

No. \_\_\_\_\_

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IN THE  
Supreme Court of the United States

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Mary Louise Smith and Tiffany E. Smith,  
*Petitioners*

v.

Asa Hutchinson, *et al.*  
*Respondents*

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On Petition for a Writ of Certiorari to the  
United States Supreme Court

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**PETITION FOR A WRIT OF CERTIORARI**

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Eighth Circuit Court of Appeals

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## **QUESTIONS PRESENTED**

1. Did a conspiracy exist among the appointed State employees, the Osceola School District, the Osceola Police Department, and Families, Inc. to deny Petitioners Mary Louise Smith and Tiffany E. Smith due process and equal protection guaranteed by the 14<sup>th</sup> Amendment to the United States Constitution but for the reason Petitioners were black?

2. Were Petitioners, Mary L. Smith and Tiffany E. Smith, denied due process and equal protection guaranteed by the 14<sup>th</sup> Amendment to the United States Constitution under the facts, when State officials, school personnel, and police conspired to falsely charge Petitioners with two felonies and remove their six (6) children from their home, alleging child abuse?

3. Did the lower courts fail to consider direct evidence of a discriminatory animus of Respondents to justify the finding of official and qualified immunity?

## LIST OF PARTIES

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

[X] 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:

MARY LOUISE SMITH and TIFFANY E. SMITH,

*Petitioners*

VS.

ASA HUTCHINSON, in his official capacity as Governor of the State of Arkansas;  
ARKANSAS DEPARTMENT OF HUMAN SERVICES;  
CINDY GILLESPIE, in her official capacity as Director of the Arkansas Department of Human Services;  
WILLIAM J. BRYANT, in his official capacity as Director of the Arkansas State Police; JEFFREY DREW, Individually and in his official capacity as the Commander of the Crimes Against Children Division (CACD) of the Arkansas State Police;  
KATHERINE CHALPECKA, Individually and in her official capacity as Investigator of the Crimes Against Children Division (CACD) of the Arkansas State Police;  
ASHLEY HODGES, Individually as school nurse at Carroll Smith Elementary School; DEE WALLACE, Individually as Assistant Principal at Carroll Smith Elementary School; and TIFFANY SMITHEY, Individually as Principal at Carroll Smith Elementary School;  
JOHN DOES, Individually and in their official capacities as former Board members of the Osceola School District; MICHAEL COX, former Superintendent of Osceola School District; JOHN DOES, Individually and in their official capacities as school Board members of the Osceola School District; ALFRED HOGAN, Individually as Superintendent of the Osceola School District; LT. TERRY HODGES, Individually and in his official capacity as an Investigator for the Osceola Police Department; CITY OF OSCEOLA, ARKANSAS;  
PTL. DUNCAN, Individually and in his official capacity as a Patrolman for the Osceola Police Department;  
SGT. GONZALEZ, Individually and in his official capacity as a Sergeant for the Osceola Police Department; SANDRA LANDRY, Individually and as Principal of North Elementary School;  
PAMELA SMITH, faculty member of North Elementary School;  
SYLVIA WEAR, Individually and in her official capacity as Supervisor of DHS; and FAMILIES, INC.,

*Respondents*

## **RELATED CASES**

Petitioners, Mary Louise Smith and Tiffany E. Smith, Plaintiffs in the First Amended Complaint filed in the United States District Court, based almost on the same facts with one exception which is explained in the Statement of the Case.

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

**PETITION FOR WRIT OF CERTIORARI**

Petitioners respectfully pray 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**: NA

**JURISDICTION**

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 1, 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: March 28, 2023.
- ☐ 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**: NA

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1<sup>st</sup> and 14<sup>th</sup> Amendments to the United States Constitution  
Fed. R. Civ. P. 56  
28 U.S.C. § 1343  
42 U.S.C. § 1983  
29 U.S.C. § 215  
42 U.S.C. § 1985, Conspiracy to Interfere with Civil Rights  
42 U.S.C. § 1981

## **STATEMENT OF THE CASE**

### **I. SUMMARY**

#### **A. Specific Acts.**

##### **1. Article 6, Arkansas Constitution.**

The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "the governor of the State of Arkansas."

Respondent Asa Hutchinson is responsible for the appointment of less than qualified department heads. Katherine Chlapecka, Investigator for the Crimes Against Children Division (CACD) of the Arkansas State Police had a lack of good faith and objectivity. Despite being aware of previous unfounded complaints by Dee Wallace and Ashley Hodges, and knowledge that D.W. was a danger to himself and others, failed to competently investigate new complaints. Although aware of previously unfounded complaints by Respondents Dee Wallace and Ashley Hodges, Katherine Chlapecka would corroborate Respondent Detective Terry Hodges' false allegations.

Dee Wallace and Ashley Hodges maliciously coached and educated D.W. to complain that Mary Smith disciplined him with a usb cord.

Respondent Detective Terry Hodges' coercion and lack of good faith interrogation of Mary Smith at the request of his wife, nurse Ashley Hodges, was conducted with malice, clearly unreasonable under clearly established law, and a violation of due process and equal protection. Respondent Detective Terry Hodges is black. (Editor's note). Because Respondent Katherine Chlapecka, Arkansas State Police, Crimes Against Children Division investigator, works closely with the Osceola Police Department, she is housed at the Osceola Police Department.

An unspoken conspiracy of prejudice toward blacks by the State, Osceola School District, and Osceola Police Department, a holdover from Jim Crow and reconstruction, denied Petitioners due process and equal protection guaranteed by the 14<sup>th</sup> Amendment to the United States Constitution. The lower court erred as a matter of law, dismissing State, School, and Police Department Respondents, based on official and/or qualified immunity, pursuant to *Wealot v.*

*Brooks*, 865 F.3d 1119 (8<sup>th</sup> Cir. 2017), *Reeves v. Sanderson Plumbing*, 530 U.S. 133 (2000), *Comcast Corp. v. National Assn. of African American-Owned Media*, 589 U.S. \_\_\_\_ (2020). The named Respondents acted, individually, conspiratorially, in bad faith, malice, more than bad judgment or negligence, clearly unreasonable under established law. Petitioner Mary Smith complained that Respondents Vice Principal Dee Wallace and nurse Ashley Hodges could not explain D.W.'s missing medication. With a racially discriminatory animus, to deflect potential criminal charges, Respondents Dee Wallace and Ashley Hodges made three complaints against Mary Smith to the Arkansas State Police Crimes Against Children Department (ASP CACD) hotline alleging missing medication and disciplining minors with a usb cord, stating D.W. was a danger to himself. Respondents Dee Wallace and Ashley Hodges coached, educated D.W., a minor, to falsely complain that Petitioners disciplined him with a usb cord. No doctor ever examined D.W. to confirm his allegations. Based on statements, affidavits by Respondents Detective Terry Hodges, husband of Osceola School nurse Ashley Hodges, and Katherine Chlapecka, ASP CACD investigator, Petitioners would each be charged with two counts of felony battery, and Petitioner Mary Smith with violation of a no contact order. Over one and one-half years later all pending criminal charges would be nolle prossed based on D.W. recanting his original allegation, stating he injured himself at home on a trampoline. Petitioners' First Amended Complaint alleges an unspoken conspiracy.

## **II. JURISDICTION**

Jurisdiction in the district court was pursuant to 28 U.S.C. § 1343, 42 U.S.C. § 1983, and 42 U.S.C. § 1981, as well as pendent state Civil Rights Act of 1993, Ark. Code Ann. § 16-123-102, et seq.

## **III. FACTS**

Petitioner, Mary Louise Smith ("Mary Smith"), age 59 at the time, is black and resides at 511 S. Marjorie, Osceola, Mississippi County, Arkansas 72370. Mary Smith has a Bachelor degree in social work and a Master degree in Early Childhood from Arkansas State University, and was previously employed with Mississippi County Arkansas Economic Opportunity Commission ("CAEOC") at the Wilson Head Start program as a teacher in the classroom.

Petitioner Tiffany E. Smith ("Tiffany Smith"), adult daughter of Petitioner Mary Smith, (not to be confused with Respondent Tiffany Smithey), age 35 at the time, is black and also resided at 511 S. Marjorie, Osceola, Mississippi County, Arkansas 72370. Tiffany Smith has a Bachelor degree in Animal Science, a Master degree in Agriculture, and a Master degree in Rehab Counseling. Tiffany Smith was previously employed with the Department of Human Services ("DHS") in Jonesboro, Arkansas as a program assistant. Tiffany Smith, was an employee of DHS and has one juvenile daughter of her own. Tiffany Smith verified the First Amended Complaint.

Collectively, Petitioners Mary Smith and Tiffany Smith had six (6) children in their home, pursuant to various legal authority.

Any act done or declaration made by or of the conspirators in furtherance, aid, or preparation of the alleged conspiracy may be shown as evidence against his or her fellow conspirators.

Although official capacity claims against State Defendants Gillespie, Chlapecka and Wear, School Defendants, Dee Wallace and nurse Ashley Hodges, and City Defendants were dismissed with prejudice based on qualified immunity, all Defendants are responsible, individually and collectively, for the acts of racial discrimination, malicious prosecution based on the conspiracy theory.

Further, Petitioners reallege that State Respondents, including, but not limited to, Gillespie, Chlapecka and Wear, School Respondents, Assistant Principal Dee Wallace and nurse Ashley Hodges, and City Respondents acted "in bad faith and/or with malice, more than just bad judgment or negligence, and were clearly unreasonable under clearly established law, a violation of Petitioners' clearly established constitutional rights of due process and equal protection.

The Smiths clearly established constitutional rights of due process and equal protection were violated by the bad faith and malice of Respondents, individually and collectively, and in conducting the responsibility of their employment.

At the suggestion of the prescribing doctor at Families, Inc., where Petitioner's children received counseling, Petitioner Mary Smith complained that Respondents Dee Wallace and nurse Ashley Hodges could not explain D.W.'s missing medication.

In anticipation of possible criminal charges, in an effort to misdirect attention away from herself and nurse Ashley Hodges' responsibility for the missing prescription medication, in retaliation and with a racially discriminatory animus, Respondent Assistant Principal Dee Wallace made a hotline report that alleged Petitioner Mary Smith failed to provide the medication for D.W. The hotline report was overseen by the Arkansas State Police, Crimes Against Children, Respondent Katherine Chlapecka, individually, and in her official capacity as Investigator for the Crimes Against Children Division (CACD) of the Arkansas State Police. Assistant Principal Dee Wallace alleged that D.W. was not receiving his medication and that D.W. was a danger to himself and others.

A copy of Respondent Dee Wallace's hotline report states that Nakita Scott, D.W.'s therapist at Respondent Families, Inc., and Taura McDaniel, attorney for DHS, were aware of Respondent Dee Wallace's allegation, including, but not limited to, D.W.'s danger to himself and others.

Respondent Dee Wallace alleged that Mary Smith was responsible for getting all the children's medical care, but failed to acknowledge that while the minor children are at school, the school has responsibility for the children *in loco parentis*. When minor children are entrusted by a parent to a school, the parents delegate to the school certain responsibilities for their children and the school has certain liabilities. In effect, the school and the teachers take the responsibility and the authority of the parents. A child is in the custody of the school staff when she or he is at the school.

Respondent Dee Wallace made racially prejudice complaints toward Mary Smith to the Arkansas State Police CACD hotline, *inter alia*:

[REDACTED]

The complaint was investigated by the Department of Human Services and the report was determined to be unfounded; Respondent Sylvia Wear was supervisor for DHS at the time Defendant Wallace's complaint was determined to be unfounded.

When Respondent Assistant Principal Dee Wallace's hotline report was determined unfounded by DHS, Wallace and Respondent Ashley Hodges, school nurse, took matters in their own hands by coaching D.W. to complain that his foster mother, Petitioner Mary Smith, was whipping him with a usb cord. (D.W. had red marks on his leg from self-inflicted injuries from a trampoline at home).

Nurse Ashley Hodges made two calls, complaints to the Arkansas State Police CACD hotline personally complaining against Mary Smith.

When the oral complaints were determined unfounded, Wallace and Ashley Hodges conspired to retaliate against Petitioner Mary Smith by coaching and educating D.W. to make complaints against Mary Smith whipping him with a usb cord, which were falsely corroborated by Respondent Detective Terry Hodges and Respondent Chlapecka, Crimes Against Children Division of the Arkansas State Police.

When nurse Hodges did not get a response from the Arkansas State Police CACD hotline she requested her husband, Defendant Detective Terry Hodges, who is black, with the Osceola Police Department, investigate her complaint against Mary Smith.

Detective Terry Hodges then conducted the interrogation of Mary Smith, in handcuffs, for a period of over one hour, coercing an alleged confession, which Mary Smith denies.

Based on Detective Hodges false statements, affidavit, alleging Mary Smith confessed, Petitioners Mary Smith and Tiffany Smith were each charged with felony battery.

Despite being aware of Respondents Dee Wallace and Ashley Hodges' previously unfounded complaints, Crimes Against Children Division of the Arkansas State Police, Respondent Investigator Chlapecka was more than willing to corroborate Respondent Detective Terry Hodges' conclusion based on his interrogation of Petitioner Mary Smith.

On May 25, 2016, based on statements by Respondent Detective Hodges and Respondent Katherine Chlapecka, an investigator with Arkansas State Police, Crimes Against Children Division, Petitioner Mary Smith was formally charged with a second count of battery in the second degree in the Circuit Court of Mississippi County, Arkansas, pursuant to Ark. Code Ann. 5-13-202(a)(3)(B)(i)-(ii) in case number 470CR-16-1 06; the charge was later amended on October 19, 2017, to being brought for violation of subsection (a)(4)(c) of the same statute.

On May 25, 2016, Respondent Tiffany Smith was formally charged with a second count of battery in the second degree in the Circuit Court of Mississippi County, Arkansas, pursuant to Ark. Code Ann. 5-13-202(a)(3)(B)(i)(ii) in case number 470CR-16-105; the charge was later amended on October 19, 2017, to being brought for violation of subsection (a)(4)(c) of the same statute.

Petitioner Tiffany Smith admitted disciplining D.W. one time, by three strikes with a cord, but denied any injury to D.W.

On May 17, 2016, based on statements by the Arkansas State Police, Crimes Against Children Division, Investigator Katherine Chlapecka, Detective Hodges also swore out an Affidavit in support of Tiffany Smith being formally charged with battery second, setting out the same substantive facts that were contained in the affidavit regarding Mary Smith.

Respondent Detective Terry Hodges' Affidavit constitutes perjury because Terry Hodges' interrogation was not conducted in good faith; any apparent confession, which Petitioner Mary Smith denies, was coerced.

A leading study by *Lofthus and Palmer* (1974), describes the fallacy of Detective Terry Hodges' conclusion from his interrogation of Petitioner Mary Smith and Tiffany Smith as described below. The main findings of *Lofthus and Palmer* in their study of eyewitness memory states, inter alia:

Loftus' findings seem to indicate that memory for an event that has been witnessed is highly flexible. If someone is exposed to new information during the interval between witnessing the event and recalling it, this new information may have marked effects on what they recall.

Loftus theory of memory states, *inter alia*:

LOFTUS: When you feed people misinformation about some experience that they may have had, you can distort or contaminate or change their memory. Oct 13, 2017

What were the main findings of *Loftus and Palmer* in their study of eyewitness memory?

Loftus' findings seem to indicate that memory for an event that has been witnessed is highly flexible. If someone is exposed to new information during the interval between witnessing the event and recalling it, this new information may have marked effects on what they recall.

What are misleading questions?

What is Misleading Question? Or argumentative question means that a question (a) uses logic in such a way that it deliberately causes someone to reach an incorrect conclusion, and (b) makes an argument rather than asks a question.

Mary Smith was in such a state of shock from being arrested, incarcerated, and in handcuffs that she didn't remember being in handcuffs during Detective Terry Hodges' interrogation.

Police tactics taught at a police academy include adult versus juvenile, e.g., Reid Technique, PEACE, Humint, include:

“Comparatively benign pre-interrogation strategies (e.g. building rapport, observing body language or speech patterns) to more psychologically coercive techniques (e.g. blaming the victim, discouraging denials) with both adults and juveniles.”

Pre-interrogation and manipulation techniques finding underscore the need for more law enforcement interrogation training as an avenue for reducing interrogation induced miscarriages of justice. (PsycINFO Database Record).

Suspects may be wrongly convicted because they provided interrogation-induced false confession.

Recent research suggests that actual innocence does not protect people across a sequence of pivotal decision; (a) pre-interrogation interviews, investigators commit false-positive errors; (b) presuming innocent suspects guilty naively in believing in the transparency of their innocence, innocent suspects waive their rights; (c) despite or because of their denials, innocent suspects elicit



highly confrontational interrogation; (d) certain commonly used techniques leads suspects to confess to crimes they did not commit; and (e) police and others cannot distinguish between uncorroborated true and false confession.

Innocence puts innocents at risk. Saul M. Kassin. Am Psychol 2005 April.

Three sequential processes are responsible for the elicitation false confessions – misclassification, coercion, and contamination.

Three psychologically distinct types of false confession are voluntary, compliant, and persuaded. Richard A. Leo. JAM Acad Psychiatry Law 2009.

Both Detective Hodges and nurse Hodges separately contacted Respondent Katherine Chlapecka, Arkansas State Police, CACD, regarding the alleged abuse of D.W., based on D.W.'s complaint made as a result of coaching by Respondents Dee Wallace and nurse Ashley Hodges.

On April 13, 2016, Det. Terry Hodges was notified by Katherine Chlapecka, an investigator with the CACD of the Arkansas State Police ASP that J.M. had injuries consistent with those that D.W. had.

Respondent Chlapecka has been employed with the Arkansas State Police, Crimes Against Children Division, for the past six years. Her current title is Senior Investigator, she possesses a BA in social work from Arkansas State University, has attended the Reid school for interrogation and child forensic interviewing training, but is not a certified law enforcement officer.

Typically, a call is placed to the hotline, but because Arkansas State Police, Crimes Against Children Division, Investigator Chlapecka works with the Osceola Police Department officers frequently, she is housed at the Osceola Police Department. Because she has been assigned to that particular area for so long, sometimes the officers will just call her if they know it is something she is going to be involved in, which is what happened here.

Respondents Detective Terry Hodges and nurse Ashley Hodges both asked Respondent Investigator Chlapecka for her assistance with respect to the investigation and then she was assigned the investigation since she was already aware of it. Investigator Chlapecka was expecting the call from Detective Terry Hodges because she was aware of the allegations. Crimes Against Children Division records reflect a formal referral date of April 13, 2016.

Investigator Chlapecka became involved in this particular case because it was the type of allegation covered by the Crimes Against Children Division insomuch as when a complaint goes to the hotline, it goes to DHS and it goes to the Crimes Against Children Division, and there are certain allegations that either or both agencies will investigate.

For example, the Crimes Against Children Division became involved in this case due to the amount of marks, and DHS had already taken hold of the kids; however, if DHS is not already involved when Investigator Chlapecka is assigned a case, then normally she will call DHS and ask them to do a safety assessment.

Once Investigator Chlapecka is assigned to a particular case, she is the investigator for the child maltreatment, and on this particular case, she worked alongside the Osceola Police Department (OPD) with whatever they needed help with.

When Investigator Chlapecka got involved, the minor children were already removed from Mary and Tiffany's home by ADHS for which Respondent Wear was responsible.

All Respondents, State, Arkansas State Police, Department of Human Services, School District, Osceola Police Department, and Families, Inc., were aware of Assistant Principal Dee Wallace's original, unfounded hotline complaint against Mary Smith, discussed in detail herein, as Taura McDaniel, attorney for DHS, and Nakita Scott, therapist for D.M. at Families, Inc. were aware of Respondent Wallace's hotline call.

**A. Violation of Alleged No Contact Order By Mary Smith.**

Respondents, Osceola School District employees, Sandra Landry and Pamela Smith, knew, or should have known, the No Contact Order had been lifted. Petitioner Mary Smith had been called by a secretary, Kyla Jeffery, a school official, to come see the children at the school, a ploy to entice Petitioner Mary Smith to violate the No Contact Order which had been lifted. Respondent Landry signed an affidavit stating she observed Petitioner Mary Smith at North Elementary School after Mary Smith was called by the secretary.

Respondents Mikal Gonzales, a sergeant with the Osceola Police Department, and Dakota Dunkin, an officer, knew the no contact orders were not in effect; they were shown paperwork by Petitioner Mary Smith in her home prior to her arrest, stating the no contact order had been lifted.

Conspiracy is a combination or confederation between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful. *Black's Law Dictionary*.

An overt act is not required as an element of the crime. *Commonwealth v. Harris*, 232 Mass. 588, 122 N.E. 749.

A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or operation; he must, however, know the purpose of the conspiracy and agree to become a party to the plan to effectuate that purpose. *Craig v. U.S.*, C.C.A. Cal., 81 F.2d 816, 822.

Chain conspiracy. Such conspiracy is characterized by different activities carried on with same subject of conspiracy in chain-like manner that each conspirator in chain-like manner performs a separate function which serves in the accomplishment of the overall conspiracy. *Bolden v. State*, 44 Md. App. 643, 410 A.2d 1085, 1091.

Petitioners were denied due process and equal protection guaranteed by the XIV Amendment to the United States Constitution by, including, but not limited to, Osceola School District nurse Ashley Hodges and Osceola Police Department Detective Terry Hodges' marriage relationship, a conflict of interest, as well as the relationship between Arkansas State Police, Crimes Against Children Division, Investigator Katherine Chlapecka to the City of Osceola Police Department. Investigator Chlapecka's office is located in the Osceola Police Department because of their close association. After the Arkansas State Police, Crimes Against Children Division, determined Dee Wallace's complaint regarding missing medication unfounded and refused to act on at least two hotline calls made by nurse Ashley Hodges. Dee Wallace and nurse Ashley Hodges coached D.W. to allege that Mary Smith whipped him with a cord. Nurse Hodges then contacted her husband, Detective Terry Hodges, to investigate her contrived complaints against Mary Smith. Because Detective Terry Hodges was married to nurse Ashley Hodges, a conflict of interested existed with Detective Terry Hodges' goal was to obtain a confession from Mary Smith to corroborate Ashley Hodges' contrived complaints as opposed to obtaining the true facts, thus, denying Mary Smith due process and equal protection pursuant to the XIV Amendment to the United States Constitution.

United States Constitution, Amendment XIV § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pursuant to the Constitution, the nature of the judicial branch does not make laws; it does not enforce laws; it resolves disputes. Real live "cases or controversies" is what the Constitution says.

A citizen is permitted to sue someone, i.e., to use the judicial branch only when he or she has been harmed by someone who is violating the law and needs the court to help him or her out (to grant relief), due process.

Equal protection refers to the idea that a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same manner as others in similar conditions and circumstances.

The Equal Protection Clause is a clause from the text of the United States Constitution, Amendment 14. The clause, which took effect in 1868, provides "nor shall any state deny to any person within its jurisdiction the equal protection of the laws." A primary motivation for this clause

was to validate the equality provisions contained in the Civil Rights Act of 1866, which guaranteed that all citizens would have equal protection by law.

The meaning of the Equal Protection Clause inspired the well-known phrase “Equal Justice Under the Law,” the basis for *Brown v. Board of Education*, 347 U.S. 483 (1954); *Gitlow v. New York*, 268 U.S. 652 (1925); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Griswold v. Connecticut* (07 June 1965); *Regents of the University of Calif. v. Bakke*, 438 U.S. 265 (1978).

The Eighth Circuit defines direct evidence based on the quality of proof. In *Torgerson v. City of Rochester*, 643 F.3d 1031, 1044 (8<sup>th</sup> Cir. 2011), the Eighth Circuit held direct evidence refers to evidence that shows a strong causal link between adverse employment decision and impermissible discriminatory motive. (quoting *Thomas v. First Nat’l Bank of Wynne*, 111 F.3d 64, 66 (8<sup>th</sup> Cir. 1997)). Under this approach, direct evidence and circumstantial evidence are not opposing terms. Direct evidence of a discriminatory motive can include “strong” circumstantial evidence that is not subject to a *McDonnell Douglas* analysis.

The Supreme Court, in *Reeves v. Sanderson Plumbing*, 530 U.S. 133 (2000), emphasized that judges should consider all of the evidence. In *Reeves*, the Supreme Court held that non-direct evidence may still be persuasive evidence that shows an employer’s stated reason for termination was pretextual. Further, by not considering the ageist remarks for the *McDonnell Douglas* analysis, the Fifth Circuit supplanted its judgment for that of the jury. *Reeves, supra*.

Petitioners strongly argue that circumstantial evidence is relevant as direct and/or indirect proof of discrimination. Petitioners repeat their argument that the evidence should be considered in its entirety. Accordingly, the most egregious remarks and more nuanced statements should be analyzed together as evidence of pretext.

Any reasonable evidence of discrimination must go to the factfinder. See Reinsmith, Proving an Employer’s Intent; Disparate Treatment Discrimination and the Stray Remarks doctrine after *Reeves v. Sanderson Plumbing*, 55 Vand. L. Rev. 219, 255 (2002).

**Detective Terry Hodges, Osceola Police Department, fabricated evidence, coerced testimony, left out testimony, and falsely edited the video of Mary Smith’s interrogation, the basis of his affidavit to secure the first felony charge against Mary Smith and Tiffany Smith. A second felony would be filed based on Detective Terry Hodges and Katherine Chlapecka’s combined statements.** (See *Loftus and Palmer* (1974), discussed previously)

**The lower court erred in failing to consider or give appropriate weight to direct and/or circumstantial evidence. The lower court failed to consider all the facts, including, but not limited to, the School District’s animus toward Mary Smith for her complaints regarding the district’s lack of explanation for D.W.’s missing medication.**

**The allegations of conspiracy are pleaded with sufficient specificity and factual support to suggest a meeting of the minds.**

### **REASONS FOR GRANTING THE PETITION**

The intent is not to harm Respondents, but to provide Petitioners justice.

A grievous wrong was committed by the State agencies, Arkansas State Police Crimes Against Children Division, public educational agencies of the State of Arkansas, and the Osceola Police Department reminiscent of the Jim Crow era and reconstruction; two educated black women were falsely, maliciously, charged with two counts each with Class D felony child abuse.

The U.S. Supreme Court should give guidance to the different circuits the way evidence is viewed, direct and circumstantial; further direction is needed when direct evidence of false malicious evidence is ignored by the courts to protect State, police, and educational employees. But for one police employee, all Respondents are white.

Guidance is needed for the circuits to discern when qualified and/or official capacity immunity is present and when it is not.

### **IMPORTANCE TO THE PUBLIC OF THE ISSUE**

Other than the courts and the federal government, little could be more important than the public's faith in the State, police, and educational agencies. But for Petitioners' race, black, and the discriminatory animus of the white establishment comprised of State, police, and educational agencies, destroyed the reputations of the educated black women who worked with children. *Comcast Corp. v. National Assn. of African American-Owned Media*, 589 U.S. \_\_\_\_ (2020).

### **CONFLICT BETWEEN DECISION AND ANOTHER APPELLATE COURT ON SAME ISSUE; IMPORTANCE TO THE PUBLIC OF THE ISSUE**

The United States District Court opinion, affirmed by the United States Court of Appeals for the Eighth Circuit conflicts with the following law.

The panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed. Where an issue of fact exists the Respondents lose their qualified and official immunity. *Wealot v. Brooks*, 865 F.3d 1119 (8<sup>th</sup> Cir. 2017). But for the reason they were black, the discrimination and the comity between the white establishment comprised of State, City, and Educational agencies destroyed the reputations, the careers of two educated women who worked with children. *Comcast Corp. v. National Assn. of African American-Owned Media*, 589 U.S. \_\_\_\_ (2020). The Court should consider all the evidence. *Reeves v. Sanderson*, 530 U.S. 133 (2000).

Each individual Respondent violated the policy of nondiscrimination in fulfilling the responsibilities of their respective positions as specifically described herein and in detail in Petitioners' Brief.

The district court candidly found *inter alia*:

“Where some material fact was genuinely disputed, the Court took that fact in the light most favorable to the Smiths.”

The lower court decided issues of fact reserved for the jury. FRCP 56.

The Eighth Circuit has adopted the liberal definition of direct evidence, holding that direct evidence refers to evidence that shows a strong causal link between adverse employment decision and impermissible discriminatory motives. *Torgerson v. City of Rochester*, 643 F.3d 1031, 1044 (2011) (quoting *Thomas v. First National Bank of Wynne*, 111 F.3d 64, 66 (8<sup>th</sup> Cir. 1997)).

### **STANDARD OF REVIEW (FRCP 56 MOTION FOR SUMMARY JUDGMENT)**

Summary judgment shall be granted if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We review de novo the district court’s grant of summary judgment, viewing the evidence in the light most favorable to the non-moving party. *See Stoner v. Watlington*, 735 F.3d 799, 802 (8<sup>th</sup> Cir. 2013).

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided solely on legal grounds. *Holloway v. Lockhart*, 813 F.2d 874 (8<sup>th</sup> Cir. 1987); Fed. R. Civ. P. 56. The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met:

The inquiry is the threshold inquiry of determining whether there is a need for trial -- whether, in other words, there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

In 1973, the U.S. Supreme Court, in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), devised the first summary judgment framework unique to Title VII disputes. *See* 411 U.S. 792 at 804-05. Under the framework, plaintiff may rely solely on circumstantial evidence to create an inference of discriminatory motive. *See McDonnell Douglas*, note 39 at 985 (explaining that the *McDonnell Douglas* framework relies on circumstantial evidence).

In 1985, the U.S. Supreme Court in *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111 (1985), clarified its prior holding, stating that if plaintiff’s prove intent with direct evidence then the *McDonnell Douglas* test does not apply. *See Trans World Airlines*, 469 U.S. at 121.

The Eighth Circuit has adopted the liberal definition of direct evidence, holding that direct evidence refers to evidence that shows a strong causal link between adverse employment decision and impermissible discriminatory motives. *Torgerson v. City of Rochester*, 643 F.3d 1031, 1044 (2011) (quoting *Thomas v. First National Bank of Wynne*, 111 F.3d 64, 66 (8<sup>th</sup> Cir. 1997)).

Here, the United States District Court ignored the fact D.W. was coached to falsely complain about being whipped and Investigator Terry Hodges fabricated false evidence, stating Petitioner Mary Smith confessed; the Eighth Circuit Court of Appeals affirmed the District Court's error of law.

### QUALIFIED IMMUNITY

Qualified immunity protects government officials from incurring civil liability as long as “their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. \*1125 2727, 73 L.Ed.2d 396 (1982)). To overcome the shield of qualified immunity, a plaintiff's claim must state a violation of a clearly established federal right, and that right must have been clearly established at the time of the violation. *See Nord v. Walsh County*, 757 F.3d 734, 738 (8<sup>th</sup> Cir. 2014). Under either prong of the inquiry, the district court “may not resolve genuine disputed facts” relevant to the issue of qualified immunity. *Tolan v. Cotton*, 572 U.S. 650, 134 S.Ct. 1861, 1866, 188 L.Ed.2d 895 (2014) (per curiam); *see also Rohrbough v. Hall*, 586 F.3d 582, 587 (8<sup>th</sup> Cir. 2009).

Where an issue of fact exists the Respondents lose their qualified and official immunity. *Wealot v. Brooks*, 865 F.3d 1119 (8<sup>th</sup> Cir. 2017). Respondents acted in bad faith and/or malice as well as unreasonably under clearly established law. Issues exist regarding all named Respondents.

### OFFICIAL IMMUNITY

Official immunity, like qualified immunity, is a threshold issue and subject to interlocutory appellate review. *See Div. of Emp't Sec. v. Bd. Of Police Comm'rs*, 864 F.3d 974, 978 (8<sup>th</sup> Cir. 2017); *cf. State ex rel. Barthelette v. Sanders*, 756 S.W.2d 536, 539 (Mo. Banc 1988); *State ex rel Mo. Dep't of Agric. V. McHenry*, 687 S.W.2d 178 181 (Mo. Banc 1985). But the similarities largely end there.

Official immunity, for example, is available unless the officer acted “in bad faith or with malice,” which requires “more than [just] bad judgment or negligence.” *Wealot v. Brooks*, 865 F.3d 1119, 1129 (8<sup>th</sup> Cir. 2017) (citations omitted). Qualified immunity, on the other hand, asks a different question: were the officer's actions “unreasonable” under clearly established law? *See id.* at 1125-28. Different questions can produce different answers. *See e.g., id.* at 1125-29 (holding that officers were entitled to official but not qualified immunity).

“The question that we must answer, then, is whether a genuine question of material fact exists regarding whether [the officer's] actions—as defined by the plaintiff's version of the events—were objectively reasonable.” *Wealot v. Brooks*, 865 F.3d 1119, 1125 (8<sup>th</sup> Cir. 2017) *citing Gainor v. Rogers*, 973 F.2d 1379, 1385 (8<sup>th</sup> Cir. 1992). “Once a genuine issue of material fact is found to exist, the defense of qualified immunity shielding the defendant from trial must be denied.”

“Because of the internal discrepancies and variations of the officers’ testimony, among other things, there remain factual issues in dispute that prohibit a grant of summary judgment.” *Wealot v. Brooks*, 865 F.3d 1119, 1125 (8<sup>th</sup> Cir. 2017) *citing Ludwig v. Anderson*, 54 F.3d 465, 473-74 & n.9 (8<sup>th</sup> Cir. 1995), reversing the grant of summary judgment on the basis of qualified immunity where “the depositions of the officers [we]re internally inconsistent on several points.”

In *Wal-Mart Stores, Inc. v. Binns* 341 Ark. 157 (Ark. 2000), 15 S.W.3d 320, the court held that the essential elements of the tort of malicious prosecution are (1) lack of probable cause, and (2) malice; the two elements are not interchangeable, although malice may be inferred from lack of probable cause.

Probable cause for prosecution must be based upon the existence of facts or credible information that would induce the person of ordinary caution to believe the accused person to be guilty of the crime for which he is charged. *Wal-Mart Stores, supra*.

In *Hoyland v. McMenomy*, 869 F.3d 644 (8<sup>th</sup> Cir. 2017), the court held that “[i]n a democracy, public officials have no general privilege to avoid publicity and embarrassment by preventing public scrutiny of their action.” *See Walker v. City of Pine Bluff*, 414 F.3d 989, 992 (8<sup>th</sup> Cir. 2005).

Official immunity should be denied all State, School District, and Osceola Police Department Defendants because each, individually, as well as conspiratorially, acted in bad faith or with malice, more than just bad judgment or negligence.

### **LOSS OF QUALIFIED IMMUNITY**

The Respondents, collectively and individually, waived their immunity from suit by and through their conduct.

Arkansas’ independence means protecting its citizens rather than malicious prosecution.

Qualified immunity should be denied all State, School District, and Osceola Police Department Respondents because each, individually, as well as conspiratorially, actions were clearly unreasonable under clearly established law, a violation of Petitioners’ clearly established constitutional rights of due process and equal protection.

### **DUE PROCESS AND EQUAL PROTECTION**

United States Constitution, Amendment XIV § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



The Eighth Circuit defines direct evidence based on the quality of proof. In *Torgerson v. City of Rochester*, 643 F.3d 1031, 1044 (8<sup>th</sup> Cir. 2011), the Eighth Circuit held direct evidence refers to evidence that shows a strong causal link between adverse employment decision and impermissible discriminatory motive. (quoting *Thomas v. First Nat'l Bank of Wynne*, 111 F.3d 64, 66 (8<sup>th</sup> Cir. 1997)). Under this approach, direct evidence and circumstantial evidence are not opposing terms. Direct evidence of a discriminatory motive can include “strong” circumstantial evidence that is not subject to a *McDonnell Douglas* analysis.

The Supreme Court, in *Reeves v. Sanderson Plumbing*, 530 U.S. 133 (2000), emphasized that judges should consider all of the evidence. In *Reeves*, the Supreme Court held that non-direct evidence may still be persuasive evidence that shows an employer’s stated reason for termination was pretextual. Further, by not considering the ageist remarks for the *McDonnell Douglas* analysis, the Fifth Circuit supplanted its judgment for that of the jury. *Reeves, supra*.

Petitioners were denied due process and equal protection guaranteed by the XIV Amendment to the United States Constitution by, including, but not limited to, Osceola School District nurse Ashley Hodges and Osceola Police Department Detective Terry Hodges’ marriage relationship, a conflict of interest, as well as the relationship between Arkansas State Police, Crimes Against Children Division, Investigator Katherine Chlapecka to the City of Osceola Police Department. Investigator Chlapecka’s office is located in the Osceola Police Department because of their close association. After the Arkansas State Police, Crimes Against Children Division, determined Dee Wallace’s complaint regarding missing medication unfounded and refused to act on at least two additional hotline calls made by nurse Ashley Hodges. Dee Wallace and school nurse Ashley Hodges coached D.W. to allege that Mary Smith whipped him with a cord. Nurse Hodges then contacted her husband, Detective Terry Hodges, to investigate her contrived complaints against Mary Smith. Because Detective Terry Hodges was married to school nurse Ashley Hodges, a conflict of interest existed with Detective Terry Hodges’ goal was to obtain a confession from Mary Smith to corroborate Ashley Hodges’ contrived complaints as opposed to obtaining the true facts, thus, denying Mary Smith due process and equal protection pursuant to the XIV Amendment to the United States Constitution.

Detective Terry Hodges, Osceola Police Department, fabricated evidence, coerced testimony, left out testimony, and falsely edited the video of Mary Smith’s interrogation, the basis of his affidavit to secure the first felony charge against Mary Smith and Tiffany Smith. A second felony would be filed based on Detective Terry Hodges and Katherine Chlapecka’s combined statements. (See *Loftus and Palmer* (1974), discussed previously herein)

The lower court failed to consider all the facts, including, but not limited to, the School District’s animus toward Mary Smith for her complaints regarding the district’s lack of explanation for D.W.’s missing medication.

Ex parte Young stands for the principle that sovereign immunity does not principle that sovereign immunity does not prevent people harmed by state agencies acting in violation of federal law from suing the officials in charge of the agencies in their individual capacity for injunctive relief.

Conflict with *Monroe v. Ark. State Univ.*, 495 F.3d 591, 594 (8<sup>th</sup> Cir. 2007).

The conduct of the school personnel, Vice Principal Dee Wallace and school nurse Ashley Hodges, and the Osceola Police, Detective Terry Hodges, was an express policy and custom whether expressly identified. (“official capacity liability under 42 U.S.C. § 1983 occurs when a constitutional injury is caused by a government’s policies or custom...”) (quoting *Monell v. Dept. of Soc. Servs. of N.Y.C.*, 436 U.S. 658, 694 (1978)).

School officials, Dee Wallace and Ashley Hodges, coached D.W. to complain that Petitioner Mary Smith whipped him with a usb cord, thus, did not have reasonable suspicion to believe the Smiths were abusing D.W. The court overlooked this fact, distinguishing this case from *Stanley v. Hutchinson*, 12 F.4<sup>th</sup> 834, 840 (8<sup>th</sup> Cir. 2021).

The state official, Arkansas State Police, Crimes Against Children Division, Investigator Katherine Chlapecka, corroborated Osceola Police Detective Terry Hodges’ findings because of her prejudice against Mary Smith. Detective Terry Hodges was married to school nurse Ashley Hodges. Detective Terry Hodges filed a false affidavit against Mary Smith based on his interrogation, the basis of felony battery charges.

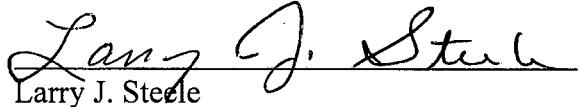
But for Detective Terry Hodges, Mary Smith would not have been arrested for violation of the protection order which had been dismissed. The arrest warrant was not valid because it was based on false information, the children had been returned to Mary Smith.

Families, Inc. withheld psychological information regarding D.W.’s self-mutilation and Mary Smith’s complaints about the school personnel’s lack of explanation regarding D.W.’s missing prescription medication.

### CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court issue a writ of certiorari to review the judgment of the Eighth Circuit Court of Appeals.

Respectfully submitted,



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