

**ORIGINAL**

24-661

No. 24A17

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SUPREME COURT OF THE UNITED STATES

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RICHARD RYNN,  
Applicant Petitioner  
v.

FIRST TRANSIT INC, AN OHIO CORPORATION,  
ABC CORPORATION I-X; AND BLACK AND WHITE  
PARTNERSHIPS, AND/OR SOLE  
PROPRIETORSHIPS I-X

Respondents

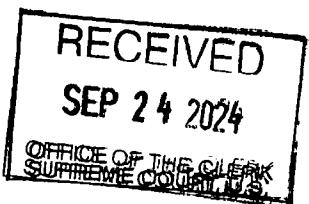
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PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

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Petitioner/Plaintiff Pro

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## **QUESTIONS PRESENTED**

1. Is employer responsible for injunction based on labor dispute for actions of employees at the workplace under direction of employer and non-disclosure?
2. Is it a violation of due process for court to deny filing further briefs based on critical new evidence and fraud?
3. Are employees protected by the EEOC, labor laws and No FEAR Act, P.L. 107-174 for discrimination at the workplace and rights to discloser of work place accusations?

## **PARTIES TO PROCEEDING**

Defendant First Transit

## **DIRECTLY RELATED CASES**

Rynn v Craig Jennings Et Al, Arizona District Court Case No. 2:24-CV-02674-PHX-RM

Rynn v Mckay Arizona District Court Case No. 2:18-cv-00414 JJT U.S. Supreme Court Case No. Case No.: 24A22--Pending

Mathews V Rynn Avondale city court Case No. P02019000235, Rynn V Avondale court, First Transit, Et Al, Superior Court Case No. LC2022-000265 and No.CV-2022-011208 Arizona Court of Appeals Case No. 1 CA-CV 23-0092 Arizona Supreme Court Case No. CV-24-0017, and CV-24-0032 U.S. Supreme Court Case No. 23A1101--Pending

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**Petition for writ of Certiorari** seeks review under Rule 60(b)-(d), 60(d)(3), and 28 U.S.C. § 1651.

**Opinions Below**

Arizona Supreme Court Case No. Cv-24-0032-SA  
Decision filed May 14, 2024

Decision of Ninth Circuit Court of Appeals  
Denial of rehearing, April. 22, 2024

Ninth Circuit Court of Appeals  
Summary Affirmance on October 23, 2023.

District Court Order Filed May 26, 2023  
Docket No. 176

District Court Order Filed April 14, 2023  
Docket No. 174

District Court Order Filed December 13, 2021  
Docket No. 162

**Jurisdiction**

Petitioner timely mailed Petition for Writ of Certiorari on September 19, 2024. Petitioner filed application for injunctive relief to the United States Supreme Court on May 23, 2024, On May 29, 2024, the Supreme Court requested the Appellant to refile the pleadings to comply with the Court's rules. The

Appellant mailed a second application to vacate on June 7, 2024.

The Supreme Court Clerk informed Appellant on June 11, 2024, that the application to vacate needed to be first filed in the Ninth Circuit. Petitioner then filed motion to vacate in the Ninth Circuit due to district court refusal to accept further filings on this case. The Ninth Circuit Court of Appeals denied the Appellant's rehearing on April 22, 2024.

Appellant timely filed application to vacate the injunctions and on September 19, 2024 timely filed this Application for Certiorari to vacate the Avondale court injunction and district court injunction refusing to accept conflicting critical new evidence from Arizona Supreme courts Case No. CV-24-0017 May 14, 2024 decision May 13, 2019 ex parte injunction based on the "workplace" on Febraury 2019 at First Transit

employees under direction of employer. Court has jurisdiction under 28 U.S.C. § 1253 and 28 U.S.C. § 1651 (All Writs Act) for a direct appeal from the denial of motion to vacate a defective workplace injunction, the denial of due process rights, and District Court's refusal to accept further pleadings without addressing critical new facts from Arizona Supreme courts decision "*at the workplace*", related to fraud and the unresolved violations of labor rights, deprivation of constitutional rights, insufficient service of process from non-disclosure.

### **Constitutional Provisions Involved**

Fifth and Fourteenth Amendments, including due process violations.

### **Statement of Case**

Petitioner originally filed case in state court seeking injunctive relief and asserting state and federal claims against the employer, First Transit.

The Appellee/Defendant subsequently transferred the case to the District Court. (Doc. 1)

The District Court's and Ninth Circuit court's decisions have been rendered void based on new evidence and state court decisions that district court responsible for Avondale court injunction based on employees' actions under direction of employer First Transit that contradict this court's

prior rulings that injunction was based outside of employment substantiating fraud on the court and failure of courts not certifying a clarification to correct, vacate falsification of facts of location originating injunction of workplace accusations.

In 2020, the U.S. Supreme Court issued two decisions (*McKesson v. Doe*, 141 S. Ct. 48, 49 (2020) (per curiam), and *Carney v. Adams*, 141 S. Ct. 493, 504 (2020)) **discussing the importance of certification**

Petitioner claims require transfer to state court for **certification** for contradictions between Arizona Supreme court decisions and district court's decisions.

Petitioner filed the following motions and notes:

1. Motion to vacate and stay proceedings June 12, 2024. Dk 28
2. Motion to recall the mandate June 13, 2024. Dk 29
3. Supplement to Application to Vacate June 18, 2024. Dk 30
4. Notice on June 20, 2024. Dk 31
5. Motion to expedite ruling June 28, 2024. Dk 32
6. Revised application under Rule 60(b)-(d) and 60(d)(3) to vacate void judgments based on fraud, filed July 30, 2024. Dk 35

7. Notice lower state court decision voiding district court's decisions due to injunction based on employment directed by First Transit, state court subpoena to district court John Tuchi and response from John Tuchi August 1, 2024. Dk 36 and August 13, 2024 entanglement recusal. see Appendix
8. Motion for Clarification filed August 8, 2024

Petitioner submitted an application to the U.S. Supreme Court to vacate the injunctions issued by the Avondale Court and the District Court, seeking permission to file additional briefs based on newly discovered evidence and allegations of fraud. The U.S. Supreme Court directed Rynn to first seek relief from the Ninth Circuit regarding the injunctions.

Petitioner subsequently filed a motion for new trial under Rule 60 in the District Court, requesting the vacatur of the injunction based on fraud and newly discovered evidence (Doc. 170). However, the District Court denied the Plaintiff's motion for a new trial (Doc. 176) without addressing the issues of fraud and the

new evidence, and further denied the Plaintiff's requests for judicial notice of evidentiary facts, summary judgment, recusal, and the submission of additional filings related to the workplace injunction (Doc. 176). Additionally, the District Court denied the Plaintiff's motion to set aside the judgment (Doc. 170), summary judgment (Doc. 171), and a change of venue (Doc. 1). The Plaintiff subsequently filed an appeal (Doc. 177).

The Ninth Circuit Court of Appeals denied the Appellant's Opening Brief, granted the Defendant's motion to dismiss through summary affirmance (Ninth Circuit Docs. 6, 15), denied the Plaintiff's motion for reconsideration of the summary affirmance (Ninth Circuit Docs. 16, 25), and failed to address the Plaintiff's notice of errata, motion for summary reversal, and motion to amend to include additional

parties and claims for damages (Ninth Circuit Docs. 18, 19, 23).

Newly discovered evidence, as detailed in the Arizona Supreme Court Case No. Cv-24-0032-SA, with an order filed on May 14, 2024, substantiates that the workplace injunction was indeed a result of actions occurring at the workplace of First Transit (Ninth Circuit Doc. 24). The State Court referenced this case in addressing the Avondale Court injunction. Both the District Court and the Ninth Circuit failed to consider this newly discovered evidence, which revealed that the injunction was based on workplace actions of which Rynn was unaware until 2023, as disclosed in the Arizona Court of Appeals Case No. 1 CA-CV 23-0092 (Doc. 175, pg. 33) and the Arizona Supreme Court Case No. Cv-24-0032-SA order filed on May 14, 2024.

Two significant issues have emerged following court's recent decision:

1. **Exhibit A: Determination of right to sue.** The Equal Employment Opportunity Commission (EEOC) issued a Determination of Right to Sue on July 15, 2024, based on new accusations stemming from the Arizona Supreme Court's decision on May 14, 2024. This decision pertains to district courts responsibility over an injunction related to actions by employees under the direction of employer First Transit, occurring within the scope of employment at the workplace. These workplace actions were not disclosed to the Applicant until the period of 2023 to 2024.
  - o **Charges of Discrimination:** The attached EEOC Determination grants Applicant Richard Rynn the right to sue defendants for workplace discrimination and the defendant's failure to disclose workplace accusations. Previous court decisions are rendered void as they failed to consider the protections afforded to Mr. Rynn under the EEOC.
  - o **EEOC's Role:** The EEOC is the federal agency tasked with enforcing laws against job discrimination and harassment, including discrimination based on race, color, religion, sex and harassment.
  - o **Jurisdictional Issues:** The Avondale court lacks jurisdiction over workplace discrimination claims that were not first reported to the EEOC. The court's failure to adhere to legal statutory workplace protections, as outlined in the Notification and Federal Employee

Antidiscrimination and Retaliation Act (No FEAR Act, P.L. 107-174), is problematic.

- **No FEAR Act Requirements:**
- Timely and appropriate disciplinary actions against employees involved in discrimination or reprisal.
- The Avondale court has no record of disciplinary or discrimination reports as mandated by the No FEAR Act.
  - **Legal Statutes:** Relevant statutes include Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 (ADEA). The Avondale court cannot assert jurisdiction over Mr. Rynn's workplace-related claims without proper notification and a prior complaint filed with the EEOC.

2. **Application to Vacate the Avondale Court Injunction**

- **Filing History:** Applicant Rynn submitted a renewal application to vacate the Avondale court injunction in U.S. Supreme Court. Renewal Application in Richard Rynn v. Craig Jennings, Avondale City Court, First Transit, Et Al Application 23A1101 and referred that case to the filing of this case.
- Supreme Court's decision dated May 14, 2024, and pursuant to RULE 60(b)-(d) and 60(d)(3) regarding the vacation of void judgments due to fraud, constitutional rights violations, and insufficient service of process or request
- **Arizona Supreme Court Decision:** The Arizona Supreme Court (Case No. CV-24-0032) concluded that the Avondale court's injunction pertains to workplace issues and concluded in its May 14, 2024 decision that

the Ninth Circuit Case No. 23-15869 and district court must resolve the Avondale Court's workplace injunction, which contradicts the District Court's prior decision that the injunction was unrelated to the workplace and should be resolved by the state court.

- **Decision required** The Ninth Circuit failed to issue a decision on this matter, despite the Arizona Supreme Court's ruling on May 14, 2024, which conflicts with the District Court's refusal to address the injunction based on a lack of jurisdiction over non-workplace-related matters.
- Avondale Court's ex parte order on May 13, 2019, without notice, without disclosure of accusations, did not meet requirements of ARPOP, Rule 38(g) failing to meet Standard of proof of irreparable injury and based on statements completely unverified requiring addressing by the court. (First Transit Memorandum Doc. 121, Ex. BB, pg. 15).

These issues highlight significant jurisdictional and procedural inconsistencies that need resolution and corrections based on the Arizona Supreme court May 14, 2024 decision of "*at the workplace*". The adherence to statutory requirements and proper jurisdiction of EEOC is essential for the equitable handling of workplace discrimination and related legal proceedings.

Petitioner denied due process by District Court failing to review Petitioner's motion for a new trial, failing to address legal protections of the workplace, allegations of fraud, newly discovered evidence and decisions from Arizona Supreme court that required district court to resolve Avondale court injunction. The Ninth Circuit also failed to rectify these issues. Petitioner provided a basis for court's subject matter jurisdiction over the injunction and related claims of injuries caused by injunction and false accusations that remain in dispute not resolved in violation of due process.

The Avondale city court workplace injunction (Doc. 175, pg. 9) is based on a workplace report caused by the workplace of the responsible party First Transit that authorized and directed employees to work under direction of First Transit. First Transit is responsible for the control of the employee actions and failed to protect Rynn from the Avondale court injunction

substantiated by fraud and new evidence discovered in year 2023 to 2024 by the decision of the “*workplace*” from the Arizona Supreme court. The workplace injunction was not authorized by the Defendant workplace and is void, based on unverified workplace accusations. (8/16/2021 Doc. 121, Ex. BB, pg. 15).

Court failed to address constitutional due process rights and work place protections against discrimination violated by the nondisclosure of the employer memorandum provided to employee Mathews and non-disclosure of February 2019 report submitted to the employer by Defendant employee Mathews that the May 13, 2019 injunction based on. The defective workplace injunction unlawfully granted *ex parte*, without notice, by the Defendant employees without disclosure, through fraud, and without workplace authorization, without disclosure for actions occurring under direction of employer at the workplace. Court did

not address employer's liability and the request for declaratory relief, thereby compromising the integrity and reputation of the courts and violating Plaintiffs constitutional right to a fair trial.

The court failed to provide an evidentiary hearing, failed to review relevant evidence from Rynn affecting substantial constitutional rights, and dismissed the case by summary judgment without reviewing evidence of interrogatories, Mclean's letter, and Mathews's memorandum provided by Rynn. The case appealed to the Ninth Circuit and by certiorari to the U.S. Supreme Court with errors in law and falsification of facts by the Defendant.

New evidence of fraud from the Defendant's declaration during summary judgment not addressed, denial of a fair trial, and new evidence discovered in 2023 changes the final judgment to actions at the

workplace of the Defendant not addressed. Errors in facts and law were not corrected, and the court failed to provide declaratory relief for the defective workplace injunction that was not legally authorized by the workplace. A brief is required to be filed in the District Court to address new evidence of the injunction from actions at the workplace (see Arizona Supreme Court order Case No. CV-24-0032).

### **Procedural History of Case**

Case arises on February 2019 from a series of acts at the direction of employer at the workplace of Defendant First Transit, where Defendant First Transit failed to disclose grossly false accusations made by an employee about plaintiff and his family. The accusations were made after a normal consensual conversation about plaintiffs District Court case No. 2:18-cv-00414 JJT Rynn v. McKay, assigned to the same judge John Tuchi (Doc. 140, pg. 8, line 13-23; pg. 11, line 11-24; Doc. 175,

pg. 3). First Transit hired employee Shayley Mathews in December 2018 to work at the Tempe facility (Doc. 175, pg. 2). Mathews directed by First Transit supervisor Cris Hamm to work and talk to coworker Richard Rynn at the Tempe facility from December 2018 to February 2019.

Coworker Mathews wrote a report of false workplace accusations to First Transit Human Resources on February 20, 2019, about Plaintiff and wife without disclosing report to plaintiff until plaintiff **discovered Mathews report on June 3, 2019 by requesting a copy from the court.** (Doc. 140, pg. 15-16). First Transit manager Lynn Mclean informed plaintiff about a report from Mathews but did not disclose the specifics of what was reported. (Doc. 121, Ex. CC; Doc. 140, pg. 3, line 14-24). Despite plaintiffs multiple requests for disclosure First Transit failed to disclose Mathews February 2019 report to plaintiff.

On May 13, 2019, Mathews filed false accusations ex parte to the Avondale court for a workplace injunction based on her February 2019 accusations without notifying Rynn. The court failed to address the lack of disclosure in violation of due process, and in violation of labor agreement policy that requires disclosure. Court failed to provide declaratory relief, address plaintiffs workplace complaints of discrimination, retaliation, employers negligence failing to disclose and damages from injuries incurred.

Mathews erroneously listed First Transit as her employer and herself as an agent for First Transit in her report of accusations filed in Avondale court on May 13, 2019. Mathews was not authorized as an agent for First Transit (Doc. 175, Ex. D, pg. 9; Doc. 140, pg. 15-16). Mathews also had illegal ex parte communication with Avondale court judge Craig Jennings on May 13, 2019, based on her February 2019

workplace accusations without notice or service to Rynn, violating due process.

The Avondale court judge Craig Jennings granted a workplace injunction by engaged prohibited ex parte communication on May 13, 2019, without First Transit's authorization, based on Mathews's February 2019 accusations, without notice and disclosure of the accusations, violating ARS 12-1810 (A) and due process by insufficient service of process to May 13, 2019 injunction.

Plaintiff first learned of Mathews February 2019 accusations and the memorandum given to Mathews by First Transit on June 3, 2019. The memorandum indicated First Transit could not verify Mathews's report of accusations (Doc. 121, Ex. BB, pg. 15). The court failed to address the Defendant's failure to disclose and the lack of credibility of Mathews

accusations. The District Court conceded that Mathews memorandum was different from the one given to Rynn, but did not address these differences, violating Rynn's due process rights and the right to a fair trial (Doc. 121, Ex. CC).

Employment Labor Agreement policy with First Transit. See below

*"Dishonesty giving knowingly or maliciously false testimony in a work related investigation or proceeding. Making false statements concerning employees of the company, any form of retaliation, for speaking up about perceived bias, harassment or discrimination, or retaliation for providing information related to any investigation into such matters is a separate violation of the company's harassment free workplace policy such conduct may also be unlawful. If complaint cannot be substantiated the company may take appropriate action providing a work environment free from harassment.*

#### **Summary: Legal Argument on First Transit and Court Errors**

The employer, First Transit, is liable for workplace injunctions issued without following statutory requirements, including the necessity of employer

authorization for workplace injunctions on a reported labor dispute. (ID 175 Ex. G, pg. 28-30; doc. 121 #5, Ex. BB pg. 1-2). The court did not address that First Transit breached the employment contract by violating its policies regarding accusations made against the plaintiff.. False accusations were made by Mathews against plaintiff, repeated in Avondale court without disclosure, despite First Transit's knowledge of their lack of verification of the injunction accusations. (doc. 121 Ex.BB pg. 12; doc. 175 pg.4).

First Transit is responsible for damages resulting from its employees' misuse of the process to obtain an ex parte workplace injunction without informing Rynn of Mathews report of accusations. Mathews and Rynn directed to work together by First Transit within the scope of employment, and Mathews report including memorandum to Mathews filed for a workplace

injunction in Avondale court without disclosure to Rynn.

(doc. 116 pg. 1, line 26-28).

An official under § 1983 is personally liable by act with deliberate or reckless disregard for constitutional rights or if the constitutional deprivation occurs at their direction or with their knowledge and consent (Smith v. Rowe, 761 F.2d 360, 369 (7th Cir.1985)).

**1. Workplace Injunction without**

**Authorization:** Under ARS 12-1810 (A), a workplace injunction issued without employer authorization is void and fraudulent. The Avondale court failed to obtain such authorization or provide evidence justifying the injunction. First Transit denied any workplace actions necessitating the injunction, and there is no record of such authorization or disclosure to Rynn, nor any indication of a threat justifying engaging in a prohibited ex parte injunction (doc. 175 pg.9).

**2. Failure to Disclose Accusations:** First Transit did not disclose Mathews' February 2019 written accusations to Rynn, who only learned of them in Avondale court on June 3, 2019 (doc. 175 pg.9 line 20-25; doc. 175, pg. 3). Rynn was denied due process as the accusations were entered ex parte on May 13, 2019, without prior disclosure. (doc. 175 Ex. A, pg. 5-6; doc. 175 pg.4).

**3. Fraud in Summary Judgment Motion:** The District Court failed to explain the specifics of what Lynn Mclean informed Rynn about in February 2019. The court did not address relevant evidence, including Mclean's letter and answers to interrogatories, which substantiate the failure to disclose Mathews' accusations (doc. 121 #6 Ex. CC; doc. 175 pg.11; doc.121 Ex.BB pg. 12). This omission is a prejudicial error requiring

correction, reversal, and remand (doc. 116, 174, 176, 175 pg. 4).

The District Court's summary judgment is based on the false assertion that Rynn was informed of Mathews' complaint. This misrepresentation, repeated in court orders, contradicts the evidence that Mclean did not disclose the accusations reported from Mathews (doc. 83 pg. 2, line 23-24; doc. 121 #6 Ex. CC; doc. 175 pg.11; doc.121 Ex.BB pg. 12). Consequently, Rynn denied due process and the right to know the accusations against him, constituting a breach of contract by First Transit and the Union of Operating Engineers. The newly discovered Mclean letter during the 2021 discovery process substantiates these claims (doc. 121 #6 Ex. CC; doc. 175 Ex. A, pg. 5-6; doc.121 Ex.BB pg. 12).

See below: (doc. 121 #6 Ex. CC)

*"Lynn McLean AGM- I first thanked Richard for his temporary help in the Tempe shop over the past month. I*

*asked Richard if he was aware of the First Transit Harassment Policy? His response was "yes I am". I then stated that I am placing you on notice that an employee in the Tempe shop has filed a written complaint regarding his actions towards them. I stated that if he was initiating contact with any of the employees in Tempe he needs to cease and desist immediately. I also instructed him to not enter the Tempe property for any reason. He was informed that First Transit Human Resources would be in contact with him regarding this complaint in the near future. This is a serious accusation towards him and could result in some kind of discipline up to termination. Richard responded that he understood. He also stated he didn't think there was any issue. I also offered to give him a written copy of our harassment policy, and he responded that he was aware of its content. At no time during this discussion did Richard request any union representation." (doc. 121 #6 Ex. CC)*

*Under Title VII, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA) the accused has the right to know what specifically they are being accused of. The right to fully respond to allegations and defend themselves. This includes providing witnesses, evidence, and their full side of the story.*

*Sixth Amendment guarantees right to public trial, right to lawyer, right to impartial jury, right to know who accusers are, nature of charges, and evidence against you.*

Rynn not provided rights under Title VII, sixth and fourth amendment. Case arises out of factual multiple

violations of Rynn employment rights, civil and constitutional rights of due process by **Defendant liable failing to disclose Mathews report of accusations.** (doc.121 Ex.BB pg. 1-2)

The fifth amendment, fourteenth amendment guarantee right to due process and ex parte motions due to their exclusion of one party (Rynn) violate Rynn right to due process.

It is well known where Defendant falsification of facts comes to lite after a final judgement such as a lie about informed knowing Rynn was not informed of what Defendants employee Mathews wrote on Febraruay 2019, to Defendant. (doc.121 Ex.BB pg. 12)

The falsification provides a basis for reopening case under Rule 60(b) and 60 (d) of federal rules of procedure and vacating workplace injunction. (doc. 170) Rule 60(d) Other Powers to Grant Relief. This rule does

not limit court's power to: (1) mistake, inadvertence,

surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(6) any other reason that justifies relief.

(1) entertain independent action to relieve party from judgment, order, proceeding;

(2) grant relief to defendant as provided in Rule 59(g); or

(3) set aside judgment for fraud on the court.

In *United States v. United States Gypsum Co.* the Supreme Court stated that Federal Rule of Civil Procedure 52(a) provides that "a finding is 'clearly erroneous' when reviewing court on entire evidence is left with the definite and firm conviction that a mistake has been committed." Essentially, appellate court must determine that a finding is unsupported by substantial, credible evidence in the record to meet this standard. *Interstate Circuit v. United States*, 306 U. S. 208, and *United States v. Masonite Corp.*, 316 U. S. 265. When appellate court determines that lower court's finding of fact is clearly erroneous, appellate court is required to reverse that finding. (doc. 170 pg. 2)

**Rule 52 (a) FINDINGS AND CONCLUSIONS.**

(1) an action tried on the facts without jury, court must find the facts specially and state its conclusions of law separately

(5) *Questioning Evidentiary Support.* Plaintiff may later question the sufficiency of the evidence supporting the findings, Plaintiff may object to them, and move to amend the findings.

(6) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must be set aside when clearly erroneous.

Per Rule 52 (a)(1)(5)(6) Plaintiff objected to courts factual findings as unsubstantiated to the record and moved to amend the findings and filed an amended complaint. (doc. 177 Attach. #1, Ex. A, #2 Ex. B, doc. 140, doc. 175 pg. 1-18) Court must set aside findings of fact that contradict to clearly substantiated credible evidence to the record. Failing to set aside is an abuse of discretion required to be reversed on appeal. (doc. 173 pg. 1-18) (doc. 175 pg. 1-18)

Its an abuse of discretion (doc. 116, 139, 117, 174, 176, 177) failing to review new evidence substantiating fraud, failing to rule on amended complaint with

additional claims, (doc. 175 pg. 17) motion for summary judgement (doc. 171) on the merits as required per rule 15(3)(b)(doc.. 140, 177) failing to resolve damages of negligence, defamation, false light, fraud, etc. caused from Defendant reckless disregard to disclose false accusations of "child abuser", "stalking". (doc. 175 Ex. A, pg. 5-6) (doc. 175 pg.4-5 pg. 17-18)

Court erred failed to consider critical facts of lack of disclosure of Mathews Febraury 2019 report and Plaintiffs complaints. Of lack of disclosure.

Because plaintiff is pro se with personal knowledge of facts, court must consider as evidence plaintiff opposition to summary judgment (doc. 199, 100, 102, 108) all of plaintiffs contentions offered in motions and pleadings, (doc. 119, 121, 123, 127, 129, 137, 138, 140, 141, 142, 145, 152-157, 170-172, 175) where such contentions are based on personal knowledge and set forth facts that would be admissible in evidence, and

where plaintiff attested under penalty of perjury that the contents of the motions or pleadings are true and correct including motion for new trial, (doc. 170, 175) summary judgement, statement of facts, (doc. 171, 172) motion to change venue,(doc. 173) etc..

*McElyea v. Babbitt, 833 F.2d 196, 197 (9th Cir. 1987) (verified pleadings admissible to oppose summary judgment); Johnson v. Meltzer, 134 F.3d 1393, 1399-1400 (9th Cir. 1998) (verified motions admissible to oppose summary judgment); Schroeder v. McDonald, 55 F.3d 454, 460 n. 10 (9th Cir. 1995) pleading counts as "verified" if the drafter states under penalty of perjury that the contents are true and correct.*

1. Declaratory relief to vacate defective workplace injunction, (doc. 175 Ex. B, pg. 9) and compensation required per ARS Rule 65 (5) (c) (1). Workplace Injunction (doc. 175 Ex. B, pg. 9) defective on its face, obtained ex parte without notice, without an affidavit of a threat of violence, (doc.172 pg. 4) in violation of state and federal requirements of ARS Rule 65(b) (1) (A)(B)(2). A threat of irreparable harm is required to obtain an injunction without notice.

Defendant failed to produce an affidavit that is required to obtain an injunction without following rules of due process that requires notice. (doc. 172 pg. 4)

2. Injunction based on hearsay from Shayley Mathews. (doc. 175 Ex. B, pg. 9) Avondale court granted workplace injunction by ex parte without notice based on hearsay from First Transit employee Mathews February 2019 work place accusations without disclosing Mathews accusations to Rynn. On top of it all First Transit does not confirm or deny what Shayley Mathews wrote on February 2019. First Transit April 26, 2019 Memorandum to Shayley Mathews said "*We could not confirm all of the details of your report*" "kept it impartial and objective" (doc. 121 #5, Ex. BB pg. 15) (doc. 117 pg. 16) First Transit confirmed Shayley Mathews on Febraury 2019 consented to working and talking to

Richard Rynn. District court failed to address evidence of Memorandum confirming Mathews consented to working with Rynn that is in contradiction to District court summary judgement ruling. (doc. 116)

3. Not addressed perjury, Patrick Camunez not hired by First Transit until March 2019. (doc. 90 pg. 3 line 23-24) Patrick Camunez not qualified as a witness in Avondale court for work place accusations that occurred in February 2019 (doc. 175 Ex. A, pg. 5-6) one month before Camunez was hired by First Transit. (doc. 174, 176)
4. Recusal of judge required when judge has personal knowledge about workplace accusations "*court issues with his daughter*" (doc. 175 Ex. A, pg. 5-6) about child abuse case Rynn v Mckay involving judge John Tuchi case. (doc. 175 EX. H, pg. 32) Judge John Tuchi failed to recuse himself showed bias by not

addressing personal knowledge of Rynn and evidence from interrogatories, (doc. 172) (doc. 175 pg. 16) letter from Mclean showing no disclosure and not informed of what was written on Mathews February 2019 accusations (doc. 121 #6 Ex. CC) (doc. 175 pg.4) contradicting fraud on declaration from Mclean of informed (doc. 175 Ex. D, pg. 19) District Court error said "*due to the failure to timely inform*" contradicting no disclosure of accusations, substantiates fraud, prejudicial errors. (doc. 170 pg. 2-3) (doc. 121 #6 Exhibit CC) (doc. 175 EX. H, pg. 32) (doc. 121 #5, Ex.BB pg. 12) Disputable facts not resolved Per Ariz. R. Civ. P. 54 (c)

**Judgment as to All Claims and Parties.**

Court failed to resolve disputable facts by denying Plaintiff motion for new trial (doc. 175, 176) is an abuse of discretion that requires reverse and remand for evidentiary hearing and a new trial. Court must

address fraud, void judgements, defective injunction caused by the workplace, decisions containing erroneous determinations of fact and law.

**District court concedes the foundation of the Avondale court workplace “injunction is false”**

(doc. 116 pg. 8 line 11-14) but failed to vacate injunction known with false foundation, and failed to address liability and damages from employer First Transit caused from a false foundation of workplace injunction. Employers are vicariously liable under the doctrine of "respondeat superior" for negligent acts or omissions by their employees in the course of employment by failing to disclose workplace accusations and damages incurred on public record.

(doc. 175 pg.4) Violations of Act (ADEA). Title VII Civil Rights Act of 1964.

The foundation of Avondale court May 13, 2019 injunction is not verified based on First Transit

Memorandum statement “*entirely unverified report*” of accusations from employee Mathews on February 2019. see Memorandum (doc.121 #5, Ex. BB pg. 15) about Rynn and Mathews acts in the course of employment that was directed by employer. The Defendant as employer is responsible for the damages to Rynn for Avondale court injunction based on actions at the control and direction of employer.

**Vicarious Liability.**

Vicarious liability means one person is indirectly responsible, or liable, for the negligent acts of another. The person injured by such negligence, therefore, may seek damages from the person indirectly liable. Black’s Law Dictionary, 1404 (5th ed. 1983).

**Basis of Liability Related to Vicarious Liability.**

**a. Respondeat Superior.**

It is a rule of law that an employer is responsible for injuries inflicted by its employees acting within the

“scope of employment,” based on the theory that employer has the authority to supervise and control its employees. In addition, the employer possesses the ultimate right to discharge disobedient employees and to hire more competent employees. b. “Scope of Employment.” “Scope of employment” means the employee was doing what the employer directed the employee to do, or what the employee could be expected to do from the nature of the employment, or that the employee acted in furtherance of the employer's business.

#### **Right to Notice Due Process**

1. Right to Notice: Greene v. Lindsey (SC 1982) [eviction notices nailed to doors, never received them in building where notice were frequently torn down. If posted notice does not work, mail should be used instead]. Holding: Fundamental requisite of due process is the opportunity to be heard. Without proper notice, there is no opportunity to be heard. SC 1982) [eviction notices nailed to doors, never received them in building where notice were frequently torn down. If posted notice does not work, mail should be used instead]. Holding: Fundamental requisite of due

process is the opportunity to be heard. Without proper notice, there is no opportunity to be heard.

District court judge John Tuchi showed prejudicial errors, and bias failed to correct errors, failed to review evidence provided by Rynn. court failed to address retaliation, defamation from grossly false work place accusations and Defendant failure to disclose accusations such as "*wife and him are considered child abusers*", "*stalker*", and damages from the abuse of process from an illegal ex parte work place injunction without notice without legal authority by not following rules of due process and disclosure required for work place accusations. (doc. 175 Ex. A, pg. 5-6) (doc. 172) (doc. 175 pg.4)

Rynn owed a duty of disclosure of accusations and employer First Transit by failing to disclose false accusations of "*him and his wife are considered child abusers*", "*stalker*," breached duty owed to Rynn. (doc. 175 Ex. A, pg. 5-6) (doc. 175 pg.4) Defendant has not

shown any evidence to support defamation of character from false accusations of *child abuser* and *stalker*. (doc. 175 Ex. A, pg. 5-6)

Rynn raises triable facts of defamation of character from false accusations and First Transit breaching duty as employer by knowing of the accusations from its employee Mathews and failing to disclose false work place accusations (doc. 175 Ex. A, pg. 5-6) (doc. 175 pg.4) and First Transit's actions injured Rynn by the failure to disclose grossly false accusations that were entered illegally on a defective work place injunction (doc. 175 Ex. B, pg. 9) without disclosure to Rynn in violation of due process, obtained ex parte without notice, without an affidavit of a threat of violence, in violation of state and federal requirements of ARS Rule 65(b) (1) (A)(B)(2). Based on the foregoing Plaintiff has verified claims for negligence, defamation and false

light including additional amended claims of discrimination.

"Negligent infliction of emotional distress" (NEID) is a personal injury law concept that arises when one-person (the defendant) acts so carelessly that he or she must compensate the injured person (the Plaintiff) for resulting mental or emotional injury. The tort is to be contrasted with intentional infliction of emotional distress in that there is no need to prove intent to inflict distress. That is, an accidental infliction, if negligent, is sufficient to support a cause of action.

Constitutional rights violated under section 242 title 18. Violation of section 1983 title 42.

It was not by accident or coincidence that the rights to freedom of speech and press were coupled with the rights of the people to peaceably assemble and petition for redress of grievances. A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938)

When a judge knows that he/she lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him/her of jurisdiction, judicial immunity is lost. *Rankin v. Howard* (1980) 633 F.2d 844, cert den. *Zeller v. Rankin*, 101 S. Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

No judicial process whatever form it may assume can have any lawful authority outside of the limits of the jurisdiction of the court or judged by whom it is issued and an attempt to enforce it beyond these boundaries is nothing less than lawless violence. *Ableman v. Booth*, 21 Hoard 506 (1859)

Undoubtedly it(fourteenth amendment) forbids any arbitrary deprivation of life, liberty or property, and secures equal protection to all under like circumstances in the enjoyment of their rights...It is enough that there is no discrimination in favor of one as against another of the same class... and due process of law within the meaning of the fifth and fourteenth amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of the government. *Giozza v. Tiernan*, 148 U.S. 657,662 (1893)

### **Legal Argument**

#### **Constitutional Basis**

Under the Fifth and Fourteenth Amendments of the United States Constitution, no person shall be deprived of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws. In *Ingraham v. Wright*, 430 U.S. 651 (1977), the Supreme Court asserted that liberty includes "freedom from bodily restraint and

punishment" and "a right to be free from and to obtain judicial relief for unjustified intrusions on personal security."

### **Voiding Earlier Rulings**

All earlier rulings are void based on fraud. Disputable legal and relevant facts remain unaddressed, as per ARS Rule 54(c). This rule stipulates that a judgment as to all claims and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 54(c).

### **Evidentiary Hearing Requirement**

According to ARS Rule 27(2), the court must hold a hearing on the relief that the petition seeks. Plaintiff is entitled to an evidentiary hearing for new evidence and fraud.

### **Statute of Limitations and Fraud**

Under Discovery Rule, the statute of limitations does not begin until the person knows or should have

reasonably known about an injury. Fraud is sufficient to toll the running of the statute of limitations until the plaintiff either knows, or through the exercise of due diligence should have known, of the fraud (*Lasley v. Helms*, 179 Ariz. 589, 880 P.2d 1135 (App. 1994)). A.R.S. Sec. 12-543 provides, in pertinent part, that actions for relief on the ground of fraud or mistake must be commenced within three years after the cause of action accrues, and not afterward. The cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

**Independent Review**

**Case**

requires independent review on the merits based on fraud and newly discovered evidence from state court decision of injunction based on the workplace. In contradiction to district court decision not at the workplace. New evidence of fraud concealed by the defendants voids earlier rulings.

**Negligent Misrepresentation**

According to the Restatement (Second) of Torts § 552, negligent misrepresentation occurs when “one who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their

justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.”

**Jurisdiction and Authority** District court failed to address having jurisdiction to vacate a defective workplace injunction entered unconstitutionally ex parte without legal authority. Court failed to address liability to employer for a workplace injunction obtained by fraud from employees of First Transit without authority of the workplace.

#### **Vacating the Defective Workplace Injunction**

The defective workplace injunction requires vacating by law for not meeting state and federal statutory requirements of disclosure, labor protections against discrimination, federal due process requirements, and for perjury from false workplace accusations (*doc. 175 Ex. A, pg. 5-6*) that were not disclosed to the appellant until after the injunction was filed in the Avondale City Court (*doc. 175 Ex. B, pg. 9; doc. 175 pg. 4*).

Plaintiff discovered this evidence in 2023-2024. The Arizona Supreme Court's decision in Case No. CV-24-0017, dated May 14, 2024, has provided a basis for claims based on critical new evidence.

The Arizona Supreme Court's ruling on May 14, 2024, held that the district court was responsible for vacating the Avondale Court injunction due to actions directed by the employer, First Transit, "*at the workplace*." This directly contradicts the statement made by District Court Judge John Tuchi, who asserted that the Arizona State Court was responsible for vacating the Avondale Court injunction as the injunction was not related to the workplace of First Transit. John Tuchi, asserted in July 2021 the injunction "*has now been stricken from the record*, as "*the court lacked subject matter jurisdiction*" over an injunction that was not connected to the workplace. New evidence from Arizona Supreme Court Case No. CV-24-0032, dated May 14,

2024, ruled injunction based on actions at the workplace, not addressed by any court, causing prejudicial errors and substantial denial of due process rights. See Appendix for additional evidence presented under ARS Rule 56(d).

Fraud from defendant not addressed. The Arizona Supreme Court concluded that injunction at the workplace, District Court must resolve the Avondale Court's workplace injunction, which contradicts the District Court's prior decision that the injunction not related to the workplace and must be resolved by the state court

Workplace injunction, based on fraud, remains unresolved due to courts' failure to address the basis of vacating injunction due to fraud from defendant.

**Discovery Rule** *The discovery rule is perhaps the most common exception to the statute of limitations, in Arizona and elsewhere. Under the discovery rule, a plaintiff's statute of limitations deadline will be extended if they are not aware of the injuries, they suffered due to the defendant's fault, and they could not have reasonably discovered the injury.*

*"Under the discovery rule, a cause of action does not accrue until the plaintiff knows or with reasonable diligence should know the facts underlying the cause [of*

*action].*" *Doe v. Roe*, 191 Ariz. 313, ¶ 29, 955 P.2d 951, 960 (App. 1998); see also *Walk v. Ring*, 202 Ariz. 310, 316, ¶ 22, 44 P.3d 990, 996 (2002); *Little v. State*, 225 Ariz. 466, ¶ 9, 240 P.3d 861, 864 (App. 2010).

*Court must relieve a party from a judgment when, by fraud on the court, the other party has prevented a real contest before the court or has committed some intentional act or conduct that has prevented the unsuccessful party from having a fair submission of the controversy. See *Alvarado v. Thomson*, 240 Ariz. 12, 16–17 ¶¶ 17–23 (App. 2016). Fraud on the court "vitiates everything it touches" *Damiano v. Damiano*, 83 Ariz. 366, 369 (1958), and is "the most egregious conduct involving a corruption of the judicial process itself,]" *Lake v. Bonham*, 148 Ariz. 599, 601 (App. 1986).*

Courts therefore have inherent authority to take corrective measures at any time when a party commits or attempts to commit fraud upon them. See *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, 151 ¶ 35 (App. 2009); *McNeil v. Hoskyns*, 236 Ariz. 173, 177 ¶ 15 (App. 2014) ("A judgment resulting from fraud on the court may be set aside by motion or by independent action.").

Per Federal Rule 25(4) **clerk must not refuse** to accept for filing any paper.  
Rule 27 (C) PERPETUATION BY AN ACTION. This rule does not limit a court's power to entertain an action to perpetuate testimony for fraud on the court.

**Duty.** Plaintiff will prove defendant owed them a duty of care.

*A duty of care arises when the law recognizes a relationship between the plaintiff and defendant requiring the defendant to exercise a certain standard of care so as to avoid harming the plaintiff. The applicable standard of care is the degree of care that a "reasonable person" would exercise under the circumstances.*

*Plaintiff claims under section 1983.: a person subjected the plaintiff to conduct that occurred under color of state law, and this conduct deprived the plaintiff of rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution. 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.*

Work place injunction violates labor agreement from discrimination, non-disclosure, rights of Due Process, deprivation of plaintiff's liberty, and court failed to remedy the deprivation of constitutional rights.

Brady Rule violation by defendant failing to disclose evidence of non-disclosure. This non-disclosure of injunction based on the workplace and non-disclosure of accusations from the workplace that injunction was

based on violated Plaintiffs due process rights to evidence of disclosure, as established in *Giglio v. United States*, 405 U.S. 150 (1972).

#### **Reasons to Grant Certiorari, Issues Presented**

1. EEOC Protections from discrimination and harassment at the workplace under Title VII of the Civil Rights Act of 1964.
2. **Employer's Responsibility for Void Injunction:** Is the employer responsible for a workplace ex parte injunction issued without notice and void for insufficient service of process.
3. **Critical New discovered evidence** Arizona Supreme court Case No. CV-24-0017 May 14, 2024 decision Avondale court injunction based on the "workplace" under direction of First Transit. **Conflict between** Arizona Supreme court decision Avondale court injunction based on employees at the workplace and district court decision injunction not based on employees at the workplace.

#### **Conclusion**

Defendant failed to object to plaintiff's Rule 60 motion on newly discovered evidence of "*injunction at the workplace*" and the substantiated facts herein.

For the foregoing reasons, Appellant respectfully requests court grant certiorari, declaratory relief

vacating District Court unconstitutional injunction, which restricts the filing of further briefs on this matter while new facts from Arizona Supreme courts decision pending under review in U.S. Supreme court Case No. 23A1101, and new evidence substantiating fraud remain in dispute.

See *Ulrich v. Butler* case # 09-7660, U.S. Supreme Court unconstitutional restrictions filing briefs.

Appellant requests injunction be vacated. This request is based on the necessity to address fraud and contradictions between Arizona Supreme court and district courts decisions of the workplace and to review newly discovered evidence on the merits. Appellant further seeks compensation, reversal of lower court's decision, and remand for additional briefing.

**RESPECTFULLY SUBMITTED**

this 19<sup>th</sup> day of September 2024

By: *Richard Rynn*  
RICHARD RYNN

