4/28/24

No. 23-1198

In The
Supreme Court of the United States

HARISADHAN PATRA AND PETULA VAZ
Petitioners,

v.

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION *et al.*
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

HARISADHAN PATRA
PETULA VAZ
Pro Se Plaintiffs
29 Duke of Gloucester Rd.
Bloomsburg, PA 17815
(308) 293-5728
patra3@gmail.com

Pro Se Petitioners

QUESTIONS PRESENTED

Supreme Court precedents require, "The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255, 106 S.Ct. 2505 (1986); *Tolan v. Cotton,* 572 U.S. 650, 659, 134 S.Ct. 1861, 1868 (2014). Further, Supreme Court precedents require that credibility determinations be left for the jury, and have held that the jury's disbelief of the employer is a "form of circumstantial evidence that is probative of intentional discrimination." *Reeves v. Sanderson Plumbing Prod., Inc.,* 530 U.S. 133 (2000). Further, in First Amendment retaliation injury contexts, the Supreme Court precedent warrants an "independent" review to apply facts to specified constitutional standards. E.g. *Bose Corp. v. Consumers Union of U.S., Inc.,* 466 U.S. 485, 499 (1984). There are some inter-circuit and intra-circuit disputes about whether Plaintiffs must be "chilled" and cease exercising their First-Amendment rights altogether to demonstrate an injury. Also, the objective criteria on how to examine and decide "blasphemous insults" as "pervasive" or "severe" are lacking because, individual perceptions and opinions differ, and one often cannot fathom the trauma of religious insults to a person from another religion.

Thus, the QUESTIONS PRESENTED are as follows:

1. Do the United States Court of Appeals have obligations to enforce FRCP 56 and the Supreme Court's precedents when *Statement of Material Facts* and supporting records filed by movants, pursuant to Local Rules, contradicted other records filed pursuant to FRCP 56? Specifically, should Courts admit movants' *Statement of Material Facts* and assertions, pursuant to Local Rules, even when contradicted by records filed pursuant to FRCP 56 by movants and/or

nonmovants? Further, should Courts grant summary judgment for movants based on movants' *Statement of Material Facts* and assertions, even when the full record, filed pursuant to FRCP 56 by nonmovants and/or movants show there are "genuine" disputes to material facts?

2. In the context of First Amendment claims, do the United States Court of Appeals have obligations to independently review the entire record, and not simply accept the lower Courts' erroneous factual findings, based on Courts' strict interpretation of Local Rules, even when nonmovants' evidence, filed pursuant to FRCP 56, contradicts movants' *Statement of Material Facts*, evidence, or assertions?

3. What is the appropriate standard for "chilling" to sustain a First Amendment injury claim? Specifically, in order to sustain an injury claim under First Amendment rights, are public or government employees always required to show that they ceased speaking altogether on matters of public concern?

4. What is the objective standard for determining whether blasphemous insults to employees at the workplace by supervisors against employees' religion are "severe" or "pervasive" in the context of workplace harassment to sustain discrimination and/or "hostile work environment" claims? How should Courts examine the effects of religious insults on employees, since religious beliefs are personal and vary widely among societies and religious backgrounds? Further, should the United States Court of Appeals not accept employees' testimonies and email records as credible and require further corroborating evidence, despite movants' lack of contrary evidence; and if so, what quality or quantity or type of corroborating evidence should the United States Court of Appeals demand to prevail at the summary judgment stage?

PARTIES TO THE PROCEEDING

The Petitioners, who were the Appellants in the United States Court of Appeals for the Third Circuit, are Harisadhan Patra and Petula C Vaz, Pro Se Plaintiffs and former faculty of Bloomsburg University of Pennsylvania. The respondents, who were the Appellees in the United States Court of Appeals for the Third Circuit, are Pennsylvania State System of Higher Education; Bloomsburg University of Pennsylvania; Frank T. Brogan, individually and in his official capacity as Chancellor; David Soltz, individually and in his official capacity as President of Bloomsburg University; Ira Blake; Robert P. Marande; Richard Angelo; Jorge E. Gonzalez; and Thomas R. Zalewski.

RELATED PROCEEDINGS

- *Patra and Vaz v. Pennsylvania State System of Higher Education et al.*, No. 4:14-cv-2265, U.S. District Court for the Middle District of Pennsylvania. Judgment entered May 08, 2018 (see 059a-064a).

- *Patra and Vaz v. Pennsylvania State System of Higher Education et al.*, No. 18-2236, U.S. Court of Appeals for the Third Circuit. Judgment entered July 12, 2019 (see 051a-058a).

- *Patra and Vaz v. Pennsylvania State System of Higher Education et al.*, No. 4:14-cv-2265, U.S. District Court for the Middle District of Pennsylvania. Judgment entered May 27, 2020 (see 020a-046a).

- *Patra and Vaz v. Pennsylvania State System of Higher Education et al.*, No. 20-2320, U.S. Court of Appeals for the Third Circuit. Judgment entered July 19, 2023 (see 003a-019a).

- *Patra and Vaz v. Pennsylvania State System of Higher Education et al.*, No. 20-2320, U.S. Court of

Appeals for the Third Circuit. Judgment entered (Petition rehearing by the panel and the Court en banc denied) November 30, 2023 (001a-002a).

TABLE OF CONTENTS[1]

[1] A separate APPENDIX is filed, which contains a "TABLE OF CONTENTS", listing all appendices. We avoid repeating the same here, based on examples we read online.

TABLE OF AUTHORITIES

Page

Cases

Statutes and Rules

Miscellaneous

PETITION FOR WRIT OF CERTIORARI

Petitioners, Patra and Vaz, respectfully petition for a writ of certiorari to review the Judgment of the Hon. Third Circuit.

OPINIONS BELOW

The Opinion of the Third Circuit is attached (005a-019a). The Court's orders denying rehearing or rehearing en banc and permission to file a fraud-on-the-Court motion prior to ruling of rehearing or rehearing en banc are attached (001a-002a; 047-048a). The Opinion of the Middle District of Pennsylvania is attached (021a-046a). Prior Circuit and District Court Judgments and Opinions are attached (051a-064a).

JURISDICTION

The Third Circuit entered its Judgment and Opinion on July 19, 2023 (003a-019a), and denied Petitioners' timely rehearing petition on November, 30, 2023 (001a-002a). Hon. Justice Alito, Jr., granted Petitioners' application to extend time to file a petition for a writ of certiorari to April 29, 2024. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND OTHER PROVISIONS

Relevant parts from the following relevant provisions (U.S. Const. Amend. I, VII, and XIV; 28 U.S.C. §1746; 42 U.S.C. §1983; FRCP 56 and 83; M.D.PA. Local Rule (hereinafter "LR") 7.8 and 56.1) are reproduced at 682a-686a.

We cited the appendix, if a record is attached in it. Hereinafter, citation styles in **Table-1** are followed. Multiple records, pages, etc. are separated by "-". We cited page numbers from headers of Court records.

"Plf" and "Def" are used to identify Plaintiffs' and Defendants' documents, respectively (e.g. Plf-Brief).

Table-1

Records	Style	Examples
District Court's	DCR#number	DCR#34
Circuit Court's	USCA#case number/Doc-number or document type	USCA#20-2320/Doc-23; USCA#18-2236/Opinion
Depositions	Deponent-Dep	Smith-Dep
Declarations	Declarant-Dec	Reed-Dec Plf-Dec
Page/s	Appendix page number followed by "a"	099a; 099a-101a
	Otherwise, source.P.page number/s	DCR#34.P.3; DCR#34:P.3-6; Smith-Dep.P.34
Line/s	:line number/s	099a:10; 099a:10-15; 099a:4-101a; 099a:4-101a:5
Paragraphs or sections	(¶paragraph or §section number/s)	099a(¶4); 125a(§4-6)
Footnotes	(n.footnote number/s)	DCR#73(n.11)

If applicable/relevant, we added identifier/s as "[identifier]". E.g. (280a-316a(§44)[Plf-Dec]). We cited

evidence from Court records and issues raised in lower Courts.

STATEMENT OF THE CASE

I. Patra and Vaz, a married couple of Indian origin/race and Hindu faith, joined Bloomsburg University (hereinafter "BU"), under certain pre-hire agreements (hereinafter "PHA") and individualized contracts (hereinafter "PIC") [which incorporated a Collective Bargaining Agreement (hereinafter "CBA") between the Pennsylvania State System of Higher Education (hereinafter "PASSHE") and the Association of PA State College and University Faculties (hereinafter "APSCUF") and Faculty Handbook] (243a-246a(§2-10)[Plf-Dec]).

II. In addition to nine EEOC/PHRC charges (DCR#81-27.P.2-12) during 2012-2014 (beginning Fall-2012), Petitioners regularly filed complaints with BU/PASSHE administration, during Spring-2012 and 05/30/2014 for race/national-origin/religion-based discrimination and retaliation against Plaintiffs. (271a-275a(§43.A, D)[Plf-Dec]).

III. During Plaintiffs' employment, BU had one doctoral program, the ~4 year-long Doctor of Audiology (hereinafter "AuD"). The AuD-program was accredited by the Council on Academic Accreditation (hereinafter "CAA") of the American Speech-Language-Hearing Association (hereinafter "ASHA"). CAA/ASHA required BU, *inter alia*, to report *yearly* program-completion rates within the published time-frame (hereinafter "OCR") *timely*, *accurately* to CAA/ASHA and *conspicuously* on websites for the public (e.g. prospective students). CAA required ≥80% OCR for accreditation (242a-243a(§1)[Plf-Dec]). At least for 10 years, BU never met accreditation

requirements, but successfully falsified official records for accreditation, funds, student recruitment, etc. (257a-264a(§24-33)[Plf-Dec]).

IV. In Spring-2012, Plaintiffs raised poor AuD-OCRs with Marande and Angelo. Marande sternly *warned* Plaintiffs not to bring up such "frivolous issues" to anyone, especially CAA to avoid serious consequences, which Plaintiffs complied with due to fear of job losses/threats, etc. (252a(§18)[Plf-Dec]). By 08/27/12, Plaintiffs discovered *prospective-speech suppression/threats* were aimed to cover-up Defendants' *false/fraudulent reporting of grossly-inflated* OCR (**usually ~25% as 100%**) for accreditation, student recruitment, funds, etc., while several Defendant Officials (hereinafter "DO"s) and non-Defendant Officials (hereinafter "NDO"s) were *gaining personal/financial benefits, causing waste/abuse/misuse of public funds. Specifically students were compelled to remain in the program up to 8 years, and many were compelled to leave the AuD-program without a Diploma, which caused severe stress, financial burden, and other losses to these students and taxpayers; although BU received a federal grant to train audiologists.* Considering Defendants' actions as **matters of serious public concern,** Plaintiffs, throughout 08/27/12-05/30/14, *spoke* against Defendants on such issues to the *public in public fora* (outside the employment-chain-of-command) under First-Amendment rights **as private citizens** and contemporaneously, **also** *reported* to appropriate authorities via employment-chains-of-command under PA Whistleblower Law (hereinafter, "PWL") (252a-271a(§19-42)[Plf-Dec]).

V. Throughout 08/27/2012-05/30/2014, Plaintiffs engaged in consistent/continuous streams of

interleaved and/or overlapped *protests and whistleblowing,* under Title-VII, PWL, and First-Amendment rights (hereinafter, collectively "Pro-Act"s) (271a-280a(§43)[Plf-Dec]). Following each *Pro-Act, mostly within days, Defendants selectively/disparately caused consistent, continuous streams of adverse employment actions* (hereinafter "AEA"s) *selectively against Plaintiffs (unlike against similarly-situated (probationary/untenured) or any other faculty),* including termination, ***contrary*** to Plaintiffs' Contracts (280a-453a(§§44-134)[Plf-Dec]).

VI. Plaintiffs filed this civil action in November 2014 and amended on 03/06/15. Attorneys from the Attorney General of Pennsylvania's Office have been acting as Defense Counsels (hereinafter "AGDC").

VII. On 10/16/17, AGDC filed a summary judgment motion (hereinafter "SJM") (DCR#70). On 05/08/18, the District Court granted Defendants summary judgment (059a-064a), which the Third Circuit vacated and remanded on 07/12/19 (051a-058a). Then, the District Court ordered Plaintiffs to refile their opposition, pursuant to LRs and other directions (065a-068a), while accepting Plaintiffs' prior exhibits (068a(n.9)). Accordingly, Plaintiffs filed their opposition (DCR#103, 103-1–103-10; e.g. 069a-487a). On 05/27/20, the District Court again granted Defendants summary judgment (020a-046a), which the Third Circuit affirmed (003a-019a). On 11/30/23, rehearing or rehearing en banc was denied (001a-002a).

REASONS FOR GRANTING THE WRIT

Pursuant to Supreme Court Rule 10(a) and 10(c), Petitioners respectfully petition for a writ of certiorari

to review and reverse the Hon. Third Circuit's judgment for the following:

A. The Third Circuit failed its obligations to enforce FRCP 56, FRCP 83, and the Supreme Court's precedents for summary judgment.

1. Pursuant to FRCP 83, no LRs could supersede FRCP 56. FRCP 56 and this Court's standards (e.g. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255-56 (1986); *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000); *Tolan v. Cotton,* 572 U.S. 650, 659, 134 S.Ct. 1861, 1868 (2014)) require Courts to accept nonmovants' version of facts in SJMs, except when nonmovants' version of facts "is blatantly contradicted by the record, so that no reasonable jury could believe it" (*Scott v. Harris*, 550 U.S. 372, 380 (2007)). Specifically, the "general rule that a 'judge's function' at summary judgment is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" (*Anderson,* 477 U.S., at 249). However, the District Court and Third Circuit departed from the foregoing requirements, as shown in **examples** infra.

2. We/Plaintiffs **certify** that we, *untrained in law, followed LRs, FRCPs, and the Court's order, to the best of our understanding* (069a(n.1-2)[Plf-Brief]). Plaintiffs controverted movants' SMF, pursuant to LR 56.1 (108a-128a), while offering counter SMF, pursuant to LR 7.8(a) in the Brief (071a-076a(§C-E)), by citing Plaintiffs' declarations (pursuant to FRCP 56(c); 28 U.S.C. §1746; Exhibits-P2-P4; 129a-453a[Plf-Dec]). Considering "a lengthy and complicated factual record" (057a:15-16[USCA#18-2236/Opinion]) and that Plaintiffs were ordered to address, *inter alia*, 13

specific issues in Plaintiffs' Brief within 30 pages (066a-068a[DCR#100/Order]); Plaintiffs (untrained in law) ***completely relied*** on citations of Plaintiffs' multiple declarations (129a-487a[Plf-Dec]; Exhibits-P2-P5 as DCR#103-3, DCR#103-6, DCR#103-7, DCR#103-8), which were based on *Plaintiffs' first-hand knowledge* and *replete* with cited evidence from depositions and discovery evidence (e.g. emails, generated in the course of regular official business; electronically stored/searched information (hereinafter "ESI"); discovery responses by Defendants and Plaintiffs, Bates-stamped with DEF- and PLAPS-, respectively; 101a-107a[DCR#103-1]). Furthermore, the District Court had analyzed (066a[DCR#100/Order]) the admissibility of Plaintiffs' documents and concluded "Plaintiffs need not refile any of their exhibits at ECF Nos. 80 and 81" (068a(n.9)[DCR#100/Order]). *Since Plaintiffs followed LRs and FRCPs; Courts must consider Plaintiffs'* ***declarations,*** *even if Plaintiffs' filings were not technically sophisticated like skilled attorneys.* However, contrary to FRCP 56, FRCP 83, this Court's precedents (**§A.1**, supra) and other Circuits' positions (e.g. *rejecting plaintiff's statements, while accepting the employer's is deemed "an approach ... inconsistent with the fundamental rules governing summary judgment" and "To hold otherwise ... an employee's account could never prevail over an employer's ...would render an employee's protections against discrimination meaningless." Helfter v. United Parcel Serv., Inc.,* 115 F.3d 613, 616 (8th Cir. 1997)), the District and Circuit Court cited ***only*** movants' SMF, evidence (including out-of-context, misleading, incomplete transcripts from Plaintiffs' testimony, cited by movants; see **§B.2-5**, infra) and assertions, ***without any*** of Plaintiffs' declarations, DO's/NDO's

deposition testimony or other Plaintiffs' evidence. **E.g.** the District Court held, "On December 29, 2012, Patra filed two complaints" with the EEOC (032a-033a(§4)[DCR#109/Opinion]), citing movants' SMF, ¶54; **even though** Plaintiffs controverted movants (126a(¶54)[DCR#103-2]) with cited evidence that Patra filed one EEOC charge on 12/04/12 and another on 12/29/12.

3. SMF/LR-56.1 statements. Movants' SMF included claims about Plaintiffs' hiring (without mentioning PHA) and yearly evaluations (DCR#71(¶1-6)); Patra's evaluations and nonrenewals (DCR#71(¶7-26)); Vaz's evaluations and nonrenewals (DCR#71(¶27-42)); changing a door-lock (DCR#71(¶43-53)); and lists of Plaintiffs' EEOC charges (DCR#71(¶54-61)); and ***nothing else;*** *as if Plaintiffs' whistleblowing and other claims, including AEAs, did not even occur.* Yet, the District and Circuit Courts failed to recognize **limitations of LR 56.1 and the scope of FRCP 56**, as discussed infra:

Nonmovants could respond only to movants' SMF claims (685a-686a(§9)) and were not permitted to add additional SMF (see the District Court's order; 068a(§5)[DCR#100/Order]). If Courts allow and accept movants' SMFs as complete material facts (as in this case), *movants can/will win SJM by simply stating selected favorable SMFs, while omitting unfavorable material facts* (as in this case). However, LRs cannot supersede FRCPs (see FRCP 83; 685a), and the scope of FRCP 56 is broad to ensure protection of VII- and XIV-amendment rights (682a-685a), which the Third Circuit recognized (e.g. "[N[othing in Rule 56 prevents [the nonmoving party] from creating a genuine issue of material fact by pointing to sufficiently powerful countervailing circumstantial evidence." *Hozier v.*

Midwest Fasteners, Inc., 908 F.2d 1155, 1165 (3d Cir. 1990)). Yet, the District and Circuit Courts ignored nonmovants' evidence (see 101a-487a; e.g. 129a-145a[DCR#103-3/Plf-Dec]; 146a-240a[DCR#103-6/Plf-Dec]; 241a-453a[DCR#103-7/Plf-Dec]; 454a-487a[DCR#103-8/Plf-Dec]; 488a-580a[testimony]) and objections to movants' evidence (108a-128a[DCR#103-2]; 129a-145a[DCR#103-3/Plf-Dec]; 071a-076a(§C-E)[DCR#103/Plf-Brief]; 078a-079a(§H)[DCR#103/Plf-Brief]; 094a-100a(§I-J)[DCR#103/Plf-Brief]), without offering reasons/explanations. The Second Circuit emphasized, "Allowing a Local Rule 56.1 statement to substitute ... admissibility requirement set forth in Fed.R.Civ.P. 56(e) "would be tantamount to the tail wagging the dog."" *Holtz v. Rockefeller Co.*, Inc., 258 F.3d at 74 (2d Cir. 2001) (internal citation omitted), and LR 56.1, "does not absolve the party seeking summary judgment of the burden of showing that it is entitled to judgment as a matter of law, and a Local Rule 56.1 statement is not itself a vehicle for making factual assertions that are otherwise unsupported by the record." *Id.* Also see, *Vermont Teddy Bear v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004) (the Court "may not rely solely on the statement of undisputed facts contained in the moving party's Rule 56.1 statement."). Further, the Fourth Circuit treated verified complaints as "the equivalent of an opposing affidavit for summary judgment purposes, when the allegations contained therein are based on personal knowledge" (*Williams v. Griffin*, 952 F.2d 820, 823 (4th Cir. 1991)), unlike the Third Circuit in Petitioners' case (e.g. EEOC/PHRC charges, under penalty of perjury). Furthermore, the Third Circuit, contrary to its own precedents ("self-serving affidavits pointing to specific facts can create a genuine issue of material fact sufficient to survive summary judgment"

Paladino v. Newsome, 885 F.3d 203 (3d Cir. 2018)) and other Circuits' position on affidavits (e.g. *Pfaller v. Amonette*, 55 F.4th 436, 450 (4th Cir. 2022)), ***failed** to consider* Petitioners' declarations (but accepted movants' declarations), under penalty of perjury; *erroneously ratifying* FRCP 56(c) provisions. Further, the District Court accepted movants' SMFs and assertions; whereas, the Circuit Court, not only accepted the District Court's version of SMF, but ***even accepted*** movants'/Appellees' ***newly created*** "facts" on appeal (e.g. USCA#20-2320/Doc-23(§3, 5)[Appellees-Brief] **vs.** DCR#71[Def-SMF]; DCR#73[Def-Brief]); although movants' claimed facts were mostly *false, half-truths, unsupported* or *contradicted* by movants' own evidence and by nonmovants (including movants' own officials' testimony), shown infra.

4. Omission of material facts. Movants' SMF (**§A.3**, supra) contained none of Plaintiffs' whistleblowing claims (except a partially accurate EEOC charges list; 125a-126a) or AEAs (except false claims of evaluations and nonrenewals). We offer examples here and refer to Plaintiffs' declarations (129a-487a; specifically, 241a-487a) (also **§B,** infra).

a. Whistleblowing on matters of public concern: Defendants violated, *inter alia*, CAA-2008-Standards for accreditation and Department of Education (hereinafter "DOE") requirements (e.g. 34 CFR §668.14(b)(4), (b)(10)) ***because***, CAA-2008-Standards *required* BU, *inter alia*, to meet at least 80% OCR and post **accurate** program-completion data on BU's websites **conspicuously** for the public (242a-243a(§1)[Plf-Dec]), **which BU never met** for at least **10 years**. However, Defendants falsified official records. E.g. although, **AuD-OCRs** between 2008/09–

2011/12 were 19%, 27%, 25%, and 9%, respectively; Defendants *regularly/consistently* reported **grossly-inflated** (100%) completion-rates to CAA/ASHA and the public (on websites), ***always favorable*** to Defendants (257a-263a(§24-32)[Plf-Dec]). For **clear/convincing** evidence of Defendants' *deliberate falsifications*, we report data for students, who joined in 2009/10 and expected to graduate in 2012/13 in **Table-3** (633a-634a; 636a-637a).

Table-3

To whom or where reported	No. completed on-time	No. completed later	No. not completing	Percentage completing	Total enrollment
CAA/ASHA	3	6	0	100	3+6 = 9
Websites	13	0	2	100	13+2 =15
Factual data	1	1	15	6	1+1+15 =17

Defendants ***knowingly falsified*** to CAA/ASHA that number completing were **(3+6)** on **07/31/13** and on websites as **13** on **11/07/13** **because** Defendants owned ***factual records*** (636a-637a), which showed that OCR was **only** 6%. **Table-4** shows actual completion data; completion time in row 1 and number completed in row 2.

Table-4

May 2013	Aug 2013	Dec 2013	Jan 2014	May 2014	Dec 2014	May 2015
1	1	2	2	1	2	5

Defendants **willfully falsified because**, on **11/07/13 or 07/31/13**, Defendants could **not** have known about **15** students' **futures** (**since, 2, 5, and 5** students completed in Dec-2013, **2014, 2015,** respectively, while 3 **never** completed; 636a-637a). ***Had*** *CAA/ASHA* ***known*** *that Defendants did not meet accreditation requirements and falsified/fabricated AuD-data for ~**10-years**, CAA/ASHA would have been obligated to enforce its requirements* as required by [34 CFR 602.20(a)(2)(iii)].

Although, BU received a federal **grant** to train audiologists, yearly OCR were ~<25%. Defendants, for *personal/financial gains,* did not provide required services; *robbed* years of AuD-students' careers; and *wasted/abused/misused* public funds. E.g. Zalewski spent ***as little as 5-minutes/week*** for thesis mentoring for enrolled students (**Table-5**) (254a-255a(§21)[Plf-Dec]).

Table-5

Time Zalewski spent for theses mentoring

Students' names	Stone	Bonsall	Taylor	Tobin	Atkins	Bukoski	Saleem
Minutes/week	10	20	10	15	5	5	20

Yet Zalewski's pay increased disproportionately, as shown in **Table-6** (628a).

Table-6					
Zalewski's Pay					
Pay-type /Year	2010-11	2011-12	2012-13	2013-14	2014-15
Regular pay	87,826	88,745	89,496	98,192	103,589
Gross pay	115,244	102,681	128,564	124,984	164,146
Differ-ence	27,418	13,936	39,068	26,792	60,557
% extra pay	**31.2**	**15.7**	***43.7***	***27.3***	***58.5***

Petitioners/Plaintiffs considered that abysmal OCRs, Defendants' falsification of AuD-data in official records for accreditation, student recruitment, funds, etc. and misuse/abuse/waste of public funds for personal/financial gains were serious matters of public concerns. Therefore, throughout 08/27/12–05/30/14, Plaintiffs used two avenues of whistleblowing contemporaneously under PWL and First-Amendment rights against Defendants' fraudulent practices (255a-271a(§22-42)[Plf-Dec]; **§B-C,** infra).

b. Contracts. Consistent with Plaintiffs' declarations (244a-246a(§4-10)[Plf-Dec]), movants' own records (581a-583a, 618a-622a) showed Plaintiffs' superior qualifications and Marande/Defendant agreeing to PHA, prior to Plaintiffs' signing PIC. PHA, PIC, and CBA (hereinafter, collectively "*contracts*") were binding for BU and Petitioners (244a-245a(§4-8)[Plf-Dec]). Yet, Defendants did not honor PHA (e.g. start-up funds, functional laboratories, assigning jobs in Plaintiffs' doctoral and postdoctoral training and areas of expertise, relocation funds, etc.); conditioned

honoring PHA to fulfilling illegal demands (e.g. Plaintiffs making false complaints against Awan citing differences in religion and race/national-origin; falsifying about AuD data/program) and subjected Plaintiffs to various threats, racial/religious harassment, etc. (246a-251a(§11-17)[Plf-Dec]; 384a-387a(§73-74)[Plf-Dec]; **§D**, infra). Not honoring PHA and assigning Plaintiffs to teach courses exclusively outside their areas of specializations and doctoral/postdoctoral training, violated Plaintiffs' *contracts* and are material because Marande's email (false assurance) influenced Plaintiffs to enter into *contracts*. Marande's email/false assurance (581a-583a) deceived Plaintiffs, inducing them to sign PICs/accept BU-jobs. Without Marande's email, "the transaction would not have occurred" (hence, it was *deception and fraud*). Despite Plaintiffs' controverting movants' SMF, Courts accepted movants' SMF, contrary to this Court's precedents (**§A.1**, supra; DCR#103-2). *Contrary* to PHA, throughout Vaz's employment at BU; Vaz, who specialized in dysphagia (swallowing and feeding disorders; 618a-622a) with doctoral/post-doctoral training, was compelled to ***exclusively*** teach courses other than dysphagia and outside Vaz's areas of expertise; and deprived Vaz of any dysphagia research laboratory or funds, while compelling Vaz to teach large consolidated courses as one (which were assigned to other faculty in two small courses), without additional pay or credit (244a-251a(§4-17)[Plf-Dec]; (281a-294a(§44)[Plf-Dec]). Patra was also deprived of a functional laboratory and start-up funds, etc., *contrary* to PHA (*id.*). Patra's doctoral and postdoctoral training were in audiology/hearing science, specializing in psychoacoustics/hearing sciences (e.g. masking; 618a-621a). Defendants' records (DCR#81-11.P.6-7) showed

Patra was specifically "hired to teach in the Au.D. graduate program" (522a[Smith-Dep.P.79:1-14]). Contrary to Plaintiffs' *contracts*, immediately following Plaintiffs' EEOC charges (12/04/12) and whistleblowing (under free-speech and PWL) during the week of 12/10/12; Defendants, on 12/16/12 (DCR#80-1.P10-11), changed Patra's teaching entirely and assigned Patra to teach undergraduate courses (311a-313a(§44(32-33)[Plf-Dec]) exclusively; not a single course was in AuD or Patra's doctoral/postdoctoral training or expertise). Following Plaintiffs' *whistleblowing/Pro-Acts*, Defendants never assigned Patra to teach any AuD courses, although Patra was specifically hired to teach in the AuD program. *NDO Smith testified*, "[I]t's not what I would consider a reasonable assignment" (522a[Smith-Dep.P.80:5-6]). *Vaz's and Patra's assignments were analogous to hiring a cardiologist to teach/perform cardiac surgery, while compelling the cardiologist to teach/practice general surgery without an operation theater or surgical tools.* Furthermore, Defendants scheduled Patra's classes with "unreasonable" time-schedules. E.g. a three-hour class (beginning at 6:00 pm) ending at 9:00 pm on Wednesdays, followed by a class next morning (Thursday) at 8:00 am, followed by subsequent classes until 1:45 pm without sufficient time gaps between such classes (e.g. 284a-285a(§3)[Plf-Dec]; 349a-350a (§B-C)[Plf-Dec]; 652a-653a), although Defendants assigned Patra brand-new classes, not in AuD or in Patra's specialization areas (unlike other similarly-situated probationary faculty; e.g. Yue. Cf. 651a vs. 652a-653a). These courses were all new preparations for Patra. Defendants never made such assignments for any other faculty. Defendants' actions significantly altered "the terms and conditions" of Plaintiffs

employment, and were both, discriminatory and retaliatory (see, *Burlington N. & Santa Fe Ry. Co. v. White,* 548 U.S. 53, 68, 126 S.Ct. 2405, 2415 (2006)). Plaintiffs were evaluated on the aforesaid unreasonable assignments and issued nonrenewals.

c. AEAs. Throughout 08/27/12–05/30/14, Plaintiffs participated in "consistent and continuous" streams of interleaved or overlapping whistleblowing/Pro-Acts (under Title VII, PWL, free-speech); and suffered continuous streams of AEAs, mostly within days after each Pro-Act (**§V**, supra; 271a-453a(§§43-134)[Plf-Dec]). Therefore, causative factors of AEAs were multifactorial (076a-078a(§G)[DCR#103/Plf-Brief]). *Contrary* to movants' SMF, in their **reply-brief** movants/AGDC *admitted* they "did not, and do not, argue that the various actions, such as their research lab purchases, teaching assignments ... negative evaluations, did not occur" (**yielding to Plaintiffs' factual assertions, yet Courts erroneously cited movants' SMF**) and contended "such actions do not constitute an adverse employment action" (DCR#107.P.7(§II)). Although, AEA standards are not coterminous and depend upon contexts (**e.g.** Title-VII discrimination, retaliation under Title VII, PWL, First Amendment), AGDC did not offer differential analyses and erroneously used Title-VII-discrimination standards for **some** of Plaintiffs' claims (DCR#73.P.13-18(§I)[Def-Brief]), **while ignoring others**, including Defendants' *prospective-speech suppression* (**§IV,** supra; 252a-255a(§18-21)[Plf-Dec]) in Spring-2012 (see *Heffernan v. City of Paterson,* 136 S.Ct. 1412, 1418 (2016)).

d. Evaluations and nonrenewals. We cite **examples** of records and officials' (DOs'/NDOs') testimony contradicting movants'/AGDC's assertions

(DCR#71(¶5-42)[Def-SMF]; 654a-657a[DCR#72-1/Reed-Dec]), and Courts' exclusive citations of movants' falsified SMF/evaluations/DCR#71 records as true, overlooking contradictory evidence (**§A.4.c**, supra; 025a-032a[DCR#109/Opinion]; 007a-010a[USCA#20-2320/Opinion]):

Smith and Awan served on Plaintiffs' evaluation committees. Awan testified, "In previous years[prior to whistleblowing] ...you had good evaluations from those people[Defendants]" (498a-499a[Awan-Dep.P.186:25-187:1]). Defendants praised Plaintiffs profusely (e.g. Vaz as "outstanding", "excellent"; Patra as "excellent", "an asset", etc.; 610a-615a; 330a-335a(48)[Plf-Dec]; 357a-359a(62)[Plf-Dec]). Even on 01/26/12, Decisionmaker/President Soltz complimented Plaintiffs, "You are commended for the positive evaluations written by your colleagues" (615a-617a). The Third Circuit acted as Defense Counsel and even created imaginary records to support movants (justified changing assignment to establish lack of causation), holding, "he[Patra] had been receiving poor student evaluations for several semesters prior to the change" (015a:34-016a:2[USCA#20-2320/Opinion]), without citations, contradicting factual records (DCR#73-1.P.663-693), including NDO's testimony (522a[Smith-Dep.P.79:11-80:10]; Patra's assignment was unreasonable, violations of contracts and outside Patra's specialization/expertise; **§A.4.b**, supra).

NDOs testified Defendants did not follow conflicts of interest, CBA/evaluation procedures/policies, etc. (e.g. "That is not how the evaluation process is supposed to work"; 526a[Smith-Dep.P.109:1-2]; 522a-529a[Smith-Dep.P.78-141]; "No, I don't consider any ... of those things appropriate" 503a[Awan-

Dep.P.200:23-25]; 497a-503a[Awan-Dep.P.178-200]). Movants'/Reed's evaluation records contained numerous *manufactured* documents (e.g. Awan testified, "I've never seen these documents before"; 501a[Awan-Dep.P194:3]) (violating CBA; 667a-678a[Article-12-13]); numerous *falsifications and contradictions* (e.g. "To date, Dr. Patra has no peer-reviewed or non-peer-reviewed publications" contrary to four peer-reviewed publications during 2010-2013; 111a-114a(§c-d)[DCR#103-2]; on 11/27/12, Marande stated, "Vaz purchased over three years ago is still in its original packaging" although Plaintiffs/Vaz did not even interview at BU in 2009; 371a-372a(§66)[Plf-Dec]); *falsified evaluations* using *disparate evaluation criteria* and *tampered students' evaluations* (360a-386a(§64-73)[Plf-Dec]; Plaintiffs had better teaching, research, service records; compared to other faculty in their probationary years; contrary to the Court's Opinions, Vaz had more peer-reviewed publications than **all** other faculty, except Awan; 399a-407a(§87)[Plf-Dec]). Defendants violated *evaluation procedures/policies* (e.g. DCR#103-7[Plf-Dec] sections in 330a-338a, 345a-399a, 425a-428a, 440a-441a, 446a-451a) and included false complaints, post-facto supplemented and anonymous/unsigned records (e.g. 505a-514a[John-Dep.P.71-111]; 139a-143a(§3-4)[Plf-Dec]; DCR#72-7.P.24), violating CBA (658a-678a). In DCR#103-7[Plf-Dec] (also see 583-609a; 120a-125a), Plaintiffs offered evidence of antagonism along with inciting students and staff/faculty (see 338a-345a, 432a-439a); disparate treatment; evidence of Defendants' religious/racial discriminatory animus (388a-394a, 441a-446a); and selective deprivation of teaching, research and service opportunities (384a-388a); which altered terms/conditions of employment/contracts and negatively impacted

Plaintiffs' performance and evaluations (yet Plaintiffs had superior records than most department/peer faculty, during such faculty's probationary/untenured (similarly-situated) period at BU; 360a-386a(§64-73)[Plf-Dec]; 399a-407a(§87)[Plf-Dec]).

Records showed that nonrenewal decisions were predetermined, well-before evaluations (428a-432a(§105-107)[Plf-Dec]). Reed also falsified about nonrenewals (655a-657a) because Soltz sent each Plaintiff a nonrenewal notice (dated 01/27/14). Both notices offered exact same reasons:

> "Your current contract will end as of ... May 30, 2014. This action is taken in accordance with the provisions of Article 14, RENEWALS AND NON-RENEWALS, Section A, 4.b.(2) of the Collective Bargaining Agreement ..." (DCR#72-11.P.24, DCR#72-8.P.12).

However, Reed's own evidence (678a-679a) showed Article 14§A.4.b.(2) required that nonrenewal notices "shall be sent by the President no later than December 15" and nonrenewal "shall be effective at the end of the spring semester". Hence, Soltz's decisions were *capricious* and *arbitrary*. Further, Soltz violated the CBA (**§5.d**, infra) and Blake did not conduct Plaintiffs' Fourth-year evaluations, contrary to BU's customary and standard practice (353a(§57)[Plf-Dec]). See, *Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996) (Customs are "such practices of state officials so permanent and well-settled as to virtually constitute law"). Hence, nonrenewals were wrongful repudiation/discharge. Plaintiffs had expectations of retraction of nonrenewal decisions; however, Soltz did not retract nonrenewal notices, making Plaintiffs' termination effective 05/31/14 (446a-453a(§133-134)[Plf-Dec]).

5. *DOs'/NDOs' perjury and officers of the Court AGDC's willful falsifications to the Courts.* The Hon. Supreme Court underscored, "Anyone who testifies in court bears an obligation, to the court and society at large, to tell the truth ... (criminalizing false statements under oath in judicial proceedings) ... ("Perjured testimony is an obvious and flagrant affront to the basic concept of judicial proceedings")" (*Lane v. Franks*, 134 S.Ct. 2369 (2014) (internal citations omitted)). We provide **examples** of DOs'/NDOs' perjury under oath and/or penalty of perjury (e.g. 465a-486a(§11)[Plf-Dec]; 094a-100a(§I-J)[Plf-Brief]), infra.

a. Reed perjured (falsified under penalty of perjury). Reed provided **false** pay/compensation information (465a-469a(§11.A)[Plf-Dec]). **Example-1**: Nozza (untenured/probationary faculty) worked for ~one semester in Spring-2011 (522a[Smith-Dep.P.90:3-4]; 563a[Spezialetti-Dep.P.56:8-57:6]). Reed provided falsified/fabricated evidence because Reed's evidence (627a-629a) showed Nozza, who left BU and never worked during 2011-2012, received $84,140 in 2011-2012, which included regular-pay ($64,566). **Example-2**: John testified Reed's evidence (627a-629a) contradicted facts because John was paid 3-5 times more than Reed's documents showed (504a-505a[John-Dep.P.32:20-35:2]). Reed's records also showed no payment for John in 2013-2015, although John testified to working then and earning more than previous years at BU (John-Dep.P.12-13, 20, 32). **History:** Reed had a history of falsifications, evidence fabrication and suppression (411a-420a(§91-99)[Plf-Dec]; 143a-144a(§5-6)[Plf-Dec]. In 2013, Reed conducted a contrived investigation against Patra; when Blake, Marande, Angelo, Gonzalez and Spezialetti provided

false interviews/information, stating Patra did not provide grade information (DCR#81-35.P125-138); although they knew Patra provided grades to Spezialetti and course material to Gonzalez (622a-626a). Reed/DOs/NDOs violated the CBA (658a-667a[Article-2-5]; 679a-680a[Article-43]). Reed suppressed critical documents/evidence and found Patra guilty (DCR#81-35.P117-120), causing Plaintiffs enormous mental sufferings and loss of faculty jobs at Utah State University).

b. Spezialetti perjured (falsified under penalty of perjury) (475a-476a(§11.E-F)[Plf-Dec]). **Example-1**: Spezialetti provided false responses to Interrogatory#23, under penalty of perjury (629a-631a) because Awan (NDO/professor with experience serving as *Department Chair* and *Dean of Graduate Studies* (492a[Awan-Dep.P.6:1-14]) testified that data provided by Spezialetti were inaccurate (492a[Awan-Dep.P.6:19-14:12]). When confronted, Spezialetti testified/admitted that her data in response to Interrogatory#23 were not correct (563a[Spezialetti-Dep.P.56:3-5]). Furthermore, Spezialetti's response contradicted factual records (636a-638a). **Example-2**: Spezialetti provided false responses to Interrogatory#26 (630a). When confronted, Spezialetti admitted/testified her responses to Interrogatory#26 were not accurate (564a[Spezialetti-Dep.P.115:4-5]). **Example-3**: Spezialetti provided false responses (DEF-3569) to Request for Production of Documents#19 because Awan testified that DEF-3569 contained inaccurate information (496a[Awan-Dep.P.152:21-156:19]). Further, Spezialetti also had a history of falsifications (**§5.a.History**, supra).

c. Wislock perjured (falsified under penalty of perjury) (e.g. 474a(§11.D)[Plf-Dec]; 476a-

480a(§11.G-H.3)[Plf-Dec]): **Example-1**: In response to Interrogatory#15, Wislock *knowingly falsified* because ESI-records showed Wislock provided *three different versions* of the event even in 2012, which AGDC concealed **by carefully inserting** Wislock's emails randomly within >25k pages (644a-648a). Wislock falsified because he provided a fabricated description and a record of calling Vaz as leaving a voicemail for Patra, although voicemail transcripts indicated otherwise (476a-479a(§11.G)[Plf-Dec]; 644a-650a). **Example-2:** Wislock responded to Interrogatory#14, which contained falsifications because, Smith and Awan (NDOs/professors with administrative experiences), under oath testified/marked "F" to indicate **so**, including information about Smith and Awan (638a-644a). Wislock knowingly falsified because Defendants/Employer had true employee-data.

d. Soltz perjured under oath. Example-1: Decisionmaker/President Soltz initially claimed he did not violate CBA in Petitioners' case (529a-530a[Soltz-Dep.P.46:10-14]); however, Soltz was compelled to admit that he did not follow the CBA and later attempted to deny it, by stating, "I followed the CBA as I interpreted it and as the director of labor relations for the State System interpreted it" (555a[Soltz-Dep.P.239:5-10]), although the CBA was not open to unilateral [mis]interpretation for convenience (667a-679a(Article-11-14)[CBA]). E.g.

551a[Soltz-Dep.P.233.22-25]

Q Do you agree that you violated -- did not follow the CBA?
A I did not send -- I did not send it that year. You're right.

552a[Soltz-Dep.P.236.1:10]

Q And you told them that you did not follow CBA in 2012.
A Yes, I said I wasn't -- I wasn't aware of that section at that time.
Q Then when we asked this question earlier this morning, you denied that, don't you think that is considered falsification under oath?
A I had -- I had forgotten that. I've corrected it now.
Q You are corrected because you are caught.

Example-2: Soltz knowingly falsified about AuD data because Plaintiffs sent Soltz emails with actual data/information and Soltz had access to official records (530a-557a[Soltz-Dep.P.62-279:14]). During deposition, Soltz was compelled to admit, "I agree that the rates that were reported to ASHA were inaccurate" (557a[Soltz-Dep.P.279:12-14]). Soltz even claimed CAA/ASHA was aware of inaccuracies because BU informed them (555a-556a[Soltz-dep.P.275:16-277:6]). Yet, despite such knowledge, Soltz initially testified, "I would presume that the survey response submitted to ASHA would be the accurate form" (534a[Soltz-Dep.P.102:3-4]).

Although yearly AuD-enrollments were 8-17, professors with Ph.D.s reported such small numbers incorrectly for ~10 years (259a-261a(§27)[Plf-Dec]; 516a-518a[Smith-Dep.P.53:23-58:15]), which Soltz termed merely "calculation errors" (548a[Soltz-dep.P.173:16-17]). *Yet, Defendants/movants/AGDC wanted Courts to believe that these same professors provided honest/truthful evaluations for Plaintiffs, whose unrelenting whistleblowing against DOs/NDOs risked exposure of an ~10-year-long aforementioned scandal.* Contrary to precedents and requirements in

SJM (**§A.1**, supra), Courts accepted such movants' assertions over Plaintiffs' evidence. Throughout his Deposition, Soltz tried to evade the truth, and repeatedly changed his answers. Soltz failed to follow BU's/PASSHE's policies and CBA (529a-560a).

Significance: The Hon. District Court noted, "If they[Plaintiffs] believe her[respondent] response is untrue, the appropriate recourse is cross-examination at trial" (DCR#41.P.20:5-6). The examining witnesses' truthfulness is the factfinders' job. Yet, District and Circuit Courts deprived us of a "jury trial"; weighted evidence in perjurers' favor against our/nonmovants' evidence; and granted movants summary judgment. Additionally, the Third Circuit denied us permission to file a fraud-on-the-Court motion, prior to denying our rehearing petition (047a-050a).

Perjury is a crime against society because it desecrates ***the sanctity of "oath", the pillar upon which the entire Judiciary rests.*** Movants' entire motion rested on Reed's declarations, and most of the critical discovery evidence, material to showing AEAs, disparate treatment, whistleblowing claims, etc., were produced by Reed, Wislock, and Spezialetti, who *perjured* (465a-486a(§11)[Plf-Dec]). Because AGDC were present during DOs'/NDOs' depositions, when evidence was obtained, AGDC knew about such perjury. Despite being attorneys, AGDC willfully used such falsified evidence and made false assertions to District and Circuit Courts (also **§B.2-4**, infra). See, *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th D.C.A. 1998):

> "The integrity of the civil litigation process depends on the truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be

discouraged in the strongest possible way".

Although "to err is human"; recurring falsifications by a group/organization indicate systemic, organized, and calculated use of mendacity, as an institutionalized tool to deliberately impair the search for truth. See, *Wigmore,* Evidence, 278 (*Chadbourn Rev.,* 1979):

> "[T]he inference, indeed ... a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence ... and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred ...lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause."

6. The foregoing shows "departure from" and "a clear misapprehension of summary judgment standards in light of [Supreme court] precedents" (see *Tolan supra*; *Thomas v. Nugent,* 572 U.S. 1111, 134 S.Ct. 2289 (Mem), 189 L.Ed.2d 169 (2014)) and that material facts asserted by movants were genuinely in dispute (also **§B-D**, infra). In denying Petitioners right to have a jury determine such issues, District and Circuit Courts violated Rule 56 and this Court's summary-judgment standards, and deprived Petitioners of their Seventh Amendment right to a jury trial. The District Court "so far departed from the accepted and usual course of judicial proceedings, [and the Third Circuit] sanctioned such a departure ... as to call for an exercise of this Court's supervisory

power." Supreme Court Rule 10(a). This Court, pursuant to its precedents in *Tolan* and *Thomas*, should vacate, reverse and remand this case or pursuant to *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) and *Wigmore*, Evidence, 278 (*Chadbourn Rev.*, 1979) grant summary judgment for Plaintiffs'/Petitioners in accordance with FRCP 56(f) (see 094a-100a(§I-J)[Plf-Brief]; **§B.2-5**, infra) because of AGDC's *willful* use of DOs'/NDOs' *perjured* and *falsified* evidence and *false* assertions to win this case.

B. In the First-Amendment injury context, the Third Circuit failed its obligations to 'make an independent examination of the whole record'; erroneously acted as Defense Counsel; and accepted Defendants'/movants' false assertions as true.

1. For First Amendment retaliation claims, the Supreme Court precedent warrants an "independent" review to apply facts to specified constitutional standards. E.g. *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) ("[I]n cases raising First Amendment issues we have repeatedly held that an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression'" (internal citation omitted). The Third Circuit failed its obligations to 'make an independent examination of the whole record'; and accepted the lower Courts' erroneous interpretations of LRs, FRCP 56, and this Court's precedents, including erroneous admission of movants' SMFs and false assertions contradicted by nonmovants with factual records (see **§A**, supra); as

shown in *examples* infra.

2. Movants' SMFs contained no statements or evidence related to Plaintiffs' whistleblowing under free-speech or PWL (DCR#71). Although parties cannot create new material facts on appeal, movants made new factual assertions (e.g. USCA#20-2030/Doc-23.P.29-31(§3, §5; n.9)); and by doing so, implicitly admitted disputes of material facts. E.g. in addition to qualified immunity claims, movants argued in the District Court (DCR#73.P.30-32(§VII-VIII)), "PLAINTIFFS' FIRST AMENDMENT CLAIM FAILS BECAUSE THEY WERE NOT SPEAKING ON MATTERS OF PUBLIC CONCERN, NOR WAS THEIR SPEECH A SUBSTANTIAL FACTOR IN THEIR TERMINATION". The District Court ruled for movants citing the "absence of causation" between protected activity and the last years' negative evaluation or nonrenewal. Unlike District Court filings, movants raised new issues in the Appeals Court, "The professors' First Amendment Claim fails, because they were not speaking as citizens ..." (USCA#20-2030/Doc-23(§II.E)[Appellees-Brief] **vs.** DCR#71[Def-SMF]; DCR#73(§VII-VIII)[Def-Brief])). Movants changed their argument from "not speaking on matters of concern" to "not speaking as citizens", which was legally **not** permissible. **Further**, even after 58 days and two extensions, AGDC Enerson filed (on 10/21/2020; USCA#20-2030/Doc-23) a nearly verbatim copy of most pages (e.g. USCA#20-2030/Doc-23.P-17-31) from a Brief filed by AGDC Kirkpatrick ~2 years earlier, including verbatim copies of wrong citations and false claims (e.g. USCA#18-2236/Doc-003113060969.P.16-30), which we had pointed out (USCA#18-2236/Doc-003113079245.P.23) were false, ~2 years earlier. Enerson used a verbatim copy of Kirkpatrick's assertion and a *made-up* citation ("Vaz

Depo. 130:8-17"), which did *not* support Enerson's assertion (USCA#20-2320/Doc-23.P.29(§3)):

> "[Plaintiffs] also spoke about the inaccuracies with "people at the university from other departments"—whom they refer to as "friends and neighbors"—at the University's cafeteria and students services center for faculty."

AGDC's assertions were *false* because:

We spoke as private citizens within BU (BU was an open-campus) and outside, in public fora (e.g. in parks, cafeteria, sidewalks, etc.), to the public, *outside* the employment-chain of command, outside working hours, and without payment (264a-271a(§34-42)[Plf-Dec]). In depositions, we emphasized that we used two avenues for whistleblowing, contemporaneously under PWL and free-speech, as evident from the following excerpts of our testimony (emphasis added).

(DC#73-2.P.133[Vaz-Dep.P.132:8-15])

A. Like our friends and neighbors.

Q. Okay.

A. People that we interact with.

Q. Okay.

A. People at the university from other departments. The cafeteria for example ... is often a common place for – and the students services center ...

(DC#73-2.P.135[Vaz-Dep.P.134:17-22])

A. Sometimes people from the university, ...
... who maybe like spouses of people who are working there.
...

A. People within the community. People within our profession.

Vaz, a scientist/educator with postdoctoral education, knew meanings of "friends" and "neighbors". Vaz was simply listing examples, not defining who "our friends and neighbors" were. Further, "Sometimes" means *occasionally, not always.* Interactions with BU-employee's spouses, people in the cafeteria, people in the *community* (our residential neighborhood) and within our profession (professionals from the U.S. and abroad) were *not* within the scope of employment.

(DC#73-1.P.73[Patra-Dep.P.284:3-12]):

Q. When you say outside, do you mean outside your department or outside bloom?

A. Outside - both.

Q. Okay.

A. Even within the Bloom outside the department, like in the cafeteria.

Q. Okay?

A. When we sat together ha[d] lunch and talked, ... But those are free speech. ...

Patra's statements; such as "Outside-both", "Even within Bloom" (suggesting including Bloom), "having lunch and talk" in the cafeteria were not part of work. Since *AGDC deposed Plaintiffs, the foregoing shows that AGDC knowingly made false assertions.* Since AGDC filed SJM not on the ground that we "were not speaking as citizens" (DCR#73.P.30-32(§VII-VIII)), AGDC's *false assertions* are *material* because it deceived the Third Circuit to hold, "speech was limited

to ... conversations with colleagues, not the community at large, and thus it was not protected" (018a:9-12(§VI)[USCA#20-2320/Opinion]).

3. Similar to impermissible new facts in Appellees' Brief, movants' *arguments* in their Brief (DCR#73.P.35(n.11)) were ***erroneously*** accepted as facts and cited by the Third Circuit, "In fact, because of the plaintiffs' reporting, Bloomsburg revised the incorrect graduation statistics" (018a(n.5)[USCA#20-2030/Opinion]), *because* attorneys' *arguments* were not evidence and AGDC knowingly falsified (Plaintiffs blew the whistle throughout 8/27/12-05/30/14 (273a-274a(§43.B[Plf-Dec]). Yet, Defendants falsely reported data throughout 2012-14, changed some numbers (not with correct data) in 2015, and continued false reporting, even in 2017 (259a-261a(§27-28); 633a-636a vs. 636a-638a). See **Table-7;** Defendants had two sets of data (different from the factual record), even after Soltz's (544a-545a[Soltz-Dep.P.163:25-164:2]; and Smith's (517a[Smith-Dep.P.55:12-56:4])) admission of inaccuracies and falsifications, respectively.

Table-7
(For 2014-15)

Source	No. completing on time	No. completed later than on time	No. not completing
On 11/08/17 (636a)	7	1	2
On 4/11/17 (635a)	6	2	3
Actual Record (637a-638a)	7†	0	10

†Including summer semester

4. In *Baloga v. Pittston Area School District*, 927 F.3d 742 (3d Cir. 2019); the Third Circuit held "Whether a public employer's conduct rises to the level of an actionable wrong is "a fact intensive inquiry focusing on the status of the [employee], the status of the retaliator, the relationship between the [employee] and the retaliator, and the nature of the retaliatory acts. ...Although ...retaliatory acts ...must "be more than de minimis," ...the threshold is "very low," "...Indeed, ..."an act of retaliation as trivial as failing to hold a birthday party for a public employee ...when intended to punish her for exercising her" First Amendment right may suffice" (internal citations/quotations omitted). Yet, in Petitioners' case, the Third Circuit failed to apply its own standards; offered no analyses of AEAs; selectively considered movants' unsupported assertions without nonmovants' evidence; and agreed with movants that the only AEA, contract nonrenewal, was not "a result of their whistleblowing" (017a-018a(§VI)[USCA#20-2320/Opinion]). However, Defendants denied numerous benefits to Plaintiffs, contrary to Plaintiffs' *contracts;* and caused numerous AEAs, mostly within days following Plaintiffs' whistleblowing (280a-316a(§44)[Plf-Dec]; 316a-453a), which any reasonable factfinder would find as retaliation, pursuant to *Baloga.* In *Perry v. Sindermann,* 408 U.S. 593, 597 (1972), the Supreme Court emphasized, "[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited." The standard requires examining potential effects on "constitutionally protected speech or associations". Since District and Circuit Courts in Petitioners' case,

considered movants' evidence and unsupported assertions, while not considering/citing Plaintiffs' evidence (depositions, declarations, etc.; **§A-B.3**, supra), Courts *weighted* even state-attorneys' false assertions over Pro Se Plaintiffs' legally admissible evidence. Court's acting as Defense Counsel, vouching for and demanding evidence from Pro Se Plaintiffs (while ignoring Plaintiffs' evidence) on issues, not raised by movants, initially at the District Court, are extremely troubling. If Hon. Courts fail to do their duty, where would/should Pro Se Plaintiffs go; (especially, when taking a case to the Hon. Supreme Court is almost an impossible task for Pro Se Plaintiffs, like us, who have no legal training and help)? The Hon. Supreme Court must consider what Petitioners had to endure and sacrifice to raise matters of serious public concern (i.e. Defendants' ~10 year-long willful falsifications in official records for accreditation, student recruitment, funds, etc., while corrupt officials spent as little as 5 minutes/week for mentoring students and gained financial benefits at students' and taxpayers' expense (see **§A.4.a,** supra). Otherwise, Courts' misapplication of laws and erroneously granting SJM would have chilling effects on other future educators deterring them from raising such issues.

5. For the foregoing, the Third Circuit not only sanctioned the District Court's departure from Supreme Court's precedents, it too failed its obligation to review the "full record", pursuant to Supreme Court precedents. Hence, pursuant to Supreme Court Rule 10(a), (c), a writ of certiorari is warranted.

C. This Court's guidance and clarification of an objective standard for "chilling" to

sustain a First Amendment injury claim are essential.

The Third Circuit held that Petitioners "had to show that: (1) their speech was protected by the First Amendment, and (2) the defendants' retaliatory action was substantially motivated by the protected activity" and "[Plaintiffs] concede that, far from "chilling" their speech" because "the defendants' actions never dissuaded them from speaking out about the school's graduation rates" (017a-018a(§VI)[USCA#20-2320/Opinion]). The Court did not follow its own precedents (e.g. *Baloga, supra*; *Kaucher v. Cty. of Bucks,* 455 F.3d 418, 423 (3d Cir. 2006)) by not conducting the "ordinary firmness" test, while *erroneously* citing some *random and impertinent* pages "Appellants' Br. at 66–77", (where pages 69-77 were nowhere related to First-Amendment claims; USCA#20-2320/Doc-9-1.P.70-79[Appellants-Brief]). The Fourth Circuit has "cautioned that '[n]ot all retaliatory conduct tends to chill First Amendment activity.'" *Snoeyenbos v. Curtis,* 60 F.4th 723, 730 (4th Cir. 2023); *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474 (4th Cir. 2005) ("Chilling" "is likely to deter a person of ordinary firmness from the exercise of First Amendment rights" and "[A] claimant need not show [he] ceased those activities altogether to demonstrate an injury in fact"). Further, "The ordinary-firmness test is well established in the case law ..." (*Garcia v. City of Trenton,* 348 F.3d 726, 728 (8th Cir. 2003)); despite *minor inter-circuit differences.* E.g. *Curley v. Village of Suffern,* 268 F.3d 65, 73 (2d Cir. 2001) (plaintiff must show that First Amendment rights were "actually chilled"); also see *Sullivan v. Carrick*, 888 F.2d 1 (1st Cir. 1989). The vast majority of Circuit Courts apply the "ordinary firmness" test, including

the Third Circuit, although this Circuit selectively departed from such standards in Petitioners' case. This Court's intervention is essential because "a subjective standard would expose public officials to liability in some cases, but not in others, for the very same conduct, depending upon the plaintiff's will to fight." *Constantine,* 411 F.3d at 500; and "[I]t would be unjust to allow a defendant to escape liability for a First Amendment violation merely because an unusually determined plaintiff persists in his protected activity. . . ." *Mendocino Envtl. Ctr. v. Mendocino City*, 192 F.3d 1283, 1300 (9th Cir. 1999). As Hon. Judge Wilson emphasized, "There is no reason to "reward" government officials for picking on unusually hardy speakers." and "In the employment context, the required adverse action in a retaliation claim is an "adverse employment action." (*Bennett v. Hendrix*, 423 F.3d 1247 (11th Cir. 2005)). In Hon. Judge Posner's words, "[t]he effect on freedom of speech may be small, but since there is no justification for harassing people for exercising their constitutional rights it need not be great in order to be actionable." *Bart v. Telford,* 677 F.2d 622, 625 (7th Cir. 1982). Therefore, even "campaign of petty harassments" such as "[h]olding her[Plaintiff] up to ridicule for bringing a birthday cake to the office" was considered a cause of action for retaliation. *id.* at 624.

Moreover, the requirement that employees must cease exercising their First Amendment rights altogether to demonstrate "chilling" effects to sustain a First Amendment injury claim is antithetic to the spirit and purpose of First Amendment rights. A clear guidance with an objective standard from this Court is essential, not only for uniformity but also to prevent "chilling" effects on exercising First Amendment rights because this Court in *Lane v. Franks* (134 S.Ct.

2369, 189 L.Ed.2d 312 (2014)), emphasized that "There is considerable value, moreover, in encouraging, rather than inhibiting, speech by public employees. For "[g]overnment employees are often in the best position to know what ails the agencies for which they work." *Waters v. Churchill,* 511 U.S. 661, 674, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994) (plurality opinion). "The interest at stake is as much the public's interest in receiving informed opinion as it is the employee's own right to disseminate it." *San Diego v. Roe,* 543 U.S. 77, 82, 125 S.Ct. 521, 160 L.Ed.2d 410 (2004) (per curiam).

The consequences of the Third Circuit's error are profound: Permitting a government entity censure and/or to take AEAs against its employees and eventually terminate such employees for not being "chilled" and continuing to speak against the government entity's wrongdoing undermines democracy, chills speech, and emboldens corrupt government officials, which would metastasize the ailment in the government entities and destroy the moral fabric of our society. Especially in Petitioners' case, evidence suggests that despite Petitioners' unrelenting whistleblowing, Defendants continued fraudulent practices for years (**§B**, supra). Defendants were compelled to modify their behavior due to this lawsuit and Plaintiffs' contemporaneously continuing free-speeches against Defendants' practices (even after Plaintiffs' termination); which led alumni, students, and family to raise the same issues to Defendants (DCR#80-5.P.118-120, 114-115). Had Petitioners stopped whistleblowing (i.e. ceased using First-Amendment rights), Defendants would have continued their 10-year-long illegal practices even today **because** Defendants successfully used the aforesaid illegal practices at least for 10 years for

accreditation, student recruitment, funds, etc. (252a-271a(§18-42)[Plf-Dec]). *Most importantly, CAA and DOE failed their supervisory duties for at least 10 years because CAA accredited BU's AuD program for ~10 years, based on Defendants' falsified records, even when Defendants did not meet accreditation criteria* (517a[Smith-Dep.P.54-57]; **A.4.a**, supra). *DOE failed its supervisory duties over CAA for lacking any mechanism to enforce CAA-standards, as required in 34 CFR 602.20(a)(2)(iii), including other regulations (e.g. 34 CFR §668.14(b)(4), (b)(10)). In fact, the third Circuit had a duty to demand that CAA and DOE explain such huge lapses and also compel them to take appropriate measures to prevent similar colossal failures by such agencies in the future because if educational programs could receive accreditation and funds using falsified data, the purpose of accreditation would become meaningless. In the greater interests of society/public, this Court must use its supervisory power to ensure Courts do not ignore such serious matters of public concerns so that academicians, employers, and students could trust accreditation and accrediting agencies, and the sanctity of the accreditation process is preserved.* Further, **the Third Circuit's rule judicializes abandonment of Free Speech as a requirement to sustain any First Amendment injury claim, which undermines First Amendment values**. The effect would be devastating to society, especially because, higher education is essential for progress and other educators would be "chilled", undermining citizens' voices, essentially one of the most valuable tools for ensuring 'institutional integrity'. Therefore, the Third Circuit's rule comes at a cost to Free Speech, the First Amendment, itself. Wary of absence of any protection and triggering AEAs, including termination; should

an educator issue criticism or speak against corruption, falsifications or other wrongdoing that a court could construe as sufficiently similar to absence of "chilling"; other educators will think twice before speaking against any corruption or wrongdoing—generating precisely the sort of "chilling effect" the First Amendment is designed to combat. See, e.g., *Reno v. ACLU,* 521 U.S. 844, 872 (1997).

D. In the context of hostile work environment involving blasphemous insults, this Court's guidance and clarification of objective standards for "severe" or "pervasive" and any requirement of corroboration of evidence are essential.

1. In this case, supervisor Angelo regularly demanded Petitioners make false complaints against a fellow faculty (Awan), citing differences in religion and race, and conditioned PHA (e.g. job assignments in expertise/specialization/training areas; start-up and research funds; etc.) to Petitioners yielding to illegal demands (246a-251a(§11-17)[Plf-Dec]). When Petitioners declined, Angelo threatened Petitioners with insubordination, firing, and even deportation/reporting to homeland security (316a-328a(§45)[Plf-Dec]). Throughout 2012–2013 (until retirement), Angelo and throughout 2012–05/30/2014, Gonzalez (who often parroted Angelo, in addition to various racial insults and physical threats), regularly, continuously, and repeatedly used religious and racial insults and threats to Petitioners. *Id.;* 384a-387a(§73-74)[Plf-Dec]; 225a-226a(§10-14)[Plf-Dec]; 235a-239a(§E.4-7)[Plf-Dec]. Although Plaintiffs regularly protested against such threats, religious and racial insults; and complained to higher administration;

administration took no actions (277a-279a(§43.F)[Plf-Dec]). Contrary to Plaintiffs' numerous emails (e.g. DCR#81-35.P.34-45, 61-62, 71-78) and (under penalty of perjury/oath) EEOC charges (DCR#81-7), declarations (456a-465a(§1-10)[Plf-Dec]; 313a-315a(§44.A.35)[Plf-Dec], 316a-328a(§45)[Plf-Dec]), and depositions; District and Circuit Courts overlooked nonmovants' evidence of illegal demands, religious slurs/abuse/insults, and threats, and held "comments" were not "severe" or "pervasive" (044a:6-12[DCR#109/Opinion]; 016a-017a(§V)[USCA#20-2320/Opinion]); even though supervisors' actions caused Petitioners severe stress, anxiety, mental agony, etc. requiring medical help (DCR#103-4.P.2-3[medical record]).

2. The constitution guarantees "Freedom of Speech" and to safeguard such freedom, there is no law directly against blasphemy. However, "right to free-speech is not a license to injure religious feelings". Specifically, no laws protect employers from religious discrimination against employees (e.g. *Faragher v. City of Boca Raton,* 524 U.S. 775, 788 (1998)). To prevail, plaintiffs must show that discrimination was "severe or pervasive" (e.g., *Pa. State Police v. Suders,* 542 U.S. 129, 133 (2004); *Harris v. Forklift Sys., Inc.,* 510 U.S. 17, 22 (1993)). Courts require looking at the "totality" of the circumstances, including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *id* at 23. Even "isolated incidents" would amount to harassment if "extremely serious" (*Faragher*, supra at 788). Several Circuits held that even an extreme isolated act of discrimination could create a hostile

work environment (*Boyer-Liberto v. Fontainbleau Corp.*, 786 F.3d 264, 268 (4th Cir. 2015) (en banc); *Rodgers v. Western-Southern Life Ins. Co.*, 12 F.3d 668, 675 (7th Cir. 1993); *Adams v. Austal, U.S.A., LLC,* 754 F.3d 1240, 1254 (11th Cir. 2014)). The D.C. Circuit held, "This single incident [of using the "n-word"] might well have been sufficient to establish a hostile work environment." (*Ayissi-Etoh v. Fannie Mae,* 712 F.3d 572, 577 (D.C.Cir. 2013)). Unlike other Circuits' and the Supreme Court's positions, the Third Circuit overlooked emails, EEOC charges, and evidence cited in Petitioners' declarations (**§D.1**, supra); essentially eliminated/ratified movants' obligations and nonmovants' rights to defend under FRCP 56; and ruled, "none of their allegations were corroborated. We agree with the District Court that the few comments ... about the plaintiffs' race or religion, while offensive, were too isolated ... Moreover, the plaintiffs failed to account for the fact that, despite being offered positions at Utah State at the alleged height of the defendants' abusive behavior, they chose not to leave Bloomsburg" (016a-017a(§V)[USCA#20-2320/Opinion]). The Third Circuit failed to consider nonmovants' evidence showing Defendants' false Article-43 grievance against Patra, preventing Petitioners/Plaintiffs from joining Utah State (315a(§44.A.38)[Plf-Dec]; DCR#81-35.P.1-78; 411a-420a(§91-99)[Plf-Dec]); reasons why Plaintiffs applied for jobs elsewhere (e.g. 120a-123a; 133a-134a(§6)[Plf-Dec]; 224a-225a(§5-9)[Plf-Dec]) and how Plaintiffs got job offers at a better university (DCR#80-2.P.186-188); or why BU's SLP-program ranking fell following Plaintiffs' termination (388a(§76)[Plf-Dec]). Further, contrary to Patra's testimony, the Third Circuit created its own records (008a(n.2)[USCA#20-2320/Opinion]) stating, "The

plaintiffs do not know exactly when or how often these comments were made ...", citing "Patra Dep. at 89"(emphasis added), although Patra (**not Plaintiffs**) was responding to "when he[Angelo] made those statements", **not** "how often" (DCR#73-1.P.24[Patra-Dep.P.89:19-21]). Therefore, ***an extremely critical question arises about how Courts should decide whether blasphemous religious insults are "severe" and/or "pervasive" and what evidence is required to corroborate Plaintiffs' allegations.***

Specifically, it is impossible for a person of one faith or background to realize or even fathom how certain insults could be "severe" to another. E.g. a person from the Nordic region may be unaware of negative connotations of the "n-word". Sometimes what is offensive to someone, may not be offensive to another. E.g. "swastika" is a Hindu religious symbol and a "holy" sign for Hindus, while the same is extremely offensive to the Jewish faith. A naive Hindu from India may not even know the "swastika" sign could be offensive to someone. Similarly, for many, idol worship is sacrilegious, while for a devout Hindu, it is an essential religious practice. Therefore, the Third Circuit's Opinion about Petitioners' perception about blasphemous insults about Hindu Deities are fundamentally flawed because it is analogous to a "swastika" to individuals with Jewish faith or the "n-word" insult to African-Americans. Because one often cannot fathom the trauma of religious insults to a person from another faith, Courts may erroneously dismiss a claim, as the Third Circuit did in Petitioners' case. Further, Courts must recognize that highly-educated supervisors in higher education (such as Angelo and Gonzalez) are extremely smart, intelligent individuals with administrative experience and when they discriminate against or harass others,

they do so in smart ways, avoiding witnesses from testifying against them or without leaving a trail of incriminating evidence against them (455a-465a(§1-10)[Plf-Dec]). The purpose of anti-discrimination laws is to prevent against illegal discrimination; however, if Courts fail to offer protection to genuine Plaintiffs by seeking direct evidence or "corroboration" at the summary judgment stage, as the Third Circuit did in Petitioners' case, protection against discrimination would be rendered futile. It is evident that currently there is ambiguity about standards and requirements, especially in the context of religious insults. Therefore, this Court must provide guidance and clarification of objective standards for "severity" or "pervasive" in the context of religious/blasphemous insults. This Court's direction about requirements of corroboration of evidence is essential because Plaintiffs may rarely have direct corroboration and should be allowed to rely on Plaintiffs' own testimony and/or declarations under oath or penalty of perjury and documentation such as emails. We *must emphasize* that during employment negotiations, while employed at BU (e.g. meetings with Deans, Provost, etc.) and in this legal proceeding, we (Plaintiffs/Petitioners) were both present at most meetings together; and hence, we could serve as a witness and advocate for the other. *We are two different individuals and just because we filed this case together, Courts must not treat us as one individual. Patra's testimony corroborated Vaz's testimony and vice versa.* Courts must not act as fact finders and take on the work of a jury to discount Plaintiffs' versions of discrimination, harassment, and religious or other insults. Since in Petitioners' case, the District Court did so and the Circuit Court approved the District Court's credibility assessment;

discounting Petitioners' testimony, declarations and official emails (although filed pursuant to FRCP 56); this Court's intervention is essential to protect all similarly-situated present and future Plaintiffs. Otherwise, laws intended for protection against discrimination would become meaningless.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Date: April 26, 2024.

Respectfully submitted,

29 Duke of Gloucester Rd.
Bloomsburg, PA 17815
Tel: (308) 293-5728
Email:
patra3@gmail.com

Harisadhan Patra
Pro Se Petitioner

Petula C. Vaz
Pro Se Petitioner