2/2/2024

No. 23-843

IN THE

Supreme Court of the United States

ROBERT MICHAEL MILLER,

Petitioner,

v.

JELENA MCWILLIAMS; CHAIRWOMAN, FEDERAL DEPOSIT INSURANCE CORPORATION,

Respondent,

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

PETITION FOR A WRIT OF CERTIORARI

ROBERT M. MILLER
4094 MAJESTIC LANE, #278
FAIRFAX, VA 22033
(415) 596-2444
ROBMILLER44@HOTMAIL.COM
Pro Se

February 2, 2024

QUESTIONS PRESENTED

1. Whether the district court's hundreds of deliberate factual and legal errors and abuses of discretion, and the circuit court's summary affirmance of those errors and abuses, demonstrate such deep-seated antagonism toward a *pro se* litigant and favoritism toward a federal defendant as to make fair judgment impossible.

2. Whether a federal district court has jurisdiction to stay federal agency personnel actions in a whistleblower reprisal appeal to the Merit Systems Protection Board when the Board has no sitting members to grant a stay, pursuant to 5 U.S.C. § 703.

3. Whether an employee of a federal corporation has an implied right of action for political discrimination pursuant to 5 U.S.C § 2301 and 5 U.S.C. § 2302, when the federal corporation has a history of corrupting its grievance process – the federal employee's sole source of relief.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner, Robert Michael Miller, is an employee of the Federal Deposit Insurance Corporation (FDIC). Miller is an individual, and thus there are no disclosures to be made by him pursuant to Supreme Court Rule 29.6.

Respondent is the Federal Deposit Insurance Corporation, a federal corporation as defined in 31 U.S.C. § 9101.

RELATED PROCEEDINGS

There are no related proceedings under Supreme Court Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Robert Michael Miller, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in *Robert Michael Miller v. Jelena McWilliams, Chairwoman, Federal Deposit Insurance Corporation*, No. 21-2073, App. 1, is unpublished. The district court's memorandum opinion and order in *Robert Miller v. Jelena McWilliams, Chairwoman, Federal Deposit Insurance Corporation, et al.*, 1:20-cv-0671 is shown at App. 6.

JURISDICTION

The Fourth Circuit issued its unpublished *per curiam* decision on September 7, 2023. App. 1. Justice Robert granted an extension of time to file a petition for a writ of certiorari to and including February 4, 2024. That date, falling on a Sunday, means this petition is due no later than February 5, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 101 of the Civil Service Reform Act of 1978, Pub. L. 95-454, 92 Stat. 1113, codified in

5 U.S.C. § 2301(b)(2) and 5 U.S.C. § 2302(b)(1)(E) provides that:

> It is the policy of the United States that—
>
> (2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to ***political affiliation***, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights; [emphasis added]

Section 703 of Pub. L. 94—574 (1976) provides that:

> The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction.

INTRODUCTION

Petitioner raised claims of age, sex, and disability discrimination and retaliation for prior protected equal employment opportunity ("EEO") activity when FDIC did not select him for a Senior Policy Analyst, grade CG-15 position. Miller raised claims of discrimination and hostile work environment on the basis of political affiliation. Miller also requested the district court stay agency personnel actions taken in retaliation for his whistleblower disclosures in the absence and inadequacy of any Merit Systems Protection Board members to grant a stay. Miller raised another discrimination and retaliation claim that was subsequently dismissed by stipulation of the parties and joined into a *mixed case* with Miller's whistleblower reprisal and adverse action appeals.

A. The Lower Courts Were Profoundly Biased and Prejudiced Against a *Pro Se* Litigant

In 2017, esteemed circuit court judge Richard Posner resigned from the Seventh Circuit bench citing the low regard his colleagues had for *pro se* litigants. "The basic thing is that most judges regard [*pro se* litigants] as kind of trash not worth the time of a federal judge." *ABA Journal*, Sep. 11, 2017.

For the second case in a row, the same district court judge invented false facts to dismiss Miller's meritorious claims in their entirety. The *Memorandum Opinion and Order* reads like a complete work of fiction with errors of fact, law, and

logic in nearly every sentence. The footnotes of the judge's opinion drip with venomous disdain, grossly misrepresenting Miller's arguments and portraying him in a most unfavorable light.

The judge unlawfully drew inferences against Miller in dispositive motions. The court condoned *hundreds* of violations of federal rules by defense counsel. The court abused its discretion in denying Miller's motions for Rule 11 sanctions, an extension of discovery, motions to compel, a motion for leave to conduct a discovery survey, and a motion for a preliminary injunction. Each reason given by the court for denying the motions was factually deficient, contrary to law, arbitrary and capricious. The court imposed nonexistent rules and deadlines on Petitioner for which he had no proper notice. When defense counsel failed to meet her legal burdens, the district court leapt from its bench to defense counsel's table to argue in defendants' favor.

For the third case in a row, the Fourth Circuit summarily affirmed obviously erroneous lower court rulings and completely ignored Miller's assignments of error.

This caps off an unbroken string of unjust decisions in five district court cases and fifteen appellate cases in which Article III courts universally refused to take any of a *pro se* litigant's facts or legal arguments seriously.

B. Petitioner Proved His Discrimination and Retaliation Claims

Petitioner easily proved FDIC discriminated against him on the basis of age, sex, and disability and retaliated against him for prior EEO activities when it selected the *least qualified* person for the highest graded civil service position in a government agency. Selectee was the youngest candidate and the only female. Of the six candidates, selectee had, by far, the least amount and type of experience. She had the lowest level of education. She had no awards, publications, or job-related training. She performed the worst on the structured job interview.

Miller's qualifications were *plainly superior* to the selectee in nearly every respect. He had vastly more experience, a much higher education, more policy-related coursework, substantially more job-related training, and he performed far better in the structured interview.

The selectee's sole qualification that exceeded Miller was her *most recent* performance evaluation, which could not have motivated the hiring decision. Miller's superior qualifications were not his own choice of selection criteria; these were ***defendants'*** chosen selection criteria as evidenced in their vacancy announcement, position description, and Merit Promotion Plan.

At Step 2 of the *McDonnell Douglas* burden-shifting analysis, FDIC failed to rebut Miller's *prima facie* case of discrimination and retaliation by merely listing positive attributes of the selectee, many of

which Miller also possessed, without demonstrating why she was *preferred* to Miller, as this Court required in *Tex. Dept. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254 (1981).

Even when FDIC's proffered non-discriminatory reasons were comparative in nature, they were vague, conclusory, subjective, and devoid of factual support. *Id.* at 248. Thus, FDIC failed to put Miller and the court on notice of its reasons for the selection such that Miller had a full and fair opportunity to prove pretext. *Id.* at 256.

Even assuming defendants rebutted the *prima facie* case, Miller responded with overwhelming evidence of pretext. FDIC had a long history of discrimination and retaliation against Miller. FDIC had policies and programs dedicated to advancing the careers of young women. Miller proved that some of FDIC's reasons were pretextual because, if true, FDIC could not have preferred the selectee over other persons inside Miller's protected classes.

The selecting official departed from FDIC's Merit Promotion Plan by consulting a person with known discriminatory and retaliatory animus against Miller. FDIC did no investigation into what these women discussed, and both witnesses feigned amnesia in depositions.

Miller demonstrated that there were genuine issues of material fact concerning the selectee's superior skills and experience, thus the district court should not have granted defendants summary judgment. There were no issues of material fact

standing in the way of granting Petitioner's motion for partial summary judgment.

C. Petitioner Had an Implied Right of Action for Political Discrimination

The worst kept secret in Washington, D.C. is that federal agencies are packed with Democrats. An overwhelming share of political campaign contributions by federal employees favor Democrat Party candidates, causes, and political action committees.[1,2] Thus, a single political party has taken over the entire federal bureaucracy, enacting that party's policies no matter who is elected president or appointed as agency head. This outcome is directly contrary to centuries of civil service law determined to create and preserve an apolitical, professional civil service free from political favoritism and coercion.

Using publicly available sources of information, Petitioner's complaint alleged, and discovery would prove, that 74 percent of persons in the FDIC who violated the law and his rights from 2011 to the present are Democrats. Data shows approximately 87 percent of Petitioner's colleagues in the Division of Insurance and Research are Democrats. It is statistically impossible for FDIC to have such a large preponderance of Democrats without political

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[1] https://www.fedsmith.com/2021/02/12/political-donations-and-federal-employees/

[2] https://www.dailysignal.com/2024/01/05/federal-employees-political-donations-largely-went-to-biden-other-democrats-in-2023/

discrimination. The National Treasury Employees' Union ("NTEU"), which is the collective bargaining unit for Miller's position, donates nearly entirely to Democrat Party candidates, causes, and political action committees.

While most federal employees can obtain redress for political discrimination through the MSPB, as an employee of a federal corporation, Miller can not. The sole source of relief for political discrimination comes from FDIC's negotiated grievance procedure with the NTEU. Miller pleaded that FDIC rigged its grievance process against him three times.

The district court erroneously held that Miller had no implied right of action for political discrimination, which is strongly implied in Sections 2301 and 2302 in Title 5, U.S. Code. As this Court held long ago, "It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress." *Marbury v. Madison*, 5 U.S. 137, 147 (1803).

D. The District Court Had Jurisdiction to Stay Retaliatory Agency Personnel Actions

Congress created extraordinary protections for federal whistleblowers who serve the interests of the United States by exposing federal agency malfeasance.

The district court erroneously denied a motion for a preliminary injunction to stay agency personnel actions retaliating for whistleblower disclosures, claiming it lacked jurisdiction. In the absence and

inadequacy of any Merit Systems Protection Board members to grant a stay, the district court unquestionably had jurisdiction to grant the stay pursuant to Section 703, Title 5, United States Code.

* * *

For all these reasons, this Court should grant this petition, vacate the decisions of the lower courts, and remand the case to the district court for assignment to an unbiased judge and complete rehearing.

STATEMENT OF THE CASE

A. Statement of Facts

At all times relevant to this petition, Miller was a Senior Financial Economist, grade CG-14, in the Division of Insurance and Research ("DIR") for the Federal Deposit Insurance Corporation (FDIC) in Washington, D.C. Miller was a white male Republican, aged 53, with a 60 percent disability rating from the Veterans Administration (VA).

On February 13, 2019, FDIC offered a Senior Policy Analyst position, grade CG-15, in FDIC's Division of Insurance and Research using Merit Promotion Procedures. Merit Promotion vacancies are available to current and past federal employees and preference eligible veterans.

As required by the Office of Personnel Management, FDIC had a Merit Promotion Plan ("MPP"). The MPP required selecting officials to evaluate "the quality, type, and level of qualifying

experience and/or education," awards, training, and pertinent outside activities. The MPP requires all other information submitted by candidates and considered by the selecting official to be made a matter of record.

Miller timely applied with his application, resume, latest performance evaluation, university transcripts, and proof of a service-connected disability rating of *at least* 30 percent. Miller's resume listed numerous awards, publications, and advanced job-related training. In response to one of ten vacancy questions, Miller indicated he worked on legislative proposals "under close supervision." FDIC found Miller fully qualified for this position, and he was referred for an interview.

The selecting official, Ashley Mihalik, was female, Asian, and age 34. Mihalik selected two other interview panel members: Krishna Patel (female, Asian, age 38) and Vivek Khare (male, Asian, age 34). All three panel members were Democrats, and all were minorities. Mihalik selected six candidates to be interviewed.

The selectee was female, age 31, with no known disabilities. Selectee had a bachelor's degree in economics. Selectee had less than four years of directly relevant work experience and only 11 months in service as a grade 14. Miller equaled or exceeded her grade level every year of her federal service. Selectee's resume showed no awards, no publications, and no directly relevant training. Selectee's college transcripts indicated she took two

economic policy courses and three undergraduate legal courses.

The remaining candidates were all men, three of whom were over age 40. One of the other candidates had a Ph.D. in Economics from Harvard University. Another candidate had a master's degree. Another candidate with a bachelor's degree had more than thirty years of directly relevant experience.

The interview panel asked the same four questions to each interviewee. Panel members rated each interviewee according to predetermined benchmarks with five ratings: Outstanding (O), Outstanding-Good (O/G); Good (G); Good-Inadequate (G/I) and Inadequate (I).

Miller had the highest number of O or O/G ratings at nine. Selectee had the least O or O/G ratings at three. Miller rated higher than selectee on eight rater-questions, while selectee outrated Miller on only two rater-questions. Selectee ranked *last* in three out of four questions. Regardless of how one analyzes the ratings, Miller ranked among the top three candidates and selectee ranked fifth or sixth.

After learning of his non-selection, Miller underwent informal EEO counseling, where he learned the identity of the selectee. Miller later filed a formal discrimination complaint on July 16, 2019.

FDIC's investigating contractor gathered evidence and interviewed Miller and responsible officials, and she issued a *Report of Investigation* ("ROI"). Although the investigator discovered that

Mihalik had sought advice from Shayna Olesiuk – a person Miller had previously accused of discrimination and retaliation – the investigator did not interview Olesiuk or determine what Mihalik and Olesiuk discussed. Miller requested a decision from FDIC without a hearing by an EEOC Administrative Judge. FDIC found itself not liable for all of Miller's claims.

Miller timely filed a complaint in the Eastern District of Virginia alleging, *inter alia*, discrimination based on age, sex, and disabilities and retaliation. Miller's federal complaint included a history of his EEO activity since 2011 detailing a lengthy campaign by FDIC to punish him for false allegations of sexual harassment and Miller's subsequent grievance alleging due process violations in the sham harassment investigation. From 2012 through 2019, FDIC had not selected Miller for more than twenty positions with promotion potential despite his disabled veterans' preference, his Ph.D. in economics, and years of directly applicable job experience. FDIC gave Miller below-average performance evaluations for nine years, and it repeatedly denied him training and details.

An EEOC administrative judge had previously found FDIC liable for age discrimination, sex discrimination and retaliation against Miller for ***two*** different nonselections in 2014. For one nonselection, EEOC found Miller's qualifications were *plainly superior* to the selectee, Ashley Mihalik. The judge found five FDIC witnesses to be not credible. FDIC appealed to the Office of Federal Operations, which affirmed the decision.

On November 13, 2019 and January 9, 2020, Miller made protected whistleblower disclosures to, *inter alia*, FDIC's Chairman, General Counsel, and Inspector General. Shortly after receiving the November 13 disclosures, FDIC conducted an unconstitutional search of Miller's internet browsing activity in an admitted search for information with which to discipline Miller. Less than 24 hours after Miller's January 9 disclosures, FDIC held a misconduct investigation. FDIC took numerous adverse personnel actions covered under 5 U.S.C. § 2302(a)(2)(A) including indefinite administrative leave, threats of personnel actions, ordering a psychiatric examination, proposing an indefinite suspension, and indefinitely suspending Miller. On February 5, 2020, FDIC conducted a second unconstitutional search of Miller's workplace computer activities, again on a fishing expedition for anything to justify its retaliatory personnel actions.

After Miller provided FDIC with exactly the medical information it requested on June 2, 2020, FDIC rejected the doctor's letter and unlawfully demanded more information. Just a few hours after the district court denied Miller's request for a preliminary injunction to stay adverse personnel actions, FDIC indefinitely suspended Miller.

B. Procedural Background

On June 15, 2020, Miller timely filed a complaint in the Eastern District of Virginia after exhausting his administrative remedies. Miller's *pro se* complaint alleged six causes of action:

(1) discrimination on the basis of age, race, sex, disability, and reprisal; (2) injunctive relief against personnel actions taken in whistleblower retaliation; (3) retaliation for opposing discriminatory and retaliatory conduct; (4) political discrimination under 5 U.S.C. §§ 2301—2302; (5) conspiracy to interfere with civil rights; and a generalized cause of action for other violations of law liberally construed from the pleaded facts.

Miller's complaint was sixty-nine pages long with 398 paragraphs. The length of the complaint was predicated upon pleading facts regarding FDIC's nine years of discrimination and retaliation and the facts and circumstances related to FDIC's whistleblower retaliation in 2019—2020. Each allegation was simple, concise, and direct.

On July 24, 2020, Miller moved for a temporary restraining order and preliminary injunction to prevent FDIC from suspending Miller in retaliation for his whistleblower disclosures. ECF 8—9. Miller argued that the district court had jurisdiction to grant the requested relief because the Merit Systems Protection Board had no sitting members to grant a stay during the pendency of Miller's whistleblower retaliation claim. See 5 U.S.C. § 703 (authorizing judicial review in the "absence or inadequacy" in a court specified by statute – here, the MSPB).

On August 4, 2020, the district court denied the preliminary injunction for lack of jurisdiction. ECF 11. The district court also determined Miller failed to demonstrate irreparable harm, which is not a

requirement for such stays. Just hours after the district court denied the preliminary injunction, FDIC suspended Miller indefinitely.

In the same order, the district court dismissed Miller's complaint *sua sponte* saying that "federal pleading standards require a complaint to state a claim that is plausible on its face and, at a minimum, provide a short, plain statement of the claim which shows an entitlement to relief. ECF 11. Without any notice of deficiencies, the court found that the complaint "fails to meet federal pleading standards."

Miller filed his First Amended Complaint (FAC) on September 3, 2020. Miller apprised the court of the Office of Federal Operation's affirmance of the discrimination and retaliation claims against FDIC. ECF 14.

On September 21, 2020, defense counsel Pamela Nelson, filed an answer only 18 days after Miller filed the FAC and well before the 60 days afforded to Defendants under Fed. R. Civ. P. 12(a)(2). ECF 16. FDIC asserted a First Defense that Miller's "claims under the Rehabilitation Act are barred to the extent that he is not a qualified individual with a disability within the meaning of 42 U.S.C. § 12111(8)" and he is without standing. ECF 16. Defendants' Eleventh Defense claimed, "This Court lacks jurisdiction over Plaintiff's claims to the extent that he has elected to appeal the underlying actions by the FDIC to the Merit Systems Protection Board." *Id.* at 2.

Miller filed a motion for sanctions under Fed. R. Civ. P. 11(c)(2), ECF 22, alleging defendants raised frivolous defenses and falsely claimed to lack information for twenty-one factual allegations they knew to be true because the evidence was contained in their own *Report of Investigation* ("ROI"). The motion alleged defendants falsely denied thirteen allegations, which again were contained in the ROI or otherwise in FDIC's possession. Miller's motion included seventeen exhibits and pin-cites to the ROI.

Defendants denied Miller was a qualified person with a disability, when they knew Miller had a 60% disability rating from the Veterans' Administration since 2009.

Defendants falsely claimed to lack knowledge of the contents of Miller's application package. Defendants falsely claimed to lack knowledge about the candidates' ages, education, and experience, all of which was contained in their own ROI. Defendants falsely claimed to lack knowledge of Miller's prior EEO activities though Miller had filed at least seven prior EEO complaints and two federal lawsuits. Defendants claimed to lack information that interview panel members knew of Miller's disabilities despite Mihalik *admitting* in her affidavit that she saw the application for disabled veterans' preference with a reference to cancer.

Defendants opposed the Rule 11 motion. ECF 27. In the *Opposition*, Nelson alleged Miller violated Rule 11, but she did not employ the safe harbor provisions in Fed. R. Civ. P. 11(c)(2). Miller filed a

reply in which he rebutted false signings by Nelson with additional evidence. ECF 28.

The magistrate judge denied the Rule 11 motion saying, "That Defendant disputes facts stated in the complaint, however, does not warrant sanctions under Rule 11." ECF 33. Miller objected to the magistrate judge's ruling, again demonstrating that defendants' denials were not merely disputing facts but were materially false statements. Defense counsel Nelson opposed the objection making numerous additional false signings, recriminations, and an outright admission that she knew Miller had at least a 30 percent disability rating.

The district court judge affirmed the magistrate judge's ruling, falsely concluding that "there exists reasonable support for virtually every response Defendant provides in its answer. The nature and extent of Miller's present disability remain an open question, and information attached to Miller's pleadings presents conflicting evidence." ECF 41. The district court admonished Petitioner for his own purported Rule 11 violations in a *boomerang* veiled threat of sanctions.

Meanwhile, Miller's whistleblower reprisal complaint was proceeding in the MSPB. Miller and Defendants agreed to stipulate to the dismissal of Miller's claim of retaliation for opposing discriminatory and retaliatory conduct. Miller amended his MSPB appeal, making it a *mixed case* appeal of civil service claims and discrimination.

Miller's complaint provided his factual findings from public sources of information that 74 percent of the persons he alleged violated his rights and the law were Democrats. Miller pleaded that 87 percent of his colleagues in his Division were Democrats. In discovery, Miller moved to conduct a discovery survey to determine the political affiliations of FDIC's employees and any instances of political discrimination they suffered. Miller argued that the survey was relevant to his political discrimination claims and that it was narrowly tailored to obtain admissible evidence. FDIC annually conducted a much larger Federal Employment Viewpoint Survey of all employees asking similar questions about discrimination, retaliation and prohibited personnel practices.

In opposing the survey, Defendants made mere cries of burden and produced no affidavits demonstrating the survey was unduly burdensome. Defendants claimed the survey was "divisive" and an unwarranted invasion of personal privacy. Miller replied that Defendants failed to meet their burden of proving the request excessive, such information was essential for proving political discrimination, that the information could not be obtained from less intrusive methods, and survey safeguards would not reveal individual political affiliations other than those persons directly discriminating against Miller.

While the district court acknowledged Defendants' failure to meet their burden of resistance, the court nonetheless *sua sponte* denied

the survey, reaching conclusions about the burden with no evidence. ECF 48.

During depositions, Nelson refused to share Miller's exhibit – the Report of Investigation – with deponents. Nelson demanded Miller extract excerpts from the ROI, submit them to her, and then she would email them to deponents. Nelson never objected to the ROI as an exhibit until the day of depositions. While deponents could quickly navigate from any of the ROI's 502 pages to any other page within three seconds, it took an average of *three minutes* for Miller to extract ROI pages and send them to Nelson. This severely disrupted Miller's deposition examination.

Nelson made one-hundred objections, nearly all of which were improper, including twenty-nine lengthy speaking objections. She made thirty-one objections to relevance, all of which were automatically preserved under federal rules. She made numerous asked-and-answered objections for questions that were neither asked nor answered. She objected to compound questions that were not compound. She objected to questions as vague rather than letting deponents determine whether they understood the questions. She asserted deponents did not understand questions without deponents saying so.

Nelson answered questions for deponents, suggested answers, and coached answers with objections. Nelson advised deponents not to answer five questions, and she permitted deponents to not answer seven questions. After Miller asked Mihalik a

question, but before Mihalik answered, Nelson demanded an unlawful witness conference with no issues of privilege involved, and Mihalik subsequently evaded answering the question.

Nelson refused to produce any of fifteen different categories of documents requested. Nelson violated Fed. R. Civ. P. 37 by lying in response to an interrogatory claiming that Mihalik did not rely on vacancy questions when she made her selection. During the meeting and conference to discuss gaps in discovery production, Nelson insulted Petitioner, shouted at him, and went into a lengthy speech about her personal views about race and sex in America. She expressly told Miller it was a "waste of time" to go over her discovery responses because she would not be changing them. After becoming aware of her Rule 37 violations, Nelson repeatedly asked whether Miller was recording their conversation.

Because of the enormous number of severe discovery violations, Miller moved for and received leave from the court to file separate and oversized motions to compel. The motion contained a substantial summary of all Nelson's violations.

As the close of discovery approached, Miller moved for an extension of discovery based on: (1) defendants' discovery misconduct, (2) financial difficulties from defendants' delay in payment of damages for a prior discrimination suit; (3) financial difficulties from defendants' indefinite suspension of Petitioner; (4) defendants' witnesses vacations, and (5) Miller's difficulty finding a reporting service

willing to conduct depositions for *pro se* litigants. ECF 57—58. Defendants opposed the 90-day extension but consented to a 45-day extension. ECF 63. The magistrate judge denied the extension in a conclusory decision finding no good cause and citing that Miller requested extension two days prior to the close of discovery. ECF 64. That same day, the district court indefinitely suspended the hearing because of the COVID-19 emergency.

Miller submitted two motions to compel, one for depositions and one for discovery. ECF 65—67, 69—70. The magistrate judge denied the motions ostensibly because they were untimely filed after the close of discovery. ECF 82. Nothing in the federal or local rules nor the orders of the court set a deadline for motions to compel. A court order set a deadline for all dispositive motions to be fully briefed before the pre-hearing conference, and Miller's motions were timely filed before that. Miller objected to the denial of the motions to compel, ECF 83, and the district court judge affirmed. ECF 103. Citing no rules or orders, the district court relied on nonbinding authorities in which the moving parties were specifically put on notice of MTC deadlines.

The parties both filed Motions for Summary Judgment ("MSJ"). For the first time in their MSJ, defendants claimed Mihalik made her selection because the selectee's duties of an "analyst" were "more in line" with the duties of the position to be filled. Defendants included several job descriptions not previously in the record and not produced in discovery. Defense counsel again violated Rule 11 by

claiming Miller's advanced education could not be considered because "education is no substitute for the experience of the position."

Miller's MSJ argued that defendants failed to rebut his *prima facie* cases of discrimination and retaliation by merely listing positive attributes of the selectee – many of which Miller also possessed – but without explaining why the selectee was *preferred* to Miller. The MSJ also argued that several of defendant's proffered reasons for their actions were vague, conclusory, without factual support, and contradicted by facts. Miller demonstrated pretext for one stated reason with Mihalik's testimony she relied on one of Miller's answers to a vacancy question to reject him, but she admitted never looking at selectee's answer to the same question.

In opposition to Miller's MSJ, defendants asserted Miller's job application did not contain his university transcripts. The sole evidence defendants relied upon for this proposition was that the transcripts were not included in their own ROI. Defendants presented no affidavits or electronic documents showing Miller's transcripts were not included, Nelson refused to produce evidence of electronic records in discovery and admitted to spoliating them, and nothing else rebutted Miller's verified statements that he did include transcripts.

On July 28, 2021, the district court judge granted defendants' MSJ and denied Miller's MSJ. Miller timely appealed.

On September 7, 2023, the Fourth Circuit summarily affirmed the district court's decision without any meaningful discussion of Miller's assignments of error. The order did not provide any explanation for the court's reasoning to give this Court a basis for reviewing its decision. Miller timely files this petition for a writ of certiorari after this Court extended the deadline to do so.

REASONS FOR GRANTING THE WRIT

I. FEDERAL COURTS ARE PROFOUNDLY BIASED AGAINST PRO SE LITIGANTS

English and American common law were *founded* upon the principle of self-representation. *McCoy v. Louisiana*, 138 S. Ct. 1500, 1507 (2018). "When the Colonies were first settled, 'the lawyer was synonymous with the cringing Attorneys-General and Solicitors-General of the Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those who opposed the King's prerogatives, and twisting the law to secure convictions.'" *Faretta v. California*, 422 U.S. 806, 826 (1975). "[T]he Concessions and Agreements of West New Jersey, in 1677, provided, for all cases, civil and criminal, 'that no person or persons shall be compelled to fee any attorney or councillor to plead his case, but that all persons have free liberty to plead his own cause, if he please.'" *Id.* at 831 n.37 (1975). "The Pennsylvania Frame of Government of 1682...provided: That, in all courts all persons of all persuasions may freely appear in their own way, and according to their own manner." *Id.*

Self-representation was the *norm* until the late 19th century when a professional association of lawyers coopted the U.S. legal system for their own enrichment. Today's legal system is no less nefarious than the one distrusted by our Founders. Federal and local rules, judge orders, and judicial practice are crafted by lawyers and judges, for lawyers and judges. Judges issue unjust decisions on meritorious cases based on bias and prejudice and as a means to clear their weighty dockets. Federal attorneys violate federal and local rules and judicial orders with complete impunity, knowing that federal judges will not sanction them.

As described by Circuit Court Judge Richard Posner, Article III judges throughout the judiciary treat *pro se* litigants as a waste of their time. No matter how strong a *pro se* litigant's evidence, no matter how clear the application of law, judges will invent reasons to support a pre-determined conclusion against the *pro se* litigant and favoring the federal government. Appellate courts are apathetic, at best, and complicit, at worst, in furtherance of these injustices.

Miller represents himself more of necessity than preference. Since 2011, numerous licensed counsel refused to take up his cases, with most not even responding to his inquiries. Had Miller retained attorneys to vindicate his rights for FDIC's *dozens* of unlawful personnel actions, he would have long ago become bankrupt. Because there are no punitive damages against federal agencies, a cost-benefit analysis disfavors any legal action at all. Yet costs and benefits are not Miller's prime motivation, which

is to vindicate his rights and to oppose a corrupt federal agency's crimes, torts, and abuses.

* * *

From beginning to end, the district court's Memorandum Opinion and Order, App. 6, was filled with false statements of fact, errors of law, inferences unlawfully drawn in defendants' favor, and venomous prejudice against Miller.

The district court claimed Miller cited no statute to recover damages for age discrimination. App. 7, n. 3. Every first-year law student knows that a plaintiff need not cite a statute if the complaint lays out factual allegations establishing an entitlement to relief. *Compton v. Alton Steamship Co.*, 608 F.2d 96, 105 (4th Cir. 1979). This is especially true for *pro se* plaintiffs.

The district court misrepresented Miller's factual allegations to make the ridiculous claim that "throughout his various filings, Mr. Miller argues that a 'feminist cabal' comprised of 'presumed lesbians' conspired against him because of his sex." App. 8. The judge further misrepresented that Miller "also defines 'Jews' as a race in support of similar arguments concerning his whiteness." *Id.* The judge's distorted characterization of Miller's claims and allegations was intended to prejudice reviewing courts against Miller.

The judge invented from thin air the false fact that Miller commenced the EEO process before he learned who was selected for the position. App. 8.

The district court reached the false factual conclusion that Mihalik did not discuss the selectee with Olesiuk other than to inform her that selectee was being considered for the position. App. 13. Mihalik *admitted* talking to Olesiuk about Miller and the selectee on the advice of Patel because Olesiuk supervised both candidates.

The district court reached the false factual conclusion that "the selectee was well-qualified had comparatively expansive experience, wielded highly relevant prior work experience, and possessed extensive familiarity with policymaking on agency rules." App. 17. Record evidence showed the selectee had less than four years of relevant job experience and only 11 months of experience at grade 14. Miller had *three times* the selectee's relevant experience and in-grade experience. Selectee described only *one instance* of being involved in interagency rules, not "extensive familiarity" as the judge concluded.

The district court repeatedly gave defendants credit for listing certain qualifications of the selectee as legitimate, nondiscriminatory reasons for the selection when none of those attributes stated why the selectee was *preferred*. See *Burdine* at 254. For example, defendants alleged that selectee briefed the Chairman, participated in interagency rules, participated in rulemaking in an international setting, and responded to Congressional requests.

But Miller also performed all these duties, thus these statements could not possibly explain why Mihalik *preferred* the selectee to Miller. Mihalik was simply combing through selectee's resume after Miller complained, and she compiled a laundry list of positive attributes. This fails to meet the employer's burden at Step 2 of *McDonnell Douglas*. The district court falsely claimed that Miller "cites no authority for this position, and the court is aware of none," when Miller clearly cited *Burdine*. App. 17, n. 7.

When Miller met each of defendant's proffered reasons head-to-head, as he was required to do by law, the judge characterized Miller's approach as "piecemeal," App. 20, and "labor[ing] to stave off summary judgment." App. 19. When Miller demonstrated his plainly superior qualifications for each of defendants' own selection criteria, the judge described this as Miller "boast[ing] of his unique rulemaking experience." App. 20, n. 8.

The district court erroneously concluded that Miller was establishing his "own criteria for judging [his] qualifications for the promotion." App. 21. Well aware of this boilerplate land mine, Miller carefully laid out with evidence from FDIC's position description, vacancy announcement, vacancy questions, and Merit Promotion Plan that his superior education, training, awards, publications, and experience were *defendants'* selection criteria, not his own.

The district court reached the erroneous conclusion that Miller and selectee "both worked in

high-grade positions at the FDIC for a similar number of years prior to interviewing ... Any difference in the length of their experience was *de minimis*." App. 21. Miller had *eleven years* of policy experience compared to selectee's less than four years. Miller served at grade 14 for three years compared to selectee's eleven months.

The district court erred in concluding that "Defendants 'found [the selectee] to be overall more qualified than [Mr. Miller] because she had more extensive policy-making experience including interagency experience." Miller had *three times* as much policy experience as selectee, and he too had interagency experience.

The district court blindly accepted defendant's false claim, in violation of Rule 11, that "there is no substitution of education for the experience of the position." App. 22. That statement in the vacancy announcement referred only to the minimum specialized experience requirement. FDIC's Merit Promotion Plan *required* Mihalik to consider the level and type of candidate education. Mihalik admitted she knew of Miller's Ph.D. and considered it. Mihalik claimed to have relied on selectee's undergraduate education in law and public policy. Thus, Miller proved FDIC's reason false. Miller proved the reason was pretextual because his Ph.D. in economics was plainly superior to the selectee's bachelor's degree.

The court errantly credited Mihalik's reliance on selectee's "superior work autonomy." App. 22.

Mihalik admitted in deposition that she never did a side-by-side comparison of Petitioner's and selectee's work autonomy.

After Miller demonstrated that the selectee performed poorly in the structured interview while he performed among the top three, the district court justified defendants' selection by saying "Defendants' focus on the implications of the candidates' interview responses, rather than interview performance itself, makes perfect sense." App. 23. It makes no sense whatsoever that FDIC would set up pre-determined questions asked to each candidate, benchmarks for rating responses, and keep records of responses and ratings only to abandon the results when its preferred candidate performs the worst. Defendants never explained in affidavits, and they *refused* to answer in depositions, what skills the selectee demonstrated in the interview that Miller did not.

The district court abused its discretion dismissing Petitioner's complaint *sua sponte*, ostensibly because it was too lengthy, and without providing any notice of deficiencies to guide a *pro se* litigant in complying with the court's expectations. Nothing in Rule 8 places a page or paragraph limit on a complaint. The rule's requirement for a "short and plain statement" is a *minimum* requirement of pleading sufficiency, not an arbitrary volume limitation subject to the whim of courts.

The district court abused its discretion denying extension of the discovery period after Miller presented the court evidence of defendants' gross

misconduct during depositions and other delaying factors beyond Miller's control. Defendants *consented* to a 45-day extension. On the same day, the court suspended the hearing indefinitely because of COVID-19, thus an extension of time would not have delayed case processing.

The district court abused its discretion by denying Petitioner's motion for sanctions under Rule 11 for defendants' dozens of false signings in their Answer. The district court plainly erred in its false, conclusory statement that "There exists reasonable support for virtually every response Defendant provides in its answer." ECF 41 at 2. There was ***zero*** support for any of defendants' denials raised in Miller's Rule 11 motion.

The district court abused its discretion denying two motions to compel as untimely filed after the close of discovery. Nothing in federal rules, local rules, or the orders of the court put Miller on notice of the deadline for motions to compel. In fact, the court set a deadline for nondispositive motions to be fully briefed no later than the pre-hearing conference; Miller's motions to compel were timely filed before that date. Authorities relied upon by the district court saying that motions to compel were due by the close of discovery were inapposite – in every one of those cases, the moving party was put on notice of the deadline.

The district court abused its discretion denying Petitioner's discovery survey. Statistical evidence of political affiliation from FDIC's workforce was the

best evidence of political discrimination. The survey could reveal other persons with *me-too* instances of political discrimination. Defendants failed to meet their burden to demonstrate with a sufficient affidavit that the survey was unduly burdensome, and the district court fabricated a conclusion that the administrative costs of the survey would be high.

The district court abused its discretion by relying on a letter Miller's supervisor wrote *one year after* the nonselection to justify the nonselection based on Miller's "open hostility toward his colleagues." App. 26.

The district court's numerous, obvious, and egregious errors of fact and law, always favoring defendants and disfavoring Petitioner, are a rare occasion when judicial decisions alone demonstrate such deep-seated antagonism toward one party and favoritism toward the other party as to make fair judgment impossible. *Liteky v. United States*, 510 U.S. 540, 541 (1994).

II. THE DISTRICT COURT'S DECISION IS CLEARLY ERRONEOUS

A. Defendants Failed to Rebut Petitioner's *Prima Facie* Showing of Discrimination and Retaliation.

Miller indisputably made out a *prima facie* case that defendants discriminated against him on the basis of his age, sex, and disabilities, and that they retaliated against him on the basis of prior protected activities. Miller pleaded and proved, unrebutted by

defendants, that (1) he was a male, over age 40, with multiple disabilities; (2) that he was fully qualified for the position with or without reasonable accommodations; (3) that Miller was not selected, and (4) defendants selected a person outside Miller's protected classes under circumstances raising an inference of prohibited discrimination because of his protected characteristics. Miller established a *prima facie* case of retaliation: (1) he proved he engaged in protected EEO activities; (2) FDIC, including and especially Olesiuk, knew of this protected activity, (3) FDIC did not select him for the position; and (4) there is a causal connection between Mihalik's conference with Olesiuk about Miller and the selectee and Miller's nonselection.

This Court firmly established that to rebut the presumption of discrimination in the *prima facie* case, the defendant is required to "produce evidence" that "plaintiff was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason." *Tex. Dep't of Cmty. Affairs, v. Burdine,* 450 U.S. 248, 254; 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Defendant must raise "a genuine issue of fact as to whether it discriminated against the plaintiff." *Id.*

As purported legitimate, nondiscriminatory reasons for its actions, FDIC provided a laundry list of mere favorable characteristics of the selectee. For example, FDIC claimed the selectee briefed the FDIC Chairman, participated in interagency rulemaking, and participated in rulemaking in an international setting. None of these examples of selectee's experience – all of which Miller also had – articulates

why the selectee was *preferred* to Miller or why Miller was rejected.

Other proffered reasons, while comparative in nature, did not present "a factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext." *Id.* at 256. For example, defendants claimed that selectee demonstrated "more in-depth experience" and a "wider range of skills" without articulating any facts supporting these vague and conclusory claims, and defense witnesses ***refused*** to state such facts in affidavits and depositions.

Even after Petitioner briefed the court on the law, the court undertook no analysis of the sufficiency of the defendant's evidence in fulfilling these functions. *Id.*

For the first time in their MSJ, defendants raised a new defense: that the selectee was a "better fit" for the Senior Policy Analyst position because she was an analyst and Petitioner was an economist. Neither the selecting official nor the panel members ever claimed this was a reason for preferring the selectee. "An articulation not admitted into evidence will not suffice. Thus, the defendant cannot meet its burden merely through an answer to the complaint or by argument of counsel." *Burdine*, at 256 n. 9. When Petitioner contested this sandbagged argument, supported by documents defendants never produced in discovery, the district court judge hunted the record for a reference in the ROI to selectee being a "better fit" for the position. But closer inspection reveals the EEO investigator referred to a statement

by Khare that selectee was a better fit because she was in Capital Markets – a pretextual criteria he invented from nothing.

B. Miller Proved Defendants' Reasons Were Pretextual

Miller presented a mountain of circumstantial evidence pointing not only to specific discrimination and retaliation in the instant case, but pervasive age, sex, disability, and political discrimination throughout FDIC.

FDIC previously discriminated against Miller on the basis of his age and sex for ***two*** nonselections in 2014. The biased district court judge dismissed this strong evidence by again attributing defendants' contradictory argument to Miller: "This is a propensity argument that cannot be reconciled with his litigating position that only the conduct and opinions of the selecting official are relevant." App. 26.

Mihalik claimed that she rejected Miller because in response to a vacancy question, he stated he performed a certain duty under "close supervision." Yet Mihalik admitted that she never looked at the selectee's response to the same vacancy question. Defense counsel violated Rule 37 by falsely stating in discovery that Mihalik never relied on answers to the vacancy questions.

Miller proved defendants' reliance on selectee's superior performance evaluation and undergraduate legal courses were pretextual because another

candidate inside Miller's protected classes had the same performance evaluation at a higher grade level, he had "thirty years of specialized experience in law," and he had more relevant job experience than the selectee had been alive.

Miller proved with an OIG report that FDIC promotes women faster than men and gives them higher performance evaluations. The district court judge drew inferences from this report against Miller, unilaterally claiming the data was "stale." App. 25. The judge nevertheless relied on a portion of the report finding that more men were selected for promotion than women, but this was true only because more men than women had applied for promotion. *Id.*

C. The District Court Should Not Have Granted Defendants Motion for Summary Judgment.

As described above, the district court repeatedly drew inferences in the moving party's favor (defendants) instead of Petitioner. It was the province of the jury to determine whether Miller's evidence of FDIC favoritism of women was "stale." It was up to a jury to determine whether FDIC's abandonment of its interview rating system in favor of subjective impressions of superior skills was credible under the circumstances.

Miller's opposition to defendants' motion for summary judgment raised numerous genuine disputes of material fact militating against summary judgment. Miller demonstrated he had

three times as many years of experience. The court could not conclude the selectee was "comparatively" better experienced as it held, nor could the court conclude selectee had substantial policymaking experience in a mere eleven months at grade 14.

Miller raised genuine disputes of fact regarding whether Mihalik was influenced to not select Miller because of Olesiuk's retaliatory animus. FDIC's failure to memorialize their conversation during the investigation and the witnesses amnesia could lead a reasonable jury to doubt their credibility.

The district court implicitly made credibility determinations in giving credit to every FDIC witnesses' self-serving claims about their reasons for favoring the selectee over Miller. Khare contradicted Mihalik and Patel's testimony that they did not rank or score applicants during post-interview deliberations. A reasonable jury could find their testimony not credible.

III. THIS COURT'S DECISION IN ST. MARY'S HONOR CTR IS ERRONEOUS

This Court's decision in *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993), has become boilerplate authority for judges to dismiss meritorious cases without any analysis of the facts. In that case, this Court incorrectly held that "a reason cannot be proved to be 'pretext for discrimination unless it is shown both that the reason was false and that discrimination was the real reason.'" *Id.* at 515.

The decision fails to understand that in the formulation of pretextual reasons for a discriminatory nonselection, employers will seek *true facts* to justify a selection. The relevant falsehood is that these are not the employer's *true reasons*.

As demonstrated in this case, defendants mostly relied upon true but pretextual claims to rebut Miller's *prima facie* case. For example, the selecting official claimed she relied on Miller's performance of a duty "under close supervision," which was a true fact. But in a deposition, she admitted never having looked at the selectee's response to the same question. Absent that comparison, the selecting official could not possibly have rejected Miller for that reason.

A plaintiff could also prove a factually true reason to be pretextual when other evidence demonstrates it could not have motivated her hiring decision. In the instant case, the performance evaluation could not have been the selecting official's real reason because another person in Miller's protected classes by age and sex also had the highest performance rating, he earned it at a higher grade level, and his qualifications were plainly superior to the selectee.

St. Mary's also erred in failing to recognize that proving an employer's proffered reason is false is *probative* of discrimination, albeit not always dispositive, standing alone.

IV. FOURTH CIRCUIT'S SUMMARY AFFIRMANCE FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

For the third time in as many appeals, the Fourth Circuit summarily affirmed lower court decisions brimming with obvious and egregious errors of fact and law and abuses of discretion.

Plaintiffs losing their cases in federal district court cases may file an appeal *as a matter of right.* 28 U.S.C. § 1291. *Gelboim v. Bank of Am. Corp.*, 135 S. Ct. 897, 901 (2014). "Appellate courts usually have an independent duty to review the facts and law in the cases that come to them." *Wilson v. Sellers*, 138 S. Ct. 1188, 1199 (2018).

"Certiorari is appropriate when 'a United States court of appeals ... has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's supervisory power.' Supreme Court Rule 10(a)." *Kalamazoo Cnty. Rd. Comm'n v. Deleon*, 135 S. Ct. 783 (2015).

V. PROTECTING WHISTLEBLOWERS WITH STAYS OF PERSONNEL ACTIONS IS EXCEPTIONALLY IMPORTANT

An important question of first impression before this Court is whether, in the absence of any MSPB members, a whistleblower can seek a stay of agency personnel actions in federal court pursuant to

5 U.S.C. § 703 or the general equitable powers of the court.

Congress has repeatedly clarified its intent to provide extraordinary protections to persons who bring evidence of federal government malfeasance to light. The Whistleblower Protection Act of 1989 established an individual right of action for federal employees to seek protection and relief from the Merit Systems Protection Board. Congress has repeatedly said that whistleblowers serve an important purpose in rooting out government wrongdoing, and protecting whistleblowers is of "paramount concern." Whistleblower Protection Act of 1989, Pub. L. 101-12 (1989) § 2, 103 Stat. 16.

Congress expressly provided that the Office of the Special Counsel can seek a stay of agency personnel actions from any Board member who can grant it. 5 U.S.C. § 1214(b)(1)(A). The Board also established regulations for appellants to request stays of personnel actions at any time prior to the deadline for completion of discovery. *See* 5 C.F.R. § 1209.5, 5 C.F.R. § 1209.8, and 5 C.F.R. § 1209.9.

In an extended period of partisan disagreement in Congress from March 2, 2019 to March 1, 2022, the Board lacked any members who could grant a stay of agency personnel actions. In the absence and inadequacy of Board members to grant a stay, the district court had jurisdiction to grant the stay pursuant to 5 U.S.C. § 703.

VI. AN IMPLIED REMEDY FOR POLITICAL DISCRIMINATION FOR FEDERAL EMPLOYEES IS EXCEPTIONALLY IMPORTANT

Putting an end to an era of patronage and political coercion existing in the federal government for more than a century, Congress passed the Pendleton Civil Service Reform Act in 1883, 22 Stat. 403, providing for selection of federal civil servants on a merit basis by competitive examination. *Bush v. Lucas*, 462 U.S. 367, 381 (1983). While civil service reforms have advanced and evolved since then, Congress has demonstrated a consistent devotion to ensuring an apolitical civil service of professional employees who are resistant to the whims of partisan political cycles. Sections 2301 and 2302 of Title 5, U.S. Code, unequivocally prohibit political discrimination in federal employment.

Petitioner's verified facts support his claims of discrimination and a hostile work environment based on political affiliation. The question before the Court is whether, where, and how Petitioner has a remedy for such violations of law.

The answer lies in decisions by this Court and in testimony FDIC gave to the U.S. Senate. FDIC employees may seek redress for political discrimination through its grievance procedures.

Yet Petitioner demonstrated with facts that FDIC had previously rigged its grievance process against him by designating people he accused of wrongdoing

as the grievance deciding officials, an act that MSPB precedent considers an *abuse of authority*. *Loyd v. Dept' of the Treasury*, 69 M.S.P.R. 684, 688 (1996). FDIC officials lied and misrepresented law more than one-hundreds times. Petitioner's labor union never responded to his request to take his grievance to arbitration, thus depriving him of the opportunity to exhaust his administrative remedies. See *Vaca v. Sipes*, 386 U.S. 171 (1967). This leaves only federal courts as the sole forum to resolve Miller's complaints of political discrimination.

Petitioner satisfied all of the conditions to demonstrate an implied right of action for political discrimination for employees of federal corporations when such corporations do not provide any relief in their grievance processes. See *Cort v. Ash*, 422 U.S. 66, 78 (1975).

Petitioner showed that he belongs to a class of persons for whose especial benefit federal law was designed to protect. Federal law provides protections against political discrimination right alongside other familiar protections against discrimination. 5 U.S.C. § 2301(b)(2). Federal policy seeks to maintain a workforce consistent with merit system principles and free from prohibited personnel practices. Civil Service Reform Act, Pub.L. 95-454 (1978), 92 Stat 1112. Employees should receive fair and equitable treatment without regard to political affiliation. 92 Stat. 1114.

Congress intended to provide remedies to federal employees pursuant to 5 U.S.C. § 2302 in actions

appealable to the Merit Systems Protection Board. Congress removed from the definition of an "agency" a government corporation, such as the FDIC. *Id.* §§ (a)(2)(C)(i). However, the definition of "agency" in 5 U.S.C. § 2301 *includes* federal corporations. FDIC acknowledged in Congressional testimony that remedies for political discrimination can be found through FDIC's grievance procedure. Senate Hearing 109-343, 9/27/2005. Petitioner pleaded that FDIC operates a grievance process that is rigged to deny all relief.

Petitioner proved that remedies for political discrimination are consistent with Section 2301's underlying remedial purpose. The Civil Service Reform Act expressly ended the previous *spoils system* in favor of an apolitical, professional civil service free from arbitrary action.

Finally, it is obvious that a remedy for political discrimination is not relegated to state law.

Thus, this Court should hold that the district court had jurisdiction to hear Miller's complaint of political discrimination and hostile work environment.

CONCLUSION

For the foregoing reasons, this Court should grant the writ of certiorari.

Respectfully submitted:

EXECUTED ON:
February 2, 2024

ROBERT M. MILLER, PH.D.
4094 MAJESTIC LANE, #278
FAIRFAX, VA 22033
(415) 596-2444
ROBMILLER44@HOTMAIL.COM