No. 23-5687

IN THE

SUPREME COURT OF THE UNITED STATES

DR. ISAAC BRUNSON

Petitioner

V

DEKALB COUNTY SCHOOL DISTRICT; DR. R. STEPHEN GREEN; LINDA WOODARD; DR. ANGELICA R. COLLINS; JOCELYN HARRINGTON

Respondents

On Petition for a Writ of Certiorari to the

United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Federal district and appellate courts have adopted an adjudication standard for employment discrimination cases that are informed only by their, documented, hostility towards employment discrimination Plaintiffs which, therefore, results in their biases in favor of employers, whether intended or not: Plaintiffs complaints are that the bias is deliberate and intentional.

The contempt for employment discrimination Plaintiffs increases when the Plaintiff represent themselves as pro se litigants. Therefore, especially for pro se litigants, due to their hubristic and unwarranted hostility, federal district and appellate judges tend to see what they want to see; quote case precedents that do not apply directly to Plaintiffs' cases; and interpret the *McDonnell Douglas Burden-Shifting Framework* NOT pursuant to the Federal Rules of Civil Procedure guidelines but to their misguided and erroneously applied "inherent authority". However, in doing so, district and appellate judges deprive thousands, if not millions, of Americans the rights guaranteed them through the Seventh Amendment of United States Constitution which is part of the Bill of Rights: A TRIAL BY JURY. Therefore, the questions presented to this Honorable Court are:

1) Will the Supreme Court continue to allow federal district and appellate courts to pervert the original intention of the summary judgement device and

thus violate millions of Americans civil rights to a jury trial, pursuant to the Seventh Amendment.

2) Will the Supreme Court continue to allow federal district and appellate courts to routinely ignore presented facts regarding employment discrimination lawsuits on subjects of race and age, especially?

3) Will the Supreme Court continue to allow federal district and appellate courts to ignore the rules and guidelines of the Federal Rules of Civil Procedure, and thus uphold the civil rights violation of an entire class of older Americans because it requires those judges to do the work and serve the American public as they are paid to do.

PARTIES

PETITIONER

1) Dr. Isaac Brunson
   Licensed and certified music teacher with experience teaching at secondary public schools and collegiate environments. The petitioner was 63 years old when he was denied an interview for the job in which he was teaching.

RESPONDENTS

1) DeKalb County School District – One of the largest public-school districts in Stone Mountain, Georgia.

2) Dr. R. Stephen Green – Superintendent of DeKalb County School District

3) Linda Woodard – Director of Human Capital Management (HR) for DeKalb County School District

4) Dr. Angelica R. Collins – Assistant Director of Human Capital management (HR) for DeKalb County School District

5) Jocelyn Harrington – Principal at Pleasantdale Elementary School in Doraville, Georgia, where petitioner, Dr. Isaac Brunson, was employed as a substitute teacher.

RELATED CASES

- Dr. Isaac Brunson v. DeKalb County School District, et.al
  No. 1:19-cv-03819-WMR, U.S. District Court for the Northern District of Georgia. Judgement entered January 5th, 2022.

- Dr. Isaac Brunson v. DeKalb County School District, et al
  No. 22-10177, U.S. Court of Appeals for the 11th Circuit. Judgement entered July 6th, 2023.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

a) Constitutional Bill of Rights Amendment VII: Rights in Civil Cases:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

b) Age Discrimination in Employment Act U.S.C. § 623 (1,2):

It shall be unlawful for an employer:

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

c. Age Discrimination Act of 1975 U.S.C. §§ 6101-6107

Section 6101. Statement of purpose

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

Section 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) of this title and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

c) Federal Rules of Civil Procedures

1. Rule 38. Right to a Jury Trial; Demand

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) **DEMAND.** On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

2. Rule 56. Summary Judgment

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

Under #56 (c)(1)(B)(4):

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

d) Northern District of Georgia Civil Rules (NDGARules)

LR 16.5 SANCTIONS
Failure to comply with the Court's pretrial instructions may result in the imposition of sanctions, including dismissal of the case or entry of a default judgment.

(G) Disqualification of ADR Neutrals. Any person selected as an ADR neutral may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

(I) Procedure Applicable to all ADR Conferences.

(1) Attendance. The attorney primarily responsible for each litigant's case must personally attend the ADR conference and must be prepared and authorized to discuss all relevant issues, including settlement unless excused by the neutral. The litigants must also be present unless excused by Court order. When a litigant is other than an individual, an authorized representative of such litigant, with full authority to settle, must attend. When a litigant has insurance coverage for the claims in dispute, an authorized representative of the insurance company, with full authority to settle, must attend. Willful failure of a party to attend an ADR conference will be reported to the administrator by the ADR neutral, who will then report the absence to a judicial officer for possible imposition of sanctions. ADR conferences will be private. Persons other than the litigants and their representatives may attend only with the permission of all litigants and with the consent of the ADR neutral.

OTHER AUTHORITIES

(1) *"Summary Judgement Rates Over Time, Across Case Categories, and Across Districts: An Empirical Study of Three Large Federal Districts"*, by Theodore Eisenberg & Charlotte Lancers/ 2008 Cornell law Library, Pg. 1

(2) "Inherent Judicial Authority: A Study in Creative Ambiguity"

by Charles M. Yablon / 2023 Cardozo Law Review, Vol. 43(3)

(3) *"Summary Judgement is Employment Discrimination Cases: A judge's Perspective"* by Hon. Denny Chin, U.S. District Judge /2013 New York Law School Review, Vol. 57(4), Pg. 672-673

(4) *Employment Discrimination Plaintiffs in Federal Courts: From Bad to Worse*, by Kevin M. Clermont & Stewart J. Schwab Harvard Law & Policy review, Vol. 3, Pg. 106

APPENDICES

Northern District of Georgia

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Appendix B	Doc. #108-1 Memorandum in Opposition to Summary Judgement Doc. #108-2 Exhibits to # 108-1
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Appendix D — Doc. # 13 Pro se Appellant Brief
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1. EX. A: Proof of Radika Brown's secretarial position.
2. EX. D-D4: Proof of John Jenkins age
3. EX. E & M: Petitioner's credentials
4. EX. I: Petitioner's hand-written request for interview
5. EX. K: Proof of False Pretext
6. EX. L: Plaintiff Motion for Sanctions; Court Reporter report re Linda Woodard Failure to Report for Deposition ; District DENIAL
7. Brunson AFFIDAVIT
8. Porcher AFFIDAVIT

PETITION FOR WRIT OF CERTIORARI

Petitioner, Dr. Isaac Brunson, respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

1. The opinion of the United States Court of Appeals for the 11th Circuit appears at Appendix D to the petition and is unpublished.
   Case No.: 22-10177
2. The opinion of the United States Court for the Northern District of Georgia appears at Appendix C to the petition and is unpublished.
   Case No.: 1:19-cv-03819-WMR-RDC

JURISDICTION

The United States Court of Appeals for the 11th Circuit issued its opinion on July 6th, 2023. Under this Court rule #13, the time for filing a writ of certiorari is 90 days from the date of the appellate court's decision. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS (Appendix pg.vi)

STATEMENT OF THE CASE

A. INTRODUCTION

This case is representative of the great injustice perpetrated on an entire class of tax-paying American citizens. Injustice based solely because of the individuals'

age when applying, specifically, in this instance, for employment and promotions for jobs, in careers and industries across this country. The primary perpetrator of the injustice is the very entity that, in a just world, should be the real defenders and arbiters of justice: The federal courts of the United States of America.

The federal court system, through its legal decisions regarding employment discrimination lawsuits, has encouraged and made it much easier for businesses, companies, and corporations to blatantly discriminate against older employees and job applicants. The consequences of these judicial decisions led to the overall increase and societal prevalence of ageism in employment.

The procedural device far too many federal district and appellate courts use to violate the civil rights of older employees and job applicants is summary judgement. This pervasive use of summary judgement by district and appellate court judges and magistrates assures businesses, companies, and corporations will not be held accountable for their discriminatory practices of ageism, while it simultaneously violates the civil rights of thousands, if not millions, of older American workers.

The federal court system's callous use of the summary judgement device in their judicial decisions is done so, primarily, at the expense of the individuals bringing the lawsuits against the businesses, companies, and corporations. This is done,

most importantly, to prohibit jury trials, which in turn violates Plaintiffs' federally guaranteed right to a trial by jury. The Federal Rules of Civil Procedure #38 states:

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) DEMAND. On any issue triable of right by a jury, a party may demand a jury trial by:

The Constitution of the United States Bill of Rights, AMENDMENT VII further declares:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

However, in far too many district and appellate court systems, the legal rules and laws have been arrogantly disregarded by federal judges and magistrates to the detriment of employment discrimination Plaintiffs, but to the benefit of businesses, companies, and corporations, that flagrantly discriminate against older employees and job applicants. The Petitioner's case that follows is merely one example, out of thousands, that the federal court system has brought about through their lawyer/business-friendly judicial decisions.

B. STATEMENT OF THE FACTS

This case involves the violation of my [Isaac Brunson] civil rights by DeKalb County School District, et al, when they refused to hire, or even interview me for a position in which I was already working, at Pleasantdale Elementary School in

Doraville, Georgia, because I was 63 years of age when I applied for the job. In denying me the opportunity to interview for a job in which I was already working, DeKalb County School District, et al, violated the Age Discrimination in Employment Act of 1967 (ADEA) and the Age Discrimination Act of 1975.

I was hired by DeKalb County School District (DCSD) in August of 2018 as a substitute teacher with the understanding that I would be given real consideration for full-time hire when positions in my discipline (Music) became available. I subbed at Peachtree Charter Middle School for the fall semester of 2018. I began subbing at Pleasantdale Elementary School on January 7th, 2019. At Pleasantdale Elementary I subbed alternately between the Interrelated Resource room and the music trailer. I began subbing, primarily, in the music trailer because the former teacher who left on maternity leave did not return in the Spring: The music position was open. On February 8th, 2019, upon arriving at Pleasantdale Elementary, the administrative secretary said they needed me again in the music trailer. I proceeded to tell the secretary that I was indeed licensed and certified in Music K-12; she then instructed me to go on the district website and officially apply for the position: "*You need to go on the site and send in an application, and the principal would then get it and could schedule a time to interview you*". During my lunch break that same day, I went to the district website and officially applied for the position. As I was leaving for home that same day, I told the administrative secretary I had

applied for the open position on the district website, she replied *"I will let her know and tell her (Principal Harrington) that you would like to have an interview"*. When I arrived at work on Tuesday, February 12th, I again asked the secretary if she had mentioned the fact that I had submitted the application for the music position and that I wanted an interview; she said she had and would get back to me when the principal gave her the scheduled time for an interview. That same day I observed interview candidates waiting in the hall to be interviewed by Principal Harrington. All the candidates the I observed waiting in the hallways for an interview were younger than me (Isaac Brunson AFFT, #8). On Wednesday, February 13th, upon returning to school, I again asked the secretary if the music position had been filled, since the principal just previously held interviews on Tuesday, February 12th. The administrative secretary, Ms. Radika Brown, responded "*No, it's still open*". I proceeded to tell her that I, again, would like to interview for the open music position with Principal Harrington on that Thursday; she said she would relay the message to Principal Harrington.

On Tuesday, February 19th, 2019, after failed attempts to secure an interview with Principal Harrington, I gave the administrative secretary, Ms. Radika Brown, a hand-written letter, addressed to Principal Harrington, making a formal request to interview for the open General Music position for which I was eminently qualified,

and for the fact that I was already teaching in the position at the time I requested to interview (Isaac Brunson AFFT, # 12).

After receiving the letter requesting an interview from me , Principal Harrington asked that I come to her office the following day; I went to Principal Harrington's office on February 20th under the belief that I would be interviewed for the position but, instead, Principal Harrington only asked about a classroom situation that occurred in the music trailer; I was told to come back on February 21st for an interview; when I returned for the interview, Principal Harrington was not to be found and the interview that was scheduled was evaded.

At the beginning of March 2019, upon my returning to Pleasantdale Elementary after a mandatory break, I discovered the music position had been filled by Mr. John Henry Jenkins who was 27 years old at the time of his hire (EX. D-D4). Though I was working in the position for most of the Spring semester; though I had received compliments from other teachers at Pleasantdale for my work in the music trailer; though I was eminently qualified for the open music position (EX. E & M: Isaac Brunson / EX. C-C3: Mr. Jenkins); and though I observed other much younger candidates waiting to be interviewed for various other open positions (Isaac Brunson AFFT, #8), I was not even given an opportunity to interview for the position.

On March 8th, 2019, I filed a Charge of Age Discrimination against DeKalb County School District, the Superintendent, and other administrators that comprise the "Named Defendants" of my case. I received EEOC "Right to Sue" letter and complaint determination, dated June 6, 2019, and proceeded to file a charge of Age Discrimination at the Northern District of Georgia Federal Court in August of 2019.

I was sixty-three when I applied for the music position at Pleasantdale Elementary but, consequently, was denied even an interview. Yet, Mr. Jenkins, the hired applicant, was given extra consideration, including having the position held for two weeks while Principal Harrington was working past office hours in an effort to vet Mr. Jenkins and to avoid interviewing me (EX. K), even though I was already vetted, more credentialed, and experienced that Mr. Jenkins. Yet, because of his age, Mr. Jenkins was given the job.

PROCEDURAL HISTORY

I, Petitioner Isaac Brunson, began this action in the Northern District of Georgia, based on the discrimination perpetrated on me by the DeKalb County School District's Principal Jocelyn Harrington. I filed under the Age Discrimination in Employment Act of 1967 (ADEA) and the Age Discrimination Act of 1975 (ADA). I, specifically, argued that I was not allowed an interview for a job which I was, at that very time, working in. I further argued that the only reason I was not given

consideration for the job was because I was 63 years old when I applied. I argued and presented evidence supporting my claims pursuant to the guidelines of the 1967 ADEA and the 1975 ADA, respectively:

> Sec 4. (a) It shall be unlawful for an employer— (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age; (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or (3) to reduce the wage rate of any employee in order to comply with this Act.
>
> 1975 ADA (42 U.S.C. Sections 6101-6107)
> Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) of this title and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

Refusing to review all presented evidence, after the period of discovery ended, the district court granted Defendants' motion for summary judgement on all my claims, including the dismissal of my claim for individual liability.

On my appeal to the Court of Appeals for the 11th Circuit, I argued that the Court erred when it allowed the defendants to set the scope and parameters of the case; the Court erred when it refused to review all presented evidence; the Court erred when it refused to review the movant request for summary judgement "in the light most favorable to the nonmoving party"; the lower courts erred when they refused to review my evidence that proved I met the ADEA standard for a prima facie case: a) I belonged to a protected age class of 40 years old and above,(b) I suffered an adverse employment action by not being hired, (c) I was qualified for the position,

and (d) I was replaced by a younger individual; the Court erred when it refused, even though they cited, to follow the guidelines of the *McDonnell-Douglas framework* for a prima facie evidence; the Court of Appeals for the 11th Circuit, erred when it refused to review the evidence presented; and the 11th Circuit erred when it refused to conduct a de novo review of my appeal. Instead, the magistrates and judges of the lower courts substituted the guidelines for the *McDonnell-Douglas framework* with a flawed "Inherent Authority" interpretation of the evidence I presented.

The lower court's documented hostility towards employment discrimination Plaintiffs (which is even more egregious towards pro se Plaintiffs) was implemented to the highest degree in the litigation and adjudication of my case.

REASONS FOR GRANTING THE PETITION

INTRODUCTION

If there is to be true justice for the average American in our society, the present federal court systems must be reformed. The courts' documented hostility toward employment discrimination Plaintiffs has created a federal judicial system that makes it almost impossible for victims of employment discrimination based on race, disability, and age to receive remedy or relief for their lawsuits. In reference to the Northern District of Georgia, a 2008 study cited a significant rise, 25 percent

(25%), in summary judgement rates in employment discrimination cases, primarily composed of racial and age factors (Other Authorities#1). Regarding Plaintiffs like me (Petitioner), a litigant representing themselves, the Court's hostility is further demonstrated in the extreme lack of publication of pro se cases. Federal courts are not obligated to publish pro se cases, so most pro se cases are not published. This fact encourages corruption of the adjudication process because it, to a great degree, lacks transparency.

In far too many federal court systems "Inherent Judicial Authority" is viewed as this nebulous power that has been bestowed on judges to allow them to better dispense justice. However, most scholars believe that the opposite is the reality; far too many federal judges in courts such as the Northern District of Georgia and the Court of Appeals for the 11th Circuit use this "authority" as a go-to excuse for decisions in which they have not utilized cogent reasoning:

"The inherent powers doctrine has been called the "murkiest, and most extensive" of the federal courts' sanctioning powers. One civil procedure scholar describes it as a "pretty ill-defined" doctrine that has been used to justify a wide variety of judicial actions. He notes that it "gets hauled out of the attic at unpredictable times to deal with odd-ball cases." (Other Authorities #2 / ¶ 2)

Summary judgement is the present adjudication device federal court systems like the Northern District of Georgia and the Court of Appeals for the 11th Circuit use to

summarily dismiss far too many employment discrimination Plaintiffs, like me. The Cornell Law Review cite examples wherein there are significant and/or "striking" decline in trials since the 1960s because of federal judges' questionable use of summary judgement (Other Authorities #1, Pg.1 ¶ 2). In a *Federal Judicial Center* memorandum, research scholars cited a portion of the study's results which stated that "*summary judgement was granted, in whole or in part, in employment discrimination cases approximately seventy-seven percent of the time, in tort cases approximately sixty-one percent of, and in contract cases approximately fifty-nine percent of the time.*" The memorandum further states that research showed that "*on appeal, plaintiff victories (both before trial and at trial) are much more likely to be reversed than defense victories*" (Other Authorities #3). Regarding pro se cases, these statistical percentages are even more egregious because of the documented hostility towards the pro se plaintiff.

I. THE LOWER COURTS HAVE ERRED IN THE OPINIONS BELOW

1. THE DISTRICT AND APPELLATE COURTS ERRED WHEN THEY REFUSED TO REVIEW EVIDENCE PRESENTED BY PETITIONER

It is standard law that on summary judgment, the reviewing court "must review the record in the light most favorable to the nonmoving party and must resolve all reasonable doubts against the movant." *Ex parte Patel, No. 1060897 (Ala. Oct. 5, 2007).*

The District and Appellate Courts repeatedly ignored or refused to review important, critical supporting evidence presented by Petitioner that proves his claim of discrimination based on his age. It will be presented later, at different intervals in this document, the many examples of the District and Appellate Courts' refusal to accept, consider, or review the Petitioner's supporting evidence.

In reference to Court ordered meetings or conferences, Petitioner (Plaintiff) was required to meet a different standard of adherence than Respondents (Defendants). For example, the Alternative Dispute Resolution (ADR), ordered by the District Court, was attended by Petitioner while Respondents, as was done for the EEOC sponsored mediation and the Joint Preliminary Report Conference, refused to attend even when they were required and ordered to do so. A case in point was the April 22nd, 2021, Mediation. The Northern District of Georgia Rules of Civil Procedure, regarding the Alternative Dispute Resolution (ADR) states:

The litigants must also be present unless excused by Court order..... Willful failure of a party to attend an ADR conference will be reported to the administrator by the ADR neutral, who will then report the absence to a judicial officer for possible imposition of sanctions. (NDGARule, LR 16.7 (I)(1)

Respondents did not request to be excused from the mediation; the Court did not excuse Respondents by Court Order; nor did the ADR neutral report Respondents' failure to appear at the April 22nd mediation to the Court. The Respondents blatantly violated the rules of the Alternative Dispute Resolution (ADR) when

litigants failed to attend; and the District Court erred when it did not address or sanctioned the actions of Respondents.

2. The District and, by Virtue of its AFFIRMANCE, Appellate Courts erred when they did not require Respondents to meet the legitimate standards for summary judgement.

Both District and Appellate Courts judged this case with indifference to established laws and federal rules, similarly. However, the bar to grant summary judgement has been set at a high level by precedence in courts across the country in decided and settled cases. Federal Rules of Civil Procedure, rule # 56(a) states:

> MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment *if the movant shows that there is no genuine dispute as to any material fact* and the movant is entitled to judgment as a matter of law.

The above standards were not met by Respondents because Petitioner provided evidence that proved there were "*genuine disputes as to any material fact.*" A dispute of fact is "*genuine*" if "the [record] evidence is such that a reasonable jury could return a verdict for the [non-movant]." *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).*

The District Court chose to grant summary judgement on assertions by Respondents that were clearly, and obviously, disputed by Petitioner. There were "disputes" for numerous material facts that the District Court chose to ignore and

not address, such as proof of age discrepancy between Appellant and Mr. Jenkins and pretext, to start.

First, and foremost, the District Court chose not to "review the record in the light most favorable to the nonmoving party" nor did it "resolve all reasonable doubts against the movant" (*Weiss v. JPMorgan Chase, No. 08-0801)* but, contrarily, the Court boasted that its inherent authority, in essence, allowed them to pick and choose what would be considered evidence. The District Court judge argued that a jury should not get the opportunity to decide if there were any genuine dispute of any material fact. In essence, the Court was arguing against settled precedent on standards of review for summary judgement, in its efforts to favor the unsupported assertions of the Defendants (Doc. 119, pg. 11¶1).

Secondly, the District Court chose not to review or address numerous supporting evidence presented by the Petitioner, such as supporting affidavits; supporting proof of age discrepancy; supporting proof of disparate treatment by DeKalb County School District; nor did the District Court review supporting proof of Petitioner's exigency status in health and living conditions, that were all due to the fact that DeKalb County School District refused to hire him for the music position based on the fact that he was 63 years old at the time of application.

The standard black letter law is that, on summary judgment, the reviewing court "must review the record in the light most favorable to the nonmoving party and must resolve all reasonable doubts against the movant."; the District Court, in its decision to grant summary judgement to the Defendants, did just the opposite, it viewed the record in the light most favorable to the moving party. *In Weiss v. JPMorgan Chase & Company, 2d Circ., No. 08-0801, June 5, 2009,* the Second United States Court of Appeals ruled that the district court decision be reversed and in favor of the Plaintiff, the nonmoving party, because the evidence, viewed by a jury, would have resulted in a judgement that was more favorable.

It is worth repeating, the District Court, in this instance, acted in a manner in which the record was viewed in the light most favorable to the movants: the Respondents.

3. Whether the District and, by Virtue of its AFFIRMANCE, Appellate Courts abused its authority when they failed to construe the evidence in the light most favorable to the nonmoving party

The District and Appellate Courts abused their authority when they granted and AFFIRMED summary judgement to Respondents based on assertions of Respondents that were not supported by evidence. Magistrate Regina D. Cannon took as evidence the Respondents assertions that Mrs. Radika Brown, the administrative secretary, was not acting in that capacity, after Plaintiff submitted evidence that proved Mrs. Brown was indeed the administrative secretary:

It is worth noting that although Mrs. Brown is Principal Harrington's subordinate, she is not Principal Harrington's secretary and had no involvement with job postings, interviews, or hirings" (Doc. 114, pg. 3 ¶ 1)

Petitioner submits proof that Mrs. Radika Brown was and is the administrative secretary for Principal Harrington and as such is privy to the Principal Harrington's daily duties and routines and is in direct communication with the principal (EX. A), but both Courts refused to review or consider the submission.

On the contrary, in her Final Report and Recommendation (Doc.114, pg. 9, ¶ 1), Magistrate Regina D. Cannon, in her discussion section, only cites from DeKalb County Schools' unsupported assertions:

"Secondly, in any event, DCS "maintains" that it presented unrebutted evidence of a legitimate, non-discriminatory reason for not hiring Dr. Brunson----namely, that Principal Harrington was unaware of his application at the time she made her final hiring decision".

Petitioner presented rebuttal evidence that Principal Harrington was aware of his request for interviews through the depositions of Radika Brown, the administrative secretary, and Dr. Tracia Cloud, Hiring Manager (Cloud Depo, pg. 16, L 11-17 / Brown Depo, pg. 15, L 16-24), but the District Court refused to consider his evidence, yet the Respondents lies, and assertions were accepted as fact.

4. Whether the District and, by virtue of its AFFIRMANCE, Appellate Courts erred in their interpretation and application of rule # 56 of the Federal Rules of Civil Procedure (FRCP) in granting summary judgement to Respondents; and Whether the District and

Appellate Courts erred in granting summary judgement to Respondents without supporting proof or evidence.

The Federal Rules of Civil Procedure #56(a) regarding standards for granting summary judgement states:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

The Respondents did not meet the burden of the standards as stated above, contrarily, they made unsupported assertions that the District Court accepted as proof. The District Court erred when it accepted as fact, despite opposing evidence presented by Petitioner, Principal Harrington claims that she was unaware of Plaintiff interest or application for the music position. Magistrate Cannon states in her Final Report and Recommendation that, "After January 30, 2019, Principal Harrington did not log back into PATS to see if there were any additional applicants for the music teacher position" (Doc. 114, pg.5, ¶ 2) and accepts that statement as fact when Petitioner presented evidence from Mrs. Radika Brown and Dr. Tracia Cloud, the Hiring Manager, clearly contradicting Harrington's claims (Cloud Depo, pg. 16, L 11-17 / Brown Depo, pg. 15, L 16-24 / Isaac Brunson AFFT. # 8).

Though Magistrate Cannon, in her recommendation, cites several cases and standards of review for granting summary judgement, she does NOT list or cite

definitive proof that the Respondents met the burden of those cases and citations (Doc. 114, pg. 7 ¶ 2), she accepts, as fact, only assertions proffered by the Respondents. The District Court refused to consider or review multiple examples of affidavits and exhibits that proved the Respondents did NOT meet the burdens, required by law, to be granted summary judgement.

Magistrate Cannon, under part "III. DISCUSSION" of her Report and Recommendation, list two primary reasons Plaintiff could not sustain his claim; a) he failed to introduce evidence that show John Jeffery Jenkins, who was hired for the music teacher position, was "substantially younger" than himself"; b) and second that " DCS maintains that it presented unrebutted evidence of a legitimate, non-discriminatory reason for not hiring Dr. Brunson--- namely, that Principal Harrington was unaware of his application at the time she made her final decision": If Harrington's reasons for not hiring Petitioner was legitimate regarding her having already made the decision to hire Mr. Jenkins, why did she agree to interview Petitioner only the day before she finally vetted Mr. Jenkins (Brunson AFFT) (Doc. 114, pg. 9 ¶ 1). The District Court denied motions to compel discovery in which Petitioner requested pertinent information regarding Mr. Jenkins, Linda Woodard, the Director of Human Resources, and Principal Harrington, which would have shed much more light on those issues. The Court denied Plaintiff's request based on mis-interpreted Defendants' emails (EX.L), but:

"Summary judgment not appropriate where material facts are within particular knowledge of moving party. ***"We are reluctant to grant summary judgment when `material facts are particularly within the knowledge of the moving party." Riley v. Andres, 107 Wash.App. 391, 395, 27 P. 3d 618 (2001). "In such cases, the matter should proceed to trial `in order that the opponent may be allowed to disprove such facts by cross - examination and by the demeanor of the moving party while testifying."*** *Mich. Nat'l Bank v. Olson, 44 Wash.App. 898, 905, 723 P. 2d 438 (1986)."*

The petitioner submitted supporting evidence that proved Mr. Jenkins, the person hired for the music teacher position, was younger than himself in two response documents. Petitioner submits proof of substantial age difference between himself and Mr. Jenkins a second time in his response to the magistrate's Final Report Recommendations under "*Objections to Magistrate Regina D. Cannon's Conclusion"* (EX. D-D4)

Magistrate Cannon's assertion that Petitioner did not introduce sufficient evidence to show that DCSD's hiring explanation is pretextual was also in error. Petitioner provided several verifiable evidences that Principal Harrington's assertion that she was "unaware" of his applying for the music position was not true, and that she was contradicted by too many accounts, including that of her own: (a) Mrs. Radika Brown, the administrative secretary, contradicts Harrington's assertions of

ignorance in her deposition (Brown Depo, page 15, L 16-23); (b) Hiring Manager, Dr. Tracia Cloud, also contradicts Harrington's assertion of ignorance of Petitioner's application in her deposition (Cloud Depo, page 16, L 1-14). Both Radika Brown, the administrative secretary, and Dr. Tracia Cloud, the Hiring Manager, testified that Principal Harrington was indeed aware of Appellant's application and request to be interviewed for the music position, but the District Court refused to consider the submitted evidence. Principal Harrington also contradicts her assertions of ignorance of Petitioner's application when she personally acknowledged receipt of his hand-written letter requesting a follow-up interview after the submission of his application and she responded that he could be interviewed the following day after receiving his letter; however, she evaded the scheduled interview and did not attempt to reschedule. Thus, for DeKalb County Schools to submit unsupported assertions that Principal Harrington was unaware of the Petitioner's application at the time she made her final hiring decision is the Respondents' contrived pretext to Harrington's asserted ignorance.

Whenever an individual starts work at a school, it is the principal's fiduciary responsibility to know the status of all employee's credentials and certifications, including substitute teachers (Cloud Depo, page 17, L 2-13). Dr. Tracia Cloud further confirms the fact that principals, in general, Harrington included, select from the PATS site those applicants they want to interview. Applicants "Date-of-

birth" appear on all applications on the PATS site which allows principals to select individuals based on their age (Cloud Depo, page 16, L 8 through page 17) Tracia Cloud, DeKalb County School District's Hiring Manager, testified that principals "are monitoring their positions daily." (Cloud Depo, page 16, L 11-17). Principal Harrington waited two weeks while the vetting process for Mr. Jenkins was taking place, still refusing to even interview Petitioner though he was teaching in the music position at the time. During the same time Principal Harrington was evading, ignoring, and refusing to interview Petitioner, she was interviewing much younger applicants (Brunson AFFT, # 8): The District Court refused to consider or review Petitioner's supporting evidence.

The District Court did not require the Respondents to meet the required burden of proof for their assertions. The Court asserted, without proof, that Principal Harrington's claims of not checking PATS after January 30th, 2019, is "undisputed fact" (Doc 114, page 14). Principal Harrington's claim of being unaware of the Petitioner's application is a contrived effort to create an acceptable pretext for Respondents. Thus, the Court erred when it granted summary judgement based, primarily, on hearsay, despite Petitioner's submitted citations of affidavits, deposition statements, and exhibits that disputes and contradict the Court's assertions (Cloud Depo, page 16, L 11-17 Brown Depo, page 15, L 16-23 / McCray AFFT.) Furthermore, the District Court's bias was evident when it allowed the

Respondents to support pretext by mere assertions from Principal Harrington while at the same time rejecting Petitioner's submitted evidence of Mr. Jenkins age, and declaring Petitioner's evidence, of such, to be counterfeit and not "authenticated" (Doc. 114, pg. 122). The Petitioner submitted proof of Mr. Jenkin's age from his own Facebook page. Petitioner submitted further proof of Mr. Jenkin's age, with attached URL links, so that the Court could prove its "authenticity" (EX. D-D4); in both instances, the District Court refused to consider or review Petitioner's supporting evidence.

The District Court further asserted that Petitioner had not pieced together a convincing "mosaic" of evidence to sustain his claim. First, the Court uses the subjective term "convincing mosaic". This term could have a different meaning to any random twenty individuals at the same time. The word mosaic means "a picture or pattern produced by arranging together smaller parts". Therefore, pursuant to the above, the Petitioner presented the five (5) affidavits that supported his claim in document #118: Brunson AFFT; McCray AFFT; Porcher AFFT; Lissowska AFFT; and Kandiah AFFT. The Petitioner also presented attachments and exhibits that supported his claims (Doc. 118, Exhibits A-E). The District Court did not state what the requirements or standards were for a "convincing mosaic" of evidence, or to whom it had to be "convincing": the judge or the jury. The Petitioner contends that the evidence cited above is a "convincing mosaic" of

evidence and should be determined by a jury comprised of his peers and not arbitrarily by a magistrate, to avoid, if nothing else, the petitioner being denied his civil rights through the prism of judicial bias. The Petitioner presented further details of his discriminating experience and expansion of his" convincing mosaic" of evidence (Isaac Brunson AFFTS)

The District Court cited the requirements that meet the standards for a prima facie case regarding failure-to-hire under the ADEA:(1) that he was at least forty years of age; (2) that he was not hired; (3) that a substantially younger person filled the position he sought; and (4) that he was qualified to do the job for which he was rejected, citing *Kragor v. Takeda Pharm. Am., Inc., 702 F.3d 1304, 1308.* The Court stated the Petitioner did not meet the burden of a prima facie case because it refused to consider or review the supporting evidence provided by the Appellant:

(1) The Petitioner was 63 years old when he applied for the music teacher job which he was already teaching (Brunson AFFT, Doc. 1)

(2) This lawsuit, filed under Title VII and the ADEA of 1967 which includes the claim of Age Discrimination, filed on August 23, 2019, is proof that Petitioner was not hired for the job.

(3) The Petitioner provided numerous supporting evidence that proved Mr. Jenkins, the individual hired, was younger than himself (EX. D-D4).

The magistrate insinuated that the Petitioner agreed to an equivalency of credentials and qualifications (Doc 114, page 15 ¶ 2); to the contrary, Petitioner argued that his credentials and qualifications, rated "Highly Qualified" on the PATS system. However, the Petitioner's credentials, because of his age, were not given the same consideration; while a much less experienced and much less credentialed individual, Mr. Jenkins, was hired for the opposite reason: 27 years old at the time (EX. D-D4). The Petitioner proved he was more qualified, more credentialed, and more experienced than the individual hired, Mr. John Jeffery Jenkins (EX. C-C3 and EX. E & EX. M).

5) The District and, by virtue of its AFFIRMANCE, the Appellate Court erred in refusing to address or consider the Petitioner's submitted evidence, such as attached exhibits, affidavits, and depositions, which supported his claims of Age Discrimination.

The District Court erred in refusing to consider or review Petitioner's submitted evidence.

(A)**Attached Exhibits**: The District Court refused to consider or review the submitted material by Petitioner that "were of such weight and significance that no reasonable person, in the exercise of impartial judgement, could have

chosen [Mr. Jenkins] over [himself]" Id. (quotation and citation omitted, Doc.114, pg.15): Selective use of "inherent authority."

(A)**Affidavits**: The District Court refused to consider or review five (5) affidavits the Petitioner submitted in support of his claim that addressed various components of the claim. (a) McCray AFFT, Brunson AFFT & Porcher AFFT., disputes and contradicts Principal Harrington's claims of being unaware of Petitioner's application (Doc. 108, Doc. 118); (b) Lissowska AFFT., Kandiah AFFT., testified to the negative mental, physical, and emotional affects Petitioner endures because of his discrimination (Doc. 108, Doc.118).

(B)**Depositions**: The District Court refused to consider or review Petitioner's submission of deposition statements that disputes the various claims of the Respondents: (1) Principal Harrington's claim that she was unaware of the Petitioner's application for the music position at her school, even as he was also working in the position at the time, left numerous messages with her administrative assistant concerning his application and his desire for an interview, defies belief (Cloud Depo, page 17, L 2-13).

8. The District, and by virtue of its AFFIRMANCE, the Appellate Court erred when they refused to consider or review Plaintiff's evidence proving disparate treatment.

Circumstantial evidence of disparate treatment is traditionally evaluated under the McDonnell Douglas burden-shifting framework (*McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)*. "An aggrieved employee may create a rebuttable presumption of unlawful discrimination by first establishing a prima facie case." According to the ADEA: "the Plaintiff must show four things: (1) that he was at least forty years old; (2) that he was not hired; (3) that a substantially younger person filled the position he sought; and (4) that he was qualified to do the job for which he was rejected." According to the magistrate's own interpretation and description of the ADEA statute, Petitioner clearly met the criteria for making out a prima facie case for discriminatory failure-to-hire: (1) he was 63 years old when he applied for the position (Isaac Brunson AFFT # 18); (2) he was not hired, nor given the opportunity to interview for the music position at Pleasantdale Elementary even though he was licensed and certified in Music K-12; (3) He proved that a substantially younger person filled the position he sought (EX. D-D4); and (4) that he was qualified to do the job for which he was rejected (EX. E & M). Respondents' claims of Principal Harrington having already made her decision to hire Mr. Jenkins when Petitioner requested interviews is blatantly contradicted by the fact that she scheduled an interview with Petitioner after the fact. Here, the assertion of pretext is undermined by the fact that Principal Harrington scheduled an interview with Petitioner after she had "supposedly already made her decision

to hire Mr. Jenkins". In fact, exhibit K also contradicts what Harrington is saying and explains why Petitioner's interview of February 21st, 2019, did not occur: Mr. Jenkins made contact with Harrington at 2: PM the day Petitioner was to interview after school ended at 2:30 PM. *BECAUSE ONLY, after Harrington met and corresponded with Mr. Reese, late at night, well after regular working hours, did she know Mr. Jenkins was viable for hire after finally having been vetted. This is why she did not meet the scheduled interview with the Petitioner that same day. This fact proves both false pretext and disparate treat at the hands of Principal Harrington and the school administrators* (EX. K).

9. THE DISTRICT COURT ERRED WHEN IT DISMISSED INDIVIDUAL LIABILITY

In 2018 the U.S. Supreme Court extended the reach of the Age Discrimination in Employment Act (ADEA) to all states and localities, regardless of their size, in a unanimous decision that will make it harder for towns to lay off older workers.

The ruling also broadened the reach of the ADEA meaning of coverage that added to the definition of liability, to include individuals acting as agents of businesses, organizations, and companies. In the 2018 Supreme Court decision for MOUNT LEMMON FIRE DISTRICT v. GUIDO et al., Justice Ruth Bader Ginsburg and seven other justices, states:

Two years later, in 1974, Congress amended the ADEA to cover state and local governments. Unlike in Title VII, where Congress added such entities to the definition of "person," in the ADEA, Congress added them directly to the definition of "employer." Thus, since 1974, the ADEA's key definitional provision has read:

"The term 'employer' means a person engaged in an industry affecting commerce who has twenty or more employees . . .. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State . . .." 29 U. S. C. §630(b).

Thus, the 2018 ruling also may make it legitimate and appropriate for plaintiffs to bring claims against individuals for direct liability under the ADEA. The federal courts' interpretation of the phrase "*also means*" is additive and would cover those and their acts who serve as agents of an employer.

The Courts have defined individuals who have been given the authority to make decisions on who will be hired or fired and who are acting as agents of the company or organization may now be held for individual liability.

Hamilton v. Rodgers, 791 F.2d 439, 443 (5th Cir. 1986) (defining an "agent" as someone who "participated in the decision-making process that forms the basis of the discrimination"); *York v. Tennessee Crushed Stone Ass'n, 684 F.2d 360, 362 (6th Cir. 1982) (dictum)* (defining "agent" as an "employee to whom employment decisions have been delegated by the employer").

All named Defendants in this case qualify as agents of DeKalb County School District and as such should be held individually liable, especially under egregious, discriminatory circumstances. The actions of the agents of DeKalb County School District have resulted in great mental, spiritual, and physical harm to not only the Petitioner but to thousands of other qualified, competent applicants.

Through its enforcement of this amendment to the ADEA, this Honorable Court can impose restrictions and penalties on company agents via individual liability that will ensure the decline of age-related discrimination.

II. THE LOWER COURTS HAVE EXPRESSED CONFLICTING VIEWS ON THIS ISSUE

1. Anastasia Nedd Allen v. United States Postal Service
United States District Court, Eastern District of Louisianna
Case No. 20-304
Judgement, April 13th, 2022: Summary Judgement GRANTED and DISMISSED WITH PREJUDICE
Anastasia Nedd Allen-Appellant v. United States Postal Service-Appellee
United States Court of Appeals for the Fifth Circuit
No. 22-30297
Decision March 21st, 2023: AFFIRM in Part and REVERSE and REMAND in part.

2. Zeferino Martinez, M.D. v. UPMC Susquehanna
United States District Court for the Middle District of Pennsylvania (D.C. No. 4:19-cv-00327)
Argued: September 15th, 2020, DISMISSED
Zeferino Martinez, M.D.: Appellant v. UPMC Susquehanna
United States Court of Appeals for the Third District: Appellee
No. 19-2866
Judgement January 29th, 2021: REVERSED

3. Theodore R. Wilson v. Timothy C. Cox, COO, Armed Forces Retirement Home, and United States of America
United States Court for the District of Columbia
No. 1:06-cv-01585
Judgement December 5, 2011: Summary Judgement GRANTED

Theodore R. Wilson: Appellant v. Timothy C. Cox, COO, Armed Forces Retirement Home, and United States of America: Appellee

United States Court of Appeals for the District of Columbia
No. 12-5070
Judgement June 3, 2014: Summary Judgement REVERSED

The divisions of the Courts of Appeal are blaringly different on various issues concerning age discrimination and the litigation process thereof. Whereas the Court of Appeals for the 11th Circuit questioned the "authenticity" of presented evidence of age differences between the discriminated and the younger hired individual (Doc 114, Pg.12 ¶ 2) subsequent to Petitioner's evidence proving the age differences (Doc 118, EX A); the Court of Appeals for the Third District in *Zeferino Martinez v. UPMC Susquehanna, No. 19-2866,* in their decision stated: " At the pleading stage, an age-discrimination plaintiff does not have to know his replacement's exact age. That age can come out in discovery." Demonstration of further division among the Courts of Appeals is evident in the fact that the Court of Appeals for the District of Columbia, in *Theodore R. Wilson v. Timothy C. Cox, COO, Armed Forces Retirement Home and United States of America,* opens their introduction stating: "We consider the facts in the light most favorable to Wilson, the party against whom summary judgement was granted.", which is directly the opposite of what Petitioner experienced from the Court of Appeals for the 11th Circuit.
Federal court systems such as the Northern District of Georgia and the Court of Appeals for the 11th Circuit, compared to the court systems listed above,

delivers drastically different and devastating decisions on federal rules and laws that are codified and settled precedent. Those decisions, relative to employment discrimination which have been documented, are 77 percent of the time decided against plaintiffs and in favor of employers (Other Authority #4). The Supreme Court of The United States must attempt to reign in federal judges with such flagrant disregard for following federal rules and procedures because in doing such, they deprive hundreds of thousands of American citizens their civil rights.

III. THIS ISSUE IS OF GREAT LEGAL/NATIONAL SIGNIFICANCE

The federal district and appellate courts have created an environment of great reluctance by attorneys to pursue employment discrimination cases because of the system's documented hostility toward employment discrimination plaintiffs. Research scholars call the hostility the "Ant-Plaintiff Effect" (A-PE) (Other Authorities #4, Vol. 3, Pg. 108). In a 2013 New York Law School Law Review a sitting judge state:

> Is summary judgment being unfairly granted in employment discrimination cases? Scholars and practitioners have put forth this proposition, as they have written about the apparent high failure rates of plaintiffs in opposing dispositive pretrial motions in employment discrimination cases.1 They have contended that: summary judgment is being granted more often in employment cases than in other kinds of cases;2 summary judgment is being unfairly granted in employment discrimination cases because federal judges are hostile to these cases;3 federal judges are trying to drive plaintiffs in employment cases to state court;4 and, indeed, summary judgment is unconstitutional.

(Other Authority #3, Vol. 57(4), Pg. 672)

A-PE is evident in the ever-increasing amount of unconstitutional summary judgement granted to Defendant-employers and against employment-discrimination Plaintiffs. This increase, in far too many cases, such as mine, the Petitioner, causes federal court magistrates and judges to twist and contort themselves into non-sensical arguments in their attempt to justify an erroneous decision that violates our civil rights and unconstitutionally take away our right to a TRIAL BY JURY.

The Anti-Plaintiff Effect (A-PE) is nowhere more evident than in the exploitative use of the summary judgement adjudication device district and appellate court magistrates and judges use to deprive civil employment discrimination litigants their civil rights and their constitutional right to a TRIAL BY JURY. For federal court systems like the Northern District of Georgia and the Court of Appeals for the 11th Circuit, summary judgement has been the default go-to vehicle used to lighten their caseloads, regardless of its legitimacy, and reward cunning lawyers and big law firms at the expense of legitimate plaintiffs. This has created the impression and appearance of collusion and corruption between lawyers, magistrates, and judges of the federal court system.

Recent research data and statistics show the devastating effects of the exploitative use of summary judgement through empirical numbers.

When it comes to the federal courts' unethical, illegitimate, and unconstitutional overuse of summary judgement, most research scholars note the following:

A Federal Judicial Center study showed that summary judgment was granted, in whole or in part, in employment discrimination cases approximately seventy-seven percent of the time, in tort cases approximately sixty-one percent of the time, and in contract cases approximately fifty-nine percent of the time.8 Other research shows that on appeal plaintiffs' victories (both before trial and at trial) are much more likely to be reversed than defense victories.

(Other Authority, #3, Vol.57(4), Pg. 672-673). Researchers also commented on the tendency of federal appellate courts to AFFIRM lower district court rulings on employment discrimination cases at extremely high rates, which contradict their purported "de novo" review:

The most striking feature of appeals is the high rate of affirmance. Our work in a number of articles shows the affirmance rate for federal civil appeals to be about eighty percent." At first glance, this affirmance effect seems unsurprising. One might expect a high affirmance rate because of frequent appellate deference to the district court's result. One might even expect a high affirmance rate when review is de novo, because of the tendency of experts to agree on matters within the fields of their expertise at about a seventy-five percent rate. These two factors together might push the expected rate of affirmance close to eighty percent." (Other Authority, #4, Vol. 3, Pg. 106)

Yet, in some districts and among some federal court systems, such as the Northern District of Georgia and the Court of Appeals for the 11th Circuit, the exploitative use of summary judgement is even greater. In their abstract, researchers form the Cornell Law Library note the following (EDPA -Eastern District of Pennsylvania and NDGA – Northern District of Georgia):

Interdistrict differences were not dramatic in these three areas except that NDGA had a higher rate of summary judgment in tort and contract cases than did EDPA. The most striking effect was the approximate doubling—to almost 25%—of the NDGA summary judgment rate in

employment discrimination cases and a substantial increase in the NDGA summary judgment rate in other civil rights cases. Subject to the limitation that both time periods studied are removed in time from the Supreme Court's 1986 summary judgment trilogy, the only strong evidence in this study of a post-trilogy increase is in NDGA employment discrimination cases. Civil rights cases had consistently higher summary judgment rates than noncivil rights cases and summary judgment rates were modest in noncivil rights cases (Other Authority #1-Abstract).

The above documentation of judicial bias against employment discrimination plaintiffs in the Northern District of Georgia and the Court of Appeals for the 11th Circuit gives reasonable explanation to the decisions that were made in my case. It explains their loose interpretation and application of the McDonnell -Douglas burden-shifting framework; their refusal to correctly-apply the four requirements to prove a prima facie case; it explains why BOTH lower and appellate courts refused to review Petitioner's evidence; and it explains why the Court of Appeals for the 11th Circuit failed to conduct a de novo review of my case on appeal: This Honorable Court must intervene on this matter and, especially, it must intervene regarding the decisions effecting employment discrimination cases in the Northern District of Georgia and the Court of Appeals for the 11th Circuit. In doing so, The United States Supreme Court will right a wrong; restore civil and constitutional rights; and give renewed hope to an entire class of older Americans seeking promotions and employment in American businesses and companies.

THIS ISSUE HAS LEGAL AND NATIONAL SIGNIFICANCE

The legal and national significance of The Supreme Court of The United States reviewing this petition is of critical importance and would have national consequences. This Honorable Court has an obligation to set defined scope and parameters for the litigation and adjudicatory processes for employment discrimination cases, in the interest of real justice being dispensed by federal magistrates and judges. This Honorable Court must, as best it can, eliminate opportunities for federal magistrates and judges to ignore federal rules and guidelines, by hubristically creating their own "improvised" definition of federal rules and guidelines that are set precedence, when judging employment discrimination cases. This must be done if the American worker over 50 years old is to receive a modicum of fairness when they bring employment discrimination cases against employers. As it stands, the present adjudicatory environment is one of hostility towards employment discrimination plaintiffs by federal magistrates and judges which leaves no hope that conditions within the federal judiciary system will evolve into a system of fairness; it must be forced.

This Honorable Court should revisit the McDonnell Douglas burden-shifting framework in the adjudication of summary judgement under Title VII disparate treatment claims. There must be clear, set rules and standards for magistrates and judges to follow if employment discrimination plaintiffs are to receive a modicum

of justice; or this Court should restrict the use of the McDonnell Douglas framework, because as it stands, federal courts use it as a default mechanism to enable employers to merely make frivolous assertions as pretext that proves they did not discriminate. The McDonnell Douglas framework is very employer-friendly, which is why federal magistrates and judges should, in the interest of fairness, not accept its application so overwhelmingly on employment discrimination cases, which, consequentially, is always at the great disadvantage of plaintiffs.

A review of this case will enlighten the Court to the present-day application of summary judgement in employment discrimination lawsuits; it will enlighten the Court to the overwhelming use and casual misapplication of summary judgement by federal magistrates and judges due to the development of a hostile environment created by the volume of employment discrimination lawsuits that increases year by year; and, it will, hopefully, alert this Court to the harm and collateral damage as a result of summary judgement.

The misuse and misapplication of summary judgement by federal magistrates and judges has become a daily routine in far too many judicial proceedings. It defies belief that a 77% grant of summary judgement in employment discrimination cases could even remotely be distributed fairly (Other Authority #3, Pg. 673). Then, more egregiously, federal court systems such as the Northern District of Georgia

and the Court of Appeals for the 11th Circuit, the numbers and percentages increase to 80% (Other Authority #4, Vol. 3, Pg. 106).

The above percentages obviously show a bias against employment discrimination plaintiffs due to a federal judiciary system that has run amok in their casual indifference to following federally established rules and guidelines for the adjudication of employment discrimination lawsuits. As in my case, many more employment discrimination plaintiffs have had their cases ended through the unorthodox, unethical use of summary judgement.

Federal magistrates and judges have, by virtue of their tendency to over-whelmingly grant summary judgement against plaintiffs, knowingly or inadvertently created havoc and caused great harm to the lives of hundreds of thousands of older Americans. As a result of losing their cases due to a hostile judicial system, many plaintiffs experience a sense of hopelessness; they experience great material loss; they experience debilitating depressions; they experience stress-induced health problems; and some even experience death due to the physical problems that are created when one is deprived of a means to make a living.

A review and correction of the misuse and overuse of summary judgement in employment discrimination lawsuits would help eliminate some of the communal sense of helplessness that has been come about; it would right a great wrong

regarding the misapplication of federal laws, rules, and guidelines; it could/would codify the present topsy turvy judicial interpretation of the McDonnell Douglas burden-shifting framework; it could/would codify and set the required rules and standards for interpreting the guidelines for summary judgement; and it could/would more specifically put in place definitive, codified component elements necessary to define the requirements for the prima facie case, because, presently, the opportunity for hostile adjudicators to contrive interpretations that benefit employers and disadvantage plaintiffs is too great and is evident in the extremely high rate of judicial decisions granting summary judgements that defies authentic legal interpretation of the law.

The revisions would only be the collateral benefits derived from a review of the many convoluted judicial interpretations regarding employment discrimination lawsuits; the real benefits could/would be the careers and lives that will be saved. The Petitioner is merely a symbolic figure representing hundreds of thousands of similar individuals who are having their civil rights trampled on by the federal court system across this country; however, southern court systems appear, through documented research, to be the most aggressive in the abuse of the summary judgement device due to their hostility towards employment discrimination plaintiffs and their indifference to following laws, rules, and guideline that have already been established as settled law. This judicial hubris has, either intentionally

or inadvertently, resulted in federal magistrates and judges, in systems such as the Northern District of Georgia and the Court of Appeals for the 11th Circuit, to grant summary judgement against plaintiffs in employment discrimination lawsuits at extremely high rates regardless of the legitimacy. The obvious consequences of these actions are the violation of the civil rights of hundreds of thousands of Americans and their guaranteed right to a TRIAL BY JURY. And, finally, a Supreme Court review of this issue would right the wrongs the present federal court systems have perpetrated on older job seekers throughout this country.

Far too many federal court systems, especially those in the Southern regions of this country, such as the Northern District of Georgia and the Court of Appeals for the 11th Circuit, have knowingly or unknowingly used the summary judgement device as a default mechanism to unjustifiably reduce caseloads at the expense of employment discrimination plaintiffs. This is a direct violation of the Seventh Amendment and infringes on the right to have a trial by jury. In doing so, the federal courts systems, either knowingly or inadvertently, demonstrates a callous indifference to the trauma, mental injury, and harm that it leaves in the wake of such decisions.

The federal court system should not aid and abet the constitutional rights of older American citizens by its overuse and/or abuse of the summary judgement device as is the present state. The Supreme Court of the United States of America must

intervene and set specific guidelines and methods in place to curtail the federal court systems' overuse of summary judgement. The federal court system's overuse of the summary judgement device must be reigned in for the good of the people.

CONCLUSION

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

Respectfully submitted,

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