No. 23-5745

In the Supreme Court of the United States

ZEPHRYN (STEPHANIE) HAMMOND,
Petitioner,

v.

THE UNIVERSITY OF VERMONT MEDICAL CENTER,
Respondent.

On Petition for a Writ of Certiorari
to the Vermont Supreme Court

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

The Vermont Fair Employment Practices Act (FEPA), 21 V.S.A. § 495(a)(1), makes it unlawful for an employer to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability. Petitioner, having failed to establish a claim of race discrimination, disability discrimination, or retaliation under the FEPA before the Vermont Supreme Court, now asks this Court to opine on matters of well-established law, matters inextricably fact-bound to the proceedings below, and matters raised for the first time in Petitioner's petition.

Respondent respectfully submits that the only question presented in this matter is:

Whether the Court should grant certiorari to review the Vermont Supreme Court's decision entering judgment in Respondent's favor, where there is no compelling reason to review Petitioner's claim, no important federal question is at issue, no conflict between state and federal law, and where Petitioner seeks to relitigate the facts and issues presented below.

LIST OF PARTIES

The parties to this matter are the University of Vermont Medical Center (Respondent) and Zephryn Hammond (Petitioner), who appears in Vermont Superior Court proceedings below as Stephanie Hammond. By Motion dated October 14, 2022, Petitioner notified the Vermont Supreme Court that Petitioner's name had been legally changed to Zephryn Hammond.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent University of Vermont Medical Center is a wholly owned subsidiary of The University of Vermont Health Network Inc. and there is no publicly held corporation that owns 10% or more of its stock.

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The Vermont Supreme Court's decision affirming summary judgment for Respondent can be found at *Hammond v. Univ. of Vermont Med. Ctr.*, 2023 VT 31 (2023). The unpublished decision of the Vermont Superior Court granting summary judgment in Respondent's favor can be found at *Hammond v. Univ. of Vermont Med. Ctr.*, No. 945-10-19 Cncv, 2022 WL 20508407 (Vt. Super. June 28, 2022).

STATUTES INVOLVED

The only statute cited in Petitioner's complaint, and therefore considered and ruled on in proceedings below, is 21 V.S.A. Chapter 5.[1] Notwithstanding the foregoing, Petitioner cites to Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Civil Rights Act of 1991, the 7th and 14th Amendments of the U.S. Constitution, the Constitution of the State of Vermont, and various Vermont statutes, as the bases for statutory authority for this matter. These authorities are cited for the first time in Petitioner's petition.

[1] 21 V.S.A. Chapter 5 contains the Vermont Fair Employment Practices Act, which is found at 21 V.S.A. § 495(a)(1).

STATEMENT OF THE CASE

1. *Factual Background.* Petitioner is African American, with a history of health issues, including Crohn's disease. Prior to 2019, Petitioner was employed as a senior histotechnologist at the University of Vermont Medical Center ("UVMMC"), where Petitioner was responsible for processing tissue samples and medical specimens. Petitioner's duties specifically included ensuring that lab samples were timely processed, in accordance with the lab's processing protocols for each type of specimen.

During Petitioner's employment with UVMMC, Petitioner's performance ratings were, overall, generally positive. However, as early as 2008, Petitioner's supervisor noted concerns about Petitioner's ability to communicate in a professional manner with colleagues, as well as Petitioner's ability to accept constructive feedback from others. In Petitioner's written self-assessments, Petitioner also acknowledged some of these short-comings, including having trouble with co-workers and displaying an attitude that "could be a bit better." Pet. App. D. 1.

In 2017, a new supervisor joined Petitioner's work group. This supervisor observed, and began documenting, the same general performance issues Petitioner's prior supervisor had previously observed. For instance, in June 2018, Petitioner received a verbal warning, memorialized in writing, noting Petitioner's need to maintain professionalism when interacting with colleagues, and emphasizing the need to let colleagues know if Petitioner had to leave the work area or was unable to complete a task. This was a requirement, despite the fact that Petitioner had

received an accommodation allowing Petitioner to take bathroom breaks, in order to avoid any confusion concerning which stage of the processing protocol Petitioner's lab samples were in. Accurate and timely processing of lab work is essential to patient care.

In November of 2018, in response to continuing issues regarding Petitioner's absences from the work area, Petitioner's supervisor again warned Petitioner about leaving the work area without first informing colleagues and about the importance of interacting with colleagues in a professional manner. In addition, the warning stated that Petitioner frequently denied responsibility for errors that were clearly Petitioner's and that Petitioner did not exhibit proper concern about patient care. This warning was contained in a written "letter of understanding," which is the second step in UVMMC's corrective action process. Pet. App. C. 4.

Following the November 2018 warning, in or about January of 2019, Petitioner met in succession with two different human resources officers to further discuss the corrective action Petitioner had received, and Petitioner's relationship with a lead histologist in the lab with whom Petitioner—and others—had had a history of personality conflicts. The first human resources officer Petitioner met with summarized the meeting in writing and sent it to Petitioner. The summary did not contain any allegation that Petitioner had reported discrimination based on race or medical condition. Petitioner did not provide any objection or feedback on the summary. During the meeting with the second human resources officer, Petitioner repeated claims of conflict with the lead histologist, who was Petitioner's

co-worker and not a supervisor, and claimed the lead histologist did not like Petitioner because their prior supervisor had always favored Petitioner. Petitioner also mentioned that several years before, Petitioner had asked a different co-worker (who later was promoted to supervisor) whether the lead histologist, "might be a racist." Pet. App. C. 5. UVMMC human resources investigated the complaint and found Petitioner's claims of being targeted or discriminated against by the co-worker to be unsubstantiated. The human resource officer invited Petitioner to send any additional documentation for review. Petitioner did not do so.

In February 2019, Petitioner received a final written warning concerning Petitioner's ongoing performance issues, including Petitioner's refusal to take responsibility for mistakes, failure to follow directions and established processes, and refusal to acknowledge potential patient harm. Petitioner appealed the final written warning to Petitioner's supervisor and the supervisor's supervisor. Both supervisors upheld the warning.

Less than a month after receiving the final warning, Petitioner failed to notice an urgent bone marrow biopsy that required Petitioner's attention, and which Petitioner was responsible for processing; a week later, Petitioner failed to appear at work without first receiving supervisory approval. Petitioner did not dispute the missed biopsy or failing to report to work, although Petitioner claimed without supporting evidence that Petitioner "had the option," but was not required, to report to work on that day. Pet. App. C. 6.

Following the exhaustion of UVMMC's progressive discipline process in which UVMMC consistently identified a pattern of performance deficiencies implicating patient safety, UVMMC terminated Petitioner's employment on April 3, 2019.

2. *Proceedings Below*. Petitioner filed a complaint in Vermont Superior Court on October 28, 2019, alleging discrimination based on race, disability, and retaliation, in violation of 21 V.S.A. Chapter 5. Respondent filed a Motion for Summary Judgment, which was granted.

Petitioner appealed to the Vermont Supreme Court on July 27, 2022, and shortly thereafter, on August 11, 2022, Petitioner's attorney withdrew as counsel. Oral arguments were heard before the Vermont Supreme Court on February 21, 2023. Despite Petitioner's claims that UVMMC had its facts wrong, and that its investigation was inadequate, based on the foregoing facts, the Vermont Supreme Court determined Petitioner had failed to provide evidence from which a jury could conclude that Petitioner's termination was motivated by race, disability, or retaliation. Further, the Vermont Supreme Court determined that the progressive discipline issued to Petitioner was consistent with UVMMC's stated reasons for firing Petitioner and Petitioner failed to demonstrate any other facts from which a jury could reasonably infer that the stated reasons were pretextual.

On June 2, 2023, the Vermont Supreme Court affirmed the trial court's grant of summary judgment. Petitioner filed a motion for rehearing, which was denied on July 17, 2023. Petitioner filed a petition for a writ of certiorari on October 4, 2023.

REASONS FOR DENYING THE PETITION

I. Petitioner has Failed to Comply with Supreme Court Rule 14.4

Pursuant to U.S. Sup. Ct. R. 14.4, "[t]he failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to a ready and adequate understanding of the points requiring consideration is a sufficient reason for the Court to deny a petition."

Here, Petitioner's submission to the Court presents a series of philosophical questions followed by a lengthy recitation of Petitioner's version of the facts below. Petitioner fails to clearly frame any questions of sufficient import for the Court's consideration, and fails to set forth any unresolved question of law appropriate for the Court's review. On this basis alone, Petitioner's petition should be denied. *See, e.g., Galveston Causeway Constr. Co v. Galveston, H & S a R Co,* 262 U.S. 747 (1923); *Tiger v. Lozier*, 275 U.S. 566 (1927).

II. This Case Presents No Issue Worthy of Review by the Court

Review on a writ of certiorari is not a matter of right, but of judicial discretion. U.S. Sup. Ct. R. 10. Not every case presented to the Court will merit judicial review, but generally, only those cases where there is a split among the circuits on an important issue, where an important federal question is raised, or where a state or appellate court has issued a decision that conflicts with governing Supreme Court precedent. *Id.* Such cases generally contain "unsettled questions of federal constitutional or statutory law of general interest." CHIEF JUSTICE REHNQUIST, THE SUPREME COURT – HOW IT WAS, HOW IT IS at 269 (1987). In short,

"[a] petition for a writ of certiorari will be granted only for compelling reasons." U.S. Sup. Ct. R. 10.

As set forth more fully below, the instant petition presents no compelling reasons for granting certiorari, and meets none of the aforementioned criteria. It does not identify an unsettled issue of law, a conflict between state and federal law, a conflict among the circuits, or an important federal question. Therefore, the petition should be denied.

A. Petitioner's Petition Seeks Advisory Opinions on Well-Settled Matters of Law

In Petitioner's "Questions Presented," Petitioner poses a number of philosophical questions, hypotheticals, and questions posed in the abstract for the Court's review. However, it has long been the Court's "considered practice not to decide abstract, hypothetical or contingent questions." *Alabama State Fed'n of Labor v. McAdory*, 325 U.S. 450, 461 (1945); *Flast v. Cohen*, 392 U.S. 83, 95–97 (1968) ("[T]he oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions.") (citation omitted). *See also*, Ann Althouse, *How to Build a Separate Sphere: Federal Courts and State Power*, 100 Harv. L. Rev. 1485, 1492 (1987) (noting that the Court "is in the business of deciding cases and emphatically not in the business of emitting free-floating legal advice.").

However, even construing Petitioner's questions to present legitimate questions of law, the issues Petitioner raises do not require resolution; they are largely well-settled matters of jurisprudence on which the Court has already ruled.

That is, liberally construed, Petitioner has asked: is an employer legally obligated to address and/or redress claims of discrimination in the workplace; what constitutes a protected class; what is required to meet the evidentiary burdens of proof under the *McDonnell Douglas* analysis; when should a claim be viewed under a continuing violation theory; when is a litigant entitled to a trial by jury; what is the standard for perjury; and what is the standard for finding, and the remedy for addressing, claims of ineffective counsel?

These are not new questions, and are not questions that require this Court's attention and review. *See, e.g., Princeton Univ. v. Schmid*, 455 U.S. 100, 102 (1982) ("We do not sit to decide hypothetical issues or to give advisory opinions about issues as to which there are not adverse parties before us."); *Conway v. California Adult Auth.*, 396 U.S. 107, 110 (1969) ("Were we to pass upon the purely artificial and hypothetical issue tendered by the petition for certiorari we would not only in effect be rendering an advisory opinion but also lending ourselves to an unjustifiable intrusion upon the time of this Court."). On this basis, too, Petitioner's petition should be denied.

B. No Federal Question Was Raised Below

Petitioner's petition contains numerous citations to the Constitution and other sources of federal law. However, only one source of authority was cited to in Petitioner's initial complaint: 21 V.S.A. Chapter 5. Resp. App. A. Indeed, a review of Petitioner's complaint reveals no references to Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Civil Rights Act of 1991, or the 7th or 14th Amendments of the U.S. Constitution. It is not surprising, then, that the lower

courts in this matter rendered judgment based only on the application of 21 V.S.A. Chapter 5, and not on any of the federal authorities cited in Petitioner's petition.[2]

Where a federal question is raised for the first time in a petition for writ of certiorari, and it does not appear that any federal question was presented for consideration, or relied on, in the state court below, the Court will generally decline to consider the question on review. *See State of Montana v. Rice*, 204 U.S. 291 (1907); *Simmerman v. State* 116 U.S. 54 (1885); *Howell v. Mississippi*, 543 U.S. 440 (2005) (declining to entertain federal question that was not first "properly presented to a state court.").

Here, Petitioner raises federal issues that were not properly raised in state proceedings below, and should not now be considered. In addition to allowing Petitioner to effectively circumvent Title VII's administrative exhaustion requirements, entertaining Petitioner's federal claims for the first time at this juncture would violate principles of comity, by disturbing the finality of a state judgment on federal grounds that the state courts did not have occasion to consider. *See Webb v. Webb*, 451 U.S. 493, 499 (1981). On this basis, too, Petitioner's petition should be denied.

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[2] Petitioner could have easily pursued the claims raised in Petitioner's complaint under federal law, but in order to do so, Petitioner would have had to first exhaust administrative remedies under 42 U.S.C. § 2000e–5. Petitioner declined to do so, instead bypassing these procedures and proceeding directly to state court, on state law claims.

C. The Decisions Below Rest on Adequate and Independent State Grounds

It is well-settled that where a state court decision "appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion," the Court may exercise its jurisdiction to grant certiorari under 28 U.S.C. § 1257.[3] *Michigan v. Long*, 463 U.S. 1032, 1037–1044 (1983). However, the Court will not review judgments of state courts that rest on adequate and independent state grounds. *See Murdock v. City of Memphis*, 87 U.S. 590, 632 (1874); *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) ("Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions.").

Here, the decisions of the courts below were decided exclusively on state law grounds under the provisions of 21 V.S.A. Chapter 5, and not under any provision of federal law. While the Vermont Supreme Court notes that the "standards and burdens of proof" under FEPA are the same as Title VII, the two laws, on their face, are not the same. To the contrary, a plain reading of FEPA reveals that the protected bases under FEPA are broader than those enumerated under Title VII. Moreover, a state's reliance on federal provisions for the purpose of guidance,

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[3] 28 U.S.C. § 1257(a). Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

without more, is insufficient to transform a matter of state law into a matter of federal law. *See Michigan v. Long*, 463 U.S. at 1041.

III. Petitioner has Failed to Demonstrate any Error in the Proceedings Below Which Would Merit Certiorari Review

In the proceedings below, both the Vermont Superior Court and the Vermont Supreme Court found that the record as a whole presented no genuine issues of fact, and that Respondent was entitled to judgment as a matter of law. Specifically, both courts below found that no reasonable trier of fact could find that Petitioner had been subjected to discrimination based on race, disability, or retaliation in violation of 21 V.S.A. § 495(a)(1). Moreover, the Vermont Supreme Court, in a thorough *de novo* review of the evidence presented, correctly affirmed the trial court's findings that Petitioner was not terminated for reasons based on race, or disability, or retaliation, but rather, for longstanding, critical deficiencies in Petitioner's performance, which threatened to put patient care at risk.

Petitioner advances no arguments sufficient to demonstrate a basis for disturbing these findings. Rather, Petitioner points to purported errors of fact, attempts to introduce news facts, and generally asserts that the courts below improperly applied the law. Additionally, UVMMC notes, pursuant to U.S. Sup. Ct. R. 15.2, that the Petition contains many significant misrepresentations of fact. For example, much of the Petition is based upon an allegation that, as early as June 5, 2018, Petitioner made a "race based complaint" about a co-worker. *See, e.g.* Pet. at 5, 10, 30-31. Contrary to such an assertion, and, as the trial court noted, the evidence "does not bear . . out" that Plaintiff made a race-based complaint in early

June 2018. Pet. App. D. 6, 13. Instead, the record shows, at most, that around that time Petitioner may have made generalized complaints that a co-worker was treating Petitioner poorly because the prior supervisor had always favored Petitioner. This is just one of numerous examples where Petitioner significantly mischaracterizes the evidence and makes assertions without any support in the record. Respondent respectfully submits that these are not worthy bases for granting certiorari. *See* U.S. Sup. Ct. R. 10. ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

Neither should the Court consider issues and authorities that have been raised for the first time in Petitioner's petition, including Petitioner's invocations of various federal Constitutional and statutory provisions and Petitioners generalized complaints about Petitioner's prior legal representative. First, the Court has consistently refused to decide federal constitutional issues raised for the first time on review of state court decisions. *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940) ("But it is also the settled practice of this Court, in the exercise of its appellate jurisdiction, that it is only in exceptional cases, and then only in cases coming from the federal courts, that it considers questions urged by a petitioner or appellant not pressed or passed upon in the courts below."). Moreover, Petitioner's counsel withdrew from representation prior to Petitioner's appeal to the Vermont Supreme

Court; any issues Petitioner desired to raise with respect to Petitioner's counsel or representation could have been—but were not—raised at that juncture.

In sum, the Vermont Supreme Court properly affirmed the Vermont Superior Court's finding that Petitioner could not establish any of Petitioner's claims of discrimination based on race, disability, or retaliation, and that Respondent was entitled to judgment as a matter of law. On this basis, too, Respondent respectfully submits that the Court should decline to exercise review in this matter.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

November 8, 2023

Respectfully submitted,

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Respondent's Appendix

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
CHITTENDEN UNIT **DOCKET NO. 945-10-19 Cncv**

STEPHANIE HAMMOND,

PLAINTIFF

v.

THE UNIVERSITY OF VERMONT MEDICAL CENTER,

DEFENDANT

>>

SUMMONS

TO: THE ABOVE NAMED DEFENDANT,

You are hereby summoned and required to serve upon Norman E. Watts, Esq., plaintiff's attorney, whose address is 19 Central Street, PO Box 270, Woodstock, VT 05091-0270, and email address is info@wattslawvt.com, an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court. Unless otherwise provided in Rule 13(a), your answer must state as a counterclaim any related claim which you may have against the plaintiff, or you will thereafter be barred from making such claim in any other action. **YOUR ANSWER MUST STATE SUCH A COUNTERCLAIM WHETHER OR NOT THE RELIEF DEMANDED IN THE COMPLAINT IS FOR DAMAGE COVERED BY A LIABILITY INSURANCE POLICY UNDER WHICH THE INSURER HAS THE RIGHT OR OBLIGATION TO CONDUCT THE DEFENSE.** If you believe that the plaintiff is not entitled to all or part of the claim set forth in the complaint, or if you believe that you have a counterclaim against the plaintiff, you may wish to consult an attorney. If you feel that you cannot afford to pay an attorney's fee, you may ask the clerk of the court for information about places where you may seek legal assistance.

Dated: 10/23/19

Norman E. Watts, Esq.

Served on: 10/28/19
Date

Deputy/Sheriff

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 945-10-19 Cncv

STEPHANIE HAMMOND,

PLAINTIFF,

v.

THE UNIVERSITY OF VERMONT MEDICAL CENTER,

DEFENDANT

>>

COMPLAINT AND JURY DEMAND

PLAINTIFF brings this lawsuit against defendant, University of Vermont Medical Center as her former employer, for illegal discriminatory dismissal from employment and illegal retaliation for disability and racial discrimination.

1. Plaintiff is a resident of Burlington City in Chittenden County, Vermont.
2. Defendant University of Vermont Medical Center ("UVMMC") is a Vermont corporation located in Burlington, Chittenden County, Vermont.
3. Plaintiff worked for defendant as a lab assistant from 2002 to 2003, and as a senior histologist in its Anatomic Pathology department from May 2003 until April 2019.
4. A histologist is a professional who studies and works with the microscopic structure of tissue.
5. Plaintiff became a histologist by earning a bachelor's degree in medical laboratory science from the University of Vermont and through a clinical internship. She also passed three national examinations.

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6. Plaintiff's duties included, *inter alia*, setting up and conducting immunohistochemistry and special stains for microscopy, preparing chemical solutions for products or processes, following standardized formulas/recipes, and providing technical support or assistance to fellow co-workers, residents, and pathologists.
7. In her position, she gained experience with constant temperature water baths, cooling plates, desktop computers, email software, eyewash fountains, personal protective equipment, laboratory drying ovens, flasks, graduated cylinders, heating plates, scales, information management system LIMS, magnetic stirring bars, Microsoft PowerPoint, embedding and processing tissues, triage, microtomy, staining, and safety equipment.
8. During most of her tenure with defendant, her supervisors' evaluations of her professional performance were positive and excellent.
9. Plaintiff fully enjoyed her work and the employees she worked with during her tenure.
10. In 2017 defendant transferred a new manager as plaintiff's supervisor.
11. Shortly thereafter, the new supervisor, Valerie Cortright, began harassing plaintiff with complaints about her performance.
12. Ms. Cortright demonstrated favoritism towards three other employees in the same department, all of whom were leads.

COUNT ONE:
RACIAL DISCRIMINATION
(VIOLATION OF VERMONT'S FAIR EMPLOYMENT PRACTICES ACT, 21 V.S.A. CHAPT. 5)

13. Plaintiff incorporates the paragraphs 1-12 into this claim.
14. The three favored employees were Caucasian.

15. Plaintiff was the only African-American person in the Histology Department.
16. Ms. Cortright accused plaintiff of making mistakes in the processing of medical procedures.
17. Under Ms. Cortright, plaintiff's evaluations dropped from "excellent" to inferior even though plaintiff had not altered her performance or conduct in any way.
18. Ms. Cortright's complaints about plaintiff's performance were false.
19. Ms. Cortright demonstrated a strong negative attitude towards plaintiff and no other similarly-situated employees.
20. Ms. Cortright even accused plaintiff of refusing to perform certain procedures in the department; the accusations were false.
21. Ms. Cortright's strong negative attitude towards plaintiff manifested itself in bullying, targeting, intimidation, demeaning accusations and setting standards for failure.
22. Ms. Cortright's strong negative attitude impacted plaintiff heavily – undermining her confidence and her working relationship with co-workers, and causing extreme anxiety and depression for plaintiff.
23. Ms. Cortright accused plaintiff of failing to follow a specific protocol in performing a procedure and instructed her to read all of the procedure manuals at home one day rather than work her regular shift.
24. Ms. Cortright changed the procedural protocol – after she reprimanded plaintiff.
25. Plaintiff had actually performed the procedure correctly.
26. Ms. Cortright did not require any other similarly-situated employees to read all of the procedure manuals, nor did she reprimand plaintiff's three Caucasian co-workers about following procedures.

27. Ms. Cortright imposed tighter restrictions on plaintiff concerning her break times while not doing the same for other employees who were Caucasian; the move was a departure from past practice.

28. Ms. Cortright criticized plaintiff for reduced productivity because of too many bathroom breaks – a false accusation.

29. Defendant demoted plaintiff and denied her compensation increases during the same period – without justification.

30. Defendant was aware of Ms. Cortright's attitude towards and treatment of plaintiff.

31. Given the false and fabricated nature of Ms. Cortright's accusations against plaintiff, Ms. Cortright's only motivation for the strong negative attitude towards plaintiff was plaintiff's African-American race – not diminished performance or conduct.

32. Ultimately, defendant dismissed plaintiff from her employment.

33. Similarly-situated Caucasian employees who made mistakes in their work were not criticized or sanctioned.

34. Defendant's conduct, in Ms. Cortright's actions, constituted illegal racial discrimination in violation of Vermont's Fair Employment Practices Act ("VFEPA," or "the Act").

35. Defendant's illegal racial discrimination caused plaintiff to lose her job and stall her career.

36. Defendant's conduct also caused plaintiff to suffer severe anxiety, loss of confidence and significant monetary losses in the form of lost compensation and benefits.

37. Plaintiff demands judgement against defendant for illegal racial discrimination in violation of the statute.

38. Plaintiff also demands an award of monetary damages in the form of compensation for lost compensation and benefits, together with statutory punitive and liquidated damages and attorney's fees and costs of litigation.

COUNT TWO:
ILLEGAL DISABILITY DISCRIMINATION
(VIOLATION OF VERMONT'S FAIR EMPLOYMENT PRACTICES ACT 21 V.S.A. CHAPT. 5)

39. Plaintiff incorporates paragraphs 1-38 into this claim.

40. Plaintiff suffers from Crohn's Disease, a recognized disability in the employment setting.

41. Plaintiff was a disabled individual who was proven to be capable of the essential functions of her job.

42. Defendant urged plaintiff to slow down her production because it made other employees feel deficient; plaintiff complied with the request and was blamed for reduced production.

43. Plaintiff had other medical issues including a hysterectomy and a labral tear of her shoulder.

44. Plaintiff's disability required her to frequently visit the bathroom for relief from its symptoms.

45. Despite its knowledge of plaintiff's disability, defendant demanded she reduce the number of bathroom breaks.

46. Ms. Cortright criticized plaintiff for reduced productivity because of too many bathroom breaks – a false accusation not based on her actual productivity, but based on her disability and defendant's bias against her as a disabled individual.

47. Plaintiff's medical condition also required occasional medical treatment, including emergency treatments.

48. When plaintiff arrived at work each day, her disability required her to rearrange her workstation.

49. Ms. Cortright criticized her for the delay in commencing work each day.

50. Plaintiff notified defendant about the requirement for occasional emergency medical treatments.

51. On several occasions, defendant refused to grant plaintiff's requests for leave for aggravated conditions of her disability, causing her to suffer pain and other symptoms.

52. In some instances, plaintiff's condition became so critical she required immediate medical treatment; on some occasions she was unable to notify her supervisor before the treatment.

53. Plaintiff complained repeatedly to defendant's human resources department about disability discrimination – to no avail.

54. Defendant's heavy criticism aggravated the symptoms of her Crohn's Disease.

55. Defendant failed to engage in an interactive discussion concerning plaintiff's disability and her requests for reasonable accommodations to assist her in her responsibilities without complications from her disability.

56. Defendant also refused to provide plaintiff with adequate or reasonable accommodations for her disability.

57. Defendant's conduct constituted illegal disability discrimination in violation of Vermont's Fair Employment Practices Act.

58. Defendant's illegal conduct caused plaintiff to lose her job and suffer anxiety and career and monetary losses.

59. Plaintiff demands judgement against defendant for illegal disability discrimination in violation of VFEPA.

60. Plaintiff also demands an award of monetary damages in the form of compensation for lost compensation and benefits, together with statutory punitive and liquidated damages and attorney's fees and costs of litigation.

COUNT THREE:
ILLEGAL RETALIATION FOR COMPLAINTS ABOUT DISABILITY DISCRIMINATION
(VIOLATION OF VERMONT'S FAIR EMPLOYMENT PRACTICES ACT, 21 V.S.A. CHAPT. 5)

61. Plaintiff incorporates paragraphs 1-60 into this claim.

62. Plaintiff complained to Human Resources about Ms. Cortright and the three employees Ms. Cortright favored, including their treatment of her because of her disability – e.g., when she needed to take breaks to deal with the disease's symptoms.

63. Plaintiff informed Human Resources about the incident when Ms. Cortright had wrongfully reprimanded plaintiff about failing to follow a procedure.

64. The result of her complaints was defendant assigned her to "the benches" for her workstation for several weeks, an unusual job station for employees in her position.

65. In June 2018, defendant's managers also verbally warned plaintiff for alleged mistakes in her processing functions – without explaining anything about the mistakes.

66. Defendant's June 2018 verbal warning was unsupported by any evidence, but when plaintiff protested, defendant issued a "letter of understanding" to plaintiff in November 2018.

67. Defendant issued other warnings against plaintiff that were similarly unfounded; for example, she was warned for failing to secure a replacement for her position when she

went on her breaks to deal with her disability, despite the fact that she had not been notified of the replacement requirement.

68. Defendant denied plaintiff's request to participate in unique medical procedures for training purposes – but allowed similarly-situated employees to participate.

69. Defendant failed to inform plaintiff of other unique medical procedures that would have been appropriate and useful training for plaintiff.

70. Defendant also falsely accused plaintiff of many infractions including, but not limited to, not retrieving a process run in a timely manner and violations of health care protocols.

71. One of the reasons defendant advanced for its dismissal of plaintiff was her occasional failure to notify it about her impending emergency medical treatment related to her disease; on those occasions, plaintiff's medical condition was critical – emergency treatment was imperative; there was no time to inform officials until after treatment.

72. Nevertheless, defendant criticized plaintiff for failure to immediately notify her supervisor about the emergency treatment.

73. Thus, defendant subjected plaintiff to unwarranted and illegal retaliation because of her disability.

74. For its illegal retaliation against her, plaintiff demands judgment against defendant.

75. Plaintiff also demands a monetary award of lost compensation in the form of back- and front-pay, liquidated and punitive damages, attorney's fees and court costs.

COUNT FOUR:
ILLEGAL RETALIATION FOR COMPLAINTS ABOUT RACIAL DISCRIMINATION
(VIOLATION OF VERMONT'S FAIR EMPLOYMENT PRACTICES ACT, 21 V.S.A. CHAPT. 5)

76. Plaintiff incorporates paragraphs 1-75 into this claim.

77. Plaintiff complained to Human Resources about Ms. Cortright and a "lead" Histology employee's treatment of her because of her race.

78. The result of her complaints was defendant assigned her to the IHC, Special Stains, and bookwork "benches" for several weeks, an unusual job station for employees in her position.

79. Defendant's managers also verbally warned plaintiff for alleged mistakes in her processing functions – without explaining anything about the mistakes or providing relevant training.

80. Defendant's June 2018 verbal warning was unsupported by evidence, but when plaintiff protested, defendant issued a "letter of understanding" to plaintiff in November 2018, followed by a written warning and a final written warning.

81. Defendant issued other warnings against plaintiff that were similarly unfounded, including warnings about allegedly failing to follow new procedures or changed procedures of which plaintiff had not been informed.

82. No similarly-situated employees were warned for mistakes that never occurred.

83. Plaintiff requested special training to handle new procedures; defendant denied plaintiff's request to participate in unique medical procedures for training purposes while allowing similarly-situated employees to participate.

84. Defendant failed to inform plaintiff of other unique medical procedures that would have been appropriate and useful training for plaintiff.

85. Defendant also falsely accused plaintiff of many infractions including, but not limited to, not retrieving a process run in a timely manner and violations of health care protocols.

86. Defendant criticized plaintiff for mistakes that never occurred.

87. Thus, defendant subjected plaintiff to unwarranted and illegal retaliation because of her race.

88. For its illegal retaliation against her, plaintiff demands judgment against defendant.

89. Plaintiff also demands a monetary award of lost compensation in the form of back- and front-pay, liquidated and punitive damages, attorney's fees and court costs.

NOTICE: PLAINTIFF DEMANDS A JURY TRIAL.

DATED: 10/10/2019.

STEPHANIE HAMMOND,
PLAINTIFF

By: _____
Norman E. Watts, Esq.
Watts Law Firm, PC
Counsel for Plaintiff