

No. 22-5595

FILED

AUG 28 2023

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

RONNIE RANDALL ROLLAND SR. PETITIONER
(Your Name)

VS.

AURORA RETIREMENT, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RONNIE RANDALL ROLLAND SR.
(Your Name)

15584 E. 12TH AVE. #102
(Address)

AURORA, COLORADO 80011
(City, State, Zip Code)

720-495-9517
(Phone Number)

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QUESTION(S) PRESENTED

QUESTION ONE:

WHETHER AN APPEALS COURT MAY CONSTITUTIONALLY IN ERROR RETAIN AUTHORITY OVER SUMMARY JUDGMENT ACTIONS THAT INCLUDES **MOOT** EXCLUDED HEARSAY CLAIM CONTENT THAT CANNOT QUALIFY AS A "**CLAIM OR CONTROVERSY**" UNDER ARTICLE III, SECTION II, OF THE UNITED STATES CONSTITUTION AND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, DUE TO LACK OF JURISDICTION AND **OBITER DICTA** REFERENCE TO MOOT HEARSAY ON THE RECORD.

QUESTION TWO:

WHETHER THE APPEALS COURT COMMITTED REVERSIBLE ERROR IN CONCLUDING APPELLANTS CLAIMS UNDER TITLE VII PARTICIPATION AND OPPOSITION CLAUSE DID NOT CONSTITUTE PROTECTED ACTIVITY FOR APPELLANTS FAILURE TO FILE A PENDING EEOC CHARGE PRIOR TO ENGAGING IN EMPLOYER'S INTERNAL INVESTIGATION, HEARING, OR PROCEEDING IN ANY MANNER UNDER THE STATUTE.

QUESTION THREE:

WHETHER THE APPEALS COURT COMMITTED REVERSIBLE ERROR BY DISMISSING APPELLANTS APPEAL BASED ON AN INCORRECT APPLICATION OF TITLE VII LAW, 42 U.S.C. SECTIONS 2000E-3 (A) AND 42 U.S.C. 2000E- 2 (A) OF THE OPPOSITION AND THE PARTICIPATION CLAUSE PROTECTING EMPLOYEE'S WHO SPEAK-OUT IN EMPLOYERS INTERNAL INVESTIGATION OF ALLEGE RETALIATORY HARASSMENT UNDER THE PARTICIPATION CLAUSE OF TITLE CIVIL RIGHTS ACT OF 1964.

QUESTION FOUR:

WHETHER THE APPEALS COURT ERRORED IN APPELLANTS CASE WAS BASED ON AN INCORRECT STANDARD OF REVIEW, AS OPPOSED TO THE CORRECT

CLEARLY ERRONOUS STANDARD OF REVIEW AND THE, BUT FOR, CAUSATION TEST, AND THE PROPOUNDER OF THE EVIDENCE STANDARD, REQUIRED TO PROVE RETALIATION CAUSE OF ACTION.

QUESTION FIVE:

WHETHER THE APPEALS COURT OVERLOOKED IN ERROR THE MATERIAL FACTUAL OR LEGAL MATTER OF EXCEPTIONAL IMPORTANCE ALLOWING OF PUNITIVE DAMAGES IN TITLE CIVIL RIGHTS ACT OF 1964, FOR MALICIOUSLY FRAUDULENT, RECKLESS INDIFFERENCE OF AGGAVATING FACTOR OF FRAUDULENT INDIFFERENCE IN A CONSTRUCUIVE DISCHARGE CLAIM.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

NONE

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AUTHORTIES INVOLED CITED

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STATUTES AND CONSTITUTIONAL

- (C) .42 U.S.C. SECTION'S 2000e- 3(a) OF TITLE VII CIVIL RIGHTS ACT OF 1964, THE OPPOSITION CLAUSE AND PARTICIPATION CLAUSE; INCLUDED IN WRIT OF CERTIORARI;
- (D) . 42 U.S.C. SECTION 2000e-2 (a) OF TITLE VII CIVIL RIGHTS ACT OF 1964, IN PETITION;
- (E). ARTICLE III, SECTION II, OF THE UNITED STATES CONSTITUTION (CLAIM AND CONTROVERSY) UNDER THE MOOT DOCTRINE STANDARD. INCLUDED IN WRIT OF CERTIORARI.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

1.

8.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 17, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JUNE 1, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATUTES AND CONSTITUTIONAL PROVISION INVOLVED

(C). 42 U.S.C. SECTION'S 2000e-3 (a) of Title VII'S civil rights act of 1964, of the Opposition and Participation Clause;

(D) 42 U.S.C. SECTION 2000e-2 (a) of Title VII civil rights act of 1964, of the Opposition and Participation Clause;

(E) ARTICLE III, SECTION II, OF THE UNITED STATES CONSTITUTION (UNDER CLAIMS AND CONTROVERSY) UNDER THE **MOOT DOCTRINE** STANDARD.).

STATEMENT OF FACTS

SUMMARY OF REVLEVANT FACTS:

On march11, 2019, appellant was hired as a floor tech at CCRV'S long-term care facility in

Aurora Colorado, at, p. 2 of defendant's motion for summary judgment in this case, dated 11-3-21;

1. On June 1, 2019, appellant was transferred to a housekeeping position, p 2 of defendants summary judgment motion dated 11-3-21;
2. Appellant's supervisors were Mr. Dennis veen (white Caucasian) and Mr. Rodney Rudolph, (black African male) ;
3. Appellant's duties were cleaning residents apartments, dusting, mopping, folding and sorting laundry, and changing bed linens;
4. Prior to august 13, 2019, appellant was not in receipt of any corrective actions Performances issues or problems with appellants supervisor's until appellant reported Supervisor intentional intimidating retaliatory harassment of august 15, 2019. See. Appellants, deposition statement, at. P. 124: 11-16 of R. ex"5", Ronnie Randall Rolland Sr. deposition dated 9-13-21, in appendix (d) to this petition.
5. On august 13, 2019, Mr. Rudolph for no substantiated reasonable reason aggressively Approached appellant and shouted at the top of his voice, in a threatening harassing m Manner of words " **I'm going to get your ass back and you're going to be crying**". With Mr. Rudolph's concise see. Rolland's deposition statement page, 131: 16-22, of R.ex."14", dated 9-13-21, in Appendix (d) to this petition.
6. On august 15, 2019, appellant for the first time (orally)"**voiced**" his opposition by Speaking out in employers internal investigation under the opposition and participation clause of title VII Related to unlawful employment adverse unwelcome harassment and retaliatory Conduct of Supervisor, without the **filing of an pending EEOC charge**. See. Appellants deposition statement, at, R.ex."2" and "3". At, P. 114:

16-25, and at, R. ex, p. 115: 1-4, of R.ex. "2' and "3". of Rolland's deposition dated 9-13-21, in Appendix (D), to this petition.

7. Appellee's, response to appellants verbal protect activity complaint is in appellee's document, CCRV-000683, dated august 15, 2019, at, top paragraph, 1, lines, 1 and 2, Further on paragraph, 4, lines, 1-3, at appendix (L) to this petition.
8. After august 15, 2019, of appellant engaging in oral protected activity of reporting supervisor unlawful conduct. **But for**, Appellee's retaliatory harassing unwelcome conduct appellants **suffered aggravated** related adverse employment actions of medical damages of "anxiety/depression" directly related to issues of supervisor work stress issues, intimidating unlawful conduct requiring appellant to seek medical treatment at hospital and put on pharmaceutical drugs for the condition. See. Medical reports of appellants dated 9-3-19, R.ex "14", and medical report R.ex. "13", dated, 8-26-19, in appendix (f), to this petition.
9. On October 1, 2019, after appellant participated **orally** in employer's internal Investigation under title VII of the civil rights act of 1964, on august 15, 2019. Appellee's Subjected appellant to various disputed corrective action charges that have Since been **mooted** by the appeals court without any explanation for lack of jurisdiction.
10. The appeals court **Mooting** of Rolland's motion to exclude hearsay contents without; Granting appellant is motion to exclude based on **inadmissible hearsay**. Effectively, is **The same as**, dismissing appellee's summary judgment motion due to appellee's Failure To show that there is no genuine disputed as to any material facts? F.R.C.P. 56, et al. In that, the same is reversal error under the "**capable of repetition yet evading Review**" doctrine, **because the dispute did not become moot before the act was Commenced.**
11. On October 2, 2019, on Rolland's day off work. Appellee's with a malicious conscious targeted objective to hinder Rolland form any future job promotions and job raises with deliberate indifference. Tampered with appellant's employment records by **ALTERING AND FORGERS APPELLANTS EMPLOYMENT DOCUMENTS. SEE. APPENDIX (E), ATTACHED.**

Van A. Smith

REASONS FOR GRANTING THE PETITION

1. This petition requesting a writ of certiorari to the United States Supreme Court Presents Issues of Conflicting, importance beyond the particular facts and parties involved, affecting Pure question of law and statue, established by United States Congress and interpreted by the United States Supreme Court. Not to be confused with Issue of second guessing the trial and Appeals Courts Decisions.

2. In Appellants judgment, one or more of the following situation exist;

(a) A material factual Matter was overlooked; in favor of summary judgment for Rolland F.R.C.P. 56, et al;

(b) The Appeals court judgment was based on incorrect Application of Title VII law impacted The results and outcome of the summary judgement proceeding; pending EEOC charge not Required in employers internal investigation under title VII opposition and participation clause Of civil rights act of 1964.

(c) The Appeals Court judgment was based on **incorrect de novo** standard of Review, as Opposed to the correct '**Clearly Erroneous** Standard of Review and the, **but for, causation test**, On the other hand, the **preponderance** of the evidence standard alleged as applicable to the Circumstances of appellant's case, prohibiting appellee from escaping liability, by citing to some Other factors;

(d) The appeals court Incorrect Judgment of opinion in dismissing appellants appeal was in Conflict with a decision of The United States Supreme Court, the tenth circuit appeals court and Another lower appeals Court on the same issues and duties, in conflict was not addressed;

(e) The case involve one or more questions of exceptional importance concerning, whether an Appeals court may constitutionally in error, retain jurisdiction over summary judgment actions That includes **mooted claims** that are **inadmissible** hearsay content that, cannot qualify As a "**claims or controversy**" under Article III, and section II, of the United States Constitution Due to lack of Jurisdiction and persuasive **obiter, dicta reference** to **moot** hearsay contents on The record. The Court does not Intent to consider, while awaiting appellant review without Court expressed Explanation to appellant by court that, the claim doesn't **qualify as a "claim or Controversy"** Under Article III, section II, Of the United States Constitution or for some other

Reasons, due to lack of Jurisdiction thus, an abuse of discretion;

(Same), or any expressed explanation putting appellant of notice by defendant or court's,

Voluntary cessation of claims matters of change of law, amendment of statutes, settlement of

The case, notice of leave to amend pleadings. Afforded appellants an opportunity to Challenge

The new change thereof, **Constituting mootness before a court reaches its Decision on the**

Claim, on the merits, constituting an abuse of Discretion;

(f). the case involve one or more questions of exceptional importance concerning, the

Assertion Of punitive damages under Title VII's civil rights act of 1964 or 42 U.S.C. section 1981,

For Maliciously reckless indifference aggravating circumstances of fraudulently alteration of

Employments documents, a material factual matter overlooked by appeals court;

3. The principal significance benefit impute of the United States Supreme Court in Resolving
The Questions in this petition is to, secure and maintain uniformity of TITLE VII laws among the
Lower Appeals Courts to maintain uniformity on the same issues in furthering the protection of
People, minorities and Women who the Statue seeks to Protect;

4. To prohibited intentional Retaliatory Discriminatory Harassment and Subtle Discrimination
(bias-driven discriminatory Behavior).the court might use its supervisory Power because a court
Of Appeals sanctioned such a Departure by a lower court that can Cause vastly different
Outcomes in similar cases on the same Issues. Appellant is a Black African American and A
71year old protected Class-Member under Title VII of the civil Rights Act of 1964, as amended
And a Paralegal degree. At Appendix (H) to this petition.

5. The Specific inquiry to this honorable court, concerns the Tenth Circuits Appeals Court in
Dismissing Rolland-Appellant Case based on incorrect Application of title VII controlling
Employment law, do to recently court expanding the scope of retaliation against employees
Who speak in employer's internal investigation hearing in any manner in an Proceeding **prior to**
Filing an EEOC charge under title VII's, 42 U.S.C. section 2000e-3 (a)-Participation Clause and 42
U.S.C. section 2000e-3(a) of the opposition Clause;

6. In conflict with this U. S. Supreme Courts recent decision that federal law Broadly Protects
Employees who "**oppose**" discriminatory conduct. In **Crawford vs. Metropolitan Government**
Of Nashville and Davidson County, Tennessee, 555 U.S. 271,129 S.CT. 846 (2009).

7. The tenth circuits decision in Rolland vs. Aurora Retirement, et al, supra. Is in further Conflict With the correct applicable Standard of review required in resolving a title VII Discriminatory Retaliatory harassment, hostile work environment cause of Action and the Malicious aggravation factors enhancing punitive damages under title VII.
8. The Appeals court's decision was based upon an incorrect, " **de novo standard of review**." While the " **preponderance of evidence standard**" based on the, **but for, causation test** and **Clearly erroneous standard**" is the proper standard in this case to Title VII retaliation claims, The same is in Conflict with the Case of, University of Texas Center vs. Southwestern Medical Center vs. Nasser, 133 S. Ct. 2517) (to prove retaliation);
9. The court of appeals decision is far departed from the accepted and usual course of judicial Proceedings. The court might use its supervisory power because a court of appeals sanctioned Such a departure by a lower court that can cause vastly different out- comes in similar cases, Inconsistent with decisions of this United States Supreme Court and other Court of appeals.
10. The order and judgment of, Hartz, Kelly, and Bacharach, Circuit judges – of the United States Court of Appeals for the tenth circuit, dated, April 12, 2023, in case# 22-1216- Document: 010011842019, with Appellants petition for panel Rehearing En Banc, denied on June 1, 2023, **is in error as such**. Attached as appendix (A) to this petition;
11. The erroneous finding and Recommendation of the United States Magistrate Judge, dated June 1, 2022, attached as appendix (B) to the petition.
12. The erroneously denial of appellants petition for En banc rehearing by the United States Tenth circuit court of appeals, on June 1, 2023. Attached as Appendix (C) to this petition.
13. The court incorrectly concluded in favor of summary judgment for appellee is that Rolland, failed to establish a prima facie case under both the " **participation clause**" and " **Opposition clause**" of Title VII because, (1) Appellant **had not filed a pending EEOC charge Prior To participating and speaking-out in an employer's internal investigation**, hearing, Proceedings In any manner under Title VII, 42 U.S.C. section 2000-e (3) (a), **which is not a Mandatory Requirement**, in light of the recent expanding of the scope of Title VII retaliation. Participation Clause and opposition clause, courts conclusion is at, p.6, of the court's order Dated April 12, 2023 and petition for rehearing En banc denied on June 1, 2023; **IN APPENDIX C C)**,

14. Same was In conflict with the case of, Crawford vs. Metropolitan Government of Nashville And Davidson County, Tennessee, 555 U.S. 271, 129 S. Ct. 846 (2009) the "Opposition' and "Participation Clause of 42 U.S.C. section 2000e-(3) (a) or 42 U.S.C. section 2000e-2(a) and, (2) That Appellants (oral) and written Complaint's did not constitute Protected Activity because Appellant did not establish he suffered an adverse employment action, that he engaged in a Protected activity; and there was a causal connection between the protected activity and the Adverse action. (Located on, p.6 of the court's order dated April, 12th, 2023);

15. The Tenth Circuit Courts opinion is in conflict with another lower court of appeals on the Same issues, in the **pervasive law** case of, Kutcher vs. Rosa & Sullivan Appliance Appliance Ctr, Inc., 957 f.2d 59, 651 (2d 1992), holding consistent with, **Crawford**, supra:

"Opposition clause encompassed an individual's Complaint to supervisors
Regardless of whether he, or she also files and EEOC charge and that
Voicing, opposition to and employer about suspected unlawful activity con-
stitute protected opposition, whether or not he or she has filed a formal
Or informal complaint. Cited in, Crawford, supra.

16. Further, under title VII's retaliation provision does not depended on who initiated the Interview of unlawful conduct. The statutory "**Touchstone is Opposition, not Initiation**" (**Crawford**), supra; in conflict with the case of, ATD Corp vs. Lydail, Inc., supra. (Holding: "in general terms, the test of whether a substantial right of a party has been affected Is whether the error in question affected the outcome of the case");

17. The Tenth Circuit appeals court opinion erred in dismissing Rolland's appeal was in Conflict With another lower Ninth Circuit Court of appeals on the same issues, in the **pervasive law case** Of, Passantino vs. Johnson and Johnson, 212 f. 3d 493 (9th cir.2000), holding:

"Informal as well as formal complaints or demands are protected activity under Title VII".
Passantino, supra.

18. Further the Tenth Circuit appeals court incorrect opinion in dismissing appellants appeal on Page, 6 of the order and judgment dated April 12, 2023 that, Rolland's (august 15, 2019) ORAL Complaint TO SUPERVISOR, was not, protected activity under Title VII in response to, Unlawful Retaliation and Harassment Claims, was in Conflict with the United States Supreme Courts

Decision in the case of, Kasten vs. Saint-Gobain Performance Plastics Corp. 564 U.S. 1 (2011) (Holding, Oral complaints as protected activity in response to Retaliation and harassment Claims). Kasten, supra. The April 12th, 2023, order and judgment is at , Appendix (A) .

19. The Tenth Circuit Court of Appeals incorrect opinion in dismissing appellants appeal was in Conflict with United States Supreme Court case of, Crawford, supra. Holding:

“Retaliation comes within the Ambit of both Clauses of Title VII’s retaliation and
There is no reason that Congress would have countenanced the inexplicable gap in
Title VII’s enforcement scheme created by the court of appeals”.

20. The Tenth Circuit Court of Appeals incorrect opinion in dismissing appellants appeal was in Conflict error and bases upon erroneous, RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE, dated 10-4-22, at, Pages, 16-17: paragraphs, 3, lines, 1-2; and page, 17: paragraph, 1, Line, 1 top of page, at, Appendix (B). That states the Following:

“In the October 8 letter, Plaintiff for the time asserted that Mr. Rudolph had
Discriminated against Plaintiff. “That letter thus constitutes protected activity
But Plaintiff has failed to allege any adverse employment action occurring after
That date”.

21. As previously demonstrated in the cases of Crawford and Armstrong, supra, herein. Appellant was not required to alleged any other adverse actions after October 8, 2019, while Appellant had engaged in (Oral protected activity Participation and Opposition) activity on August 15th, 2019, during employer’s internal investigation in reporting what appellant Objectively and subjectively reasonable believed in good faith to be supervisor targeted Conscience objective of unlawful retaliatory harassing conduct creating an intimidating hostile Work environment for Rolland. See. Deposition statement of appellant dated 9-13-22, R.ex. “ 16”, at, page, 120:16-25; and, page, 121: 1-9; in appendix (D), to this petition.

22. The appeals court incorrectly dismissing appellants appeal was, is in conflict with another Lower fourth circuit court of appeals on the same issues in the pervasive law case of case of, Boyer-liberto vs. Fontainebleau corp., 786 f.3d 264, 282 (4th cir.2015) (holding, that “an Employee is protected from retaliation when she opposes a hostile work environment that, All Though not fully formed, is in progress, see. Pervasive law case of, Wasek vs. arrow energy

Serves. Inc., 682 f. 3d. 463, 470(6th Cir. 2012);

23. The title Opposition clause does not use the term "active "and "consistent"" nowhere Appears In the text of the statute. As title VII and no other circuit has adopted such Circumscribed Interpretation of title VII, as demanding appellant to take further actions after October 8, 2019, in addition to expressed opposition on august 15, 2019. See. Crawford, Supra;

24. See, Appellants deposition statements of, date, September 13, 2021-RONNIE RANDALL ROLLAND, Sr. located in appendix (**D**), Clarifies number# 12 above as follows: R. ex "16" , Page, 120: Numbers, 16-25; R. ex. page, 121: number's, 1-25; R.ex."5": page, 122: numbers, 15-25; R.ex. Page, 124: Numbers, 11-25; R. ex. page, 122: Numbers, 15-25; R.ex. Page, 123: Numbers, 10-25; R. ex. page, 131: Number's, 15-25: R. ex. "4", page, 184: Numbers, 6-25: R.ex. Page, 183: numbers, 20-25: R.ex."15", Page, 138: number's, 14-25: R.ex. Page, 139: number's, 1-20: page, 141: number's, 1-4: R ex's."2" and "3", page, 114: numbers, 17-25: R.ex. Page, 115: Numbers, 1-4: in appendix (**D**) to this petition.

25. The Tenth Circuit Court of Appeals incorrect decision in dismissing appellants appeal was in Conflict with another lower appeals court on the same issues in, the **pervasive law case**, of Baldwin vs. blue cross/ blue Shield, 480 f. 3d at 1287, 1307 (11th Cir. 2007) (holding, "conduct Need not have been **Persistent or severe**". See also. In conflict with, Vance vs. Ball, state University, 133 S. Ct. 2434

26. The tenth circuit incorrect decision in dismissing appellants appeals court was further in Conflict, with another lower court of appeals, On the Same issues herein, under **pervasive law**. In the case of, Snell, 782 f. 2d at 1104, (holding," the employer new of harassment but did Nothing about it.";

27. Appellee's Response to appellants Oral protected activity complaint on august 15, 2019, is Located in the above deposition statements of appellants cited in number 24; also Was in Conflict With another lower appeals court on the same issues, under the **cat's paw Theory of Liability** in Retaliation cases under title VII of the civil rights act 1964, in the **Pervasive Law case** of, Staub vs. Proctor Hospital, 131 S. Ct. 1186 (2011) ("holding: "an employer is Vicarious Liable for creating a hostile Work environment Created By supervisor";

28. The tenth circuit appeals court in dismissing appellants appeal favoring summary judgement

For defendants, was in conflict with its own mandate decision in the case of, Baty vs. Willamette Indus., Inc., 172 f.3d 1232(10th cir. 1999) (holding, " finding lack of disciplinary action Against a harassing employee relevant to an analysis of the employer's response, after Repeated request to director asking supervisor to stop the harassment of unwelcome conduct". See. Also. Deposition statements responsive of employer at internal investigation meeting on August 15, 2019. cited at, number 24 above. See. Willamette, Supra.

29. The appeals court overlooked in error, a "material factual matter" affecting the outcome of Appellants appeal in incorrectly concluding appellant did not establish a prima facie case of Retaliation under the protected opposition and participation clause of, 42 U.S.C. section 2000e-3(a) and 2000e-2(a) of the title VII civil rights act of 1964, as amended, and its case law Prohibiting retaliatory harassment discrimination based on a, **but for**, causation test of Standard alleged.

30. The appeals court's opinion in this case, is further in conflict with the 10th circuit's own Retaliation case in, the case Of, Hennagier vs. Utah Department of Corrections, 587 f.3d 1255, 1267, (holding:

"Court finding that" employers awareness of plaintiffs charge, that Supervisor was specifically named as the transgressor in the Charge and that supervisor lowered the plaintiffs' performance Evaluation the day after." (See. Corrective action form CCRV-000141 Exhibit "I", of appellees is dated 10-1-19, after 8-15-19, evidence of Hostile Environment establishing employment adverse action). In Appendix (I) to this petition.

31. The court of appeals decision in error, is also in conflict with **pervasive law** with another Lower 1st cir. Appeals Court on the same issue in the case of, Quiles-Quiles vs. Henderson, 493 F. 3d 1, 8-9 (1st 2006) (holding;

"Appellant had to seek hospital and medication treatment for anxiety and depression related to Supervisors unlawful adverse job stress" but for, the temporal proximity between the behavior In question and Appellants **Oral protected activity complaint on, 8-15-19**. It is traced to

Appellees **adverse Action** against appellant in this case; see. Medical reports, R. Exhibit's, "13", And "14". Attached To petition as Appendix (F); same was in conflict with, Noviello, 398 f. 3d at 93-94 (Holding; "Evidence of increased hostility after the filing of a Title VII claim was sufficient Evidence of Retaliation to warrant jury trial").

32. The appeals court decision in dismissing appellants request for punitive damages under title VII's civil rights act of 1964, is of exceptional importance in this case, at, p. 4, of Appellee's Corrected answer brief in case number 22-1216, dated 10-4-22, is in conflict with the United States Supreme Court case of, kolstad vs. am. Dental Assn's, 527 U.S. 527, 536 (1999)(holding:

'Title VII punitive damages allowed only when plaintiff makes two Showing. The plaintiff must show that the employer' engaged in Unlawful intentional discrimination. Second, the plaintiff must Show that the employer engaged in discriminatory practice "With malice or with reckless indifference to the federal protected Rights of an aggrieved individual".

33. Based upon allegations of aggravating factors for fraudulent alteration and forgery Including supporting **persuasive legal case law authority** in conflict with another lower appeals Court in the Case of, Ward vs. Autozonners, L.L.C. no.18 -2100 (4th Cir. 2020), Submitted to Appellee's .and in conflict with a district court Opinion in, Servillo vs. Sola Medi Spa, L.L.C., NO. 220-CV-00130-JLBNPM, 2021 WL 406177, AT*5 (M.D. FLA. FEB. 5, 2021- PERSUASIVE LAW), (Allowing Punitive Damages). The same was in conflict with another lower court decision in , Clark vs. Marsh, 665 f.2d 1168, 1174 (D.C Cir. 1981) (holding: Constructive discharge must be Justified by the existence of "aggravating factors".

34. The appeals court's decision in dismissing appellants claim motion to exclude appellees Disputed hearsay content **as Moot**, on page 8, of the court's order and judgment, dated April 12, 2023, as not falling within any hearsay exception rule under the F.R.E. et al, **constitutes a Genuine disputed material issue of fact** not allowing summary judgment in appellee's favor. Was in error by the appeals court and in conflict with fed. R. civ. P. 56, et al. order in, Appendix (A) to this petition.

35. The adverse action of appellee's in tampering with appellants' employment documents on

Appellants' day off work, by altering and forging Rolland's signature on employment Documents without Rolland's consent or knowledge. on 10-2-19. Was done with a conscience Adverse objective in targeting retaliation and Intentional harassment against appellant in order To **hinder Rolland** from any future Job promotions and raises was, in conflict with cited above Case law under # 31, herein, and supported by appellants sworn affidavit of Wendy Carlson, Certified document Examiner and handwriting expert attached as exhibit document "10" with Attached exhibits, R. ODE EX. "Q1"; "R. ODE EX." K1"; R. ODE EX. "Q2". In appendix (**E**) to this Petition.

36. Also, see. Appellants CCRV time card, Ex. "33", showing appellants was off work on **10-2-19**, In appendix (**G**) of this petition.

37. Further the appeals courts statement on, p.4 of its order of recommendation dated 10-4-22, that "the court is unaware of any legal authorities supporting punitive damages, for Aggravation factors under title VII", is without merit and in conflict with their own case law and **Pervasive law** cases of, ward, Supra, Servillo, supra; and Clark, supra.

38. The appeals Court's dismissal of appellants' motion to exclude hearsay content as **moot**, While awaiting appeal review without addressing the question of mootness before reaching the Merits of the parties claim on, p. 8 of the court's order dated April 12th, 2023, was a Constitutional violation, and in conflict with the case of, United States vs. Munsingwear, Inc., 340 U.S. 26, 39 (1950) (holding:

"The established practice of the court in dealing with civil Cases from a court in federal system when which has become **moot**' on Appeal or before the court has issued it's "**decision on the merits is to Reverse or vacate the judgment below to dismiss disposing of a moot Claim** in this manner there by "clears the path for future relitigation Of the issues between the parties and eliminates a judgment, review Of which was prevented though happenstance. Put another way The Munsingwear procedure for disposing of a cases, en sures that the Appellant courts have the last word on the answer to legal question".

39. The court of appeals ruling in favor of summary judgment for appellee's was in conflict with This Supreme Court mandate in the case of, Aza vs. Garza, 138 S.Ct. 1790, 1791-93 (2018) (Dismissing case as Moot without applying, analyzing, or mentioning the "capable of repetition Yet evading review' doctrine, was error. (Certiorari granted, vacated, and remanded to Appeals Court).

40. The appeals court in dismissing appellant's claims while on appeal was in conflict with the Case of, Rennes vs. Geary, 501 U.S. 312, 320 (1991) (holding: "denial of appellant's motion to Exclude hearsay content as moot, is reversal error under the, "capable of repetition yet Evading review "doctrine, because the dispute did not become moot before the action was Commence."

41. The Tenth Circuit Court of appeals erred in dismissing appellants appeal and the same was In conflict with, The Fed. R. CIV. P. 56 (a) Standard of review on summary judgment which States" Summary judgment is appropriate only if "The movant is entitled to judgment as a Matter of law". Citing, Celotex Corp. vs. Catrett, 477 U.S. 371, 322 (1986), further the appeals Courts decision was in conflict with, the case of, Tolan vs. Cotton, 572 U.S. 650, 656 (2014) (Quoting Anderson vs. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) , states " (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"

42. Appellants, reasonableness objective and subjective reasonable good faith belief that Appellees were engaging in unlawful retaliatory harassment against Mr. Rolland. Was based Upon appellant having a paralegal degree in employment law for 11 years after retirement and The case of. Reznik vs. Incontact, Inc., United States court of appeals, tenth circuit Dec 1, 2020- 18 f. 4th 1257 (10th Cir. 2021). See. Paralegal degree, in Appendix (H) to this petition.

43. The appeals courts erred decision in mooting appellants claim in absence of any Explanations before reaching a decision on the merits. Was in conflict with another lower court Of appeals on the same issue in the case of, Employees of Montgomery county Sheriff's Dept. VS. Marshall, 893, So. 2d 326, 330 (Ala. 2001), pervasive law, Citing-Hatch vs. Health-Mor, Inc., 686 So.2d 1132, 1132, (Ala.1996), holding:

"It was error for the trial court to enter a summary judgment as to all of (plaintiffs) claims, Because one claim.....was not before the trial court on summary judgment, and Henson vs. Mobile Infirmary Ass's, 646 So. 2d 559, 562 (Ala. 1994); (**pervasive law**);

44. The court of appeals erroneous decision in granting summary judgment to appellees on a **Moot disputed claim** without justification violating and in **conflict with the F.R.C.P. 56(C)**, Et al, and Article III, of the United States Constitution, Holding the following:

"Summary judgment is appropriate only when "there is no genuine issue As to any material fact and...the moving party is entitled to judgment as a Matter of law". (The appeals court should reverse and remand this cause of Action).

45. The court of appeals repeated "**obiter dictum**" reference to mooted hearsay out-of-court Disputed claims of unidentified Witnesses statements was in conflict with the "**claim**" or "**Controversy**" Under Article III, of the United States Constitution as follows and in conflict with F.R.C.P. 56(c), et al. The court, at, p. 3, of the Courts order dated 10-4-22 of the Recommendation of The magistrate judge of without justification offered the following on the Record without Intentions to consider the remarks. The court, quote:

"On review of the briefing and recommendation, however, it appears that while The disputed facts may have been referenced generally in the recommendations Recitation of the statement of facts.....those facts were not relied on....."

46. The court appeals repeated "**obiter dictum**" reference offer of evidence on the record of **Mooted**, disputed issues, the court **was not** considering to be offered in opposition to summary Judgment, was in error and in conflict with another lower appeals court on the same issues, in The case of, Zuckerman vs. city of New York, 49 N.Y.2d 557, 404 N.E.2d 718 (1980) (**persuasive Case law**)-(Holding:

"It is common practice, based on that rule, to disregard inadmissible evidence And most often to not even offer it in opposition to a summary judgment motion. **After all, why should you offer evidence that will not be considered?** There is only One problem with this idea. **It is wrong**".

47. The appeals court in rejecting appellants appeal was in conflict with a supreme court

Mandate in the case of, City of Mesquite, 455 U.S. AT 289) (Holding:

"A party should not be able to evade judicial review, or to

Defeat a judgment, by temporally altering questionable behavior"

48. Appellants retaliation, harassment, hostile environment and punitive damages claims, **are Alive** by reason appellant has a continuing interest in Title VII statute as a protected class – Member that has not been affected by any disputed **mootness** of, the relevant Supreme Court Controlling case law and Congress Interpretation of Title VII statute. Which purpose of the Statute is to protect class-members and compensation for injury. The appeals courts in Dismissing appellant's case was in Conflict with the **persuasive case of, Board of Pardons vs. Allen**, 482 U.S. 369, 370 n. 1 (1987) (**collateral injury is exception to mootness**) "Illustrates the Use of a damage claim to avoid **Mootness**."

49. Appellant suffered the following adverse employment actions of retaliatory intimidating Harassment and Hostile work environment **but for**, appellant engaging in protected activity Under the Opposition and participation clause of title VII civil rights act of 1964, as amended, For Reporting what appellant objectively and subjectively reasonable believed in good faith to Be unlawful supervisor conduct.

50. The Tenth Circuit Court of Appeals incorrect decision in dismissing Rolland's appeal was in Conflict with its **own horizontal star decisive mandate** of the time prior that may establish a Casual connection between protected activity and adverse employment actions. On **august 15, 2019**. Appellant engaged in protected opposition participation activity in **employer's internal Investigation** of speaking out against his supervisors' unlawful conduct under title VII civil rights Act of 1964.

51. On September 24, 2019, 40 days after the 15th of august. Appellants supervisor **but for**, Appellee's engaging in protected activity opposition participation in employers internal Investigation in speaking out against unlawful retaliatory harassing unwelcomed unlawful Conduct Against appellant on 8-15-19, for engaging in **Oral protective activity of** reporting his Supervisor Mr. Rudolph. Appellant suffered adverse employment action. Rolland was writing up For unexpectedly pretextual use of offense behavior of using racial slurs towards an unnamed Person not documented in the corrective form. The same has become **mooted** by the appeals

Court as a disputed fact. In the courts recommendation, of June 1, 2022, at, p. 19. In appendix (C), to this petition.

52. On October 1, 2019, 7 days after September 24, 2019. **But for**, appellants engaging in Protected activity alleged in #51, above. Appellant was perpetual charged with various disputed Pretextual hearsay CCRV company violations that were "**mooted**" by the Appeals court, Eliminating defendant's pretextual defense to the unsubstantiated false charges. (Suggesting Reversal and Remand), **for Lack of evidence**. See. R.ex."17", in appendix (I) to this petition.

53. **But for**, appellants' actions of engaging in protected opposition participation activity as Alleged herein. On October 2, 2019, appellee's, targeted appellant with reckless conscience Malicious indifference Objective to retaliate and harass appellants. Tampered with and forged Appellants 'Employment Documents as aggravating circumstances for intended purpose of Altering the same to hinder Rolland chances of future employment promotions and raises. Not Good employment record. The same was done on appellant day off work on, **10-2-19**. See. Correction action form dated 10-2-19, Rolland's CCRV-time card dated 10-2-19, ex."33" and Sworn affidavit of Wendy Carlson, certified forensic document examiner and handwriting Expert. With exhibit document (10), and ODE exhibit "Q1", ODE exhibit "Q2", "ODE exhibit "K1". In appendix (E) to this petition.

54. On October 7, 2019, 5 days after October 2, 2019. Without my knowledge or consent. Defendants allegedly completed a hearsay alleging poor work performance against appellant The document was not signed are dated by appellant. See. Affidavit of Wendy Carlson supra, in Appendix (E) to this petition.

55. As illustrated, there is less than a one and one-half month period between the protected Activity and the adverse employment actions against appellant. The appeals Court's decision Was in conflict with its own **horizontal stare decisi decision** establishing causation in the case Of, Anderson vs. Coors Brewing co., United States Tenth Circuit Court of Appeals 1999)(Holding):

"We have held that a one and one-half month period between protected Activity and adverse action may, by itself, establish causation"

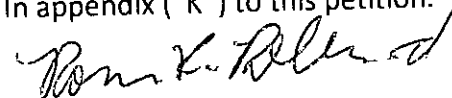
56. As a direct and proximate result of all the alleged unlawful conduct of the appellee's

Alleged, and, appellants engaging in protected opposition participation activity under title VII Of The Civil rights act of 1964 and 42 U.S.C. 1981.

57. The appeals court decision in dismissing Rolland's appeal that appellant **was not Constructively discharged** when he submitted his resignation letter to employer on October 27, 2019, on page, 17 of the United States Magistrate Recommendation judge report, dated June 1, 2020 was in conflict with a Supreme case of, Green vs. Brennan, 575 U.S. 983 (2016) (in that Case of Green, supra, it hold in the Supreme Court's decision in Green vs. Brennan, "A Claim that an employer constructively discharged an employee, "is no different from that an Employer actually discharged an employee. "And that, "a constructive-discharge claim accrues And- the limitations period begins **running only on the date employee resigned, and not Before, on the date of the discrimination**". See. Appellee's document document (J), CCRV-000707, attached to this petition.

58. The Tenth Circuit appeals court decision in dismissing appellant's appeals, was in conflict With the Supreme Court's Decision in the Case of, Burlington industries, Inc, vs .Ellerth, 524 U.S.742, 761 (1998). Stating" a tangible employment action constitutes a significant change in Employment status such as firing, failing to promote, or decision causing a significant change in Benefits". Accord Vance vs. Ball STATE UNIV. , 133 S.CT. 2434, 2443 (2013). (Appellant, lost job Income, benefits, overtime pay, potential job promotion's pay raises and medical sick-time Pay, as a proximate result of appellants designing a Constructive discharge for Appellant.

59. Appellants Supervisor's, Mr. VEEN and Mr. Rudolph. Created an hostile work environment For appellant who was under supervisor Official Authority and **but for**, appellee's intimidating Harassment and Retaliation conduct in the course and scope of employment. As part of the Conduct leading to the Constructive Discharge of Rolland as demonstrated herein. The same is In Conflict with, Suders, supra. and, Pennsylvania State Police vs. Suders, 542 U.S. 129, 131(2004). See, Appellee's response to Rolland's interrogatory number 18 and 4 ,dated 8-27-21 In appendix (K) to this petition.



Dated, 8-26-23

FOR THESE REASONS THE HONORABLE UNITED STATES SUPREME COURT SHOULD REVERSE AND REMAND THIS CASE BACK TO THE UNITED STATES TENTH CIRCUIT APPEALS COURT IN

THE INTEREST OF JUSTICE. SAY YEA NOT.

R

CONCLUSION

The petition for a writ of certiorari should be granted. *IN THE INTEREST OF JUSTICE
AND FAIRNESS.*

Respectfully submitted,

Comm. R. Rollins DL

Date: 8-20-53