

No. 22-_____

In the
Supreme Court of the United States

CHERYL PRINCE-MOORE,

Petitioner,

v.

TEXAS DOW EMPLOYEES CREDIT UNION,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid, job protected leave per year. It also requires that their group health benefits be maintained during the leave, correct?
2. Is it a statutory violation for an employer to present documents for immediate termination of employment without any prior offense or communication of any kind?

LIST OF PROCEEDINGS

United States Court of Appeals for the Fifth Circuit
No. 21-20205

Cheryl Prince-Moore, *Plaintiff-Appellant*, v. Texas
Dow Employees Credit Union, *Defendant-Appellee*

Date of Final Opinion: December 1, 2021

Date of Rehearing Denial: April 20, 2022

United States District Court
for the Southern District of Texas

No. 4:20-CV-1501

Cheryl Prince-Moore, *Plaintiff*, v. Texas Dow Employees
Credit Union, *Defendant*

Date of Final Order: March 19, 2021

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PETITION FOR A WRIT OF CERTIORARI

Cheryl Prince-Moore, a 62-year-old divorced parent of 1 son, and Pro Se Litigant respectfully petition this court for a writ of certiorari to review the judgement of The United States Court of Appeals 5th Circuit.



OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit, dated December 1, 2021, is included in the Appendix (App.) at 1a. The Order of the United States District Court for the Southern District of Texas, dated March 19, 2021, is included at (App.10a). These opinions were not designated for publication.



JURISDICTION

Appellant's case was filed in the United States District Court for the Southern District of Texas. The United States Court of Appeals for the Fifth Circuit has jurisdiction over all Final Court orders from the trial court. The instant Petition for Rehearing En Banc was filed pursuant to FRAP 40 and adjudged on April 28, 2022. (App.14a). By letter of the clerk, petitioner was provided until October 8, 2022 to file this petition. This Court has jurisdiction under 28 U.S.C. § 1254.



STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 2601 - Findings and purposes

(a) Findings

Congress finds that—

- (1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;
- (2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;
- (3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;
- (4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;
- (5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men; and
- (6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against

employees and applicants for employment who are of that gender.

(b) Purposes

It is the purpose of this Act—

- (1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;
- (2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;
- (3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;
- (4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and
- (5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

29 U.S.C. § 2615 - Prohibited acts**(a) Interference with rights****(1) Exercise of rights**

It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

(2) Discrimination

It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.

(b) Interference with proceedings or inquiries

It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

- (1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this subchapter;
- (2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this subchapter; or
- (3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this subchapter.

The FMLA entitles employees to take reasonable leave for medical reasons. Additionally, the act prohibits employers from discharging or in any manner

discriminating against an individual for opposing any practice made unlawful by the act. *Id.* 2615(a)(2).



STATEMENT OF THE CASE

The Court's recent decision of December 1, 2021, conflicts with the decision of the United States Supreme Court and/or conflicts with maintaining uniformity as per the stated deference to be afforded to pro se litigants 'filings especially applicable to Appellant in the case at bar.

Appellant's Amended Complaint pled a case of contractual rescission based upon a lack of mental capacity at the time her employer, Defendant/Appellee, terminated her position and confronted her with an employment Settlement Agreement while she was on approved FMLA and therefore was an abuse as per the protection of the Family Medical Leave Act. The first and central issue, the Respondent's interference with Appellant's leave of absence, to wit, confronting her with a surprised termination while on leave of absence, is the *prima facie* abuse which is pivotal to maintaining the underlying action.

Secondly, this Court initially agreed and found that Appellant's Complaint did sufficiently plead and raise the issue of mental capacity as a defect to contracting. To acknowledge a layman's effort as worthy and sufficient, only to recede to a plain error. The standard wherein a more stringent review can be exacted against a pro se filing is a contradictory, about face, and ultimately disfavors pro se litigants by returning them back to the same results.

1. Whether the Court dismissed Appellant's case prematurely in the face of FMLA violation: but for the FMLA violation on the part of employer-Appellee, there is an issue.
2. Whether the plain error, the standard of judicial review is an equitable standard to dismiss pro se filings notwithstanding the less stringent standard that would otherwise protect and maintain their actions.

The Appellant's Amended Complaint pled a case of contractual rescission based upon the lack of mental capacity at the time her employer, Defendant/Appellee, terminated her position with no prior knowledge and confronted her with a employment Settlement Agreement whilst and during the midst of her FMLA leave of absence. Appellant was on an employment leave of absence due to family physical abuse and violence; homelessness; and cognitive impairment from such debilitating domestic issues.

Appellant's Settlement Agreement was unilateral and contained legal provisions concerning severance: prohibition against legal action; future employability; and waiver of protections including the Family Medical Leave Act.

1. Appellant's Complaint and Amended Complaint alleged mental capacity defect as the basis for the Settlement Agreement being voided. The trial court, in ruling upon Appellee's Motion to Dismiss the Complaint, dismissed Appellant's action without acquiring, collecting, nor having taken any testimony directly from Appellant, Appellants last TDECU direct report, Appellants peers nor

Appellants physicians. Texas State law controls as to the principals of contracting. Under Texas law, the Court or the jury must have/or receive evidence of the mental capacity or the lack thereof to render any such ruling.



REASONS FOR GRANTING THE PETITION

- A. To avoid interference with the Family and Medical Leave**
- B. To ensure employers and employees clearly understand and adhere to the instructions provided by the Family Medical Leave Act.**



CONCLUSION

For the foregoing reasons, I, Cheryl Prince-Moore, pro se litigant respectfully request that this Court issue a writ of certiorari to review the judgement of United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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