury claim under O.C.G.A, 3-3-33 as alleged by local school board (defendants), be "*legally ordered time-barred and dismissed*" by U.S. District Courts along with their decision not to exercise supplemental jurisdiction in ruling on state employment torts despite evidence revealing teacher's exhaustion of all state administrative remedies for a fair and just resolution having proved futile?

### **A. LIST OF PARTIES**

☒ All parties appear in the caption of the case on the cover page.

### **B. RELATED CASES**

There exist no related cases in relation to this petition.

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#### IV. PETITION FOR WRIT OF CERTIORARI

Petitioners Ruth Falls-Miller and Dr. Howard J. Miller respectfully requests the issuance of a writ of certiorari to review the judgment below of the United States Court of Appeals of the Eleventh Circuit.

#### V. DECISION BELOW

The decision of the United States Court of Appeals of the Eleventh Circuit to deny plaintiffs' appeal of the U.S. District Court of the Southern Division of Georgia was made on December 29, 2021. (*Appendix 17*). This decision came after the plaintiffs' filed a corrected Petition for Rehearing Enbanc on November 15, 2021 (*Appendix A*) which the Court denied. Both denials were without written published opinions.

#### VI. JURISDICTION

The Eleventh Circuit entered judgment denying the plaintiffs' appeal and subsequently denying the plaintiffs request for a rehearing on January 6, 2022. This Court's jurisdiction was invoked under 28 U.S.C. § 1254(1). The District Court was later sent a copy of the Courts' order affirming its decision to deny the petitioners appeal, which the District Court sent a copy of the order to the petitioners in restating its concurrence with the Court on January 10, 2022. (*See Appendix C*). A timely petition for rehearing was denied by the U.S. Court of Appeals for the Eleventh Circuit (referred hereafter as the Eleventh Circuit on the following date: December 29, 2021, and a copy of the order denying the petition for rehearing (*Appendix D*).

## VII. STATUTORY PROVISION(S) INVOLVED

This case involves the application of 42 U.S.C. § 1983, applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub. L. 96-170 set out as a note under section 1343 of Title 28, Judiciary and Judicial Procedure.

## VIII. STATEMENT OF THE CASE

### A. INTRODUCTION

#### Background

In the Fall of 2004, the plaintiff, Ruth Falls-Miller (hereafter referred to as Petitioner) hired as a Social Studies Teacher within the Savannah-Chatham County Public School System. She earned teacher status after having successfully taught for four years, entitling her to have achieved tenure status. As such, according to Georgia state law she earned tenure status as a full-time, state-certified teacher. She continued to perform her teaching duties in compliance with the terms of her written contract clear up to January 11, 2013 when the then local school superintendent recommended her for termination.

#### Proceedings

On January 28, 2013 the local school board's tribunal, under the Georgia Fair Dismissal Act (*Georgia Code* § 20-2-940) conducted a termination hearing with the petitioner, her witnesses and attorney present at the 9-hour long hearing. Fifteen days later, at the recommendation of the tribunal, the local school board contrary to the petitioner's undisputed testimony and documented evidence (*Appendix E*), arbitrarily and capriciously decided to terminate the petitioner's employment

contract with the local school district. But, the petitioner in seeking to appeal the termination decision before the Georgia State Board, the local school board shocked the conscience of the plaintiff. The local school board wrote to and deliberately informed the plaintiff that she had to pay for the preparation of the termination hearing transcript required to be sent to the state board. Such an egregious actions were in violation of state law requiring the local school board to pay the cost of \$2,000 to have the hearing transcript prepared and forward to the state board.

Despite the petitioner not being required by state law to pay for the transcript, she requested and was granted a hearing by the local school board in response to her written request for waive the expense of the transcript due to her indigent status. Documentation supporting her indigent status and along with that of her husband, her request was denied. After trying for nearly two years exhausting all administrative remedies to reverse the local school board's denial of her indigent status, she finally saved enough money to cover the cost of have the transcript prepared for her appeal. She then pursued, unsuccessfully, all state administrative remedies to reverse the local school board decision to terminate her employment.

Having exhausted all administrative remedies, on January 25, 2019, before the state's six-year statute of limitation (OCGA 9-3-24) timed out, the plaintiff unsuccessfully filed a state law claim for breach of contract complaint in the Superior Court of Chatham County against the local school board and the local school superintendent. Plaintiff's actions arises under the 14<sup>th</sup> Amendment of the

U.S. Constitution and Title 42 U.S.C. § 1983. As such, plaintiff filed a § 1983 claim in the U.S. Court of the Southern Division of Georgia (*Appendix F*) against the defendants. She charged the local school for violating her substantive and procedural due process rights attributed to their decision to wrongfully terminate her of employment, in addition to breaching her contract. Also, included in the complaint charging the local school superintendent depriving plaintiff of her liberty of free speech. Specifically, denying the plaintiff to disclose the uncontrollable student gang behavior, and retaliatory harassment and hostile work environment she experienced at the hands of her school's principal. to prevent her from disclosing material findings of fact regarding. Despite assertions that plaintiff failed to state a claim for which relief could be granted, material findings support of her claims were either withheld from the record, yet identified in the plaintiff's civil complaint. Also, a brief (*Appendix G*) in support of her appeals submitted to the Circuit Court which was totally ignored with respect to the material findings of fact and law citations supportive of the claim levied against the defendants. And along with the plaintiff being denied discovery, along the local school superintendent withholding the plaintiffs documented evidence from the termination hearing transcript.

Within less than a week upon the plaintiff filing a § 1983 federal claim against the defendants, the Magistrate of the U.S. District Court affirmed recommended the dismissal of all claims identified in the plaintiff's complaint. (*Appendix H*) Despite this recommendation for dismissal, the plaintiff unsuccessfully filed an appeal

owing to the District Court affirming the recommendation to dismiss plaintiff's complaint as untimely and failing to state a claim, from here, the plaintiff filed an appeal, along with motion to proceed IFP before the U.S. Court of Appeals of the Eleventh Circuit. This Appeals Court denied the motion to proceed IFP (*Appendix I*) and denied the appeal and subsequently issued an unpublished opinion (*Appendix J*), while totally ignoring material findings of fact, documented and supported by citations of authority cited in the plaintiff's brief. Even, the plaintiff's petition for rehearing en banc, as previously stated was rejected by the Appeals Court. Both the U.S. District Court and the Appeals court based their decision to dismiss and deny the plaintiff's civil complaint in total disregard, along with a deliberate indifference to the evidence or need for discovery. And they primarily based their decisions on the erroneous belief and misapplication of Georgia state laws on the "the statute of limitations" that the plaintiff's civil complaint was time-barred. Plaintiff was left to conclude that these courts simply to the position that the plaintiffs had no knowledge of the law worthy to be taken seriously.

Despite such thoughts by the plaintiffs, either wrong or true, the plaintiff and her husband, a co-plaintiff remained confident in their belief that justice existed still within the nation's courts. And they felt that with the weight of evidence supportive of all the claims identified in their civil complaint, they now move to submit this Petition for Writ of Certiorari to the Supreme Court of the United States, in accordance with 28 U.S.C. § 1254(1).



## IX. REASONS FOR GRANTING THE WRIT

Several reasons are offered in support of why the Court should grant the writ as discussed below:

An erroneous claim has been made by defendants that the plaintiffs' complaint was time barred. They assert and the courts affirm that the plaintiff's civil complaint for breach of contract should have been filed with Georgia's two-year statute of limitations for personal injury claims (OCGA 9-3-33), rather than the state's six-year statute of limitation (OCGA 9-3-24). Citations of authority offered by the plaintiff in challenging the defendants' claim were ignored by the lower courts. Added to this in the case of *Muscogee County Bd. Of Educ. v. Boisvert*, 396 S.E. 2d 303, 504, (1990) the court ruled that:

"The statute of limitations on all simple contracts in writing is six years; and this is true whether the promise sued on is expressed in the writing or implied and written into it by the law. This rule is in accord with the decisions of the Supreme Court in numerous cases where it has been expressly recognized that, where contract forming the basis of the action is in writing, the provisions of OCGA § 9-3-24 are applicable. (Emphasis supplied.) [Cits.]" (Punctuation omitted.) *Nelson v. Nelson*, 176 Ga. App. 107, 108 (335 S.E.2d 411) (1985). *Ct. City of Atlanta v. Adams*, 256 Ga. 620 (351 S.E. 2d 444) (1987)."

In that decision, the Court rejected the Muscogee County School Board's assertion that a terminated teacher suing for breach of contract should have been filed under any other statute than that of OCGA 9-3-24, the six-year statute of limitation relative to a written contract. Yet, despite this law, throughout the

plaintiff's efforts to exhaust all the state's administrative remedies, as well as said federal courts, the plaintiffs' state law and federal law claims have been denied or dismissed as time-barred under erroneous assertion and misapplication of the state's two year statute of limitations.

Consequently, under the decision by the U.S. District that plaintiff's filing of her breach of contract complaint was time-barred and the complaint dismissed. Equally important, the U.S. District erroneously rendered a decision not to exercise its supplemental jurisdiction to address the state torts relative to the plaintiff employment complaints. The decision to dismiss was erroneous, when considering that the Court has ruled that the dismissal of a complaint is appropriate only when, on the basis of a dispositive issue of law, where no construction of the factual allegations will support a cause of action. *Marshall County Bd. Of Educ. v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11<sup>th</sup> Cir. 1993).

In addition, the plaintiff's efforts to exhaust all the state's administrative remedies to allow the state to provide for and protect the plaintiff's due process rights, the defendant egregious actions which compromised the ability of remedies to provide a just resolution or reversal of the defendants' termination decision. Such actions by the defendants included the spoliation of the plaintiffs' documented evidence withheld from the official record on the termination proceedings.

Added to this, the defendants committed fraud, in falsely claiming that the plaintiff was required by state law to pay for the preparation of the termination hearing transcript required for appeal before the Georgia State Board of Education.

On the issue of such fraud, the Courts have ruled that..."The limitation period may be tolled in the defendant commits an act of actual fraud. (Coffee v. General Motors Acceptance Corp., 30 F. Supp. 2d 1376, 1381 (S.D. Ga. 1998). This tortious action of fraud by the local school board (claiming that it and not its tribunal conducted the Fair Dismissal Hearing) appeared designed to delay plaintiffs' efforts timely to appeal the local school board's termination decision, and to exceed EEOC's 180 days statute of limitation for filing a wrongful discharge claim against said defendants.

The factors described above which compromised the ability of the state's administrative remedies, limited to a de novo review of the complaint, resulted in the state not being able to protect and provide for the plaintiff, Ruth Falls-Miller, having her procedural due process rights guaranteed by the state. In such cases, the courts have ruled that a plaintiff's § 1983 claim can and should be filed with the U.S. District court. (See Jordan v. Columbia Cnty. Bd. Of Educ., CV-110-037, 33 (S.D. Ga. Mar, 29, 2012; Grayden v. Rhodes, 345 F.3d 1225, 1232 (11<sup>th</sup> Cir. 2003).

#### **X. CONCLUSION AND PRAYER FOR RELIEF**

The plaintiffs, Ruth Falls-Miller and Dr. Howard J. Miller respectfully request that this Court issue a writ of certiorari.

Respectfully Submitted, March 29, 2022

*Ruth Falls-Miller*

**RUTH FALLS-MILLER**

*Pro Se - Petitioner*

1 Ashleigh Lane

Savannah, GA 31407-3921

912.323.3880

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*Howard J. Miller*

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**RUTH FALLS-MILLER AND DR. HOWARD J. MILLER**

*Petitioners-Pro Ses*

**v.**

**SAVANNAH-CHATHAM COUNTY  
PUBLIC SCHOOL BOARD AND DR. THOMAS B. LOCKAMY**

*Respondents*

---

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eleventh Circuit**

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**LIST OF APPENDICES  
VOLUME 1 (Appendices A to E)**

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(912) 323-3880

**APPENDIX A -  
CIRCUIT COURT DENIAL OF APPEAL**

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
[www.uscourts.gov](http://www.uscourts.gov)

December 29, 2021

**MEMORANDUM TO COUNSEL OR PARTIES**

Appeal Number: 20-14594-HH

Case Style: Ruth Falls-Miller, et al v. Savannah-Chatham County Public, et al

District Court Docket No: 4:20-cv-00085-JRH-CLR

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Christopher Bergquist/jc  
Phone #: 404-335-6169

REHG-1 Ltr Order Petition Rehearing

**APPENDIX B -  
PETITION FOR REHEARING**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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CASE NO. 20-14594

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RUTH FALLS-MILLER,  
DR. HOWARD J. MILLER

Plaintiffs-Appellants,

v.

SAVANNAH-CHATHAM COUNTY  
PUBLIC SCHOOL BOARD,  
DR. THOMAS B. LOCKAMY, JR., in his official capacity

Defendants-Appellees

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION  
CASE NO. 4:20-00085-JRH-CLR

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**APPELLANTS' CORRECTED PETITION FOR PANEL REHEARING  
AND REHEARING EN BANC**

Pursuant to Federal Rules of Appellate Procedure

ECF Date: November 15, 2021

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RUTH FALLS-MILLER  
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Savannah, GA 31407  
Telephone: (912) 323-3880  
Email: ruthfallsmiller@gmail.com

DR. HOWARD J. MILLER  
1 Ashleigh Lane  
Savannah, GA 31407  
Telephone: (912) 561-9087  
Email: drhjmiller@gmail.com

Plaintiffs-Appellants Pro Sees



**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Plaintiffs/Appellants Ruth Falls-Miller and Dr. Howard J. Miller pursuant to FRAP 26.1 and 11th Cir. R. 26.1-1, 26.1-2 and 26.1-3, here now files this Certificate of Interested Persons and Corporate Disclosure Statement and verifies that those persons or entities listed below may have an interest in the outcome of this case:

1. Baker, R. Stan – Judge, U.S. District Court of Southern District
2. Borg, Chuck – Director, Georgia Judiciary Qualifications Commission (J.Q.C.)
3. Buck, Dr. Joseph – Interested Person
4. Cochran, Peggy – Interim Executive Director, Georgia Association of Educators (G.A.E.)
5. Davenport, Dr. Roy – Interested Person
6. Falls-Miller, Ruth - Appellant/Pro Se
7. Goldware, Alfreda – Interested Person
8. Grosse, Russell – Interested Person
9. Hall, J. Randal – Chief Judge, U.S. District Court
10. Holliday, III, Leamon Roy – Counsel for Appellees
11. Johnson, III, Lester B. – Interested Person
12. Jones, Ruby – Interested Person
13. Kachmar, Shawn A. – Interested Person

14. Lambeth, Jennifer B. – Interested Person
15. Levett, Dr. Ann – School Superintendent, Savannah-Chatham County Public School District (S.C.C.P.S.D.)
16. Lockamy, Dr. Thomas B. – Appellee
17. Gloria McArthur-Davis – Interested Person
18. Myles, Dora S. – Interested Person
19. Miller, Dr. Howard J. Miller – Appellant/Pro Se
20. Napier, Elise M. – Court Reporter (CCR-2492)
21. Ray, Christopher - Magistrate Judge, U.S. District Court of South Georgia, Savannah Division
22. Savannah-Chatham County Public School Board – Appellee
23. Seabrook, Dr. Walter – Interested Person
24. Sturdivant, Hagger – Interested Person
25. Trotter, John – Chairman, Metro Association of Classroom Educators (M.A.C.E.)
26. Ware, Apo K. – Interested Person
27. Watson, Theresa – Savannah Federation of Teachers
28. Weingarten, Randi – American Federation of Teachers
29. Williams, Leonard – Staff Attorney, Professional Association of Georgia Educators (P.A.G.E.)
30. Woods, Richard – Superintendent, Georgia Department of Education

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

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## INTRODUCTION

Plaintiffs argues that O.C.G.A. § 20-2-940, the Georgia Fair Dismissal Act (hereafter, the Act) promulgated by the Georgia state authorizes local school boards to decide on the termination of tenured teachers for cause. Should this law be allowed, as asserted by U.S. District Court require teacher recommended for termination not only exhaust all administrative remedies before being allowed to file a civil complaint in the courts. Also, the teacher, as alleged by the defendants and affirmed by the courts, is required to timely file a personal injury claim with the state's two-year statute of limitation. If so, such a teacher, and the plaintiff in this instant case, stands to be unconstitutionally deprived of her procedural due process rights. This petition for rehearing serves to ask this panel to provide a critical judicial review of their opinion, to consider a justifiable opinion reversal.

### **STATEMENT OF ISSUES MERITING REHEARING OR REHEARING EN BANC CONSIDERATION**

On October 25, 2021, the United States Court of Appeals of the 11<sup>th</sup> Circuit affirmed the decision of the United States District of the Southern District of Georgia (*See Exhibit A – Opinion of the United States Court of Appeals*). Relative to the 11<sup>th</sup> Circuit Rule (35-5(c)), in offering a statement of importance for a rehearing, we, the plaintiffs, Ruth Falls-Miller, and Howard J. Miller in the instant case come now before this panel. Plaintiffs respectfully express to this honorable Court a sincere belief, based on both a reasoned and critical review of decisions



rendered by the Supreme Court of the United States and other courts that relevant to the panel's unpublished opinion on the instant case. We argue there exist several questions on unconstitutional law connected with *Georgia's Fair Dismissal Act* (O.C.G.A. § 20-2-940) that relevant to panel's unpublished opinion. And which this panel in granting a rehearing or rehearing en banc should and must conduct a critical judicial review. Several of these unconstitutional state laws or policies briefly identified below deprived the plaintiff of her procedural due process rights covered under 42 U.S.C. § 1983. Allowing these unconstitutional laws or regulations/policies promulgated by the state to go unchecked serves to deny a wrongfully terminated teacher her constitutional due process rights will prove similar to those cases where an American citizen's due process rights protected under the U.S. Constitution and/or Bill of Rights have been violated.

1. Whether a state's statute of limitation for filing a personal injury claim can be broadly interpreted or so generally defined as to allow a state or local government entity to legally claim it use, concurrent with the state law requiring a terminated teacher to exhaust all the state's administrative remedies...from which the teacher/plaintiff is at the mercy of the state's courts or quasi-judicial entities empowered to set their own time schedules in docketing, hearing and deciding on a case?
2. Whether a tenured teacher's due process rights to timely file a civil rights complaint or gain access to the courts to file an appeal via a state's administrative remedies can be obstructed or denied due to his/her financial inability to pay for the report preparation of a termination hearing transcript?
3. Whether a decision to deny or grant a terminated tenured teacher approval of his/her affidavit of indigence should be decided by the vary defendants

identified in the civil complaint filed with the courts, as a prerequisite before the teacher can access the court to receive and exercise her constitutional due process right to keep from being unconstitutionally deprived of an economic benefits of a property interest of a contracted teaching position with the local school district?

### **STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE**

Following the local school board's decision to terminate her employment, the plaintiff, Ruth Falls-Miller became aware on January 28, 2013 she was wrongfully terminated by the local school board due to the board's arbitrarily and capriciously termination decision which violated both her substantive and procedural due process rights (not on January 4, as alleged in the panel's opinion). On February 14, 2013 the plaintiff's affidavit of indigence to waive the report preparation cost of the termination hearing transcript was denied by the local school superintendent, followed by the local school board. Over the next six years plaintiff sought to exhaust all administrative remedies to reverse the local school board's denial of her affidavit of indigence and employment termination.

Then on January 25, 2019, (within the state's six-year statute of limitations) the plaintiff's file a complaint in the Superior Court of Chatham against the defendants for breach of contract relative to the violation of her constitutional due process rights. Having the option to file in either the state or federal courts, she chose the state courts. The complaint was dismissed on June 7, 2019, on the grounds that the local school board had immunity and could not be sued. Having

exhausted all state remedies, plaintiffs on April 24, 2020 filed a civil rights complaint against the defendants for violation of her due process rights in the U.S. District Court of the Southern District of Georgia – Savannah District. On April 30, 2020, the plaintiffs' civil complaint ordered to be dismissed by the District's magistrate judge. And, it was affirmed, on September 30, 2020 by the District judge. Next, on November 6, 2020, the United States District Court ruled the plaintiffs' complaint untimely and it had failed to state a claim. Plaintiffs then filed an appeal on January 4, 2021 with the U.S. Court of Appeals for the 11th Circuit. On October 25, 2021, the appeal was dismissed, and on November 14, 2021, plaintiffs' filed a petition for rehearing; later, in response to a federal rules deficiency, FRAP 32(g)(1), it was revised on November 17, 2021 and resubmitted.

**ARGUMENT – En Banc Review is Necessary to Resolve Whether the Denial of Petitioners' Civil Complaint by this Panel and the U.S. District Court Properly Ruled It as Time-Barred, Plus Failing to State a Claim, and Not Entitled to Exercising Supplemental Jurisdiction of State Tort Issues Relative to Plaintiff's Employment Termination.**

**A. The Panel Incorrectly Mis-placed Case Law in Support of its Opinion that the Plaintiff Failed to Timely File Her Civil Complaint with Georgia's Two-Year Statute of Limitation, When In Fact She Filed Her Complaint Under the State's Six-Year Statute of Limitation Within the Superior Court of Chatham County.**

The states two-year statute of limitation relative to personal liberty applies to physical or mental injuries suffered from the negligence or intentional torts of defendants. This law, O.C.G.A. § 9-3-33, includes personal injuries incurred from

car accidents, defective products, wrongful death, libel or slander, fraud, false imprisonment and/or assault and battery. Close examination will show that plaintiffs filed a breach of contract complaint against the defendants under the state's six-year statute of limitation (O.C.G.A. § 9-3-24), along with claims of violation of her due process rights on January 25, 2019 before the Superior Court of Chatham County. Plaintiffs were not required under Georgia law, O.C.G.A. 9-3-33), to file a personal injury claim with the two-year statute of limitation. Instead, under 42 U.S.C § 1983, plaintiffs filed a civil rights violation claim against the defendants relative to the violation of her due process rights attributed to local school board's arbitrary and capricious decision to terminate employment resulting in the local board's breach of her employment contract. Yet, the panel affirms the order of the U.S. District in its claim that plaintiff's filing of her civil complaint was untimely. And, as such, panels use of *Chappell v. Rich*, 340 F.3d 1279 (11<sup>th</sup> Cir. 2003) and *Gissendaner v. Comm'r Ga. Dep't of Corr.*, 779 F.3d 1275,1280 (11<sup>th</sup> Cir. 2015) in the claim that Georgia's two-year statute of limitations for personal injury are mis-placed as part of the panels reasoning in asserting the plaintiff's civil complaint is untimely.

**B. The Panel's Opinion was Erroneous in Asserting the Plaintiffs Failed to State a Claim as Part of Its Decision Not to Exercise Its Supplemental Jurisdiction Over State Torts Connected with the Plaintiff's Termination of Employment,**

State and federal courts which have ruled that local school board cannot hide behind sovereign immunity, nor the *11<sup>th</sup> Amendment Immunity Clause* in claims based on breach of contract. Nor can such be done involving employment termination relative to claims on the deprivation of procedural due process rights covered under both state and federal law. (See *Ga. Constitution of 1983*, Art. 1, Sec. 11, Para. IX (c); *Liberty County School District v. Halliburton*, 762 S.E.2d 138 (Ga. App. 2014); *Stewart v. Baldwin County Board of Education*, 980 F.2d 1499, 1509 (11<sup>th</sup> Cir. 1990 (citing *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 280, 97 S.Ct. 568, 572, 50 L.Ed.2d 471 (1977), *Manders v. Lee*, 338 F.3d 1304, 1308 (11<sup>th</sup> Cir. 2003) en banc).

It's important to consider that the state concurrently requires a party, in this instant case, a terminated tenured teacher to exhaust all administrative remedies before being allowed to file a claim under 42 U.S.C. § 1983 either in the state or federal court. (See *Brogdon v. State Board of Veterinary Medicine*, 244 Ga. 780, 781, 262 S.E.2d 56, 1979; *Woodford v. Ngo*, 548 U.S. 81, 88-89 (126 S. Ct. 2378, 165 L.E.2d 368, 2006). And, to begin the process of exhausting all administrative remedies relative to the local school board's wrongful termination decision, the Board erroneously told plaintiff she had to pay for the report preparation of the termination hearing transcript. The cost of producing the hearing transcript set by a court reporting agency was more than \$2000.00 which was beyond the financial

ability of the plaintiff. The local school board's tribunal, however, contrary to state law, O.C.G.A. § 20-2-940(e), placed the responsibility on the plaintiff to pay for the report preparation of the termination hearing transcript.

The specific state law, (Rule 160-1-3-.04(4)(b)), promulgated by the Georgia state legislature and administered by this and other local school boards provided no standards or guidelines identifying by what means a teacher's affidavit of indigence would or could be evaluated for approval or rejection (neither was any such information provided this plaintiff). Also, according to Georgia state law (O.C.G.A. 20-2-1160(c)), the plaintiff within thirty (30) days after being notified of the local school board's termination decision was obligated to inform the local school superintendent of her desire to appeal the termination decision. Plaintiff then, despite her indigent status, had to pay for and present a copy of the termination hearing transcript to the local school superintendent. This defendant then had the responsibility of timely submitting the plaintiff's appeal, including all proceedings, along with a complete copy of the termination hearing transcript and all documented evidence presented during the termination hearing to the Georgia State Board of Education, but failed to timely submit these documents. Under Georgia law, (Rule 160-1-3-.04(4)(b)), the plaintiff upon appealing the local school board's termination decision was required to pay the cost of the report preparation of the termination hearing transcript (contrary to the fact that a tribunal

representing the local school board conducted the hearing). Plaintiff's financial inability to pay the record preparation cost of the termination hearing transcript required her to submit an affidavit of indigence to the local school superintendent which he denied. Under Georgia state law (Rule 160-1-3-.04(4)(c)), local school superintendents are authorized to grant or deny a plaintiff's affidavit of indigence.

Considering, however, the plaintiff's affidavit of indigence was denied by the local school superintendent, the plaintiff was required and did, according to Georgia law (*id*) to file an appeal before the local school board. This denial resulted in the plaintiff taking action to exhaust all administrative remedies in her appeal of the defendants' denial of her affidavit of indigence. Added to this, the plaintiff's indigence status in lacking the monies to pay for the termination hearing transcript were further exacerbated due to the local school district's refusal contrary to state law (O.C.G.A. § 20-2-940(g)).

When plaintiff appeared before the local school board on January 16, 2013, for the termination hearing, she informed the local board that a lawyer was assigned to her case by the Professional Association of Georgia Educators (P.A.G.E.) would be representing her. Consequently, the local board rescheduled the termination hearing for January 28, 2013, at which time she was represented by an attorney. As such, the sum of monies earned by the plaintiff was not paid to her within the 10-day period, nor was she paid such a sum or able to obtain the monies

needed to purchase the termination hearing transcript; a transcript which according to state law (O.C.G.A. §20-2-940(e)(2)), the tribunal of five (5) school board members representing the local school board, in actuality had the responsibility of paying for the report preparation of the termination hearing transcript (See O.C.G.A. 20-2-940(e)(1)).

Owing to these efforts to wrongfully deny her timely access to the hearing transcript, the plaintiff appealed the superintendent's denial of her affidavit before the local school board to seek approval of her affidavit of indigence. During the hearing, the plaintiff, along with her husband, presented documented evidence and undisputed testimony in support of their indigence claim that their income was below the poverty-line.

Despite evidence to the contrary, the local school board, similar in action taken by the local school superintendent, denied the plaintiff appeal, rejecting her request to have the report preparation cost of the hearing transcript waived. To appeal the local school superintendent's denial of her affidavit of indigence, the plaintiff, according to Georgia law, (See O.C.G.A. § 50-13-19), was required to exhaust all state administrative remedies to reverse the denial of her affidavit of indigence. Such was needed if she was to be allowed to waive the cost of paying for the transcript. And, for her to proceed with her appeal of the local school board's arbitrary and capricious decision to wrongfully terminate her employment.



After Georgia's two-year statute of limitations to filing a personal injury claim had passed did the court reporting agency reduce the report preparation cost of the hearing transcript initially \$2,132.00 dollars down to \$880.00 dollars. As such, the plaintiff was then able to afford to pay the \$880.00 dollars.

Similar to exhausting all state administrative remedies relative to the denial of her indigent claim to waive the cost of the termination hearing transcript, Georgia state law (O.C.G.A. § 50-13-19(a); *Perkins v. Georgia Dept. of Med. Assist.* 252 Ga. App. 37 (Ga. Ct. App. 2001) also, required the plaintiff to exhaust all administrative remedies before she could file a civil action in the court against the defendants for unconstitutionally depriving her of the financial benefits from the property interest in the teaching position which she held under written contract with the local school board. Plaintiff then proceeded to exhaust all administrative remedies afforded by the state of Georgia to address the wrongful termination of employment attributed to the violation of her due process rights. Had the defendant not exhausted all the state's administrative remedies, she would not have been able to file her claim under the 42 U.S.C. § 1983. (See *Georgia Dept. of Community Health v. Georgia Soc. Of Ambulatory Surgery Centers*, 290 Ga. 628, 629 (724 S.E.2d 386) 2012; *Georgia Dept. of Behavioral Health and Developmental Disabilities, et al. v. United Cerebral Palsy of Georgia, Inc.*, 784 S.E.2d 781 (Ga. 2016).

To have filed a civil complaint prior to exhausting all available state administrative remedies would have resulted in the plaintiff's civil complaint which she eventually filed would have been dismissed. According to Georgia law, Rule 160-1-.04(4)(b), this transcript needed to be purchased as the first step by a teacher before proceeding with his/her appeal efforts in to exhaust all administrative remedies before being able to gain access to the federal courts to file a civil complaint under 42 U.S.C. §1983. In addition, the panel is asked to reconsider their unpublished opinion to dismiss or deny the plaintiffs' appeal pursuant to the standard of review Rule 12(b)(6) on Motions to Dismiss where a motion or decision to dismiss for failure to state a claim should not be granted or decided unless it appears certain the plaintiff can prove no set of facts which would support its claims and entitle it to relief. (See *Mylan Labs, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4<sup>th</sup> Cir. 1993). Also, plaintiffs seeks to remind the panel that the Supreme Court of the United States has ruled that dismissal of a complaint is appropriate only when the complaint does not give a defendant fair notice of a legally cognizable claim and the basis on which it rests. (See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In the instant case before this panel, defendants were given fair notice.

**C. Statement of The Panel Opinion is Contrary to Precedent of the Supreme Court of the United States**

Relative to the constitutionality of the first issue is related to a law promulgated by the state requiring the plaintiff, despite her indigence status, to pay for the report reproduction of the termination hearing transcript, if she was to move forward with her appeal. The constitutionality of the second issue centers on the local school superintendent, a defendant in the case, being permitted or authorized by the state to decide whether or not to grant approve of the plaintiff's affidavit. Below is a comparative assessment of the unconstitutionality of the two state laws attributed to the violation of the plaintiff's procedural due process rights.

In the case of *M.L.B. v. S.L.J.* the Supreme Court ruled that it was unconstitutional to withhold from *M.L.B.*, a mother of four children her right to argue her appeal before the Supreme Court of Mississippi in the decision to terminate her parental rights owing to her inability to pay the \$2,352.36 cost for record preparation of the court hearing transcript. In during so, she argued, and the Supreme Court of the United States agreed that her pocketbook or lack of funds to pay the record preparation fees should not have been used to deprive her of "an interest far more precious than any property right"...a constitutional protected interest in seeking and maintaining custody of her children. (See *M.L.B. v. S.L.J.*, 519 U.S. 102, 128 (1996)). In such cases, the Courts have ruled that appeals from trial court decrees terminating parental rights on the parent's ability to pay record preparation fees were unconstitutional.

Like the above case, Georgia state law requiring the plaintiff, Ruth Falls-Miller, a terminated teacher in the instant case was required to pay for the record preparation of the termination hearing transcript before she could begin her appeal of the local school board's termination decision. Finding herself unemployed and denied her last paycheck for more than 30 days after her termination, she was denied leave by the local school board to proceed *in forma pauperis*. And despite appearing before the local school board with documented proof of her indigence status, with documented evidence showing the combined income of both her and her husband was below the U.S. poverty line set for two people.

In the case of *Turner v. Safley*, the Supreme Court of the United States ruled on the constitutionality on the regulations promulgated by the Missouri Division of Corrections that permitted prison superintendents' the authority in granting or denying inmate marriage request to be unconstitutional. (See *Turner v. Safley*, 482 U.S. 78 (1987). The Court's decision was based on the premise that..."absent evidence that the relationship was or would become abusive, the connection between an inmate's marriage and the subsequent commission of a crime was simply too tenuous to justify denial of this constitutional right (*Id.* p. 84). Relative to the instant case before the Court, plaintiffs argue that the Georgia law, Rule 160-1-3-.04(4)(c), permitting the local school superintendent authority to disapprove indigence plaintiff's request affidavit was a violation of her due process. A policy

decision similar to that in the case of *Turner v. Safley*, where the Supreme Court of the U.S. ruled that such a law/regulations was unconstitutional.

Based on the consistently of the tortious actions committed against the plaintiff by the local school superintendent (*see Brief in Support of Appellants' Appeal*, pp. 6-9), no evidence existed to suggest that the very person named as a defendant in the plaintiff's appeal of a wrongful termination would be expected to approve the plaintiff's affidavit of indigence. Plaintiff further argues that Georgia state law granting the local school superintendent the right to determine whether to grant a teacher whom he/she has recommended for termination to be granted approval of his/her request to proceed in forma pauperis is unconstitutional. The panel is asked to refer back to the argument presented earlier in this petition which addressed the issue of the plaintiff, despite her indigent status, being required based on the broadly defined and non-existence of any guidelines or standards for judging the credibility of the plaintiffs indigent status (see pages 17-18).

Also, the panel in it critical judicial review is asked to consider both the misapplication and unconstitutionality of Georgia's two-year statute of limitation. This law coupled with the law requiring the plaintiff to exhaust all state remedies before being able to file her Section 1983 claim, would unconstitutionally deprive the plaintiff of timely access to the federal court and filing. No citizen should be blocked in gaining access to the federal courts by any state law that deprives them

of their constitutionally guaranteed liberties, freedoms, and property without benefit of a trial. Also, on the issue of failing to state a claim, this appellate court asserts "Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed. (See *Tannenbaum v. United States*, 148 F. 3d 1262, 1263 (11th Cir. 1998). It appears to have given no consideration argument presented by the plaintiffs in support of its statement of a claim as described in her *Brief in Support Appellants Appeal* (pp. 17-20) submitted on April 15, 2021. Plaintiffs here and now restate the argument from said pages in response to the panel's assertion that they failed to state a claim.

### CONCLUSION

Plaintiffs pray that this panel agreeing to and conducting a rehearing or rehearing en banc of their unpublished opinion will upon conducting a critical judicial review of the appeal will reverse its opinion and approve plaintiffs' appeal. Plus, reverse the order of the United States District Court and remand the case for hearing to permit the plaintiff to pursue its civil rights complaint for the violation of her due process rights.

Dated this 15<sup>th</sup> day of November 2021

Respectfully submitted,

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## **EXHIBIT A**

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 20-14594

Non-Argument Calendar

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RUTH FALLS-MILLER,  
DR. HOWARD J. MILLER,

Plaintiffs-Appellants,

*versus*

SAVANNAH-CHATHAM COUNTY PUBLIC SCHOOL BOARD,  
THOMAS B. LOCKAMY, JR.,  
In his official capacity,

Defendants-Appellees.



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Appeal from the United States District Court  
for the Southern District of Georgia  
D.C. Docket No. 4:20-cv-00085-JRH-CLR

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Before JORDAN, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

Ruth Falls-Miller and Dr. Howard J. Miller appeal *pro se* the district court's *sua sponte* dismissal of their complaint, which alleged due process and First Amendment violations under 42 U.S.C. section 1983 and violations of Georgia tort and contract law against the Savannah-Chatham County Public School Board and Dr. Thomas B. Lockamy, Jr. The Millers argue that the district court erred in (1) dismissing their complaint as time barred; (2) concluding that the School Board was immune from suit; (3) finding that their Section 1983 claim was filed in bad faith, was frivolous, and failed to state a claim; and (4) ignoring their due process and free speech claims.

Falls-Miller was terminated from her teaching position with the School Board at the suggestion of its superintendent, Lockamy. The Millers alleged constitutional violations beginning on January 4, 2013, when Falls-Miller received Lockamy's written notice of termination recommendation to the School Board. According to the Millers, the alleged violations continued until her termination

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Opinion of the Court

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hearing on January 28, 2013. They filed their complaint on April 24, 2020. A magistrate judge screened the complaint pursuant to 28 U.S.C. section 1915(e)(2) and issued a report and recommendation that the complaint be dismissed as untimely. The district court adopted the magistrate judge's recommendation over the Millers' objection, explaining that constitutional claims under Section 1983 are tort actions subject to Georgia's two-year statute of limitations.

We review *de novo* a district court's *sua sponte* dismissal under 28 U.S.C. section 1915(e)(2)(B) of an *in forma pauperis* complaint for failure to state a claim on which relief may be granted. *Hughes v. Lott*, 350 F.3d 1157, 1159-60 (11th Cir. 2003). We review *de novo* the district court's dismissal of a complaint for lack of subject matter jurisdiction. *Hall v. U.S. Dep't Veterans' Affairs*, 85 F.3d 532, 533 (11th Cir. 1996). We may affirm on any ground supported by the record. *Trotter v. Sec'y, Dep't of Corrs.*, 535 F.3d 1286, 1291 (11th Cir. 2008); "*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

A district court may properly dismiss a complaint for failure to state a claim if it is apparent from the face of the complaint that the applicable statute of limitations bars the claim. *United States v. Henco Holding Corp.*, 985 F.3d 1290, 1296 (11th Cir. 2021). Constitutional claims brought under 42 U.S.C. section 1983 are tort actions and are subject to the statute of limitations governing personal injury actions in the state in which the federal court sits.

*Powell v. Thomas*, 643 F.3d 1300, 1303-04 (11th Cir. 2011). A cause of action under Section 1983 accrues, and thereby sets the limitations clock running, when the plaintiff knows or should know (1) that she has suffered the injury that forms the basis of her complaint and (2) who has inflicted the injury. *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003). The governing statute of limitations in Georgia is two years. O.C.G.A. § 9-3-33. The statute of limitations for actions involving written contracts is six years. O.C.G.A. § 9-3-24. An untimely complaint will not succeed on the merits. *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 779 F.3d 1275, 1280 (11th Cir. 2015).

District courts have original jurisdiction over civil actions arising under the Constitution or laws of the United States and have supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction." 28 U.S.C. §§ 1331, 1367(a). A district court may decline supplemental jurisdiction over a state law claim if:

(1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

*Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1185 (11th Cir. 2003) (quoting 28 U.S.C. § 1367(c)(1)-(4)). The decision to exercise

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## Opinion of the Court

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supplemental jurisdiction rests within the discretion of the district court. *Mergeris v. Dreyfoos*, 166 F.3d 1114, 1119 (11th Cir. 1999).

On appeal, the Millers contend that the district court erred in applying the two-year statute of limitations for tort actions instead of the six-year limitations period for breach of contract actions. The complaint asserted a "42 U.S.C. § 1983 claim against [the Board] for violation [Fall-Miller's] due process rights" and "den[ying] her of the property rights to her contracted teaching position." The Board argues that the Millers failed to state a claim for breach of contract, and, in any event, the claim would be untimely.

We conclude that the district court correctly determined that the Millers' Section 1983 action was a tort action subject to Georgia's two-year statute of limitations for personal injury claims. Accordingly, it properly dismissed the complaint for being untimely by over five years. To the extent that the complaint raised other claims under contract law, which has a six-year statute of limitations, the complaint still was untimely filed by more than one year. Further, because the district court properly dismissed the only federal claim, it also did not err by declining to exercise supplemental jurisdiction over any state law claims. Because we concluded that the district court properly dismissed the action as untimely, we need not reach the remaining arguments that the Millers raise on appeal.

**AFFIRMED.**

**APPENDIX C -  
U.S. DISTRICT COURT DISMISSAL OF COMPLAINT**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

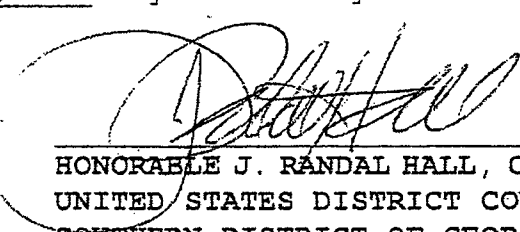
RUTH FALLS-MILLER,	)	
DR. HOWARD J. MILLER,	)	
	)	
Plaintiffs-Appellants,	)	Case No. CV 420-085
	)	Appeal No. 20-14594
v.	)	
	)	
SAVANNAH-CHATHAM COUNTY PUBLIC	)	
SCHOOL BOARD, THOMAS B.	)	
LOCAMY, JR., in his official	)	
Capacity,	)	
	)	
Defendants - Appellees.	)	

O R D E R

The judgment in the above-styled action having been affirmed  
by the United States Court of Appeals for the Eleventh Circuit,

IT IS HEREBY ORDERED that the judgment of the United States Court  
of Appeals for the Eleventh Circuit is made the judgment of this  
Court.

SO ORDERED, this 10<sup>th</sup> day of January 2022.

  
HONORABLE J. RANDAL HALL, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

**APPENDIX D -  
CIRCUIT COURT DENIAL OF PETITION FOR REHEARING**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-14594-HH

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RUTH FALLS-MILLER,  
DR. HOWARD J. MILLER,

Plaintiffs - Appellants,

versus

SAVANNAH-CHATHAM COUNTY PUBLIC SCHOOL BOARD,  
THOMAS B. LOCKAMY, JR.,  
In his official capacity,

Defendants - Appellees.

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Appeal from the United States District Court  
for the Southern District of Georgia

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JORDAN, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)



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