No 23-789

ORIGINAL

In the Supreme Court of the United States

LARISA DIRKZWAGER,

Petitioner,

v.

ARCHER-DANIELS-MIDLAND COMPANY,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Larisa Dirkzwager
Petitioner Pro Se
5869 49th Avenue North East
York, ND 58386
(763) 307-0342
ld.quarterhorses@gondtc.com

January 18, 2024
SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. Whether the Judge's error in miscalculation of the Plaintiff's Response deadline negates his dispositive Order and thereby logically and legally renders the mistakenly disregarded motion as timely filed; therefore rendering the Response eligible for consideration by higher courts in appellant procedures.

2. Whether the clear error and stare decisis ruling, where the court completely disregarded the United State Supreme Court precedent on jurisdictional infringement and is in direct conflict with the decisions of another Courts of Appeals, warrants the automatic ruling of "reverse and remand", and possible writ of mandamus.

3. Whether the highest court of the land, in its role as a federal judiciary supervisor, is allowed to review "local" rules, procedures, and other legislative constructs such as "Corporate personhood," "but for" standards, quasi-court procedures, alternative dispute resolution mandatory requirements and etc. for their compliance with the equal protections under the Fourteenth Amendment to the Constitution and possible endangerment to our democracy,

4. Whether protections of Forced Arbitration Bill (H.R.4445) should be validated and extended to various alternative dispute resolution quasi-court procedures that jeopardize our democracy in effort to defend the Seventh Amendment to United States Constitution

5. Whether the inferior courts can disallow the Supreme Court of the United States to review documents and evidence by removing or otherwise causing them to disappear from the docket; block decisions and transcripts of proceedings from public scrutiny; issue rulings before deadlines; and other acts of legal malfeasance.

6. Whether the United States Supreme Court should resolve the split between circuits on lenient treatment of Pro Se litigants and protect the core value of due process which is a meaningful opportunity to be heard.

LIST OF PROCEEDINGS

United States Court of Appeals for the Eighth Circuit

Case No. 22-3657

Larisa Dirkzwager, *Plaintiff-Appellant,* v.
Archer-Daniels-Midland Company, *Defendant-Appellee.*

Date of Final Opinion: August 23, 2023

Date of Rehearing Denial: October 20, 2023

United States District Court for the District of North Dakota-Western

No. 1:20-cv-212

Larisa Dirkzwager, *Plaintiff,* v.
Archer-Daniels-Midland Company, *Defendant.*

Date of Final Order: November 28, 2022

McHenry County District Court, State of North Dakota

Case No. 25-2020-cv-84

Dirkzwager v. Archer-Daniels-Midland Company

The case was removed to the United States District Court for the District of North Dakota-Western by Defendants on November 16, 2020

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDER

OTHER DOCUMENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

OPINIONS BELOW

The opinion of the U.S Court of Appeals for the Eighth Circuit, dated August 23, 2023 is included in the Appendix ("App.") at 1a-3a. The order denying rehearing and rehearing *en banc* appears at App.41a-42a. The opinion of the U.S. District Court for the District of North Dakota is included at App.4a-6a. These opinions were not designated for publication.

JURISDICTION

The judgment of the Eighth Circuit was entered on August 23, 2023. App.1a. The court of appeals denied petitioner's petitions for rehearing and rehearing *en banc* on October 20, 2023. (App.41a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. VII

> 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.

U.S. Const. amend. XIV

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty. Or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1981(a)

> All persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1985(3)

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward

> or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act of furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege as a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

28 U.S.C. § 1331

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

STATEMENT OF THE CASE

Dirkzwager initiated this action pro se in state district court, claiming that, while employed by Defendant Archer-Daniels-Midland Company ("ADM"), she had been discriminated against and otherwise harassed because of her age, national origin, and/or sex in violation of the North Dakota Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended. ADM removed the case to the United States District Court for the district of

North Dakota on November 16, 2020. This case proceeded routinely as most civil rights cases, as described clearly, accurately, and succinctly in the "Background" section of Court Orders in the Appendix (pp. 8a, 16a, 28a). Mrs. Dirkzwager ("Petitioner;" "Plaintiff;" "Appellant"), an immigrant without any formal training in English, would never be able to write any case description better than the Judge, so she has elected to enter them in the Appendix for those who are interested in a history of the case.

The proceedings came to a screeching halt when Mrs. Dirkzwager decided to Amend her Complaint by adding Sections 1985 and 1981 of the Civil Rights Act of 1866, and eventually filed the Motion for reconsideration (Doc. Nos. 29 and 30). In this motion, she asked the Court to reconsider its Order (Doc. No. 18) to strike Section 1981 from her amended Complaint, among other actions. This Section was extremely important for Petitioner's case because the Department of Labor (DoL) erroneously entered in the charge (claim) a demeaning nickname that Defendant Archer Daniels Midland (ADM) employees called Mrs. Dirzwager instead of her real name, and it took two weeks to correct the misspelling of Petitioner's name. This mistake delayed filing her charge just long enough to miss a deadline by four days, for Petitioner Mrs. Dirkzwager's strongest allegation of failure to promote. While Petitioner was the most qualified candidate for the position in question due her vast experience and relevant higher education, ADM promoted an uneducated, young, White man with an extensive criminal record to a position that required an advanced degree and a pristine reputation; the Quality Control Lab Supervisor's signature guaranteed

the quality of the product and compliance to guidelines for the cleanliness of water discharged into the river from the manufacturing process.

This allegation alone could make Petitioner's case for discrimination. The four-year statute of limitations deadline of 42 U.S.C. § 1981 would allow pick-up of this charge, as well as other conduct charges. Of course, section 1981 comes with a hefty burden: the "but for" standard of proof. Upon examination, it is clear that the original plain language of 42 U.S.C. § 1981 does not require this standard; over the years, courts have constructed this requirement, the consequence of which has been the mass discharge of valid civil rights cases. Firstly, those restrictions ask plaintiffs to prove a double negative. In Mrs. Dirkzwager case, it would be presented as: "Defendants would not discriminate against me but for I would not have been born in Russia and did not exhibit non-tolerance to Nazis due their attempt to commit the genocide of all Slavic people, and their killing six of my close relatives, including my grandfather, in World War II". All of these linguistic "nots" and "nons" would make the heads of even native English speakers spin.

This also means that in order to comply with the "but for" standard of proof, Petitioner had to prove that Defendant ADM did not discriminate against her for the reason of her sex, her age, her religion, her sexual orientation, and all the other protected classifications. If the case was litigated in California, she would have to deny about twenty two protected characteristics. In a democratic society, a person should not have to prove even a single negative. The requirements are even more outrageous, considering that in order to offer proof, Petitioner had to explain why the

Defendants abused her. The contents of the abuser's mind are known only to the abuser. Normal people, including psychology professionals, cannot comprehend why someone may enjoy torturing their victims. Ironically, explaining the ADM pervert's behavior opened the door to speculations and accusations that the abuse was justified, as if Petitioner deserved this treatment. Unsurprisingly, most victims are not able to meet this paradoxical requirement, and their cases are dismissed. Just when plaintiffs think the process cannot get any more difficult, they realize that the "but for" standard gives perpetrators an extra chance to act illegally with impunity. With it, abusers don't have to prove that they did not discriminate against the victim; the effect is that they simply have to prove that they had more than one motive to discriminate. So, it is strategic to admit racial discrimination, alongside gender discrimination, and the "but for" standard of proof makes all the allegations go away. These kinds of twisted and unconstitutional laws constructed by lower courts over the years create public distrust for the judicial system and the government as a whole, and build grounds for wannabe tyrants to incite disgruntled people to attack government institutions, with a tyrant's promise to be their redemption and to make a new order, cleansed from illogical laws.

What happened in this action exemplifies the unfairness inherent in the legal requirements. Defendants were able to pursue Judge to strike section 1985 based on "intracorporate conspiracy doctrine" (aka "Corporate Personhood") despite Plaintiff's protests that "Corporate Personhood" doctrine is not applicable to civil rights cases. She also lost the Human Rights

Act of 1988 also Defendant's argument didn't make sense. They claimed that this Act is only applicable to citizens of Japanese ancestry who were incarcerated in intermittent camps during World War Two. Those events had happened about eighty years ago, and all victims were already compensated and most of them passed away. Congress keeps this law to make sure it won't happen again. She saw the connection between the persecution of innocent American citizens for their Japanese ancestry and discrimination against her for her Russian ancestry for political reasons. Of course, when Mrs. Dirkzwager drafted her First Amended Complaint in the Winter of 2021 she couldn't imaging that we would have a presidential candidate who would base his campaign on promise to build concentration camps on our homeland. It turned out that this law is not as obsolete as Defendants argued. However, she managed to win Section 1981. (App.16a-39a).

The entering of 42 U.S.C. § 1981 into the complaint ignited a fierce battle over sexual harassment allegations, where Mrs. Dirkzwager was proving that the sexually demeaning conduct to which she was subjected was not a gender discrimination, but "mere" creation of a retaliatory hostile work environment to coerce her to quit her job, after she got involved in a protected activity by complaining about racial discrimination in the workplace. The opposing parties were relentless, generating about a dozen motions and four court orders altogether. On September 3rd, 2021, the Court announced that the issue was fully briefed and ready for ruling. Mrs. Dirkzwager eagerly anticipated notification; she could not start her discovery without the knowledge of which of her causes of action remained in the Complaint. Federal Rules of Civil Procedure

allow unlimited discovery, but the Court Order limited it to twenty-five documents, and Petitioner could not afford to waste material effort on the causes that could be stricken. At the same time, it would be sad to have the motion granted and yet be unable to prosecute because the limit of discovery requests was exceeded.

Petitioner knew better than to appear to rush the Judge; however, the trial date was approaching. After nine months of waiting, Mrs. Dirkzwager was worried that the mail notification had been lost. The Clerk assured Petitioner that the mail had not been missed, and organized a status conference. In this conference, the Judge declared that he had "good news:" He was ready to make a ruling, but first he wanted to know if Mrs. Dirkzwager was going to attend the Settlement Conference. If "Yes," he would enter his decision that very day, and as a bonus appoint an attorney to help Petitioner to prepare for the Settlement Conference, free of charge. To Petitioner, the "deal" sounded good all the way around, and at this point, she was still operating under the premise that the proceedings and Judge were impartial. After four years of being a one-woman army fighting the formidable giant Fortune 500 Corporation, it would be a relief to have a professional lawyer in her corner, even if for this limited purpose. The assistance would give Petitioner some time to file the second amended Complaint with Section 1981 in their conduct discovery, and do some work on her ranch, where she raised cattle together with her husband. Through all of this, Petitioner had to pay her bills. The challenges of the life of rancher/Pro Se litigant are described in the Excerpts from Opening Brief in (App.97a-105a). In short and put simply, it is very time consuming.

Somewhere in the middle of intense motion exchanges, the Defendant's request to enforce "local" Federal rules caught Mrs. Dirkzwager's attention. All this was happening in the middle of the COVID-19 pandemic, and the only source of information that was available to Plaintiff was the internet. Usually, she would just Google the Federal Rules for each motion, and act or respond accordingly. To her, "local federal" sounded oxymoronic. This time she searched "local Federal Rules of Civil Procedure North Dakota." Those search results astounded Petitioner. To her dismay, "local" federal rules existed; not truly Federal rules, but official nonetheless. And they were much worse than "real federal" Federal Rules. For one, the "local" rules had shorter deadlines. Even more, they didn't honor the "Mail Box" rule! That would explain the perpetual complaining by Defendant that Plaintiff's motions were "untimely." Petitioner thought that her motions might be late because the Post office was shorthanded due to the pandemic. And after Judge ruled that he "won't dismiss her Complaint just because it was one day late." (App.27a). Petitioner became so overwhelmed that some things fell through the cracks. For this, Petitioner is remorseful. After the court order granted the motion to reinstall Section 1981 and was silent about sexual harassment allegations, Mrs. Dirkzwager, following the principle of "what is not forbidden is allowed," kept the sexual misconduct allegations intact in her Complaint. A second wave of motions on sexual harassment claims was ignited. Mrs. Dirkzwager continued the argument that sexual content in harassment had nothing to do with gender discrimination, but only with the lack of imagination of culprits who use sexual abuse no matter the issue

they have with the victim, which in Petitioner's case was retaliation for her protected civil rights activity.

These motions were still pending when Petitioner entered into the settlement meeting. Rather, that is what she thought. Fortunately or unfortunately, it was easy to show that sexual attraction had nothing to do with Defendant's sexual harassment conduct, because Petitioner is old enough to be a mother to most of her harassers, and after years of abuse she developed an eating disorder and gained a lot of weight and lost interest in her appearance. (Or perhaps this was a defense mechanism against the abuse.)

In fact, the Court made a ruling on this issue two days before the Settlement Conference, but because Mrs. Dirkzwager was, by the strange "local" Federal rules, deprived of access to the court electronic messaging system and it took the United States Postal Service (USPS) five days to deliver the order, Petitioner had no way of knowing this. Her court appointed attorney had access to the electronically filed order, but failed to share this positive news that the Judge had denied Defendant's motion to strike the sexual misconduct allegations. Petitioner's case was very strong, as evidenced by the Judge's denial of dismissal, and when a jury learned the details of Defendant's abuse against Petitioner, they could logically award huge punitive damages. Quite the opposite, Petitioner's attorney kept telling her that her case was very weak because what Petitioner endured in her workplace was "not too bad;" the attorney even hinted that she "knew things." It was as if the Defendant's motion to strike was granted, because the only way Petitioner's case could be weak was if all the Defendant's despicable behavior was taken out of the complaint. The attorney,

Ms. Sambor, made her client Petitioner believe that if she agreed to settle, the attorney would negotiate all desirable terms, including the right to talk about ADM practices, and an ADM commitment to stop the discriminatory conduct. However—again, according to the attorney appointed by the Court to assist Mrs. Dirkzwager—if Petitioner was "stubborn," the Judge would find a way to dismiss her case, and she would not only lose the small amount of money that ADM offered her, but nobody would ever hear about her cause and struggle.

Then the Judge asked Petitioner what exactly she would want ADM to do to mitigate the damage, and Mrs. Dirkzwager suggested that ADM implement a standardized form for submitting complaints about misconduct, similar to one used by the Occupational Safety and Health Administration (OSHA) for physical injuries. Work accidents decreased in the ADM plant, partly because the form was easy to submit even for illiterate workers; all they had to do to check boxes and sign. `The idea occurred to Petitioner when her co-worker gave her a mocking form titled "Hurt Feelings Report," an attempt to inflict emotional distress and dissuade Petitioner from complaining about the hostile workplace environment. The form appeared to be real, and for a moment Mrs. Dirkzwager believed that this man wanted to help after Petitioner's supervisor refused to help her with the complaint.

In reality, it contained derogatory statements, and indeed made Mrs. Dirkzwager very sad and more isolated. (App.132a). But she remembered how hopeful she was to see this form in the first moment, because she was not yet proficient in writing in English at that

time and had no idea how to file a formal complaint. This form would be a solution for all workers with limited literacy. Of course, the demeaning statements would be replaced by legally correct and appropriate language. The Judge assured Petitioner that Defendant admitted to him that their investigation proved that all allegations in Plaintiff's Complaint were true, and that Defendant even had a talk with the culprits and committed to continue to improve the diversity situation in the plant. The Judge commended Mrs. Dirkzwager for fulfilling her citizen's duty to protect democracy and invited her to the short court procedure to put it on the record to make sure that ADM would not back out of these agreements. The case would have ended right here if Defendant had not tried to weasel their way out of it.

Petitioner's rude awakening happened when the court-appointed attorney delivered to her the Defendant's version of the Settlement Agreement. None of the negotiated terms were in it, and at the same time, some absolutely unacceptable terms had been added. The worst of these was the non-admission clause, which said that ADM had done nothing wrong; this would in turn mean that Petitioner's complaint was all lies and that ADM did not have to do any improvements. When Mrs. Dirkzwager pointed this out to her attorney Mrs. Sambor, she said it did not matter and that Petitioner had to sign it. Mrs. Dirkzwager replied with comments on the draft that had to be corrected. (App.81a-97a). Defendant corrected some; however, some non-negotiable terms remained. Apparently, ADM felt strongly about these terms; Mrs. Dirkzwager was just as adamant. Fortunately, this

draft contained two rescinding clauses: the "Consideration Period" and "Revocation Period".

These clauses are mandatory, specifically for this legal circumstance, so that victims can void unconscionable, coerced contracts. Therefore, all Plaintiff had to do was wait for the consideration period to elapse, the fraudulent Settlement Agreement would be null, and the trial would be back on track. However, it was not so easy. What happened next is described in detail in (App.105a-115a). The short account of it: Mrs. Dirkzwager caught her court-appointed attorney red-handed, colluding with Defendant in an attempt to override her client's will by signing the Contract on Petitioner's behalf. Fortunately, the Judge did not go along with her scheme, and did not agree to authorize Mrs. Sambor to sign. Mrs. Dirkzwager then made an unexpected and uninvited appearance at their clandestine conference, and declared clearly and unequivocally that Mrs. Sambor was fired, and that Petitioner was not going to sign the fraudulent Settlement Agreement for full story. (App.73a-77a).

After these developments, Petitioner hoped for a break so that she could finish her harvest. All of the wonderful hay that her husband and she made for their animals would not do any good buried in deep snow twenty miles away. Unfortunately, the over seventy-year-old husband who had just survived a stroke could not help much with the ranch chores. Defendant skillfully used the "local" Federal Rules of Civil Procedure again to set Petitioner up for failure when they sent the Motion to Enforce Settlement Agreement by USPS, the slowest method of delivery. When Petitioner received the Motion six days later, the first thing she did was check the "local" Rules for

dispositive motions, in recognition that the Motion ultimately asked to dispose the case. The deadline was two weeks shorter than the "real federal" Federal Rules. She had only twenty-one days. Petitioner had to hustle. She managed to email the Response Motion to Defendant on day twenty; however, she needed to notarize her "Declaration" and the notary had already gone for the day. The next day, Mrs. Dirkzwager went to town in the early morning, notarized the "Declaration," and went to the post office to make sure that her parcel was stamped that day, number twenty-one.

Later that day, Mrs. Dirkzwager found the Court order in her mailbox. The Judge had issued a ruling on the "Motion to Enforce" five days prior. Obviously, the Judge erroneously considered the motion to dispose the case to be non-dispositive. This could be understandable, considering that by making a ruling on a contract, which is a state court jurisdiction, the Federal Judge infringed in uncharted territory for federal Judges, where contract law, state law, actual Federal law, and "local" Federal Rules of Civil Procedure are entangled in an incomprehensible knot. Later, the Appellate Court used this very mistake to justify the refusal to review Mrs. Dirkzwager's Response, arguing incomprehensibly that if the Judge made a judicial mistake, they have a duty to make it too. Now they probably expect the United States Supreme Court to follow their example. Technically, the Judge did not need the Response Motion to make the correct ruling. He had all necessary documents at his disposal, and all the arguments that were presented in response were thoroughly argued before, during the almost two-year-long intense litigation, which he actively

participated to. Also Mrs. Dirkzwager thoroughly discussed every term in the Settlement Agreement and showed that it materially different with the record on the settlement conference the Appellate court kept saying that "it did not materially differ from the written agreement, and that Dirkzwager did not provide a sufficient justification for revoking it."

In her Response motion Mrs. Dirkzwager argued that the Draft of settlement agreement is very different with the court records, which conflicts with United States Supreme Court Precedent. To prove it she tried to download the Court order (Doc.No.51). However, she couldn't do it because it just disappeared from the docket. Now, the only proof of discrepancies between the court records and Settlement Agreement draft was the audio recording of quasi-court proceedings. She ordered the transcripts of this conference. This Court has the opportunity to review them in Appendix (App.43a-77a).

REASONS FOR GRANTING THE PETITION

I. THE QUESTION ABOUT THE DUE PROCESS RIGHT OF CIVIL PRO SE LITIGANTS FOR LENIENCY REPRESENTS THE SPLIT BETWEEN THE CIRCUITS.

The questions presented in this case are of critical importance for protection of civil rights and democracy in our country. This case is a perfect vehicle to reinforce the civil rights. A meaningful opportunity to be heard is a core due process value. If one cannot proceed at all, one clearly has lost more than simply the damages or the injunctive relief sought, because

the meaningful opportunity be heard is itself a protected interest.

John Adams wrote on the matter in 1776:" The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depends so much upon an upright and skillful administration of Justice."

Pro se litigants in civil cases in federal courts are entitled under the due process clause to have their pleadings liberally construed by the courts under the *Haines v. Kerner* (404 U.S. 519 (1972)) standard. After that the treatment of these cases is depends of court. Some of them will include lenient application of all procedural rules whenever it is in the interest of due process to do so. Forcing strict compliance with subsequent court procedures is inconsistent with a liberal construction of pleadings at the beginning of the action. In several cases the federal courts have rules that pro se litigants must receive notice of the requirements of summary judgment motion under Rules 12(b)(6) and 56 of Federal Rules of Civil Procedure. *See, e.g., Hudson v. Hardy*, 412 F.2d 1091, 1094 (D.C. Cir. 1968); *Garaux v. Pulley*, 739 F.2d 437, 439 (9th Cir. 1984); *Moore v. State of Fla.*, 703 F.2d 516, 520-21 (11th Cir. 1983); *Ham v. Smith*, 653 F.2d 628, 630 (D.C. Cir. 1981); *Barker v. Norman*, 651 F.2d 1107. 1128-30 (5th Cir. 1981); *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975); *Mitchell v. Inman*, 682 F.2d 886, 887 (11th Cir. 1982). Other lower federal courts, however, have taken a *Faretta v. California*, 422 U.S. 806 (1975) type approach to ruling on procedural rights of pro se civil litigants. On the ground that judicial assistance to pro se litigants undermines the impartial role of the judge in the

adversary system, at least one circuit court has ruled that the trial court did not have to notify a pro se plaintiff of a summary judgment motion's requirements. *Jacobsen v. Filler*, 790 F.2d 1362, 1364-67 (9th Cir. 1986); *Nelson v. Foti*, 707 F.2d 170, 171-72 (5th Cir. 1983); *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194-95 (D.C. Cir. 1983); *United States v. Pinkey*, 548 F.2d 305, 310 (10th Cir. 1977). Congress would not grant the right to proceed pro se without conveying with that right for a meaningful opportunity to be heard. Most Pro Se appearances by civil litigants are not voluntary, but rather result because pro se litigants cannot afford attorney to represent them. Some cases would not generate money judgment (injunctive relief) and cannot be taken on contingency bases. Sometimes all labor lawyers in the State have a conflict of interest. Mrs. Dirkzwager believes that her case would not be dismissed without notification if it was decided in 4th or 11th Circuit. The United States Supreme Court must address this Circuit split in interest of judicial uniformity.

II. THE JUDGE'S ERROR IN MISCALCULATION OF THE PLAINTIFF'S RESPONSE DEADLINE NEGATES THE DISPOSITIVE ORDER AND THEREBY LOGICALLY AND LEGALLY RENDERS THE MISTAKENLY DISREGARDED MOTION AS TIMELY FILED AND ELIGIBLE FOR CONSIDERATION BY HIGHER COURTS IN APPELLANT PROCEDURES.

The Judge made a clear mistake by miscalculating the deadline and issuing a premature order, dismissing the case with prejudice as unopposed before he received Plaintiff's response, which had been pre-empted. The Unites States Supreme Court precedent *Kemp v. United States*, 142 S.Ct. 1856 (2022) clearly

requires a reversal and remand of the case. However, the panel uses this deadline miscalculation to justify their refusal to review the Appellant's argument, stating that if the Judge has not seen the filing when it was filed in district court, then it is a new argument and cannot be reviewed by Court of Appeals. This ruling ultimately punishes the petitioner for the Judge's mistake. It is in the docket. A just ruling would not be one that builds on the Judge's error. A potential solution may appear straightforward: reverse according to the *Kemp* precedent and send it back to the same Judge. However, considering how closely this Judge adhered to the wishes of the Defendant giant corporation, odds are that he would issue the same order even after reviewing the responsive motion, and the case will be back in Appeal in several months' time. Alternatively, and more justly, this Court can settle the issue right now. Considering that this case has implications in the societal dissatisfactions that can contribute towards ills that can lead to voter disaffection, mass shootings, and child suicides time is of the essence.

The Appellate Court Decision to discard the issues presented in Appeal because the Judge failed to consider them by his own mistake creates a dangerous precedent. A Judge who wants to grant motion that benefits the giant corporation and diminishes the chance for successful appeal only has to make a premature ruling before the non-movant has a chance to respond and call it "unopposed." This legal maneuver amounts to trickery and is especially repugnant in the present case when it took this Judge almost 9 months to grant Mrs. Dirkzwager's motion for reconsideration of his order to strike the sexual

harassment and racial discrimination Causes for Action from her Complaint. An order that would not benefit the Defendant giant corporation was delayed, but the order that gets this same corporation off the hook for its discriminatory policies was issued prematurely. This kind of rulings seriously undermine the Fourteenth Amendment right for equal protection under law and due process. The number of cases that were cited by defendants shows that this complaint is not an isolated incident. The research shows that all of these cases follow the same pattern that reveals systemic departure from longstanding governing Unites States Supreme Court precedent. Doc. No. 77. Thus, this matter represents the question of "exceptional importance".

III. THE HIGHEST COURT OF LAND HAS A DUTY TO INTERVENE WHENEVER THE GLARING CONSTITUTIONAL VIOLATION IS TAKING PLACE.

The plain and clear language of sections 1981 and 1985 says nothing about either the "but for" standard or the "Corporate Persona" doctrine, the latter of which was created exclusively for accounting purposes and has no legal correspondence to civil rights. When lower courts apply inappropriate doctrines and standards to civil right cases; create "local" rules and procedures that weed out meritorious claims, which Congress considered to be profoundly important to litigate; and "disappear" their own, it is time for the highest court of the land, the Supreme Court of the United States, to fulfill its duty and invoke its power of supervision, and review all of these "local" judicial constructs for compliance with the U.S. Constitution.

In *Mitchum v. Foster*, 407 U.S. 225 (1972), Supreme Court didn't hesitate to protect people's

constitutional rights, even though the Anti-injunction Act limits a federal courts ability to interfere with state court proceedings.

IV. THE APPELLATE COURT OPINION'S INTERPRETATION OF 28 U.S.C. § 1331 CONFLICTS WITH SUPREME COURT PRECEDENT, THE OTHER CIRCUITS AND ITS OWN PRECEDENT REGARDING SUBJECT MATTER JURISDICTION.

The panel opinion conflicts with Supreme Court holdings by failing properly to apply an analysis of *Kokkonen v. Guardian Life Insurance Co. of America,* 114 S.Ct. 1673 (1994), when interpreting a Jurisdictional Statute.

Similar to current case, *Kokkonen* presented the issue of whether a federal court has the power to enforce a settlement agreement in a case that the court had already dismissed. The issue arises because federal courts are courts of limited jurisdiction, possessing only such power as is conferred upon them under the Constitution and by statute. Thus, in order for a federal district court to act in a case, it must be authorized to exercise jurisdiction over the cause of action. With respect to the dispute that originally brings the parties to court, this jurisdiction may exist because, for instance, the dispute involves a question "arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331 (1994) or because there is diversity of citizenship between the parties and the amount in controversy exceeds $75,000. U.S.C. § 1331 (1994). Only if jurisdiction exists may the district court proceed to resolve the parties' dispute. In most cases, the parties enter into an agreement settling their dispute before the court issues a final judgment in the case. Under accepted

legal principles, this settlement agreement is regarded as a contract between the parties, enforceable on the same terms as any other private contract.' When a case is settled, the court generally closes the case by issuing an order of dismissal, often with prejudice." Federal Rule of Civil Procedure 41(a)(1)(ii) provides for dismissal of an action "by filing a stipulation of dismissal signed by all parties who have appeared in the action," and allows the parties to stipulate that the dismissal is to be with prejudice. Federal Rule of Civil Procedure 41(a)(2) allows an action to be dismissed "upon order of the court and upon such terms and conditions as the court deems proper. In doing so, the district court formally relinquishes jurisdiction over the original cause of action.

Moreover, unless the court expressly retains jurisdiction over the settlement agreement, the court is not engaged in active supervision of the parties' performance of their settlement agreement. In some cases, though, the parties quarrel over one another's compliance with the terms of the settlement agreement. In that situation, the complaining party may, of course, file an action for breach of contract in state court, which is normally the appropriate forum for the adjudication of contract disputes. The complaining party, however, may prefer to return directly to the original court-a federal district court-to seek enforcement of the terms of the settlement agreement.

The question presented in *Kokkonen* was whether the district court has the power to act in response to such a request. In other words, the issue was whether the district court has jurisdiction to enforce a settlement agreement in a case that the court had dismissed earlier, where the court does not have an

independent basis for jurisdiction over the contract claim and did not expressly retain jurisdiction when it dismissed the case. When this situation arose in *Kokkonen*, the district court concluded that it had the "'inherent power'" to enforce the settlement agreement. *Kokkonen v. Guardian Life Ins. Co. of Am.*, No. CV-F-90-325-REC, slip op. at 6 (E.D. Cal. Aug. 19, 1992), *aff'd,* 993 F.2d 883 (9th Cir. 1993), *rev'd,* 114 S.Ct. 1673 (1994). On appeal, the Ninth Circuit affirmed,' *Kokkonen v. Guardian Life Ins. Co. of Am.*, 993 F.2d 883 (9th Cir. 1993), *rev'd*, 114 S.Ct. 1673 (1994) holding that a district court has jurisdiction under its "'inherent supervisory power'" to enforce the terms of a settlement agreement after dismissal of a case. *Kokkonen v. Guardian Life Ins. Co. of Am.*, No. 92-16628, slip op. at A-5 (9th Cir. Apr. 27, 1993) *(quoting Wilkinson v. FBI*, 922 F.2d 555, 557 (9th Cir. 1991), *overruled in part by Kokkonen v. Guardian Life Ins. Co. of America*, 114 S.Ct. 1673 (1994)). In reaching this conclusion, the court of appeals emphasized that the "'authority of a trial court to enter a judgment enforcing a settlement agreement has as its foundation the policy favoring the amicable adjustment of disputes and the concomitant avoidance of costly and time-consuming litigation.'" *Kokkonen*, slip op. at A-2 - A-3 (*quoting Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978)). The Supreme Court, however, granted review of *Kokkonen* and reversed the Ninth Circuit's assertion of inherent power. *Kokkonen*, 114 S.Ct. at 1677.

The Court unanimously held that a federal court does not have the power to enforce a settlement agreement after it has dismissed a case, unless the court had retained jurisdiction over the settlement

agreement in its dismissal order or otherwise has some independent basis for jurisdiction. *Id.* The opinion, written by Justice Antonin Scalia, is noteworthy for the narrowness of its holding on a federal court's ability to obtain jurisdiction over a settlement agreement after it had unconditionally dismissed a case.

A. The Appellate Court Opinion Conflicts with Supreme Court Precedent Regarding Interpretation of 28 U.S.C. § 1331.

The panel ruled that Federal Court Remained Jurisdiction on enforcing contract based on 28 U.S.C. § 1331, which states: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." The wording clearly shows that it is not applicable to action that involved the contract law, which reserved to state courts and above discussed *Kokkonen* unequivocally established that the moment Judge disposed the case with prejudice he loses jurisdiction and legally the case is not in front of him anymore even it lies on his desk.

In the Per Curium, the first paragraph on page 2 states that the Federal Court has jurisdiction because the case was still pending. The operational word is "pending." The argument that the case was still "pending" before Federal court is foundational; if the case is pending, then release was not granted. If release was not granted, then the contract does not exist. Logically, if the contract does not exist, it cannot be enforced. The bundling of two different rulings into one order was a duplicitous judicial maneuver to avoid the jurisdictional problem. This tactic is disingenuous at best, a clever work-around of the conundrum that

might have fooled less experienced pro se litigants or even some legal professionals. By signing two decisions with one signature, Court made it appear as if the rulings were singular, simultaneous, and equivalent. Although it is possible to do physically, this is impossible legally. Before enforcing a contract, a judge must have the actual contract before him or her. Without it, there is nothing to enforce; it is simply a sheet of paper, invalid without signature. The moment the Judge legalizes the contract, she loses jurisdiction, for reasons amply described in the Opening Brief pages 43-46 and Reply Brief pages 50-52. At this juncture, the entire case must go to the state court; or, if parties agree in written stipulations to remain in Federal Court Jurisdiction for enforcing the Agreement, the Judge assumes the responsibility to check every provision for fairness and legality. The Judge cannot simply take the word of the mediator that procedures were followed, and laws and policies were applied fairly and with integrity—especially if the victim Petitioner has raised objections to those procedures.

This case was removed by Defendants from the state court by "well pleaded complain" rule which was fine. However, in *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804 (1986), the Court weighed on in the question of Subject matter jurisdiction to add the requirement that to establish Subject matter jurisdiction, a state cause of action must not only depend on federal law, but must depend on a "substantial" question of federal law. The *Merrell Dow* test defined the issue as interpretation of congressional intent. If the question was important enough that Congress likely would have approved the issue being decided in federal court that is sufficient. Here, the Congress

obviously, never intended to burden Federal Courts with enforcing contracts, especially with meticulous and time-consuming review the terms for legality and fairness. The reluctance of Federal Judges to waste their time on numerous terms of contract is understandable. They have more important Constitutional matters that affect the whole country to solve. That why they must leave it to the state judges, who are well rehearsed on contract law, not just force victims to sign fraudulent and unconscienced contracts without reviewing the terms.

B. Appellate Court's Opinion Conflicts with Precedents in Other Circuits and Its Own.

The decision is also in conflict with precedents in other circuits that were ruled in concert with the law of the land, and shockingly contradicts the long standing and well-established precedent of its own circuit. The number of cases that were cited by defendants shows that this complaint is not an isolated incident. *See Sheng v. Starkey Laboratories*, 117 F.3d 1081 (8th Cir. 1997); *Tarver v. Tarver*, 2019 ND 189, 931 N.W.2d 187; *Langley v. Jackson State University*, 14 F.3d 1070, 1074 (5th Cir. 1994); *Adduono v. World Hockey Ass'n.*, 824 F.2d 617, 620 (8th Cir. 1987); *McCall-Bey v. Franzen*, 777 F.2d 1178, 1186-87 (7th Cir. 1985); *and Fairfax Countrywide Citizens Ass'n v. County of Fairfax*, 571 F.2d 1299 (4th Cir. 1978). The research shows that all of these cases follow the same pattern that reveals systemic departure from long-standing governing Unites States Supreme Court precedent. The split decision must be addressed and resolved by the US Supreme Court to protect judicial uniformity, which constitute the question of "exceptional importance".

V. THE SUPREME COURT RULING ON THIS CASE WILL INVALIDATE THE BILL H.R. 4445.

Unconstitutional local Rules and procedures of court that disparately impact the defenders of civil liberties are at the core of this case. The most outrageous of these rules and procedures are the different forms of Alternative Dispute Resolution masquerading as Mandatory Arbitration, Mandatory Settlement conferences, Mandatory Mediation, and other quasi-court procedures, which have devolved to destroy the protections of the Seventh Amendment to the United States Constitution, the guarantee of the right for trial by a jury of peers. The evidence in this case show that this type of alternative dispute resolution gives the perpetrators yet another chance to abuse their victims. Acutely aware of this danger, President Biden addressed this issue in his Bill H.R. 4445. Invalidation of Congressional enactment obviously reflects a question of "exceptional importance".

CONCLUSION

The petition for writ of *certiorari* should be granted.

Respectfully submitted,

Larisa Dirkzwager
Petitioner Pro Se
5869 49th Avenue North East
York, ND 58386
(763) 307-0342
ld.quarterhorses@gondtc.com

January 18, 2024

BLANK PAGE