9/16/24

No. 24-446

IN THE
SUPREME COURT OF THE UNITED STATES

Roobina Zadoorian

Petitioner

v.

Gwinnett Technical College (GTC)
Ms. Kimberly Strong, Director of Sonography program
Mr. Jim Sass, Dean of Health Imaging & Informatics
Ms. Rebecca Alexander, VP of Academic Affairs
Mr. Derek Dabrowiak, Executive Director, Student Affairs, TCSG
Technical College System of Georgia (TCSG)
Office for Civil Rights (OCR) (Atlanta & Dallas)

Respondents

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Statute of Limitation of Title VI

11th Circuit Appeal Court dismissed Plaintiff's discrimination claims against Gwinnett Technical College et al., invoked under **Title VI**, by relying on their "***Rozar v. Mullis***", 85 F.3d 556 (11th Cir. 1996), which decided that the statute of limitation for Title VI is the statute of limitation for "personal injury": in GA it is two years.

Despite 11th Circuit, Supreme Court in all their reviews of Title VI and other "Spending Clause Statutes" cases such as Title IX, etc., has regularly characterized Title VI as "Contract" and its remedy as "Remedy for Breach of Contract".

Furthermore, U.S. Supreme Court's guidelines for determining the statute of limitation of §1983 claims in ***Wilson v. Garcia,*** 471 U.S. 261 (1985), were not followed in deciding "personal injury" as statute of limitation of Title VI.

11th Circuit in their opinion (App.11) said that ***Rozar*** will remain good law, and that they need an intervening Supreme Court decision that is clearly on point or directly in conflict with ***Rozar*** such that they may decline to apply that case.

Now, it is time that this important question was presented and answered by this Court:

Does U.S. Supreme Court characterize **Title VI and all other Spending Clause Statutes** as "Contract" or "Personal Injury"? And whether **the statute of limitation of Title VI and all other Spending**

Clause Statutes is the statute of limitation of "Written Contracts" or the statute of limitation of "Personal Injury" in states?

2. APA and §704

OCR investigated Plaintiff's claim of discrimination against Gwinnett Technical College and issued a letter of findings. After Plaintiff's appeal, OCR sent an email to Plaintiff denying her appeal. Therefore both the initial investigation and its appeal are considered final.

11th Circuit dismissed Plaintiff's APA claim against OCR by relying on §704 and saying that judicial review under the APA is available only for an "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court."

11th Circuit says that Plaintiff is banned from APA according to §704, because her claim against state Defendants is an adequate alternative remedy.

In ***Bowen v. Massachusetts,*** 487 U.S. 879 (1988), Supreme Court made it clear that §704 refers only to finality of the agency's investigation; hence, it does not bar those investigations which are already complete as is Plaintiff's case.

In ***Bowen,*** Supreme Court stated that the agency's action was reviewable under APA and that existence of a financial remedy shall not ban the APA for agency's action.

11th Circuit ignores ***Bowen*** cited by Plaintiff and instead uses ***Cannon v. University of Chicago,*** 441 U.S. 677 (1979) to dismiss her APA claim.

In ***Cannon,*** Supreme Court gave the private right of action to Plaintiffs of Title IX, just as it was for Title VI. Hence, Supreme Court gave another alternative to discrimination Plaintiffs besides the previous option of investigation by agencies.

The question presented is:

Does 11th Circuit Appeals Court have the authority to oppose Supreme Court's opinion in ***Bowen*** and bar Plaintiff's APA claim against OCR by abusing ***Cannon***?

Statement of Related Proceedings

- *Roobina Zadoorian v. Gwinnett Technical College et al.*, Case No. 1:22-cv-00922-LMM, U. S. District Court for the Northern District of Georgia. Judgment entered Nov. 8, 2022.

- *Roobina Zadoorian v. Gwinnett Technical College et al.*, No. 22-14206, U. S. Court of Appeals for the Eleventh Circuit. Judgment entered Apr. 10, 2024. The opinion is unpublished; it is available in the Appendix, App.1-23.

- *Roobina Zadoorian v.Gwinnett Technical College et al.*, No. 22-14206, U. S. Court of Appeals for the Eleventh Circuit. Petition for Rehearing En Banc was denied on June 20, 2024. The Order is available in the Appendix, App.24-25.

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Statutes

Opinions Below

The decision by 11th Circuit Court of Appeals denying Roobina Zadooiran's appeal was issued on April 10, 2024. The opinion of the Court was not published; it is available in the Appendix: App. 1-23.

11th Circuit Court of Appeals denied Roobina Zadoorian's petition for rehearing en banc on June 20, 2024. That order is attached in the Appendix: App.24-25.

Jurisdiction

Plaintiff's Appeal to 11th Circuit Court of Appeals was denied on April 10, 2024. Plaintiff invokes this Court's jurisdiction under 28 U.S.C. §1254, having timely filed this petition for a writ of certiorari within ninety days of denial of Plaintiff's petition for rehearing en banc, entered on June 20, 2024.

Statutes Involved in the Case

Title VI- Civil Rights Act of 1964

§2000d: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§2000d-2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 602, shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedures Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

42 U.S. Code § 1988

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the

protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

5 U.S.C. §704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Statement of the case

Plaintiff applied to Gwinnett Technical College's Sonography program in May 2017; on June 12, 2017 she received her rejection email.

On July 11, 2017, Plaintiff and her husband went to see Ms Thurmond, the program specialist, for some input and advice on her application as per invitation in the rejection email. Suddenly, Mr Sass, the Dean, invaded into the room, shouted at Ms Thurmond and threatened her not to speak a word with Plaintiff, because she was working for him. He said that Plaintiff did not have any right to be there and ask

questions, because she had submitted her complaint to the College. Then he went out of the room and said that he was going to call the police to come and throw out Plaintiff and her husband! (Doc 49- pg 28-30).

Plaintiff sent an email to TCSG, Mr Dabrowiak and explained the above incident- (Doc 49-1, pg5-9).
GTC through Mr Sass's Retaliatory action prevented Plaintiff from accessing the facts that would support her Intentional Discrimination claim against the College. GTC committed active and affirmative concealment and prevented the discovery of Plaintiff's Intentional Discrimination claim, Count 1.

On July 2017, Plaintiff sent her discrimination complaint to OCR (Doc 35-1). OCR sent their "letter of findings" on Sept 30, 2019, after more than two years (Doc 35-3). After carefully reading the letter several times, Plaintiff came into important facts that would support her Intentional Discrimination claim against the College. When these facts became apparent to her, i.e., on Nov. 19, 2019, Plaintiff wrote her appeal to OCR (Doc 49-1, 15-24), which was denied on 30 Sept., 2021(Doc 35-4).

On March 4, 2022 Plaintiff filed lawsuit in federal Court against State Defendants and OCR. On Nov 8, 2022, Judge May dismissed Plaintiff's all claims, including Intentional Discrimination and Retaliation claims invoked under Title VI as time barred. Judge May decided that the cause of action started to accrue on July 11, 2017. Plaintiff does not agree and believes that it should start to accrue on Nov. 19, 2019, when she became aware of the facts that would

support her claim of Intentional discrimination in OCR's letter of findings. Plaintiff expected the Court to consider the fact that Plaintiff was diligent in perusing her right and was thrown out of the College through Police threat, by Dean Sass, when she was there to get information. Nevertheless, even if as Judge May decided the cause of action had started to accrue on July 11, 2017, Plaintiff's complaint would still be timely, since Supreme Court has regularly characterized Title VI and all Spending Clause Statues as "Contract", and statute of limitation for "written contracts" in GA is 6 years. Since Plaintiff brought her case to Northern District Court of GA on 4, March 2022, which is less than 5 years from its accrual on June 11, 2017 (as Judge May believes), it would still be timely. But Judge May applied 2 years statute of limitation of "personal injury" in GA with reference to ***Rozar v. Mullis,*** 85 F.3d 556, 561 (11th Cir.1996).

Judge May also denied Plaintiff's APA claim against OCR by relying on §704, while Supreme Court in ***Bowen v. Massachusetts,*** 487 U.S. 879, 902 (1988) ruled that APA was allowed and that §704 is only referring to the finality of the investigation of the case, which was already satisfied for Plaintiff's case.

On Dec. 7, 2022 Plaintiff filed her appeal in 11th Circuit, demanding the Appeal Court to remove the Northern District Court's ruling in dismissing her Intentional Discrimination and Retaliation claims as time barred and to remove dismissal of her APA claim. Plaintiff's Appeal was denied with the judgment dated April 10, 2024. App. 1-23. Plaintiff explains in her arguments why this Court should

reverse the judgment of 11th Circuit Court of Appeals in her arguments under the header of Reasons for Granting the Petition.

On April 30, 2024, Plaintiff filed her petition for rehearing en banc, which was denied with the judgment dated June 20, 2024. App. 24-25

Reasons for Granting the Petition

1.

Statute of Limitation of Title VI

U.S. Supreme Court Regularly Characterized Title VI as "Contract"

Below citations are proofs of Supreme Court's Characterization of "Title VI" as "Contract":

> In fact, applicants for federal assistance literally sign contracts in which they agree to comply with **Title VI** and to "immediately take any measures necessary" to do so. This assurance is given "in consideration of" federal aid, and the Federal Government extends assistance "in reliance on" the assurance of compliance. [Footnote 4/23] ... (written assurances are merely a formality, because the statutory mandate applies and is enforceable apart from the text of any

agreement). ***Guardians Assn. v. Civil Svc. Comm'n***, 463 U.S. 582,630 (1983)

Therefore, as Supreme Court explicitly states in above paragraph, applicants for federal assistance literally sign contracts with federal government through Title VI, to which Plaintiffs are third party beneficiaries. Hence, the statute of limitation of Title VI is the statute of limitation of "written contracts".

> **Title VI** invokes Congress's Spending Clause power to place conditions on the grant of federal funds. **This Court** has regularly applied a **contract-law analogy** in defining the scope of conduct for which funding recipients may be held liable in money damages and in finding a damages remedy available, in private suits under Spending Clause legislation. ***Barnes v. Gorman,*** 536 U.S. 181 (2002)
>
> We have repeatedly **characterized** this statute and other Spending Clause legislation as "much in the **nature of a contract**: in return for federal funds, the [recipients] agree to comply with federally imposed conditions. " ***Branes v. Gorman,*** 536 U.S. 181, 186 (2002)

Despite all the above clear statements by Supreme Court about characterization of Title VI as "Contract", 10th Circuit and consecutively all other 11 circuits, including 11th Circuit decided to characterize Title VI as "personal injury"; it started with ***Baker v. Board of Regents,*** 991 F.2d 628 (10th Cir. 1993).

Supreme Court Guidelines in *Wilson* for Determining Statute of Limitations of §1983 Rejects "Personal Injury" as Characterization of Title VI

In determining the statute of limitation for §1983 in ***Wilson v. Garcia,*** 471 U.S. 261 (1985), Supreme court set very important guidelines that are to be strictly followed mostly according to §1988, none of which was referred to in deciding the statute of limitation for Title VI by 10th Circuit, in ***Baker***, or by 11th Circuit in ***Rozar***!

Wilson v. Garcia, 471 U.S. 261 (1985), *footnote13:*

Title 42 U.S.C. §1988 provides, in relevant part:

> "... , the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause . . . ."

Supreme Court refers to §1988 in ***Wilson*** at 267 to emphasize the conditions that should be satisfied when borrowing statute of limitations from state law:

> A third step asserts **the predominance of the federal interest**: courts are to apply state law only if it is not 'inconsistent with the Constitution and laws of the United States.' Ibid." Burnett v. Grattan, 468 U.S. 42, 47-48 (1984).

Supreme Court in ***Wilson*** at 268 said that characterization is done by considering the elements and the purpose of Congress from establishing the statute.

Wilson at 276 states:

> After exhaustively reviewing the different ways that **§ 1983 claims** have been characterized in every Federal Circuit, the Court of Appeals concluded that the tort action for the recovery of damages for personal injuries is the best alternative available.... We agree that this choice is supported by the nature of the §1983 remedy, and by the federal interest in ensuring that the borrowed period of limitations not discriminate against the federal civil rights remedy.

a) Notice that in ***Wilson*** above, Supreme Court found that nature of §1983 remedies were similar to remedies for "personal injury". Nevertheless, the remedy of **Title VI**, has been characterized as "**remedy for breach of contract**", ***Barnes v.Gorman,*** 536 U.S. 181,189. Therefore, unlike for §1983, characterization as "tort actions for recovery of damages for personal injury" is not supported by the nature of Title VI remedy. Therefore, "personal injury" fails the prescribed test by Supreme Court for being the statute of limitation for Title VI.

11th Circuit in their opinion (App.11) says that ***Rozar*** remains good law because both ***Barnes*** and ***Guardians*** related to what remedies are available

to Title VI plaintiffs and did not address what statute of limitations applies to such claims.

Characterization is a matter of federal law, ***Wilson*** at 269 and 270, and is done prior to defining the appropriate state statute of limitation, and as stated by Supreme Court above, ***Wilson*** at 276, "characterization" should be supported by the "remedy" and cannot be done in a vacuum. In ***Wilson,*** Supreme Court decided because "the tort actions for recovery of personal injury claims" were supported by the "nature of §1983 remedy", therefore, the statute of limitation for "personal injury" could also be used for §1983 claims.

Hence, 11th Circuit's statement that "statute of limitation" and "remedy" for a cause of action are not related, is not true; since in ***Wilson,*** Supreme Court in deciding the statute of limitation for §1983, was careful to choose a "characterization" for the "statute of limitation" that was also supported by the "remedy" and did not discriminate against the remedy!

If what 11th Circuit claims is right, therefore each statute should have dual characterization, one for its remedy and one for its statute of limitation. But Supreme Court did use "personal injury" both for the remedy and for statute of limitation of §1983. The same will be true for Title VI, because its nature does not change for remedy or statute of limitation sake. The "Nature" is within the statute and Congress's purpose from which the "remedy" is also derived and which also determines the statute of limitation.

Characterizing Title VI as "personal injury" does not fit the statutes remedial purpose as it should. Supreme Court in ***Wilson*** at 261, emphasized:

> A simple, broad characterization of all §1983 claims for statute of limitation purposes, ..., best fits the statute's remedial purpose.

So, despite 11th Circuit's claim that characterization for statute of limitation is not related to the "remedy", Supreme Court stated that characterization for statute of limitation should fit the remedial purpose.

The remedy in Title VI is not "protecting personal rights" as 11th Circuit's characterization of Title VI in ***Rozar v. Mullis,*** 85 F.3d 556 (11th Cir. 1996) is seeking to fulfill.

The purpose of Congress from creating Title VI was preventing federal government's money to finance discriminating activities and organizations, ***Baker v. Board of Regents,*** 991 F.2d 628, 631 (10th Cir. 1993); and for that to be fulfilled Title VI was created as a Spending Clause Statute. Government entered into a contract with recipients of financial assistants on behalf of Plaintiff's of these statutes. The "Remedy" here is not remedy for "personal injury"; it is much more important, it is remedy for "Breach of Contract".

Therefore, from the two characterizations, "personal injury" and "contract", the one that fits the remedy for Title VI, is "contract". It is very simple. Hence, the statute of limitation for Title VI is the one for "written contracts".

b) Statute of limitation for "personal injury" in GA is 2 years. GA written contract claims enjoy 6 years of statute of limitation, while Title VI only gets 2 years if borrowed from "personal injury".

Hence, using "personal injury" characterization for Title VI causes discrimination against its intended remedy, i.e. remedy for "breach of contract" and therefore is not supported by the federal interest, and fails the above Supreme Court's test for determining the statute of limitation, ***Wilson*** at 267.

c) Congress abrogated sovereign immunity of states in the Federal Courts for **Title VI**, but not for claims under §1983 or §1981! Therefore, $1983 or any tort claim of personal injury against the states in Federal Courts cannot provide the same remedy as Title VI.

But judges falsely said:

> "Indeed, a Plaintiff suing a federally-supported program for racial discrimination may bring a claim under any one of these three laws."
> *Egerdahl*, 72 F3d at 618 (quoting, *Baker* 991F.2d at 631). Therefore, we see no reason to treat Title VI claims differently for limitations purposes. ***Monroe v. Columbia College Chicago,*** 990 .3d 1098, 1100 (7th Cir. 2021).

Although, apparently in *Egerdahl* at 619, Plaintiff's claims under §1983 and §1981 against her defendants were dismissed for 11th amendment immunity!

Therefore, since §1983 and its characterization as "personal injury" cannot offer the same remedy that Title VI does, it does not support federal interest in suing states and the liability requirements intended by Congress as required by Supreme Court in ***Wilson*** at 276. Hence, "personal injury" fails the test for being the characterization of Title VI in determining its statute of limitation.

Supreme Court Distinguishes Claims for "Personal Injury" and §1983 from Claims for "Breach of Contract", i.e. Title VI

In ***Wilson v. Garcia,*** 471 U.S. 261 (1985) at 277, Supreme Court said:

> The atrocities that concerned Congress in 1871 plainly sounded in tort. Relying on this premise we have found tort analogies compelling in establishing the elements of a cause of action under §1983, ...and in identifying the immunities available to defendants.

It continues by referring to Civil Rights Act of 1871 and §1983 as Civil Rights Act:

> Among the potential analogies, Congress unquestionably would have considered the remedies established in the Civil Rights Act to be more analogous to tort claims for personal injury **than**, for example, to claims for damages to property or **breach of contract**.

Hence, Supreme Court clearly distinguishes claims of "personal injury" and §1983 from claims for "breach of contract", i.e. Title VI.

The conclusion of all above arguments is that the decision of assigning statute of limitation of "personal injury" to "Title VI" in ***Rozar v. Mullis,*** 85 F.3d 556 (11th Cir. 1996), is not a valid decision: first, it opposes the Supreme Court's "Contract" Characterization: second, it is not consistent with federal laws as is required by §1988; since it is not supported by remedy of Title VI, and discriminates against the remedy of title VI. Therefore, the decision of assigning "personal injury" statute of limitation to Title VI is not supported by federal interest.

Hence, ***Rozar*** should be set aside.

11 Circuit in their opinion, (App.7) says:

> We reasoned that claims under 42 U.S.C. §§ 1983 and 1981 are subject to states' personal injury limitations periods, and thus, "[c]haracterizing section 2000d claims as personal injury actions for limitations purposes promotes a consistent and uniform framework by which suitable statutes of limitations can be determined for civil rights claims, and serves Congress' objectives by avoiding uncertainty and creating an effective remedy for the enforcement of federal civil rights." Id. at 561....

Creating uniformity in statutes of limitations for avoiding uncertainty, should not create a law that is inconsistent with the laws of the United States; it is against §1988.

As, also In ***Loper Bright Enterprises et. al., v. Raimondo, Secretary of Commerce, et. al.,*** 603 U.S. 1, 6 (2024), Supreme Court by overruling ***Chevron,*** refuses to support uniformity for the sake of uniformity:

> Nor does a desire for the uniform construction of federal law justify *Chevron*. It is unclear how much the *Chevron* doctrine as a whole actually promotes such uniformity, and in any event, we see no reason to presume that Congress prefers uniformity for uniformity's sake over the correct interpretation of the laws it enacts.

Hence, Supreme Court is an advocate of accuracy and correctness, and does not believe in compromising the laws for the sake of uniformity.

Besides, Supreme Court's characterization of all Spending Clause Statutes including Title VI as "Contract" already creates uniformity for all Spending Clause Statutes! Moreover, assigning statute of limitation of "written Contracts" to Title VI does not create any uncertainty and does not prevent an effective remedy for the enforcement of Title VI, instead, creates a more effective remedy which is also in line with the purpose of Congress.

Plaintiffs in ***Barnes v Gorman,*** 536 U.S. 181(2002), ***Cummings v. Premier Rehab K...,P.L.L.C,*** 142 S. Ct. 1562 (2022) lost their claims because Supreme Court said the remedy for Title VI is the remedy for "breach of contract", which does not include punitive damages and damages for emotional distress. In Contrast, plaintiffs of "personal injury" claims can

receive both remedies. In ***Cummings*** at 1574, Supreme Court reasoned that the funding recipients would still lack the requisite notice that emotional distress damages were available under the statutes at issue.

But, the funding recipients cannot deny that they were completely aware of entering into contract with federal government when agreed to receive funds. Hence, they knew that the statute of limitation for Title VI would be the one for "contracts". What would have made them think that the statute of limitation of "personal injury" should apply to their "contract"? Unless the federal Courts betrayed the Congress's intent and sided with states/the powerful and assigned the statute of limitation of "personal injury" to Spending Clause Statutes!

Thus, this Court should overrule ***Rozar*** and affirm Supreme Court's characterization of Title VI as "Contract" and its statute of limitation as "Written Contract's".

Lack of "Quality of Reasoning" for Resemblance of Title VI to §1981 & §1983 by 10th Circuit, Followed by 11th Circuit

In ***Loper Bright Enterprises et. al., v. Raimondo, Secretary of Commerce, et. al.,*** 603 U.S. 1,7 (2024), Supreme Court in supporting their overruling of ***Chevron*** as a precedent, offers three elements to be considered, one of which is "**the quality of the precedent's reasoning**":

> (d) Stare decisis, the doctrine governing judicial adherence to precedent, does not require the Court to persist in the *Chevron* project. The stare decisis considerations most relevant here—"the quality of [the precedent's] reasoning, the workability of the rule it established, . . . and reliance on the decision," Knick v. Township of Scott, 588 U. S. 180, 203 (quoting Janus v. State, County, and Municipal Employees, 585 U. S. 878, 917)—all weigh in favor of letting Chevron go.

10th Circuit Court in ***Baker v. Board of Regents,*** 991 F.2d 628, 631 (10th Cir. 1993) decided that Title VI is like an injury to personal right, just because they wanted to unify the characterization statewide. They did it without any reasoning and without considering any of the guidelines of Supreme Court in ***Wilson v. Garcia,*** 471 U.S. 261 (1985). Therefore, ***Baker*** and also ***Rozar*** are to be overruled according to the above Supreme Court statement and lack of quality of reasoning in deciding it in first place.

In the proceeding of the ***Baker*** Court, judges said that they would characterize the nature of Title VI by focusing on its elements instead of the remedy, ***Baker*** at 631.

After mentioning the elements for Title VI, one being "racial or national origin discrimination" and the other one "the entity engaging in discrimination is receiving federal assistance", judges themselves see that there is no resemblance especially in the second element with sections §1983 and §1981; hence, they leave their comparison of Title VI elements unfinished.

Even after acknowledging in ***Baker*** at 631 that:

> The goal of Title VI is to "safeguard against the use of federal funds in a way that encourages or permits discrimination."

which is an obvious difference with ***§1983*** and ***§1981,*** judges continue as:

> Title VI is a civil rights statute, and **we believe** that **it is closely analogous to sections 1983 and 1981.**The language of Title VI specifically refers to discrimination against a "person." This language is similar to that in sections 1983 and 1981, which language protects a "person" from deprivation of rights, and which provides equal rights under the law to all "persons." An injury Resulting from discrimination produces impairments and wounds to the rights and dignities of the individual.

The injury resulting from discrimination Breaches the Fund Recipient's Contract with the Federal Government, but judges tried to downplay it by reducing it to "wounds to the rights and dignities of the individual"! Judges forgot the above "goal of Title VI" that they themselves mentioned!

In ***Baker*** at 631, they add:

> This result is consistent with our decision to adopt a general characterization for all civil rights claims **based upon our perception of the nature of the claims.** *Garcia,* 731 F.2d at 649.

Plaintiff, wonders why Congress, itself did not think of such a unity in elements and same purposeness,

i.e. "protection of personal rights" between §**1983** and **Title VI**, and uselessly created Title VI; otherwise Congress would not have bothered to create a separate and independent statute named **Title VI**! 10th Circuit decided to use them interchangeably, or even better completely omit Title VI and instead use §1983. Surprisingly or ironically, maybe not so much surprisingly all other circuits followed without any question, on behalf of states. Apparently, they betrayed Congress's purpose!

First, they did not explain how they reached to their Characterization based on Title VI's elements and Congress's purpose. Second, they did not follow the guidance of Supreme Court for determining the statute of limitation of §1983 in ***Wilson v. Garcia,*** 471 U.S. 261 (1985), i.e. §1988, to make sure that the "personal injury" statute of limitation is not inconsistent with federal laws and does not discriminate against the cause of action of Title VI and its remedy. Third, they ignored Supreme Court's "Contract" analogy; but, why?!

Therefore, ***Rozar,*** resulting from ***Baker*** should be overruled, as it is against all the guidelines of Supreme Court in ***Wilson*** and against characterization of Title VI as "Contract" and its remedy as "Breach of Contract" by Supreme Court. Moreover, as stated in the beginning of this header, like *Chevron,* it does not have any "quality of reasoning", and it should be overruled.

As stated in ***Loper Bright Enterprises et. al., v. Raimondo, Secretary of Commerce, et. al.,*** 603

U.S. 1, 42 (2024), 11th Circuit by accepting their mistake will show "judicial humility".

> And part of "judicial humility," post, at 3, 25 (opinion of KAGAN, J.,), is admitting and in certain cases correcting our own mistakes, especially when those mistakes are serious, see post, at 8–9 (opinion of GORSUCH, J.).

Justice Gorsuch in support of the Court's decision in overruling *Chevron* in ***Loper*** at 59 said:

> To proceed otherwise risks "turn[ing] stare decisis from a tool of judicial humility into one of judicial hubris." Ibid.

2.

APA and §704

11th Circuit's Opinion in Dismissing Plaintiff's APA Claim is in Direct Conflict with the Supreme Court's Decision in *Bowen v. Massachusetts*

According to **§2000d-2 of Title VI,** agency action is reviewable:

> **§2000d-2. Judicial review; administrative procedure provisions**
> Any department or agency action taken pursuant to section 602, shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating

> or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedures Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

Supreme Court in ***Bowen v. Massachusetts,*** 487 U.S. 879, 901, 902, 903, 904, 911(1988) emphasized that the purpose of **§704** is merely the finality of the agency's action and it does not ban APA!

As Plaintiff has exhausted both initial administrative investigation by OCR and its Appeal too, therefore her complaint against OCR is eligible for a Judicial Review under APA.

Supreme Court stated in ***Bowen*** at 902:

> Professor Davis, a widely respected administrative law scholar, has written that §704 "has been almost completely ignored in judicial opinions," and has discussed §704's bar to judicial review of agency action when there is an "adequate remedy" elsewhere as merely a restatement of the proposition that "[o]ne need not exhaust administrative remedies that are inadequate."

Therefore, as Supreme Court emphasizes the purpose of **§ 704** is merely the finality of the agency's action! The following is Professor Davis's words:

> Footnote 34 from ***Bowen:***
> K. Davis, Administrative Law § 26:12, p. 468 (2d ed. 1983).
>
> Footnote 35 from ***Bowen:***
> Id., at § 26:11, p. 464. Further, § 704 is titled "Actions reviewable" and it discusses, in the two sentences that follow the one at issue today, matters regarding finality. Thus, it is certainly arguable that by enacting § 704 Congress merely meant to ensure that judicial review would be limited to final agency actions and to those nonfinal agency actions for which there would be no adequate remedy later.

The above clarification of **§704** by Supreme Court as its referring only to the finality of the agency's action is also supported by Supreme Court's decision in overruling ***Chevron*** when deciding ***Loper Bright Enterprises et. al., v. Raimondo, Secretary of Commerce, et. al.,*** 603 U.S. 1, 30 (2024)***:***

> In neither case does an ambiguity necessarily reflect a congressional intent that an agency, as opposed to a court, resolves the resulting interpretive question.

By defining **§704** and its conditions in ***Bowen,*** Supreme Court removed any ambiguity from **§704,** and clearly stated that **§704** does not bar review of agency actions which are already finished and finalized as is Plaintiff's case.

In below statement Supreme Court rejects the request that §704 should bar the review of agency action, because of existence of monetary relief:

> The Secretary argues that §704 should be construed to bar review of the agency action in the District Court because monetary relief against the United States is available in the Claims Court under the Tucker Act. This restrictive — and unprecedented—interpretation of § 704 should be rejected because the remedy available to the State in the Claims Court is plainly not the kind of "special and adequate review procedure" that will oust a district court of its normal jurisdiction under the APA. ***Bowen*** at 904.

OCR, like the Secretary in ***Bowen,*** falsely claims that Plaintiff's APA claim should be barred, because there is monetary relief for her claim against the College. Therefore, OCR's request and 11th Circuit order to bar APA shall be rejected by Supreme Court in the same way the Secretary's was rejected, also supported by below statement.

> As the facts of these cases illustrate, the interaction between the State's administration of its responsibilities under an approved Medicaid plan and the Secretary's interpretation of his regulations may make it appropriate for judicial review to culminate in the entry of declaratory or injunctive relief that requires the Secretary to modify future practices. We are not willing to assume categorically, that a naked money judgment against the United States will always

> be an adequate substitute for prospective relief fashioned in the light of the rather complex ongoing relationship between the parties. ***Bowen*** at 905.

Above Supreme Court's statements that rejects the "adequacy" of the monetary relief as a substitute for APA reviews for the prospective relief sought, opposes the opinion of 11th Circuit that lawsuit against the College is "adequate remedy" for Judicial Review of OCR's actions unlawfully withheld, or delayed, §706(1), or which are abuse of discretion, and not according to the law, etc. §706(2), explained elaborately by Plaintiff in Doc 42, pg 3-24.

Also, Plaintiff's APA review may cause the entry of declaratory or injunctive relief that requires the OCR to modify future practices, or procedures such as in Plaintiff's case, for example by defining "prompt" in their procedure manual, and cause prospective relief as explained by Supreme Court above. It took about 4 years for OCR to conclude Plaintiff's case; and 4 years by no means is "prompt" for an admission discrimination investigation that consisted of 81 applicants, only.

> It seems perfectly clear that, as "the reviewing court," the District Court had the authority to "hold unlawful and set aside agency action" that it found to be "not in accordance with law." ***Bowen*** at 911.

11th Circuit's opinion to bar Plaintiff's APA claim is against Supreme Court's decision in ***Bowen.*** OCR and 11th Circuit should follow the interpretation of

Supreme Court for **§704,** and therefore Plaintiff's APA claim against OCR shall not be denied.

11th Circuit, not only ignored Plaintiff's cited authorities from ***Bowen,*** but also abused ***Cannon*** (App.19, 22) to ban Plaintiff's APA! They wrote:

> In ***Cannon v. Univ. of Chicago,*** 441 U.S. 677 (1979), the Supreme Court stated that "lawsuits to end discrimination [] would be the preferable and more effective remedy" for discrimination in federally funded programs than placing on individual plaintiffs "the burden of demonstrating that an institution's practices are so pervasively discriminatory that a complete cut-off of federal funding is appropriate." 441 U.S. at 688-89, 704-06 & n.38. (holding that a plaintiff could raise a claim of discrimination directly against a medical school).

Cannon v. University of Chicago, 441 U.S. 677 (1979), as quoted above by 11th Circuit, says that Supreme Court added the alternative of suing the recipients of federal funds to the previously existing administrative investigation option for Plaintiffs. It does not ban APA and review of the agency actions and procedures that are not according to law.

Below, is Justice Stevens' words in ***Cannon,*** 441 U.S. at 680 (1979):

> Petitioner's complaints allege that her applications for admission to medical school were denied by the respondents because she is a woman. [Footnote 1] Accepting the truth of those allegations for the purpose of its decision, the Court of Appeals held that petitioner has no right

> of action against respondents that may be asserted in a federal court. 559 F.2d 1063. We granted certiorari to review that holding. 438 U.S. 914.

Supreme Court had to decide if the Petitioner had a private right of action or not; there is no discussion of APA in ***Cannon***.

Cannon, as is clearly stated below has nothing to do with APA.

> "Similarly, in ***Cannon v. University of Chicago,*** 441 U. S. 677, 441 U. S. 705-706 (1979), this Court rejected the notion that an administrative mechanism was the exclusive remedy under Title IX of the Education Amendments of 1972." ***Guardians*** Page 463 U. S. 628. (Footnote 4/20)

Cannon, as above statement says, provides another alternative for fighting discrimination. ***Cannon*** does not ban APA.

11th Circuit abused the precedent of ***Cannon*** as precluding APA. The Court abused its discretion and changed the Supreme Court's Precedent's purpose and misused it to unjustly defeat the Plaintiff. 11th Circuit also ignored the authorities cited by Plaintiff from ***Bowen v. Massachusetts,*** 487 U.S. 879 (1988), decided by Supreme Court, only for the purpose of defeating the Plaintiff.

Therefore, this Court should stand for justice and let the law be as it is and discourage lower Courts from siding with powerful Defendants or Plaintiffs against those ordinary people like this Plaintiff.

As this Court in deciding ***Loper Bright Enterprises et. al., v. Raimondo, Secretary of Commerce, et. al.,*** 603 U.S. 1, 65 (2024), overturned ***Chevron U.S.A. v. Natural Res. Def. Council,*** on 28 June 2024, and limited the discretionary power of agencies, Plaintiff is very hopeful that it will also judge her case impartially and will do whatever is right and just and will reject the dismissal of Plaintiff's APA claim.

As stated in ***Loper*** at 65, Courts should not side with the powerful just because they are powerful:

> *Chevron* deference requires courts to "place a finger on the scales of justice in favor of the most powerful of litigants, the federal government."

Plaintiff is grateful that she lives in such an enlightened and free judicial era; Justices by overturning ***Chevron*** showed that they are so determined to stay loyal to the Constitution and Statutes promulgated by Congress, i.e. the rule of law and not to the powerful litigants!

As it is well said in ***Loper,*** page *34*:

> Indeed, the Framers crafted the Constitution to ensure that federal judges could exercise judgment free from the influence of the political branches. See The Federalist, No. 78, at 522–525. They were to construe the law with "[c]lear heads . . . and honest hearts," not with an eye to policy preferences that had not made it into the statute. 1 Works of James Wilson 363 (J. Andrews ed. 1896).

Conclusion

For the foregoing reasons, this Court should grant certiorari.

Respectfully, Date: 09/16/2024

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APPENDIX A

United States Court of Appeals
For the Eleventh Circuit

No. 22-14206
[Filed: April 10, 2024]

ROOBINA ZADOORIAN,

Plaintiff-Appellant,

versus

GWINNETT TECHNICAL COLLEGE,
KIMBERLY STRONG,
Director of Sonography Program,
JIM SASS,
Dean of Health Imaging & Informatics,
REBECCA ALEXANDER,
VP of Academic Affairs,
DEREK DABROWIAK,
Executive Director, Student Affairs -TCSG, et. al.

Defendants-Appellees.

Opinion of the Court

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-00922-LMM

Before BRASHER, ABUDU, and ANDERSON, Circuit Judges.