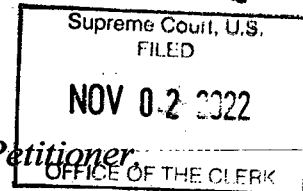


22-5995
No. 22-5995

In The
Supreme Court of the United States

COLLUCCI J. MYERS,

ORIGINAL



v.

CLAYTON COUNTY BOARD OF COMMISSIONERS
In their Official Capacity and Their Successors,

PAMELA FERGUSON
*Probate Judge of Clayton County, Georgia
In Her Official and Individual Capacity,*

Respondents.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the 11th Circuit

PETITION FOR A WRIT OF CERTIORARI

Submitted on November 2, 2022 by;
Collucci J. Myers, pro se
12661 Simmons Road
Hampton, Georgia 30228
404-987-9861

QUESTIONS PRESENTED

The questions presented here are related to both the issues ruled upon by the district court, and appealed to the 11th Circuit Court of Appeals and also all events giving rise to petitioner's initial discrimination complaint filed in the district court *1:20-cv-0987-CAP-AJB NdGa* that the district court referenced in full detail within its Final Order as one of its determining factors that decided this present case now being petitioned for writ of certiorari before this Court.

1. What is the appropriate standard for determining when or if a U.S. district court Judge and a U.S. Magistrate Judge are required to recuse themselves from adjudicating over a civil matter such as in this present case given that the both of them had already been named by this petitioner as the subject(s) of the simultaneous ongoing bias complaint against the two of them in the 11th Circuit Court of Appeals as in this present case. *28 U.S.C. § 455*.

2. Should the district court's refusal to apply the State of Georgia's "Notice of a Lawsuit" standards rule which lessens the stringent evidence requirements of a petitioner's complaint inadvertently bias the outcome and Final Order of dismissal with prejudice against this petitioner? *See O.C.G.A. §§ 9-11-8 thru 9-11-11*.

3. Did the district court's treatment of this petitioner's initial pro se complaint which was type written word for word from the downloadable standard civil discrimination complaint offered on the district court's website constitute this petitioner's assertion that all of her filings were held to the same standard as that of a licensed attorney?

4. Should the district have either ordered the clerk of its court to enter default judgment against defendant Pamela Ferguson in her Individual Capacity in this case given that she failed to answer or defend against to this petitioner's complaint in her Individual Capacity and did the district court hold this petitioner to a standard of that of a practicing attorney as a reason for not entering default judgment against Pamela Ferguson? *see Haines v. Kerner*, 404 U.S. 520 (1971).

CORPORATE DISCLOSURE STATEMENT

Petitioner is a pro se litigant with no corporate associations and the respondents to this petition are a government entity, The Clayton County Board of Commissioners, the Office of The Probate Judge for Clayton County, Georgia and Pamela Ferguson in her Individual Capacity. A list of all named persons or entity(s) having any known affiliation with this petition before this Court are accompanied within the appendix to this petition.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii);

Collucci J. Myers, v. Clayton County Board of Commissioners, et al.,
1:20-cv-0987-CAP-AJB, NdGa. dismissed on May 4, 2021.

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The Petitioner, Collucci J. Myers, respectfully petition the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the 11th Circuit in this case. As explained further below, the petitioner submits that this petition should be granted for various reasons, primarily but not excluding the fact that this entire matter is a result of an investigation by The Equal Employment Opportunity Commission that found in fact that both The Clayton County Board of Commissioners in their Official Capacity and their successors and defendant Pamela Ferguson in both her Official and Individual Capacity did in fact violate this Petitioner's rights as protected by and through the laws of the United States of America, Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, *et seq*, the Age Discrimination in Employment Act ("ADEA"), 42 U.S.C. § 1983 and 42 U.S.C. § 1981.

OPINIONS BELOW

The opinion of the Court of Appeals for the 11th Circuit (App No. 21-12636-DD) and the district court's Final Order (1:20-cv-05186-CAP) are referenced with this petition.

JURISDICTION

The judgment of the Court of Appeals for the 11th Circuit was entered

on July 6, 2022. The petitioner received formal notice of the appeals court decision of judgment in favor of the respondents on August 4, 2022. This petitioner filed a timely motion for an extension of time to the Clerk of this court on October 4, 2022 and this Court granted an extension of time to file this petition with a set filing date no later than November 3, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL and STATUTORY PROVISION

The U.S. Equal Employment Opportunity Commission, the [E.E.O.C.] a division of the United States government, is tasked to investigate, charge, regulate and sue, on the behalf of the United States government, U.S. citizens and U.S. businesses that are either involved with, accused of or found to have committed acts of discrimination in employment. Among the things that the E.E.O.C. was involved in and made a determination of concerning the matters in this case before this Court are that the named respondents in this case did in fact commit the following acts against the petitioner named within this petition. According to the E.E.O.C.'s thorough investigation, the Respondents named herein violated this petitioner's rights by and through the following Acts; Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, *et seq*, the Age

Discrimination in Employment Act (“ADEA”), 42 U.S.C. § 1983, and 42 U.S.C. § 1981.

STATEMENT OF THE CASE

1. This petitioner filed her initial civil rights complaint before the district court in the northern district of Georgia, Atlanta division on or about March 4, 2020 [*1:20-cv-0987-CAP ndga*] after having received the “Right to Sue” letter dated February 6, 2020 from the Officials at the E.E.O.C. upon the completion of their racial, age and gender discrimination investigation that they [the E.E.O.C.] performed against the Respondents named within this petition. The Right to Sue letter primarily sets out a set of facts that 1; this petitioner does in fact qualify and is identified to be a member of the protected class of U.S. citizens that the referenced discrimination Acts identified within this petition were established to protect in respect to work related discrimination. 2; that events identified as being discriminatory in nature did in fact take place in a manner already complained of by this petitioner during her employment with the Respondents. 3; that as a result of the fore mentioned set of facts, this petitioner had a right to bring the Respondents named within this petition, before a federal district court for legal redress. Petitioner’s initial discrimination complaint was typewritten

to mirror the very same exact information, wording and paragraph numbering as the [fill in the blank downloadable Title VII Civil Rights complaint application] available to the general public over the northern district of Georgia's Official website. Immediately after filing the initial complaint along with an application, pauper's affidavit, financial affidavit and motion to proceed in forma pauper, the district court performed a [frivolity test] and did not find any grounds for dismissal at that point in time. However, after the Respondents were served the complaint along with the summons and all of the E.E.O.C.'s investigatory documentation, the Magistrate Judge assigned to the complaint began the systematic process of dismissing the petitioner's initial complaint even before the Respondents ever offered a qualified response to any of the claims stated within the complaint. Basically, the actions of the Magistrate Judge ran afoul to the Georgia "Notice of a Lawsuit" rule that lessens the requirements for a lawsuit to overcome either a motion to dismiss or a motion for summary judgment. *See O.C.G.A. §§ 9-11-8 thru 9-11-11.*

2. After the Magistrate Judge had basically gutted and dismissed most of this Petitioner's initial lawsuit after having already initially ruled that he found no frivolity, the Magistrate judge's reasoning that he stated

within his Report and Recommendations issued to the district judge was clearly based on his instructing this petitioner to amend her complaint so that it would not include the majority of the findings of facts that the E.E.O.C. stated that they had officially found the Respondents to be in violation of. The petitioner made every effort to amend her complaint so that it would comply with the wording of the Magistrate judge's order, but as expected, the Magistrate judge continued to order this petitioner to dismantle pretty much all of the wording or supporting facts that the E.E.O.C. found as a result of their official investigation of discrimination attributed to the Respondents named herein. After the Magistrate Judge had successfully whittled the Petitioner's claims down to only [1] claim remaining, the Magistrate judge then set out by recommendation to have that remaining claim dismissed. The district court fully accepted and agreed with all of the actions undertaken against this petitioner over all objections. This is more fully detailed within the district court's Final Order attached within the appendices to this petition.

3. Based on the actions of both the Magistrate Judge and the district court Judge, this petitioner lodged a complaint against both of the judges referenced herein, voluntarily dismissed her initial complaint and

immediately re-filed this second complaint that the enclosed Final Order derives from.

4. Given that petitioner's initial complaint had apparently been systematically dismissed by the Magistrate Judge and supported by the district court, the petitioner proposes that her rights to redress a federal court had not ended as claimed by the Respondents and supported by the Magistrate and district court. In fact, the filing of the initial lawsuit clearly established both personal and statutory jurisdiction over all parties named to the lawsuit for which the accompanying Final Order references. This Court has recently decided elements of time limitations running afoul to the issue of jurisdiction in *United States v. Kwai Fun Wong*, 575 U.S. 402, 410 (2015). "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences." *Boechler* at *3. referring to *Boechler, P.C. v. Commissioner of Internal Revenue*, WL 1177496 (U.S. April 21, 2022) This Court ruled that a federal time deadline is jurisdictional only if Congress clearly states that it is. If a limitations period instead is non-jurisdictional, then the limitations period is presumptively subject to equitable tolling. In this instant case as described within attached Final Order, the Respondents argued to the district

court that because this Petitioner filed her initial complaint within 90 days after receiving the "Right to Sue" letter that any subsequent claims raised or sued for were time barred. The 11th Circuit Court of Appeals agreed with the district court and upheld that specific ruling within the Final Order with no consideration of whether or not the time limitation period was presumptive, jurisdictional or non-jurisdictional. As a United States citizen, this Petitioner should be provided every possible opportunity to seek justice for the acts of obvious discrimination that was officially found to have occurred against her and described within the findings of facts by the E.E.O.C.. Even though the above referenced cases cited involves either consumer related issues or issues involving the I.R.S., the issue of jurisdictional or non-jurisdictional status of a claim before a federal court should also apply in this case due to the fact that there is no such wording within any of the federal statues supporting this Petitioner's initial lawsuit and equally, this subsequent lawsuit that the accompanied Final Order derives from primarily because there are not specific language and or wording within the statutory wording of any of the statues cited by either this Petitioner or within the E.E.O.C.'s "Right to Sue" letter that specifically prohibits this petitioner from continually seeking justice within a federal

court after any of the discriminatory acts had occurred.

5. For actions in courts of law, Chapter XXI, Section 2 of the Judiciary Act of 1789 provides that the procedural rules of such actions in federal court “shall be the same in each state respectively as are now used or allowed in the supreme courts of the same.” Respectively, in this instant case, this Petitioner’s initial lawsuit and also the lawsuit for which the Final Order attached with this petition references, should have been only held to the “Notice of a Lawsuit” standard, but on the contrary, the district court applied “Iqbal v. Twombly” standards as the grounds supporting the dismissal with prejudice referenced within the Final Order submitted with this petition. Georgia’s Civil Practice Act and O.C.G.A. §§ 9-11-8 thru 9-11-11 provides that the serving of a civil lawsuit accompanied along with a summons from the perspective court having jurisdiction, acts as a mechanism to subject a defendant to that court’s jurisdiction but the specific wording within that lawsuit does not subject it to be dismissed either with or without prejudice on that basis alone. Additionally, all claims and or averments alleged against the defendant in that specific lawsuit must be deemed as true unless the defendant can present responsive proof, facts and evidence that is both overwhelming and plausible that can support a possible

motion to dismiss. In this instant case, the district court's application of "Iqbal v. Twombly" standards circumvent the implied statutory limitations that a federal court is required to operate within according to Chapter XXI, Section 2 of the Judiciary Act of 1789. The 11th Circuit Court of Appeals upheld all of the rulings issued by the district court in respect to the applicable standard of review. The standards argument was made before the 11th Circuit Court of Appeals within the Petitioner's appellant brief to no avail as the 11th Circuit affirmed the district court's Final Order and the filing requirements that mirrored that of a licensed attorney and not of a pro se filer as this Petitioner clearly have indicated that she is not a licensed attorney.

6. In this instant case there again the requirements set forth by the district court and upheld by the 11th Circuit Court of Appeals for the imposition of default judgment against Respondent Pamela Ferguson was apparently higher for this pro se non-attorney Petitioner than this Court have previously required in past cases. *See Hanes v. Kerner*, 404 U.S. 520 (1971). According to Federal Rule of Civil Procedures 55(b)(2) the district court had the inherent power to enter default judgment against Respondent Pamela Ferguson in her Individual Capacity but instead, it chose to indicate that this Petitioner acted

improper by filing a motion for the entry of default judgment directly to the court. This set of facts are outlined within the Final Order exhibited within the appendices to this petition. Moreover and specifically, the very fact that the district court refused to apply Fed. R. Civ. P. 55((b)(2) as a ground to enter default judgment against Respondent Pamela Ferguson in her Individual Capacity and also that the 11th Circuit Court of Appeals upheld that decision, this matter should be decided by this Court in order that the law is properly applied and that justice can be obtained by this Petitioner for the matters at hand. Additionally, the Petition relies upon well settled case law that default judgment should have been entered by the district court and should have been upheld by the 11th Circuit Court of Appeals; The U.S. Court of Appeals for the 5th Circuit has adopted a Three-Step Process to obtain a default judgment. *see New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996). First, a default occurs when a party “has failed to plead or otherwise defend” against an action. Fed R. Civ. P. 55(a). Next, an entry of default must be entered by the clerk when the default is shown “by affidavit or otherwise.” *See id.*; *New York Life Ins. Co.*, 84 F.3d at 141. Third, a party may apply to the court for a default judgment after an entry of default. Fed. R. Civ. P. 55(b); *New York Life Ins. Co.*, 84 F.3d at 141. After a party files for a default judgment, courts must

apply a two-part process to determine whether a default judgment should be entered.

7. First, a court must consider whether entry of default is appropriate under the circumstances. *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998). Several factors are relevant to this inquiry, including the following; (1) whether there are material issues of fact; (2) whether there has been substantial prejudice; (3) whether the grounds for default have been clearly established; (4) whether the default was caused by excusable neglect or good faith mistake; (5) the harshness of the default judgment; and (6) whether the court would think itself obliged to set aside the default on a motion by Defendant. *Id.* Default judgments are disfavored due to a strong policy in favor of decisions on the merits against resolution of cases through default judgments. *Id.* Default judgments are “available only when the adversary process has been halted because of an essentially unresponsive party.” *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n.*, 874 F.2d 274, 276 (5th Cir. 1989)(citation omitted).

Second, the Court must assess the merits of Plaintiff’s claims and determine whether Plaintiff has a claim for relief. *Nishimatsu Constr. Co. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *Hamdan v. Tiger Bros. Food Mart, Inc.*, No. CV 15-00412, 2016 WL 1192679. at *2(M.D. La.

Mar. 22, 2016).

8. In this instant case before this Court, all facts and evidence supports this Petitioner's assertions that Respondent Pamela Ferguson was sued in both her Official Capacity as the Probate Judge for Clayton County, Georgia and also in her Individual Capacity, that the answer submitted by counsel only supports an answer or response to the Petitioner's lawsuit on the behalf of Probate Judge Pamela Ferguson and not on the behalf of Pamela Ferguson the Individual. At no time in response to the Petitioner's motion, did Respondent Pamela Ferguson make any attempts to respond in her Individual Capacity as the records of this case will clearly show. In order for this Petitioner to obtain justice in the courts, the Petitioner is of the belief that either this Court should grant review of this matter and directly rule over this set of transactions or that this case be remanded back to the district court, that the Clerk of the district court be instructed to perform the requirements set out within Fed. R. Civ. P. 55(1)(a), to enter an entry of default judgment against Respondent Pamela Ferguson in her Individual Capacity and that the district court properly enter default judgment as justice so requires.

9. Additionally, the Petitioner referenced *Tanzin v. Tanver*, 592 U.S. (2020) in support of her case before both the district court and before the 11th

Circuit Court, but both Courts refused to apply the same standards against the Respondents in this case. This Court ruled that public officials are capable of being sued in their Individual Capacity such as in this instant case and that they can be liable for damages as well. Additional supporting cases already ruled upon by this Court and also stands in support of this Petitioner's assertions are; *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 305-306. Pp. 3-5. *Employment Div. of Human Resources of Ore. V. Smith*, 494 U.S. 872. Both of these cases supports the fact that this Petitioner's claims against Respondent Pamela Ferguson in her Individual Capacity should have been ruled to be in default, that Ms. Ferguson should have been liable to this Petitioner for all claims asserted against her, but instead of asserting default, the district court expressed the perceived bias that this Petitioner's Judicial bias complaint filed within the 11th Circuit against both Judges that ultimately proved to be true and proved to exist as described. The 11th Circuit upheld the district court despite all of the obvious facts surrounding both the case and the existing Judicial Bias complaint made in the 11th Circuit by this Petitioner. Although neither the Respondent nor her counsel responded with any claims of immunity as a defense, these already decided cases supports the fact that Respondent Pamela Ferguson was not entitle to any immunity anyways.

REASONS FOR GRANTING THE PETITION

In this instant case before this Court, this Petitioner has cited cases from both the 11th Circuit Court of Appeals and also from the 5th Circuit Court of Appeals that obviously expresses two very different paths that this case would have take if it had been filed within the 5th Circuit versus where it was filed within the 11th Circuit. This disparity of the manner by which a pro se petitioner will be treated while seeking to redress the federal courts is quite glaringly apparent and further serves as a prevailing reason for why this Petitioner respectfully request that this Court grant this petition and review this matter so that justice can be obtained. Additionally, the Petitioner have outlined and cited multiple stages of occurrences of how and when the district court and the 11th Circuit have both inadvertently failed to take into account the Clerk of Court at the district level to have been required to follow the written black letter law when this Petitioner moved and filed for default judgment in the case at bar. Instead of entering any part of an order that would have corrected the actions of the Clerk, both the district court and the 11th Circuit upheld the apparent inactions of the Clerk thereby denying this Petitioner of her rights to obtain justice by and through the federal courts. Petitioner is respectful of the fact that this Court only grants review by discretion, and with all due respect,

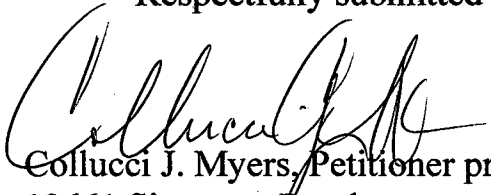
the actions of both the district court and by the 11th Circuit not only denies this Petitioner from obtaining justice but also challenges the written law as well as the spirit of which the laws were written in and for their very purposes as outlined within this petition. Additionally, this case is only one of many whereby pro se petitioners who had already filed discrimination complaints with the E.E.O.C. but only to have those complaints dismissed with prejudice by the district court in the district court and that dismissal with prejudice be upheld by the 11th Circuit Court of Appeals on a routine basis. This entire process denies and undermines the work of the E.E.O.C.'s ability to investigate discrimination in the workplace in Georgia, to issue Right to Sue Letters and then to have the majority of those cases dismiss simply because the district court routinely supports dismissing discrimination cases in Georgia on a dismissal with prejudice basis as the statistics are clear. Taking into consideration that the majority of these types of cases are a direct result of the petitioners having lost their employment as a direct result of the alleged discrimination, the E.E.O.C. and the federal court is the last option available for most but as prominently outlined herein, that option more often than not proves to be futile given that the district court and the 11th Circuit more often than not, plays by their own rules as to how they serve up justice to pro se litigants as the

evidence clearly states within this petition.

CONCLUSION

This petition for a writ of certiorari should be granted due to the severity of the known discriminatory practices that the Respondents have factually been proven to have committed against this Petitioner and also based upon the glaring disparities between federal court interpretations and applications of federal law from one federal circuit to another federal circuit.

Respectfully submitted on this 2nd day of November, 2022 by;

A handwritten signature in cursive script, appearing to read 'Collucci J. Myers', is written over the printed name.

Collucci J. Myers, Petitioner pro se
12661 Simmons Road
Hampton, GA 30228
404-987-9861

APPENDICES

APPENDIX A	October 7, 2022 Letter from Supreme Court Office of The Clerk Extending Filing Date to Nov. 3, 2022
APPENDIX B.....	Petitioner's Motion for An Extension of Time to File Petition for Writ Of Certiorari
APPENDIX C.....	Opinion of the 11th Circuit Ct of Appeals
APPENDIX D.....	Order of The District Court for the Northern District of Georgia, Atlanta, Division
APPENDIX E.....	Statement of All Interested Persons or Parties

APPENDIX A

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 7, 2022

Ms. Collucci Myers
12661 Simmons Road
Hampton, GA 30228

Re: Collucci J. Myers
v. Clayton County Board of Commissioners, et al.
Application No. 22A295

Dear Ms. Myers:

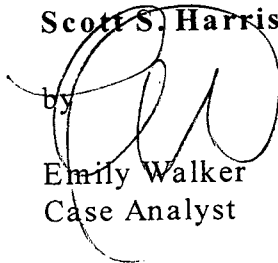
The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on October 7, 2022, extended the time to and including November 3, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by


Emily Walker
Case Analyst

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Ms. Collucci Myers
12661 Simmons Road
Hampton, GA 30228

Clerk
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

APPENDIX B

22A295
IN THE UNITED STATES SUPREME COURT

Supreme Court, U.S. FILED
OCT 04 2022
OFFICE OF THE CLERK

Petition No. _____

11th Circuit Court Of Appeals
Number: 21-12636

IN RE: COLLUCCI J. MYERS *versus*
CLAYTON COUNTY BOARD
OF COMMISSIONERS in its
Official Capacity and its Successors,
PAMELA FERGUSON, Probate
Judge for Clayton County, Georgia
in her Official Capacity and in her
Individual Capacity.

**REQUEST FOR AN EXTENSION OF TIME OR REQUEST FOR
LEAVE OF COURT TO PETITION THE U.S. SUPREME COURT
FOR WRIT OF CERTIORARI OUT OF TIME AND FOR CAUSE**

COMES NOW Collucci J. Myers, petitioner do hereby request for
an extension of time to file her petition for Writ of Certiorari to the United
States Supreme Court for cause and state t he following;

1. The petitioner have attached a copy of the Final Order from The
United States Court of Appeals for the Eleventh Circuit along with the
Notice of Intent to Petition The United States Supreme Court for Writ of
Certiorari that this petitioner filed in the Eleventh Circuit case files. *See
Petitioner's Exhibit "1" attached hereto.*

Page 1

2. The petitioner suffered two back to back health setbacks as she

contracted Covid-19 in severe forms both back to back preventing her from being able to properly and successfully prosecute a petition for writ of certiorari that, if an extension of time is permitted, can be filed within 30 day from the date of the filing of this document.

3. The petitioner have also submitted a paupers affidavit in support of the filing of this request for leave of court to file out of time or in the alternative a request for an extension of time to properly file her petition either late or out of time. *See Petitioner's Exhibit "2" attached hereto.*

4. The petitioner moves the court for this motion on the grounds of extenuating circumstances and in the best interest of justice for the matters needing to be petitioned.

For the reasons so stated herein, this petitioner respectfully request that this request for an extension of time be assigned a case number, and that a minimum of 30 days be granted the petitioner for the filing of her petition for writ of certiorari.

Respectfully submitted via U.S. Mail Overnight Mail on this 4th day of October, 2022 by: