

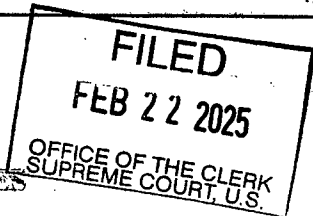
No.

24-6722

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Ashley Muse-Petitioner

Vs.

State of Louisiana, Louisiana Department of Public Safety and Corrections, James LeBlanc, in
his official capacity as Secretary of the Louisiana Department of Public Safety and Corrections-
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. FIFTH CIRCUIT COURT OF APPEALS

Ashley Muse

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QUESTIONS PRESENTED

If the U. S. Supreme Court has ruled that a constitutionally infirm State Court Judgement cannot be given preclusive effect in Federal Court, what is petitioner's legal recourse when the U. S. Western District Court of Louisiana grants Judgement based on Res judicata and Collateral Estoppel applied to a void State Court judgement and refuses to grant relief?

Did the U.S. Fifth Circuit Court of Appeals Court violate Petitioner's 5th Amendment due process rights when it misrepresented a material fact in its judgement?

Did the U.S. Fifth Circuit Court of Appeals Court violate Petitioner's 5th Amendment due process rights when it denied petitioner's Petition for Panel rehearing, after petitioner cited parts of the record on appeal that contradicts a material fact of the U. S. Appeals Court's judgement and creates controversy?

Can the U. S. Fifth Circuit Court of Appeals rule that all of petitioners claims of race discrimination, in her application to gain permanent status, hostile working environment, harassment, disparate treatment and vicarious liability are within the jurisdiction of the Louisiana State Civil Service when the Louisiana Supreme Court has ruled that the Louisiana State Civil Service does not have jurisdiction of petitioner's discrimination claims?

If the Louisiana Commission on Human Rights was created to adjudicate claims of discrimination, embodied in the Title VII Civil Rights Act of 1964 (Title VII), can a U.S. District Court apply Res Judicata to a Louisiana State Civil Service Commission decision, judicially reviewed, when the State of Louisiana Civil Service Commission's definition of discrimination does neither mirror nor is as broad as Title VII of the Civil Rights Act of 1964?

Did the District court violate Petitioner's 5th Amendment due process of the U.S. Constitution when it refused to grant relief from a void judgement and hear Petitioner's argument in her Motion 60(b)(4) that it applied Res Judicata and Collateral Estoppel to a void State Court judgement?

Can a State Court of Appeal judgement be subject to Res judicata in federal court when the State Court of Appeals fails to issue a decision addressing Petitioner's lack of due process claim ?

When a State Administrative agency is accorded judicial deference, in judicial review proceedings, based on its own definition of discrimination, can its judgments be used to preclude Title VII claims in a Federal Court?

Was Petitioner's 14th and 5th amendment Due Process violated when Res Judicata was applied to a State Court decision, upholding an administrative agency's appeal process which denied petitioner prior notice of reasons for the action taken?

If the U.S. District Court granted summary judgement based on Res judicata and that the parties are the same, in the District Court, was privity of parties and virtual representation properly before the U.S. Appeals Court?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

RELATED CASES

Ashley Muse vs. State of Louisiana, Department of Public Safety and Corrections, James M. LeBlanc, in official Capacity, No. 3:21-CV-2419, U. S. District Court for the Western District of Louisiana. Judgement entered May 10, 2023 Motion 60(B) denied on July 17, 2023

Ashley Muse vs. State of Louisiana, Department of Public Safety and Corrections, James M. LeBlanc, in official Capacity, No. 23-30499, U. S. Court of Appeals for the Fifth Circuit. Judgement entered October 10, 2024. Motion for Panel Rehearing denied November 25, 2024.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 10, 2024.

A timely petition for rehearing was denied by the United States Court of Appeals on November 25, 2024, and a copy of the order denying rehearing appears at Appendix C.

The Jurisdiction of this Court is invoked under 28 U.S.C § 1254(1).

Constitutional and Statutory Provisions Involved

Louisiana State Constitution of 1974, Article X

"Section 1.(A) State Civil Service. The state civil service is established and includes all persons holding offices and positions of trust or employment in the employ of the state, or any instrumentality thereof, and any joint state and federal agency, joint state and parochial agency, or joint state and municipal agency, regardless of the source of the funds used to pay for such employment. It shall not include members of the state police service as provided in Part IV of this Article or persons holding offices and positions of any municipal board of health or local governmental subdivision."

Title VII of the Civil Rights Act of 1964

See Appendix E

United States Constitution, Fifth (5th) Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Fourteenth (14th) Amendment

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner worked as a Probation and Parole Officer through the Louisiana Department of Public Safety and Corrections, from September 23, 2019-February 8, 2021. Petitioner was required to serve a 12-month probationary period. Petitioner's position was within the classified service of the Louisiana State Civil Service. Petitioner's probationary period was extended for 6 months and she was expected to be granted permanent status on or about March 23, 2021. Petitioner was terminated on February 8, 2021 and no reasons were given for her termination. Petitioner filed an appeal with the Louisiana State Civil Service Commission alleging rule violations and discrimination, in several aspects of her employment, including denial of her application to gain permanent status, training, treatment, work environment, harassment, statements and symbols based on race, several days later. August 10, 2021, Petitioner filed a complaint in the US Western District Court against her former employer for violations of Title VII of the Civil Rights Act of 1964. From August 17-19, 2021, Petitioner participated, Pro se, in a Civil Service Appeal hearing. The Civil Service Appeal process does neither have discovery procedures nor a Complaint/Answer process. "Interrogatories and pre-trial discovery proceedings shall not be recognized by the Commission or a referee." *Louisiana Civil Service Rule 13.33(a)*. During the hearing, Petitioner was informed by the former Regional Coordinator, Cole Gralapp, that it was a review of her application to gain permanent status that led to her termination. Petitioner's former supervisors and perpetrators of the discriminatory acts presented false testimony and misrepresented evidence. Petitioner's employer, James LeBlanc, nor anyone in his capacity participated in the Appeal hearing. The Civil Service decision was that Petitioner was not discriminated against. Petitioner appealed to the Louisiana First Circuit Court of appeals based on lack of due process, based on not receiving prior notice of the reasons that would be stated for

her termination and abuse of discretion for not listing the true reasons, presented by Cole Gralapp for Petitioner's termination. The First Circuit did not make a decision on Petitioner's claim of lack of due process, however ruled that leaving Cole Gralapp's testimony out of the decision was within the Civil Service Referee's discretion and upheld the decision of the Civil Service Commission. *Ashley Muse v. Louisiana Dept. of Public Safety and Corrections*, 355 So. 3d 620 (La. Ct. App 2022). The State Court ruling that allowed the Civil Service Referee to misrepresent events that led to petitioner's termination instead of the factual events that it was the review of petitioner's application to gain permanent status that led to petitioner's termination, allowed the Civil Service Commission to exceed personal and subject matter jurisdiction, commit Fraud upon the Court and create a void judgment. During the appeal hearing was the first time that Petitioner and the Referee were made aware of the basis of petitioner's termination. Once Cole Gralapp testified of the true reasons for petitioner's termination, the review of the application to gain permanent status, the Civil Service Commission lost jurisdiction and the appeal hearing should have ended and the appeal dismissed. During the discovery proceedings in the US Western District Court, February 2022-February 2023, and a public records request, Petitioner discovered new evidence, including the paperwork for the review of her application to gain permanent status, included in the Record of Appeal, that supported her allegations of discrimination and further research after her case was dismissed, discovered that the Civil Service Commission exceeded its jurisdiction in hearing her claims of discrimination. On May 10, 2023, Petitioner's Title VII complaint was dismissed by the US Western District Court of Louisiana based on Summary Judgement, Res Judicata and Collateral Estoppel (Appendix B). Petitioner filed a timely Motion 60 for relief from a judgement based on new evidence, fraud of the court, void judgement, and other arguments upon which relief should be

granted. On July 17, 2023, the District Court Denied Petitioners Motion 60 (b). In the District Court's denial of Motion 60(b)(4), it refused to hear petitioner's claim that the judgment, in which res judicata was applied, is void, due to the Civil Service Commission exceeding its jurisdiction (Appendix D). The Federal District Court Judge refusing to grant petitioners Motion 60(b)(3) relief from a void judgment, respondents being granted Summary Judgement based on a void judgement is fraud upon the court and applying Res Judicata to a void judgement is Fraud upon the Court. Petitioner appealed to the United States Fifth Circuit Court of Appeals. On October 10, 2024, the Fifth Circuit upheld the judgement of the District Court and misrepresented a material fact, in the record of appeal, stating petitioner did not allege discrimination, in her application to gain permanent status (Appendix A). Petitioner requested a panel rehearing to correct the misrepresented fact that discrimination in her application was alleged in her Title VII original and amended Complaint in the Record of appeal. On November 25, 2024, Petitioner's Panel Rehearing was denied (Appendix C). The Fifth Circuits refusal to correct an intentional misrepresented fact, upon a final judgement committed Fraud upon the Court. Petitioner now petitions the United States (U. S.) Supreme Court for a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

- I. An U. S. Court of Appeals has entered a decision that conflicts with a decision by a state court of last resort and departed from the accepted and usual course of judicial proceedings.

The Louisiana Supreme Court ruled in *Louisiana Department of Agriculture and Forestry vs. Herbert Sumrall, et al*, 728 So. 2d 1254 (March 1999) that the former Civil Service Rule (CSR) 13.10(f) was unconstitutional. The former Civil Service Rule 13.10(f) stated:

"Any person who shall have applied for or been examined for the Classified Service, without having acquired permanent status therein, and who alleges discrimination in the review of his application, admission to an examination, scoring of examinations, the establishment of an eligible list or certification therefrom, or in the Director's decision under Rule 7.5(d)."

Former Civil Service Rule 13.10(f) was ruled unconstitutional because it expanded the jurisdiction of the Civil Service Commission(CSC) and was repealed by the Civil Service Commission in March 2001. In Sumrall, the Court stated:

"The Commission has original jurisdiction "to hear and decide all removal and disciplinary cases." La. Const. art. X, § 12...The few remaining discrimination claims (other than those involving removal or discipline) must be filed in the district courts (unless the Legislature proposes a constitutional amendment to expand the Commission's jurisdiction.)"

According to CSR 137, "{ 'Removal' means the separation from employment for non-disciplinary reasons as provided in Rule 12.6" According to CSR 12.6 "(a) An employee may be non-disciplinarily removed under the following circumstances:

1. When, on the date the notice required by Rule 12.7 is mailed, hand delivered, or orally given, the employee is unable to perform the essential functions of his job due to illness or medical disability and has fewer than eight hours of sick leave. An employee removed under this provision shall be paid for all remaining sick leave.
2. When, after the employee has been given written notice that his attendance requires improvement and copy of this rule, an employee has seven or more unscheduled absences during any consecutive twenty-six week period. The employee shall also be given written notice each time he incurs a sixth unscheduled absence during a consecutive twenty-six week period. An unscheduled absence occurs when an employee is absent from work without having obtained approved leave prior to the absence. Approval of leave, after the fact, to cover an unscheduled absence shall not prevent the absence from being considered unscheduled. A continuous absence for the same reason is one unscheduled absence, regardless of its duration.

3. When, as a result of conduct that was not work related, the employee fails to obtain or loses a license, commission, certificate or other accreditation that is legally required for the job.
 4. When the employee holds more than one position in the state service and the multiple employment causes an employing agency to be liable for overtime payments under the Fair Labor Standards Act and, after having been provided the opportunity to do so, the employee has refused to resign from one of the positions.
 5. When there is cause for dismissal, but the cause is not the employee's fault.
- (b) When an employee is removed under this Rule, the adverse consequences of Rules 6.5(c); 22.4(d); 23.16(a)4; 23.13(b); 11.18(b) and 17.23(e)4 shall not apply."

The Record on appeal shows that Petitioner was not removed from employment, based on CSR 12.6. CSR 12.3 states, "(a) Discipline includes only: suspension without pay, reduction in pay, involuntary demotion and dismissal.

(b) A suspension without pay cannot exceed 176 work hours, except under Rule 12.5 or as ordered or agreed to under Chapter 13 or Chapter 16.

(c) A reduction in pay cannot reduce an employee's pay below minimum wage or below the pay range minimum." "Dismissal" means the separation from employment for disciplinary reasons."

Petitioner was not removed or terminated based on disciplinary reasons. As the State Court judgement record of appeal and US District Court Record on Appeal contains evidence that it was the review of petitioner's application to gain permanent status, that led to her separation from employment and she was separated for no reasons, per the Defendants in the Federal Court, not the false reasons cited in the Civil Service Decision and judicially reviewed State Court Judgement. According to CSR 1.14.1 "Discrimination" means consideration of religious or political beliefs, sex, race, or any other non-merit factors." Petitioner's claims of discrimination include workplace harassment, hostile work environment and disparate treatment, based on race, which occurred throughout her employment. The Louisiana State Court of Appeals, ruled that the Louisiana State Civil Service Commission does not have jurisdiction of a probationary employee's claims of discrimination, in an application to gain permanent status. The Louisiana State Court of Appeal ruled in *Charlotte St. Romain v. Louisiana Department of Wildlife and Fisheries*, 863 So. 2d 577 (La. Ct. App. 2003), writ denied:

"Thus, from the *Sumrall* court's articulation of the scope of the CSC's jurisdiction of La. Const. art. X, § 8(B) claims, we conclude that the claims of a probationary employee alleging discrimination in the review of his or her application to gain permanent status pursuant to La. Const. art. X, § 7 fall outside the ambit of the CSC's jurisdiction."

Louisiana State Constitution of 1974, Article X limits the Civil Service Commission jurisdiction to all persons holding offices and positions of trust or employment in the employ of the state, or any instrumentality thereof. Petitioner must, at the time of her appeal hold an office or be within the employ of the state or any instrumentality thereof, to be within the CSC's limited jurisdiction.

On 2/08/2021, at 4:30pm, Petitioner was terminated and no longer within the classified employ of neither the State nor a state agency. Petitioner was not a classified employee nor in the jurisdiction of the State Civil Service when she filed an appeal with the Civil Service Commission days after 2/08/2021. She was a regular citizen.

"Upon final termination of appellant as an employee of the state, all rights incidental to employment came to an end...It is beyond the jurisdiction of the Commission to pass upon or sit in judgment of the character and reputation of a person whose status is like that of the appellant. Such action would clearly be beyond the scope of the operation of the Commission, and would go beyond the authority and duty conferred upon it by the Constitution. The commission is empowered to pass upon employment disputes arising between appointing authorities and employees within the classified services" *Danna v Commissioner of Insurance*, 207 So.2d 377 (La.1st Ct 1968)

II. The Courts have a responsibility to correct a void judgement

The U.S. Western District and U.S. Fifth Circuit Court of Appeal in Louisiana have refused to answer the question of whether the State Court judgement is void and refused to correct a void judgement and in doing so created void judgments themselves. The Civil Service Commission (CSC) exceeded its jurisdiction, therefore making it's decision void. A void decision cannot be judicially reviewed. The judicial review resulting in the State Court judgment in petitioner's case is void. Res judicata cannot be applied to a void judgement. The U.S. District Court judgment granting a Motion for Summary Judgement based on Res

judicata and Collateral Estoppel, void. Petitioner's fifth Amendment due process rights were violated when the US Western District Court of Louisiana denied petitioner's Motion 60(b) by refusing to hear petitioner's claim that it applied Res judicata to a void judgement. The U. S. Fifth Circuit Court of Appeals violated petitioner's *United States Constitution Fifth Amendment Rights* and committed Fraud upon the court when it misrepresented the fact, that petitioner never alleged discrimination in her application to gain permanent status, despite petitioner pointing out in her Petition for Panel Rehearing that she does allege discrimination in her application to gain permanent status, in her original and amended complaint. Disregarding evidence favorable to petitioner violates petitioner's 5th amendment fairness requirement in legal proceedings. *Brady vs. Maryland* 373 U.S. 83 (1963) "Under rule 60(b)(4), "the only question for the court is whether the judgement is void; if it is, relief from it should be granted." *Marquette Corp. v. Priester*, 234 F. Supp. 799, 802 (DSC 1964). The law is well settled that a void order or judgement is void even before reversal. *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). *Louisiana State Constitution of 1974, Article X* does not place petitioner's former employer within the jurisdiction of the Civil Service commission and specifically states,

"It shall not include members of the state police service as provided in Part IV of this Article or persons holding offices and positions of any municipal board of health or local governmental subdivision."

Petitioner's former employer, Secretary of Louisiana Department of Public Safety and Corrections, James LeBlanc, held an Unclassified Service position, *Louisiana Constitution Article X section 2(B)(2)* places the heads of each principal executive department appointed by the governor, the mayor, or the governing authority of a city into the unclassified service.

Louisiana Revised Statute (LRS) "Section 36:403 - Secretary of public safety and corrections: There shall be a secretary of public safety and corrections who shall be appointed by the governor with consent of the Senate and who shall serve at the pleasure of the governor at a

salary fixed by the governor, which salary shall not exceed the amount approved for such position by the legislature while in session."

LRS 36-404(B)(1)(A) gives the Secretary the power to Employ, appoint, remove, assign, and

promote such personnel within the Department of Public Safety and Corrections. A court must

have personal and subject matter jurisdiction of all parties, for their decisions to bind a party.

"Courts are constituted by authority and they cannot go beyond that power delegated to them. If

they act beyond that authority, and certainly in contravention of it, their judgments and orders are

regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."

[Emphasis added]. *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116

(1920). If a judgement is void the state must be wiped clean *Armstrong v. Manzo* 380 U.S. 545

(1962).

III. Violations of Petitioners U. S. Constitution Fifth and Fourteenth Amendment Rights.

Petitioner had a property interest in continued employment. Petitioner's continued employment

and granting of permanent status was governed by *Louisiana Civil Service Rule 9.1* " The

probationary period shall be an essential part of the examination process and shall be used for the

most effective adjustment of a new employee and for the elimination of any probationary

employee whose performance does not meet the required standard of work " Petitioner's

Performance Evaluation report, in the record of appeal, state that her job performance met the

required standard of work and her most recent monthly performance reports were 100%.

Louisiana Civil Service Rule 9.1 entitled petitioner to continued employment and granting of

permanent status, as long as her job performance met the required standard of work. *Board of*

Regents v. Roth 408 US 564, 576-77 (1972). Petitioner was entitled to some form of an

evidentiary hearing to prevent erroneous deprivation or access to the information relied upon by

the decision maker in her termination, *Mathews v. Eldridge*, 424 US 319 (1976), *Goldberg v.*

Kelly, 397 US 254 (1970). Petitioner was not given notice of the basis for her termination nor a fair opportunity to refute the basis, once stated. Notice of reasons and a fair opportunity to refute the reason stated are requirements of due process. When a probationary employee, such as petitioner is terminated, the Louisiana State Civil Service does not require that cause for the termination be given to the employee. When Petitioner first raised the issue of lack of due process in the State Court, it was that court's jurisdiction to examine the course of procedures given to Petitioner in the Administrative hearing. US Appeals Court and US District Court, it was their duty to examine the course of procedures given to Petitioner in the CSC proceedings, *Hansberry V. Lee*, 311 U.S. 32, 40 (1940);. Petitioner was terminated on February 8, 2021. Petitioner was informed for the first time of the stated causes of what lead up to her termination on August 17-18, 2021, during the State Civil Service Appeal hearing and was not given an opportunity to subpoena witnesses or evidence to disprove the causes presented before the hearing and before a decision was issued. The essence of the 14th amendment of the United States Constitution's due process is the requirement that "a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Joint Anti-Facist committee v. McGrath*, 341 U.S. 123 (1951). *Matthews v. Eldridge*, 424 US 319 (1976). The US Supreme Court ruled that a hearing must be "at a meaningful time and in a meaningful manner" and allow a challenge to incorrect or misleading premises or misapplication of rules or policies, *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The Civil Service Commission (CSC) appeal hearings on discrimination are not bound by the McDonnell Douglas burden shifting framework established by the U. S. Supreme Court, *McDonnell Douglas Corp V. Green*, 411 U.S. 792 (1973). The federal cases concerning discrimination are persuasive, but not controlling, in civil service appeals concerning discrimination. *Lawson v. State, Department of Health and Hospitals*, 618

So.2d 1002 (La.App. 1 Cir. 1993); *Bernard v. L.I.L.R.A., Southwest Charity Hospital of Lafayette*, 358 So.2d 653 (La.App. 1 Cir. 1978). The U. S. Supreme Court ended the era of the judicial system deferring to an administrative agency's interpretation of law and re-enforced Separation of Powers when it over ruled *Chevron, U.S.A., Inc. v. Natural Resources Defense Council et al*, 467 U.S. 837 known as Chevron Deference. In *Loper Bright Enterprises et al v. Gina Raimondo, Secretary of Commerce et Al*, 603 U.S. 309, the US Supreme Court held that courts must exercise their independent judgement in deciding if an agency has acted within its statutory authority and cannot defer to an agency's interpretation of law. Thus the Courts must use Federal or State Law anti-discrimination statutes, in judicial review of an administrative agency's decision concerning discrimination cases for preclusion to apply. The decision of the Civil Service Commission was that Petitioner was not separated based on discrimination, as defined in Civil Service Rules. According to CSR 1.14.1 "Discrimination' means consideration of religious or political beliefs, sex, race, or any other non-merit factors." The Civil Service's definition does not include the actions and conduct of petitioner's supervisor, treatment of petitioner, petitioner's hostile work place environment, harassment, display of racially offensive symbols or statements. Consideration is not tangible and is limited to person thought process and hard to prove, unless the perpetrator admits to having a discriminatory thought process. The State Court judgment was not base on State Law anti-discrimination law or violations of Title VII of the Civil Rights Act of 1964.

IV. The Judgment of the U.S. Appeals court conflicts with U.S. Supreme Court precedent ruling in *Kremer v. Chemical Construction Corp.*

Congress tasked the Equal Employment Opportunity Commission (EEOC) with investigating and enforcing Title VII of The Civil Rights Act of 1964. The Louisiana Commission on Human

Rights (LCHR) is the only state agency that the EEOC defers to in investigating violations of Title VII. State and Federal Courts have concurrent jurisdiction to hear Title VII violations. The Louisiana Legislature created the Louisiana Commission on Human Rights(LCHR). The LCHR was created to adjudicate claims of discrimination, embodied in the Title VII Civil Rights Act of 1964. *Louisiana Revised Statute (LRS) 51:2231, Ch. 38* establishes the LCHR and states,

“ It is the purpose and intent of the legislature by this enactment to provide for execution within Louisiana of the policies embodied in the Federal Civil Rights Act of 1964,...and to assure that Louisiana has appropriate legislation prohibiting discrimination...to justify the deferral of cases by the federal Equal Employment Opportunity Commission...”

The State of Louisiana Civil Service Commission's definition of discrimination does neither mirror nor is as broad as Title VII of the Civil Rights Act of 1964 (Appendix E). The U.S.

Appellate Court and District Court's misapplication of Res Judicata and Collateral Estoppel and granting of Summary Judgement are Errors of Law. When a federal court is asked to apply Res Judicata to a State Court Judgement, it must apply the res judicata principles of the law of the state whose decision is set up as a bar to further litigation, *Lafreniere Park Foundation v.*

Broussard, 221 F.3d 804, 808 (5th Cir. 2000). “A state may not grant preclusive effect in its own court to a constitutionally infirm judgement and other state and federal courts are not required to accord full faith and credit to such a judgement.” *Kremer v. Chemical Corp.* 465 U.S. 461 (1982).

The Louisiana Supreme has held that under *LRS § 13:4231*, a second action is precluded when five elements are satisfied:

“(1) the judgement is valid; (2) the judgement is final; (3) the parties are the same; (4) the cause or causes of action asserted in the second suit existed at the time of the final judgement in the first litigation; (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation.”

The Civil Service decision is void due to exceeding its jurisdiction. A void judgement is never final. A void judgement does not create any binding obligation. *Kalb v. Feuerstein* 308 US 433, 60 S Ct 343, 84 L ed 370.

V. A United States Appeals Court Exceeded its Appellate jurisdiction

A Federal Appellate court can review the sufficiency of an affirmative defense and how the law was applied. The US District Court granted Summary Judgement based Res judicata and the parties being the same in the State Court proceeding. Petitioner appealed on the basis that the Defendants failed to identify the parties who are the same, to be granted Res judicata. The Fifth Circuit agreed, with Petitioner that the parties are not the same and upheld the District Court's judgement by applying virtual representative, sua sponte. The Defendants bore the burden of proving all elements of an asserted affirmative defense. *U.S v. Sineneng-Smith*, 140 S.Ct 1573, 1579 (2020), see also *Greenlaw v. United States* 554 US 237, 243 (2008). Defendants forfeited the claim of virtual representative and the claim of virtual representative was not properly before the Appeals Court, therefore not within the jurisdiction of the Fifth Circuit to review. Neither the Respondents, District Court nor the Appeals Court identified what individual party was the same or acting as a virtual representative of all parties in the State Court judgement and Federal Court for preclusion to apply. "Identity of parties does not mean the parties must be the same physical or material parties, but they must appear in the suit in the same quality or capacity." *United Gen. Title Ins. Co. v. Casey Title, Ltd.*, 01-600, p. 10 (La. App. 5 Cir. 10/30/01); 800 So. 2d 1061, 1067 (citation omitted). "Identity of parties can also be satisfied when a privy of one of the parties is involved." *Cole Gralapp*, a former employee, who held the position of Regional Coordinator for Division of Probation and Parole during petitioner's employment, testified in the Civil Service Appeal hearing that he was currently retired and he

had authority to terminate petitioner. Termination of Petitioner was not within Mr. Gralapp's legal scope of employment duties. Adequate representation requires that "the interests of the non-party and her representative are aligned" and the "party understood herself to be acting in a representative capacity," *Taylor v. Sturgell* 553 US 880 (2008) A retired former employee of Respondents, Cole Gralapp, cannot be a virtual representative in the State Court proceeding, due to no legal relationship at the time of the proceedings. There is no proof in the Record of appeal that Mr. Gralapp or any of the witnesses in the State Court proceeding had authority to represent or understood to be virtual representatives of Respondents. No one within the same quality or capacity of the respondents appeared in the State Court proceeding, in which res judicata was applied. The Fifth Circuit has held that "individuals who do not otherwise qualify as Employer cannot be held liable for breach of Title VII" *Hughes v. Arveson*, 924 F.Supp 735 (M.D. La. 1996) citing *Grant v. Lonestar Co.* 21 F.3d 649 (5th Cir. 1994). No one who qualified as petitioner's employer participated in the State Court proceeding.

Collateral Estoppel or Issue preclusion under Louisiana law requires that (1) the parties are identical; (2) the issues are identical; (3) the issue was actually litigated and determined in the prior litigation; and (4) the issue was essential to the disposition of the claim in the prior action

Res Judicata requires a judgment on all merits, with nothing to be addressed. It is recognized that the bar of Res Judicata does not apply when a party was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restriction their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action. The Civil Service Commission does not have jurisdiction to hear claims of hostile work environment, harassment, or disparate treatment, that does not result in disciplinary action.

Petitioner's amended complaint asserts allegations that could not be properly litigated during the Civil Service proceeding because Petitioner learned of or discovered these events during a public records request, the hearing dates of August 17, 2021-August 19, 2021 or through given evidence given to her on August 16, 2021. There is no mention of the review of petitioner's application to gain permanent status that occurred on February 5, 2021 and another review of petitioner's application to gain permanent status on February 8, 2021, in the State Court Decision (Appendix F), in which Petitioner claims is evidence of discrimination in which defendants were negligent and vicariously responsible for. Despite being addressed in the Civil Service Appeal hearing, the State Court decision does not contain decision on Petitioner's claims of disparate treatment regarding four similarly situated white employees, Courtney Robinson, Phillip Roark, Patrick Riser and Kathy McDonald. There has not been a State Court decision on Petitioner's claims that she was replaced by Courtney Robinson despite being more qualified for the position of a Probation and Parole Officer 1 than Courtney Robinson because petitioner was Peace Officer Standards and Training (POST) certified, received 100% on her monthly reports and had a higher Civil Service Score than Ms. Robinson. Ms. Robinson's previous job position duties required clerical duties, signing in visitors and answering the phone. There has not been a decision or judgement rendered on Petitioner's claims of discrimination in denying her permanent status, although no reasons were documented for denying her permanent status and her evaluation stated that she met the required standard of work while other similarly situated co-workers, outside her race, who had documented job performance issues were granted permanent status. Petitioner's claims that the defendants failed to investigate a previous employee's complaint for race discrimination against the same supervisor, allowing the supervisor's actions to continue and later on Petitioner becoming a victim (negligence). Defendants did not prove there has been a

decision rendered on Petitioner's claims of disparate treatment in training when petitioner was assigned to office duties and other similarly situated co-workers, outside her race were assigned to field training or petitioner's claim of a hostile work environment based on race, Petitioner being told not to like or support anything related to Black Lives Matter. In Petitioner's 1st Circuit appeal the Court said the Black Lives Matter incident was outside the jurisdiction of the Civil Service, *Ashley Muse v Louisiana Dept. of Public Safety and Corrections*, 355 So. 3d 620 (La. Ct. App 2022) (Appendix F). There has not been a decision rendered on Petitioner's claims that the Civil Service Rules were applied with discriminatory practices. The Fifth Circuit rendered a decision in *Hamilton v. Dallas County*, No.21-10133, that Title VII applies to claims without an adverse action.

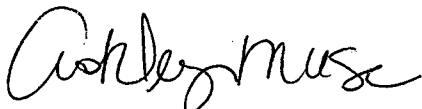
The Courts have the responsibility to correct void judgements. Petitioner's Petition for a Writ of Certiorari should be granted because the U. S. Fifth Circuit Court of Appeals has departed from usual course of judicial proceedings by refusing to declare a judgement as void and issued a conflicting judgment with a State Court of last resort as to call for an exercise of the Court's supervisory power. Allowing the judgment of the U.S. Fifth Circuit of Appeals decision to stand allows the Judicial process to be tainted, fraud upon the court to be committed and the "integrity of the judicial process to be fraudulently subverted. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, 245-246 (1948). There is a currently an assault on the processes and programs that minorities and or marginalized have to protect their rights and ensure equality. Petitioner has a right to a fair opportunity prove that those reasons given for her termination are not true, but an attempt to hide violations of Title VII. In *Axon Enterprise, Inc v. Federal Trade Commission et al*, the U.S. Supreme Court and U.S. Fifth Circuit court of appeals ruled that the statutory review schemes set out in the Securities Exchange Act and Federal Trade

Commission Act, an administrative agency, do not displace a district court's federal-question jurisdiction over claims challenging as unconstitutional the structure or existence of the SEC or FTC. The Louisiana Civil Service Commission's appeal process violates the U. S. Constitution when it denies notice of reasons. The creation of a review scheme, for Civil Service decisions, divests district courts of their ordinary jurisdiction over covered cases. The court noted that the harm is "being subjected to unconstitutional agency authority." That is the proceeding itself, rather than any adverse decision against the respondent, that constitutes the harm. "The Court of Appeals can do nothing: A proceeding that has already happened cannot be undone." *Axon Enterprise, Inc v. Federal Trade Commission et al, citing Thunder Basin*". The respondents' summary judgment, at its core, relies upon the Chevron Deference also known as judicial deference. The U.S. Supreme court has overruled the longstanding practice of judicial deference which allowed agencies to curtail law and in some cases, such as petitioner's, deny citizen's constitutional rights. *Loper Bright Enterprises et al v. Gina Raimondo, Secretary of Commerce et Al, 603 U.S 309(2024)*.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



Date: 2/21/2025