No. 24-1206

IN THE

Supreme Court of the United States

DARYAO KHATRI,

Petitioner,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner has set forth the following questions presented:

Whether the District of Columbia Court of Appeals and lower court erred on two counts:

(1) by not considering the Supreme Court ruling of April 6, 2020 (No. 18-882) in the case of *Babb* and *Wilkie* where the court held: "The plain meaning of § 633a(a) demands that personnel actions be untainted by any consideration of age"; and

(2) by believing the defendant's misleading narrative as true and ignoring the facts that have come to light during court proceedings and during the 2022-2024 timeframe.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the District of Columbia Court of Appeals were:

Petitioner/Plaintiff-Appellant Daryao S. Khatri

Plaintiff-Appellant Hailemichael Seyoum[1]

Respondent/Defendant-Appellee Board of Trustees of the University of the District of Columbia

1. Plaintiff-Appellant Hailemichael Seyoum passed away in November 2024.

RULE 29.6 DISCLOSURE STATEMENT

Respondent is an independent agency of the District of Columbia government. D.C. Code § 1-603.01(13). Accordingly, a disclosure statement pursuant to Rule 29.6 is not required.

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The Order of the District of Columbia Superior Court, dated February 26, 2020, granting the Motion for Summary Judgment of Respondent Board of Trustees of the University of the District of Columbia ("University"), denying Petitioner's Motion for Summary Judgment, and entering summary judgment in the University's favor, included in Petitioner's Appendix at App. 39a-62a, is unpublished.

The *per curiam* Memorandum Opinion and Judgment of the District of Columbia Court of Appeals, dated February 7, 2023, affirming the decision of the District of Columbia Superior Court granting the University's Motion for Summary Judgment, denying Petitioner's Motion for Summary Judgment, and entering summary judgment in the University's favor, included in Petitioner's Appendix at App. 16a-38a,[2] is unpublished. *See Seyoum et al. v. Bd. of Trust. of the Univ. of the Dist. of Columbia,* Case Nos. 20-CV-240 & 20-CV-314 (D.C. Court of Appeals). The *per curiam* Order of the District of Columbia Court of Appeals denying Petitioner's petition for rehearing and rehearing en banc of this Memorandum Opinion and Judgment, dated March 22, 2023, which Petitioner did not include in his Appendix, is attached hereto as Appendix A at 1a-2a and is unpublished.

The Order of the District of Columbia Superior Court, dated February 4, 2022, denying Petitioner's motion for reconsideration under District of Columbia Superior

2. Petitioner's Appendix indicates this matter was submitted April 7, 2023 and decided August 30, 2023, which is incorrect.

Court Rules of Civil Procedure 60(b)(6) and 60(d)(2), which Petitioner did not include in his Appendix, is attached hereto as Appendix B at 3a-11a and is unpublished.

The *per curiam* Memorandum Opinion and Judgment of the District of Columbia Court of Appeals, dated August 30, 2023, affirming the District of Columbia Superior Court's Order denying Petitioner's motion for reconsideration under District of Columbia Superior Court Rule of Civil Procedure 60(d)(2) and remanding the case for further consideration of the motion for reconsideration under District of Columbia Superior Court Rule of Civil Procedure 60(b)(6), included in Petitioner's Appendix at App. 8a-15a, is unpublished. *See Seyoum et al. v. Bd. of Trust. of the Univ. of the Dist. of Columbia,* Case Nos. 22-CV-0077 & 22-CV-0078 (D.C. Court of Appeals).

The Order of the District of Columbia Superior Court, dated October 12, 2023, denying upon remand Petitioner's motion for reconsideration under District of Columbia Superior Court Rule of Civil Procedure 60(b)(6) and denying Petitioner's motion requesting permission to file newly discovered documents, which Petitioner did not include in his Appendix, is attached hereto as Appendix C at 12a-21a and is unpublished.

The *per curiam* Memorandum Opinion and Judgment of the District of Columbia Court of Appeals, dated January 6, 2025, affirming the District of Columbia Superior Court's Order denying upon remand Petitioner's motion for reconsideration under District of Columbia Superior Court Rule of Civil Procedure 60(b)(6) and denying Petitioner's motion requesting permission to file newly discovered documents, included in Petitioner's

Appendix at App. 1a-7a, is unpublished. *See Seyoum et al. v. Bd. of Trust. of the Univ. of the Dist. of Columbia,* Case Nos. 23-CV-0874 & 23-CV-0875 (D.C. Court of Appeals). The *per curiam* Order of the District of Columbia Court of Appeals denying Petitioner's petition for rehearing and rehearing en banc of this Memorandum Opinion and Judgment, included in Petitioner's Appendix at App. 63a-64a, is unpublished.

JURISDICTION

For the reasons set forth more fully herein, this Court lacks jurisdiction under 28 U.S.C. § 1257 to review the Memorandum Opinion and Judgment of the District of Columbia Court of Appeals affirming the District of Columbia Superior Court's Order granting the University's Motion for Summary Judgment, denying Petitioner's Motion for Summary Judgment, and entering summary judgment in favor of the University.

The District of Columbia Court of Appeals issued its *per curiam* Memorandum Opinion and Judgment affirming the decision of the District of Columbia Superior Court granting the University's Motion for Summary Judgment, denying Petitioner's Motion for Summary Judgment, and entering summary judgment in the University's favor on February 7, 2023. *See* Petitioner's App. at 16a-38a. The *per curiam* Order of the District of Columbia Court of Appeals denying Petitioner's petition for rehearing and rehearing en banc of this Memorandum Opinion and Judgment is dated March 22, 2023. *See* Appendix A at 1a-2a. Petitioner's petition for writ of certiorari was filed April 21, 2025 and docketed May 27, 2025. Accordingly, Petitioner's petition for writ

of certiorari was not filed within 90-days of the Order of the District of Columbia Court of Appeals denying Petitioner's petition for rehearing and rehearing en banc of the Court of Appeals' February 7, 2023 Memorandum Opinion and Judgment affirming summary judgment in favor of the University.

STATUTES INVOLVED

The District of Columbia Human Rights Act, D.C. Code § 2-1402.01 *et seq.*, provides in pertinent part:

> (a) *General.*—It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking, credit information, or homeless status of any individual:
>
> (1)(A) *By an employer.*—To fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his or her compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his or her employees in any way which would deprive or tend to deprive any

> individual of employment opportunities, or otherwise adversely affect his or her status as an employee; . . .

D.C. Code § 2-1402.11(a)(1)(A).

STATEMENT OF THE CASE

Petitioner is a former Professor of Physics at the University. Pet. App. at 17a, 41a. In 2012, the Council of the District of Columbia ("Council") enacted the Fiscal Year 2013 Budget Support Act of 2012 ("Budget Support Act"), which included the University of the District of Columbia Right-Sizing Plan Act of 2012. *Id.* at 17a-18a, 42a. The Budget Support Act required the University to submit to the Council a "right-sizing plan," approved by the University's Board of Trustees ("Board"), to "bring the University's costs, staff, and faculty size in line with other comparable public universities." *Id.* at 18a. The Council directed that the University's right-sizing plan include "[a]n analysis of all academic programs identify[ing] under-enrolled and under-performing programs and an associated timeline and plan for improving or eliminating these programs" and "[a] staff and faculty reduction strategy and timeline." *Id.* at 42a; *see also id.* at 18a. The University's Board addressed these issues, *see id.* at 18a, 42a, and ultimately decided to eliminate seventeen degree-granting programs, including the Bachelor of Science degree in physics, which were memorialized in Board Resolutions. *Id.* at 18a-19a, 42a-43a.

The University's Board subsequently issued a Resolution approving a reduction-in-force impacting seventeen faculty members, including those associated

with the eliminated degree-granting programs. *Id.* at 19a-20a, 43a. The reduction-in-force was carried out pursuant to the terms of the collective bargaining agreement between the University and the union representing its full-time faculty. *Id*. at 19a; *see also id.* at 41a-42a. Petitioner was laid off as part of this reduction-in-force, effective May 15, 2015. *Id.* at 20a, 43a.

Petitioner filed a lawsuit against the University in the District of Columbia Superior Court ("Superior Court") alleging he was laid off because of his age, in violation of the District of Columbia Human Rights Act ("DCHRA"). *Id.* at 17a, 21a, 43a-44a. Petitioner did not allege any claims under the federal Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq. Id.* at 21a n.4, 44a n.3; *see also* Complaint in *Khatri v. Bd. of Trust. of the Univ. of the Dist. of Columbia,* 2018 CA 004941 B (D.C. Superior Court), filed July 11, 2018.

On November 20, 2019, the University filed a Motion for Summary Judgment in Superior Court. On February 26, 2020, the Superior Court entered an Order granting the University's Motion for Summary Judgment and entering summary judgment in the University's favor. *See* Pet. App. at 39a-62a. Finding that Petitioner established a *prima facie* case of age discrimination, *id.* at 47a-48a, the Superior Court concluded the University articulated a legitimate, non-discriminatory reason for Petitioner's lay off. *Id.* at 49a-50a. The Superior Court further concluded Petitioner did not demonstrate that the University's stated reason was a pretext for age discrimination, rejecting, among other things, Petitioner's argument that the University inconsistently applied the reduction-in-force by allegedly retaining younger faculty members. *Id.* at

50a-61a. In considering the issue of pretext, the Superior Court specifically noted that it "declines to apply the federal 'but-for' causation standard used to analyze claims under the [Age Discrimination in Employment Act]." *Id.* at 51a n.4. Petitioner filed a Notice of Appeal to the District of Columbia Court of Appeals ("Court of Appeals").

On February 7, 2023, the Court of Appeals issued its *per curiam* Memorandum Opinion and Judgment affirming the Superior Court's Order granting the University's Motion for Summary Judgment. Pet. App. at 16a-38a. The Court of Appeals concluded that the Superior Court correctly determined that Petitioner established a *prima facie* case of age discrimination, *id.* at 23a-24a, and further concluded that the University articulated a legitimate basis for Petitioner's lay off. *Id.*at 24a-27a. The Court of Appeals further concluded that Petitioner did not establish pretext, rejecting, among other things, Petitioner's argument that younger faculty members were treated more favorably. *Id.* at 27a-36a. In rendering its decision, the Court of Appeals did not apply a "but for" causation standard. To the contrary, the Court of Appeals recognized that an employer may violate the DCHRA if it acted with "just 'one discriminatory motive, even if the employer had other lawful motives'", and, thus, to satisfy his burden, Petitioner was required to provide evidence that his age was "a 'substantial factor' in [his] termination[], or in other words, a 'significant motivating factor bringing about [UDC's] decision.'" *Id.* at 27a. On March 22, 2023, the Court of Appeals denied Petitioner's petition for rehearing and rehearing en banc. *See* Appendix A at 1a-2a.

While the appeal of the Superior Court's Order granting the University's Motion for Summary Judgment was pending, on November 17, 2021, Petitioner filed a motion for reconsideration of the Superior Court's February 26, 2020 Order granting summary judgment in the University's favor. By Order dated February 4, 2022, the Superior Court denied Petitioner's motion for reconsideration. *See* Appendix B at 3a-11a. Petitioner appealed this decision, and on August 30, 2023, the Court of Appeals issued its *per curiam* Memorandum Opinion and Judgment affirming the Superior Court's denial of Petitioner's motion for reconsideration under District of Columbia Superior Court Rule of Civil Procedure 60(d)(2) and remanding the case for further consideration of the motion for reconsideration under District of Columbia Superior Court Rule of Civil Procedure 60(b)(6). *See* Pet. App. at 8a-15a.

On October 12, 2023, the Superior Court issued its Order on remand, denying Petitioner's motion for reconsideration, pursuant to District of Columbia Superior Court Rule of Civil Procedure 60(b)(6), of the Superior Court's Order granting summary judgment in the University's favor. *See* Appendix C at 12a-21a. The Superior Court further denied Petitioner's request to file newly discovered documents. *Id.* Petitioner appealed this Order, and on January 6, 2025, the Court of Appeals issued its *per curiam* Memorandum Opinion and Judgment affirming the Superior Court's October 12, 2023 Order. *See* Pet. App. at 1a-7a. On January 31, 2025, the Court of Appeals issued its *per curiam* Order denying Petitioner's petition for rehearing and rehearing en banc of the Court of Appeals' January 6, 2025 Memorandum Opinion and Judgment affirming the Superior Court's denial,

on remand, of Petitioner's motion for reconsideration under Rule 60(b)(6) and motion to file newly discovered documents. Pet. App. at 63a-64a.

ARGUMENT

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

I. THIS COURT LACKS JURISDICTION UNDER 28 U.S.C. § 1257

Section 1257 of Title 28 of the United States Code provides:

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

28 U.S.C. § 1257(a) ("Section 1257").

The instant case does not involve a federal statute or question of federal law. Moreover, this matter does not

question the validity of the DCHRA as "being repugnant" to the Constitution or federal law. Accordingly, Petitioner's petition for writ of certiorari should be denied, as this Court lacks jurisdiction. *See Kansas v. Marsh,* 548 U.S. 163, 168 (2006) (Section 1257 "authorizes this Court to review, by writ of certiorari, the final judgment of the highest court of a State when the validity of a state statute is questioned on federal constitutional grounds."); *Oregon v. Guzek*, 546 U.S. 517, 521 (2006) (this Court has jurisdiction "to review state-court determinations that rest upon federal law."); *Johnson v. Williams*, 568 U.S. 289, 309 (2013) (Section 1257 "imposes a federal-question requirement as a condition of this Court's appellate jurisdiction.") (Scalia, J., concurring).

II. PETITIONER'S REQUEST THAT THIS COURT REVIEW THE COURT OF APPEALS' DECISION AFFIRMING THE GRANT OF SUMMARY JUDGMENT IN THE UNIVERSITY'S FAVOR IS UNTIMELY

A petition for writ of certiorari must be filed within 90 days after entry of the judgment to be reviewed. Supreme Court Rule 13.1; *see also id.* Rule 13.3. Where a timely petition for rehearing is filed, the time to file a petition for writ of certiorari runs from the date of the denial of the petition for rehearing. *Id.* Rule 13.3.

The Court of Appeals issued its Memorandum Opinion and Judgment on February 7, 2023, affirming the Superior Court's Order granting the University's Motion for Summary Judgment and entering summary judgment in the University's favor. *See* Pet. App. at 16a-38a (Court of Appeals Case No. 20-CV-240 & 20-CV-314). On March

22, 2023, the Court of Appeals denied Petitioner's petition for rehearing and rehearing en banc of this Memorandum Opinion and Judgment. *See* Appendix A at 1a-2a. The petition for writ of certiorari was filed over two years later, on April 21, 2025. Thus, Petitioner's request that this Court review the Court of Appeals February 7, 2023 Memorandum Opinion and Judgment affirming summary judgment in the University's favor is untimely.

III. THE PETITION FOR WRIT OF CERTIORARI MUST BE DENIED, AS PETITIONER FAILS TO SATISFY THE REQUIREMENTS OF SUPREME COURT RULE 10

Review on a writ of certiorari rests with the Court's discretion. Supreme Court Rule 10. A petition for writ of certiorari "will be granted only for compelling reasons." *Id*. This Court may grant a petition for writ of certiorari for the following reasons:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that

> conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Id.

Petitioner asserts this case "presents the Court with another opportunity to continue providing coherence and clarity to the statutory framework applicable to federal-sector discrimination and retaliation claims." Petition at 2. Petitioner is incorrect. As set forth in the Statement of Facts and more fully detailed below, Petitioner was not a federal employee and has not brought any claim against the University in this matter under the federal discrimination statutes.

Petitioner offers no compelling reasons for this Court to grant his petition for writ of certiorari, and, as set forth more fully below, there are none. As Petitioner does not seek review of a decision of a United States court of appeals, subsection (a) of Rule 10 is inapplicable.

Contrary to Petitioner's assertion, this case does not present "questions of fundamental importance to the application of the Title VII (and ADEA) cases of thousands of federal employees . . . " Petition at 7. The Court of Appeals February 7, 2023 Memorandum Opinion

and Judgment affirming the Superior Court's Order granting the University's Motion for Summary Judgment and entering summary judgment in the University's favor does not involve a federal question and does not decide any question of federal law—and neither does any other decision of the Court of Appeals in this matter. Thus, this dispute does not present any issue on which clarification of a federal legal principle or requirement is warranted. Accordingly, subsections (b) and (c) of Rule 10 are inapplicable.

In short, Petitioner offers none of the usual reasons that would support granting his petition for writ of certiorari. This case has no precedential value whatsoever and no significance beyond the interests of the parties involved. Accordingly, the petition for writ of certiorari should be denied.

IV. PETITIONER'S FIRST QUESTION PRESENTED DOES NOT WARRANT THIS COURT'S REVIEW

Relying upon this Court's decision in *Babb v. Wilkie*, 589 U.S. 399 (2020), Petitioner's First Question Presented focuses on the standard of proof necessary to demonstrate causation, arguing the decisions of the Superior Court and Court of Appeals are contrary to the ruling in *Babb*, *see* Pet. at 2-10, 19-21, which held:

> The plain meaning of the critical statutory language [of the federal-sector provision of the Age Discrimination in Employment Act, § 633a(a)] ('made free from any discrimination based on age') demands that personnel actions be untainted by any consideration of age. This

> does not mean that a plaintiff may obtain all forms of relief that are generally available for a violation of § 633a(a), including hiring, reinstatement, backpay, and compensatory damages, without showing that a personnel action would have been different if age had not been taken into account. To obtain such relief, a plaintiff must show that age was a but-for cause of the challenged employment decision. But if age discrimination played a lesser part in the decision, other remedies may be appropriate.

Babb, 589 U.S. at 402. Plaintiff is incorrect and, thus, the First Question Presented does not warrant this Court's review.

The holding in *Babb* is inapplicable to the present case. Petitioner was not a federal employee. To the contrary, he was an employee of the University, which is an independent agency of the District of Columbia government. D.C. Code § 1-603.01(13). This matter does not involve an alleged violation of the ADEA—or any other federal discrimination law. Petitioner's claim against the University is solely for age discrimination under the DCHRA. *See* Pet. App. at 21a n.4, 44a n.3; *see also* Complaint in *Khatri v. Bd. of Trust. of the Univ. of the Dist. of Columbia,* 2018 CA 004941 B (D.C. Superior Court), filed July 11, 2018.

While *Babb* was decided on April 6, 2020—prior to Petitioner's submission of his brief and reply brief to the Court of Appeals seeking review of the Superior Court's Order granting the University's Motion for Summary Judgment—Petitioner did not cite to *Babb* in either

brief. *See* Petitioner's Brief and Reply Brief in District of Columbia Court of Appeals Case Nos. 20-CV-240 & 20-CV-314. In addition, Petitioner did not raise this Court's decision in *Babb* before the Court of Appeals upon review of the Superior Court's Order on his motion for reconsideration. *See* Petitioner's Brief and Reply Brief in District of Columbia Court of Appeals Case Nos. 22-CV-77 & 22-CV-78, and Case Nos. 23-CV-874 & 23-CV-875. This Court does not review issues raised for the first time in the petition for writ of certiorari. *See, e.g., Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view."); *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (declining to address issue where Court of Appeals did not consider it, noting this Court's role is "'a court of review, not first view'"); *Gray v. Netherland*, 518 U.S. 152, 165 (1996) ("If the claim was not raised or addressed in federal proceedings, below, our usual practice would be to decline to review it.") (citing *Yee v. Escondido*, 503 U.S. 519, 533 (1992)); *Wood v. Georgia*, 450 U.S. 261, 277 (1981) (noting there is a "jurisdictional bar to our reaching the issue" where the issue was not raised in, or decided by, the state court) (White, J., dissenting).

Moreover, Petitioner is incorrect in his assertion that the Court of Appeals and Superior Court "determined it is bound by . . . a but-for causation standard to a federal-sector retaliation case". Pet. at 5. Neither the Superior Court nor the Court of Appeals applied a but-for standard of proof to Petitioner's DCHRA claim. In considering the University's Motion for Summary Judgment, the Superior Court specifically "decline[d] to apply the federal 'but-for' causation standard used to analyze claims under the [Age Discrimination in Employment Act]." Pet.

App. at 51a n.4. Likewise, the Court of Appeals noted Petitioner was required to provide evidence that his age was "a 'substantial factor' in [his] termination[], or in other words, a 'significant motivating factor bringing about [UDC's] decision.'" *Id.* at 27a. Indeed, Petitioner recognizes that the Superior Court noted that the DCHRA prohibits an employer from discharging an employee "'wholly or partially for a discriminatory reason based upon the actual or perceived . . . age' of the individual." Pet. at 5; *see also* Pet. App. at 45a.[3] Accordingly, neither the decisions of the Superior Court nor Court of Appeals is contrary to this Court's decision in *Babb,* as argued by Petitioner in support of his petition. *See* Pet. at 7.

Thus, there is no basis on which to grant Petitioner's petition for writ of certiorari.

V. PETITIONER'S SECOND QUESTION PRESENTED DOES NOT WARRANT THIS COURT'S REVIEW

Petitioner's Second Question Presented is premised on Petitioner's argument regarding the lower courts' consideration of evidence and the courts' interpretation of the record in this case. *See* Pet. at i-ii; *see also id.* at 10-17. This is a fact-based argument, which is not appropriate for this Court's consideration. *See* Supreme Court Rule 10 ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Petitioner's alleged errors have no relevance beyond the interests of the parties to this case. Moreover,

3. Plaintiff attributes this quote to the Court of Appeals.

to the extent the alleged factual information upon which Petitioner purports to rely was not presented below, it cannot be considered herein.

Accordingly, the petition for writ of certiorari should be denied. *See Powell v. Nevada*, 511 U.S. 79, 86-87 (1994) ("'it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.'") (quoting *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923)) (Thomas, J., and Rehnquist, C.J., dissenting).

CONCLUSION

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

Respectfully submitted,

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June 26, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE DISTRICT OF COLUMBIA COURT OF APPEALS, FILED MARCH 22, 2023

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 20-CV-0240
2018-CA-004939-B

HAILEMICHAEL SEYOUM, *et al.*,

Appellants,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Appellee,

and

No. 20-CV-0314
2018-CA-004941-B

DARYAO S. KHATRI, *et al.*,

Appellants,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Appellee.

Appendix A

BEFORE: Blackburne-Rigsby, Chief Judge, Beckwith, Easterly,* McLeese,* Deahl, Howard, AliKhan, and Shanker, Associate Judges, and Glickman,* Senior Judge.

ORDER

On consideration of appellants' petition for rehearing or rehearing en banc, and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED by the merits division* that appellants' petition for rehearing is denied. It is

FURTHER ORDERED that appellants' petition for rehearing en banc is denied.

PER CURIAM

* Judge Glickman was an Associate Judge of this court at the time of oral argument. He began his service as a Senior Judge on December 21, 2022.

APPENDIX B — ORDER OF THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA, CIVIL DIVISION, FILED FEBRUARY 4, 2022

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

Consolidated Cases:
Case No.: 2018 CA 004939 B
Case No.: 2018 CA 004941 B
Judge Jason Park

HAILEMICHAEL SEYOUM,

Plaintiff,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Defendant.

DARYAO KHATRI,

Plaintiff,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Defendant.

Appendix B

ORDER

This matter is before the Court on the plaintiffs' motion for relief from the Court's March 4, 2020 order, filed November 17, 2021, which the Court will construe as a motion for reconsideration of its February 26, 2020 order granting summary judgment. Upon consideration of the motion, the opposition memorandum, and the entire record, and for the reasons discussed below, the Court denies the plaintiffs' motion.

BACKGROUND

This case arises from an employment dispute between the plaintiffs, Hailemichael Seyoum, Ph.D. and Daryao Khatri, Ph.D., and the defendant, the Board of Trustees of the University of the District of Columbia ("the Board"). On July 11, 2018, the *pro se* plaintiffs filed separate age discrimination actions, alleging that the Board terminated their employment at the University of the District of Columbia ("the University") in violation of the D.C. Human Rights Act, D.C. Code § 2-1402.11(a)(1) ("the DCHRA"). *See generally* Compls. On February 26, 2020, this Court granted summary judgment to the defendant and against the plaintiffs, finding that the plaintiffs had established a prima facie case of age discrimination under the DCHRA but that the defendant had offered substantial evidence showing the plaintiffs' terminations were non-discriminatory. *See* Order (Feb. 26, 2020) at 6.

The plaintiffs filed this motion for relief from the Court's summary judgment order on November 17, 2021.

See generally Pls.' Mot. for Relief from a Judge's Order of March 04, 2020 [sic], for the Board of Trustees of the University of the District of Columbia ("Pls.' Mot. for Relief"). The defendant filed its opposition on November 30, 2021. *See generally* Def.'s Opp'n to "Pls.' Mot. for Relief from a Judge's Order of March 04, 2020, for the Board of Trustees of the University of the District of Columbia" ("Def s. Opp'n.").[1]

LEGAL STANDARD

"Although the trial court rules do not expressly provide for motions to reconsider . . . we have observed that they are in fact entertained from time to time" and are filed pursuant to Rule 59 or Rule 60. *Williams v. Vel Rey Properties, Inc.*, 699 A.2d 416, 419 (D.C. 1997). Motions for reconsideration under either Rule 59(e) or 60(b) "are committed to the broad discretion of the trial judge." *Onyeneho v. Allstate Ins. Co.*, 80 A.3d 641, 644 (D.C. 2013) (quoting *Dist. No. 1 – Pac. Coast Dist. v. Travelers Cas. & Sur. Co.*, 782 A.2d 269, 278 (D.C. 2001)).[2] Rule 60(b) provides relief from a final order based on, *inter alia,* "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that,

1. The plaintiffs also filed a reply on December 6, 2021, which the Court does not consider. *See* D.C. Super. Ct. Civ. R. 12-I(g).

2. Rule 59(e) provides that "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." D.C. Super. Ct. Civ. R. 59(e). Here, the plaintiffs' motion was untimely under Rule 59(e), and thus the Court does not consider the motion under that rule.

with reasonable diligence, could not have been discovered in time to move for a new trial under 59(b); . . . or (6) any other reason that justifies relief." D.C. Super. Ct. Civ. R. 60(b).[3] Reconsideration under Rule 60(b)(6) "is intended for 'unusual and extraordinary situations, justifying an exception to the overriding policy of finality.'" *Puckrein v. Jenkins*, 884 A.2d 46, 59 (D.C. 2005) (quoting *Profitt v. Smith*, 513 A.2d 216, 218 (D.C. 1986) (internal citation omitted)).

Additionally, Rule 60(d)(2) allows a court to "set aside a judgment for fraud on the court." This is an extraordinary type of relief that requires clear and convincing evidence of fraud. *See Kline v. Ahuja*, No. l:07-cv-451-RCL, 2021 U.S. Dist. LEXIS 226403, at *21 (D.D.C. Nov. 24, 2021).

Finally, the Court may issue an indicative ruling while the case is on appeal under Rule 62.1. This rule states:

> If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
>
> (1) defer considering the motion;
>
> (2) deny the motion; or

3. Rule 60(b)(3) also allows a party to seek relief for "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party" but must be filed within a year of entry of the judgment or order. *See* D.C. Super. Ct. Civ. R. 60(c)(1).

> (3) state that it would grant the motion if the District of Columbia Court of Appeals remands for that purpose.

D.C. Super. Ct. Civ. R. 62.1(a).

ANALYSIS

The plaintiffs argue that they are entitled to relief under D.C. Super. Ct. Civ. R. 60(b)(6) and 60(d)(2) because the defendant submitted false statements to the Court. *See* Pls.' Mot. for Relief at 3. More specifically, the plaintiffs allege that the Court relied on three false statements in its order granting summary judgment for the defendant: (1) that Professor Chatman was selected as an assistant professor at the University following his termination, (2) that the D.C. Council instructed the defendant to delete programs with shallow enrollment, and (3) that a budgetary reduction-in-force that purportedly resulted in the elimination of plaintiffs' position at the University of the District of Columbia constituted a legitimate, non-discriminatory reason. *Id.* at 3, 5-9; *see* Order (Feb. 26, 2020) at 3, 8-9, 13. The plaintiffs request that the Court issue a Rule 62.1(a) indicative ruling while the case is pending appeal stating "that [the Court] would be inclined to grant [the p]laintiffs' Rule 60(b)(6) motion." Pls.' Mot. for Relief at 5.[4]

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4. The plaintiffs also ask the Court to find that their motion "raises a substantial issue," which is not a basis for an indicative ruling under D.C. Super. Ct. Civ. R. 62.1(a). Pls.' Mot. for Relief at 5.

In response, the defendant argues that the plaintiffs' motion should be denied because it raises the same issues that are pending before the D.C. Court of Appeals. *See* Def's. Opp'n at 3. The defendant further argues that the plaintiffs' Rule 60(b)(6) motion is untimely and, even if timely, would not justify relief under Rule 60(b)(6) because the allegedly false statements do not rise to the level of extraordinary circumstances. *See id.* at 5-6. Finally, the defendant argues that the plaintiffs' arguments do not rise to the level of "fraud on the court" justifying relief under Rule 60(d)(2). *See id.* at 12-13.

I. RULE 60(b)(6)

"Rule 60 was adopted (and amended) to cabin and simplify the procedure for attacking a prior judgment of the same court." *Threatt v. Winston*, 907 A.2d 780, 787 (D.C. 2006). A motion made under Rule 60(b) must be made "within a reasonable time" from entry of the order from which relief is sought. D.C. Super. Ct. Civ. R. 60(c)(1). District of Columbia courts "almost uniformly deny Rule 60(b)(6) motions as untimely when they are filed more than three months after judgment." *Carvajal v. DEA*, 286 F.R.D. 23, 26 (D.D.C. 2012).[5] Indeed, "Rule 60(b)(6) relief normally will not be granted unless the

5. When interpreting D.C. Super. Ct. Civ. R. 60(b), District courts looks to federal court decisions interpreting Fed. R. Civ. Proc. 60(b) as persuasive authority. *See Threatt*, 907 A.2d at 784 n.8 ("When a federal rule and a local rule contain the same language, we will look to federal court decisions interpreting the federal rule as persuasive authority in interpreting the local rule.") (quoting *Oparaugo v. Watts*, 884 A.2d 63, 69 n.1 (D.C. 2005)).

moving party is able to show circumstances beyond its control prevented taking 'earlier, more timely' action to protect its interests." *Id.* (quoting *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). "In the context of institutional reform litigation," courts must also consider whether "the movant's delay has prejudiced the non-moving party" in determining timeliness. *Salazar v. District of Columbia*, 633 F.3d 1110, 1112, 1119 (D.C. Cir. 2011) (holding that a Rule 60(b)(6) motion was timely because there was no prejudice and the delay in filing the motion "was caused in considerable part by cooperative efforts among the parties . . . with the strong encouragement of the court," where the court held nine status conferences, and the parties filed 11 opposed motions, between the entry of the order and the filing of the motion).

Here, the plaintiffs seek Rule 60(b)(6) relief almost 21 months after the entry of the Court's February 26, 2020 order. *See generally* Pls' Mot. for Relief (Nov. 17, 2021). The plaintiffs present no evidence that this delay was caused by circumstances beyond their control or that they could not have taken earlier action. *See Carvajal*, 286 F.R.D. at 26. Further, this case does not present an issue of institutional reform litigation, and the delay here was not caused by cooperation between the parties or continuing action by this Court, distinguishing the present circumstances from *Salazar*, 633 F.3d at 1112. In fact, the Court finds that the plaintiffs' delay here prejudices the defendant, which has fully litigated this matter in the appellate court, including engaging in oral argument. Accordingly, the Court finds that the plaintiffs' 60(b)(6) motion is untimely and denies relief on this ground.

II. RULE 60(d)(2)

Fraud on the court is "is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury." *Baltia Air Lines v. Transaction Mgmt.*, 98 F.3d 640, 642 (D.C. Cir. 1996) (quoting *Bulloch v. United States*, 721 F.2d 713, 718 (10th Cir. 1983)).[6] "Relief due to 'fraud on the court' is very rarely warranted, and is 'typically confined to the most egregious cases, such as bribery of a judge or a juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged.'" *More v. Lew*, 34 F. Supp. 3d 23, 28 (D.D.C. 2014) (quoting *Great Coastal Express, Inc. v. Int'l Bhd. of Teamsters*, 675 F.2d 1349, 1356 (4th Cir. 1982)).

Here, the Court finds that the plaintiffs have not shown evidence of fraud "directed to the judicial machinery itself," even accepting their allegations of false statements as true. *Baltia Air Lines*, 98 F.3d at 642. The plaintiffs allege false statements made by the defendants, which is not so egregious to rise to the level of fraud on the court. *See id.* Accordingly, finding that the plaintiffs are neither entitled to relief under Rule 60(b)(6) nor 60(d)(2), the Court denies the plaintiffs' motion for relief.

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6. D.C. Super. Ct. Civ. R. 60(d)(2) is equivalent to its federal analog, Fed. R. Civil Proc. 60(d)(3). *See* Comment, D.C. Super. Ct. Civ. R. 60(d)(2); *see also Threatt*, 907 A.2d at 784 n.8.

Appendix B

CONCLUSION

Accordingly, it is this 4th day of February, 2022, hereby

ORDERED that the plaintiffs' motion is **DENIED**.

SO ORDERED.

/s/ Jason Park
Judge Jason Park
Superior Court of the
District of Columbia

APPENDIX C — ORDER OF THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA, CIVIL DIVISION, FILED OCTOBER 12, 2023

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2018-CA-004939-B
Case No. 2018-CA-004941-B
(consolidated cases)
Judge Juliet J. McKenna
CLOSED CASE

DARYAO KHATRI, HAILEMICHAEL SEYOUM,

Plaintiffs,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Defendant.

ORDER

These consolidated cases are before this Court upon remand from the District of Columbia Court of Appeals for further consideration of Plaintiffs Daryao Khatri and Hailemichael Seyoum's (hereinafter "Plaintiffs") Motion to Reconsider the trial court's February 26, 2020, Order granting summary judgment in favor of Defendant Board

of Trustees of the University of the District of Columbia (hereinafter "Defendant") pursuant to D.C. Civil Rule 60(b)(6).[1] *See* Case Nos. 22-CV-0077 & 22-CV-0078, Sept, 21, 2023, Mem. J. Op. at 4 (hereinafter "MOJ"). Additionally, on September 10, 2023, Plaintiffs filed a Motion Requesting Permission to File Newly Discovered Documents Showing Falsehoods of Defendant's Claims in its Briefs, to which Defendant filed an Opposition and Plaintiffs a Reply. For the reasons set forth below, while this Court finds that Plaintiffs' Reply to Defendant's Opposition to the Motion to Reconsider provides sufficient justification for the 21-month delay in seeking reconsideration, the Court finds that Plaintiffs have failed to provide "any other reason that justifies relief" from the February 26, 2020, Summary Judgment Order. *See* D.C. Civil Rule 60(b)(6). Additionally, Plaintiffs' Motion for Leave to file additional documents is denied and the October 27, 2023, status hearing is vacated.

The lengthy factual and procedural history of this case has been previously set forth in the trial court's February 26, 2020, Summary Judgment Order and by the D.C. Court of Appeals (hereinafter "DCCA") in an earlier Memorandum Opinion and Judgment affirming this order; it will not be repeated here. *See* Order, Feb. 26, 2020, at 1-4; Case Nos. 20-CV-0240 & 20-CV-0314, Mar. 30, 2023, MOJ at 1-4. On appeal of the denial of Plaintiffs' November 17, 2021, Motion for Reconsideration; the DCCA affirmed

1. This Order was issued by the Honorable Jason Park, who previously presided over this litigation. On September 21, 2023 these consolidated matters were certified to the undersigned by Order of the Civil Division Presiding Judge.

the trial court's denial of the motion under D.C. Superior Court Rule 60(d)(2), finding that "[t]he trial court did not abuse its discretion in determining that [Plaintiffs] had failed to provide evidence of fraud on the court." MOJ at 4. However, the DCCA concluded that the trial court erred in declining to consider Plaintiffs' explanation for the 21-month delay in seeking reconsideration[2] and denying Plaintiffs' Motion under Rule 60(b)(6) as not filed within a "reasonable time." The issue before this Court on remand is whether Plaintiffs provided a sufficient justification for the delay and, if so, whether the Motion to Reconsider should be granted.

Defendant's Opposition to Plaintiffs' Motion to Reconsider argued that, in addition to failing to set forth legal grounds to set aside summary judgment in favor of the Defendant, the Motion must be denied as untimely due to the twenty-one-month delay between the February 26, 2020, Order and the November 17, 2021, Motion. Plaintiffs' Reply attributed the delay to the over 15-month delay between their July 4, 2020, Freedom of Information Act (hereinafter "FOIA") request for additional documents from the Defendant and the September 20, 2021, response to the request; during much of this time, University of the District of Columbia (hereinafter "UDC") employees were not required to report in-person due to the COVID-19 pandemic and FOIA requests requiring

2. This explanation was set forth in Plaintiffs' Reply. At the time the Reply was filed on December 6, 2021, the D.C. Civil Rules did not permit a reply to a Rule 60 motion to be filed absent prior leave of court. Rule 12-1(g) was amended several months later to permit replies to be filed for all motions.

in-person searches were tolled. *See* Pl. Reply at 6. Plaintiffs' assertion of the length and cause of delay was corroborated by attached documentation. While certainly Plaintiffs could have submitted their FOIA requests immediately after the issuance of the February 26, 2020 Order rather than waiting over four months to do so, this Court notes that this period coincided with the outset of the COVID-19 pandemic and the declaration of a state of emergency and public health emergency in the District of Columbia and implementation of stay-at-home orders and other restrictions. *See generally* https://coronavirus.dc.gov (archived orders). While a twenty-one-month delay is "plainly an unreasonable time absent any satisfactory explanation for the delay," MOJ at 3, this Court finds that the Plaintiffs provided a satisfactory explanation for such delay in their Reply. As a result, this Court now considers whether the Plaintiffs' Motion for Reconsideration sets forth "any other reason that justifies relief" under Rule 60(b)(6) from the February 26, 2020, Order awarding summary judgment in favor of the Defendant.

The "catchall" provision contained in Rule 60(b)(6) is "intended for unusual and extraordinary situations, justifying an exception to the overriding policy of finality." *Puckrein v. Jenkins*, 884 A.2d 46, 59 (D.C. 2005) (internal citations omitted). For example, the fact that a party "finally had obtained an expert witness willing to support their claims [of medical malpractice] . . . is not the sort of unusual or extraordinary situation justifying an exception to the overriding policy of finality" so as to warrant reconsideration of an order awarding summary judgment to the opposing party. *Proffitt v. Smith*, 513 A.2d 216, 218 (D.C. 1986).

In this case, Plaintiffs offer no such grounds for setting aside summary judgment in favor of the Defendant. Plaintiffs' arguments in support of their Motion for Reconsideration under Rule 60(b)(6) simply reiterate their arguments under Rule 60(d)(2) that the Defendant committed a fraud on the court and provide no alternative grounds upon which relief should be granted. *See generally* Pl. Mot. to Reconsider. As noted above, the DCCA affirmed the trial court's denial of the motion under Rule 60(d)(2), finding that the Plaintiffs did not meet the standard for demonstrating "fraud on the court," which is "narrowly construed and confined to the most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged." MOJ at 4 (citing *P'ship Placements, Inc. v. Landmark Ins. Co.*, 722 A.2d 837, 844 (D.C. 1998)) (internal citations and quotations omitted).

Applying a less stringent standard under Rule 60(b)(6)'s general catchall provision, this Court finds that Plaintiffs have failed to provide evidence of false statements, deceit, or other misconduct on the part of Defendant that would warrant reconsideration of the order granting summary judgment in its favor. As the DCCA noted, "[t]he evidence that appellants offer in support of their falsity claims is entirely speculative." MOJ at 5. This Court finds that the lack of FOIA records corroborating deposition testimony of UDC officials Dr. Rachel Petty and Dean Massey does not render such statements false. Similarly, any claim that the Defendant falsely stated that it was instructed to delete degree programs with

"shallow enrollment," as opposed to degree programs that were "under-enrolled," is baseless given the similarity in meaning of the two terms. Moreover, such a distinction is immaterial given the trial court's findings that "[t]he evidence on this score is stark. It is undisputed that between 2011 and 2015—the four years preceding the reduction-in-force—the University conferred only three Bachelor of Science degrees in physics, . . . a rate of less than one per year." Order, Feb. 26, 2020, at 11.

With respect to Plaintiffs' additional argument that the claim that a budgetary reduction-in-force required elimination of their position was false, the Defendant maintained throughout this litigation that the Plaintiffs were terminated as a result of the right-sizing directive from the D.C. Council directing UDC to eliminate under-enrolled programs and reduce faculty. The fact that the trial court may have relied upon decisions in other cases finding that a reduction-in-force for budgetary reasons may constitute a legitimate, non-discriminatory justification for termination does not provide a basis to conclude that the Defendant misled the trial court or to set aside the award of summary judgment. In fact, in affirming the trial court's award of summary judgment, the DCCA observed that "whether or not the Superior Court correctly identified 'budget as an issue' in UDC's specific decision to terminate the professors' full-time employment, the bottom line is that UDC proffered a sequence of nondiscriminatory decision-making that led to their termination." Case Nos. 20-CV-0240 & 20-CV-0314, Mar. 30, 2023, MOJ at 8.

Appendix C

The remaining claims made by the Plaintiffs in their Motion to Reconsider—including that the Defendant's assertion that it followed proper procedures in eliminating certain programs, including the physics program, was false because the procedures followed were allegedly inconsistent with an unidentified D.C. Municipal Regulation—are unsupported and vague. Moreover, such claims are simply not material to the trial court's summary judgment determination. *See* Order, Feb. 26, 2020, at 17 ("The plaintiffs, however, do not explain how the process by which the seventeen programs were selected . . . violated governance regulations, much less how any such violations give rise to an inference of discriminatory intent.").

On September 10, 2023, Plaintiffs filed a Motion Requesting Permission to File Newly Discovered Documents Showing Falsehoods of Defendant's Claims in its Briefs, presumably in further support of their November 17, 2021, Motion for Reconsideration. These additional documents again concern the alleged falsity of the deposition testimony of Dr. Petty concerning the requirements of the Middle States Commission of Higher Education and the Defendant's purported claim that Plaintiffs were terminated as a result of financial difficulties. Defendant opposes this Motion. Plaintiffs filed a Reply to Defendant's Opposition.

Plaintiffs assert that Dr. Petty recently recanted her September 24, 2019, deposition testimony that the Middle States Commission of Higher Education told her that at least one full-time faculty member was required

for a degree-granting program during a bench trial in related litigation before the Honorable Neal Kravitz involving both Plaintiffs Khatri and Seyoum (in addition to other plaintiffs) and the Defendant, challenging the same reduction-in-force at issue in this case. *See* Pl. Mot. ¶¶ 4-5. Defendant disputes that Dr. Petty recanted her prior testimony and asserts that, once provided with her complete response, she simply explained her prior deposition testimony, rather than disavowing her prior testimony as false. *See* Def. Opp. at 3. Even if Dr. Petty's prior testimony concerning what she was told by the Middle States Commission was false, Plaintiffs do not explain the relevance of this evidence to their Motion to Reconsider, beyond potentially undermining Dr. Petty's credibility. In fact, in granting the Defendant's Rule 52 Motion for judgment at the conclusion of the Plaintiffs' case-in-chief, Judge Kravitz found that the Plaintiffs had "not proved by a preponderance of the evidence that the university lacked any legitimate reason for their termination. . . ." Def. Opp., Ex. A (Transcript, *University of the District of Columbia Faculty Association/NEA, et al. v. Board of Trustees of the University of the District of Columbia*, 2015-CA-7165-B), at p. 10, lines 4-6. In doing so, Judge Kravitz apparently credited Dr. Petty's testimony, finding that "Dr. Petty explained, persuasively in my view, that once the eliminated programs no longer offered degrees or high-level courses, there was no need for full-time faculty in those programs because there was no need for the things full-time faculty do beyond teaching basic courses. . . ." *Id.* at p. 13, lines 10-15. Thus, this Court finds that Dr. Petty's recent testimony would only further support, as opposed to contradict, the trial court's

Appendix C

February 26, 2020, Order granting summary judgment in favor of the Defendant.

With respect to the second category of additional documents Plaintiffs seek to introduce, any such evidence is similarly unpersuasive. As discussed above, this Court finds that documents suggesting that Plaintiffs' termination was not required by a budget deficit or shortfall is simply not material given the Defendant's contention throughout the litigation that the reduction-in-force was required by the D.C. Council's mandate that UDC eliminate under-enrolled or underperforming degree programs. Even accepting that the Council's reduction-in-force directive, while not technically a budgetary one, was motivated by fiscal and budgetary concerns, evidence that such budgetary concerns had been addressed prior to Plaintiffs' termination does not undermine the previous determination that the Defendant proffered a legitimate, non-pretextual, and nondiscriminatory justification for the adverse employment action. Thus, this Court denies Plaintiffs' Motion for Leave to File Newly Discovered Documents.

For the reasons set forth above, having now considered Plaintiffs' Motion for Reconsideration under D.C. Civil Rule 60(b)(6) as timely filed, the Plaintiffs' Motion for Reconsideration is **DENIED.**

Accordingly, it is this 12th day of October 2023, hereby

ORDERED that, upon remand, the Plaintiffs' Motion for Reconsideration under D.C. Civil Rule 60(b)(6) is **DENIED;** and it is

FURTHER ORDERED that the Plaintiffs' Motion Requesting Permission to File Newly Discovered Documents Showing Falsehoods of Defendant's Claims in its Briefs is **DENIED;** and it is

FURTHER ORDERED that the October 27, 2023, Status Hearing is **VACATED;** and it is

FURTHER ORDERED that the above-captioned cases remain **CLOSED.**

IT IS SO ORDERED.

/s/ Juliet J. McKenna
Juliet J. McKenna
Associate Judge