

No. _____

In the
Supreme Court of the United States

ALAN RODEMAKER,

Petitioner,

v.

CITY OF VALDOSTA BOARD OF EDUCATION, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Panel required petitioner to include within his § 1983 complaint for racial discrimination against School Board members individually his separate Title VII claim against the Board itself for workplace discrimination—a claim which had not yet accrued—or forfeit this inchoate claim to the bar of *res judicata*. The question presented is:

Does this ruling square with settled law that *res judicata* cannot bar claims against a new defendant emerging after petitioner filed his initial lawsuit and does it undermine Congress' intent that Title VII be available as an independent, parallel remedy with § 1983 so that victims of workplace discrimination have full redress for their injuries?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Alan Rodemaker

Respondents and Defendants-Appellees below

- City of Valdosta Board of Education or, in the alternative, Valdosta City School District
- Warren Lee, Liz Shumphard; Tyra Howard; Debra Bell; and Kelisa Brown, all individually and as agents of the Valdosta Board of Education or the Valdosta School District

LIST OF PROCEEDINGS

Direct Proceedings below (“Rodemaker II”)

U.S. Court of Appeals, Eleventh Circuit

Alan Rodemaker v. City of Valdosta Board of Education or, in the alternative, Valdosta City School District; Warren Lee, Liz Shumphard, Tyra Howard, Debra Bell, and Kelisa Brown, all individually as agents of the Valdosta Board of Education or the Valdosta School District, C.A. Docket No. 22-13300. Judgment entered August 5, 2024.

U.S. District Court, Middle District of Georgia

Alan Rodemaker v. City of Valdosta Board of Education or, in the alternative, Valdosta City School District; Warren Lee, Liz Shumphard, Tyra Howard, Debra Bell, and Kelisa Brown, all individually as agents of the Valdosta Board of Education or the Valdosta School District, Civil Action No. 7:21-cv-00076-HL. Judgment entered August 31, 2022.

**Prior Proceedings Involving Different Causes
of Action and a Subset of Defendants in Their
Individual Capacity (“Rodemaker I”)**

U.S. Court of Appeals, Eleventh Circuit

*Alan Rodemaker v. Liz Shumphard; Tyra Howard;
Kelisa Brown; Warren Lee; and Debra Bell, all in
their individual capacities*, C.A. Docket No. 20-
14716. Judgment entered June 8, 2021.

U.S. District Court, Middle District of Georgia

*Alan Rodemaker v. Liz Shumphard; Tyra Howard;
Kelisa Brown; Warren Lee; and Debra Bell, all in
their individual capacities*, Civil Action No. 7:20-cv-
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OPINIONS BELOW

The published Opinion of the United States Court of Appeals for the Eleventh Circuit in *Alan Rodemaker v. City of Valdosta Board of Education or, in the alternative, Valdosta City School District et al.*, C.A. Docket No. 22-13300, decided and filed August 5, 2024, and reported at 110 F.4th 1318 (11th Cir. 2024), affirming the grant of summary judgment in favor of respondents City of Valdosta Board of Education or the City's School District, on the grounds of *res judicata*, is set forth in the Appendix hereto (App.1a-25a).

The unpublished Decision of the federal district court of the Middle District of Georgia, Valdosta Division, in *Alan Rodemaker v. City of Valdosta Board of Education or, in the alternative, Valdosta City School District et al.*, Civil Action No. 7:21-cv-00076-HL, decided and filed August 31, 2022, and reported at 2022 WL 3927821 (M.D. Ga. 8/31/2022), granting summary judgment to respondents City of Valdosta Board of Education or the City's School District, on the grounds of *res judicata*, is set forth in the Appendix hereto (App.26a-50a).

The unpublished Order of the United States Court of Appeals for the Eleventh Circuit in *Alan Rodemaker v. City of Valdosta Board of Education or, in the alternative, Valdosta City School District et al.*, C.A. Docket No. 22-13300, decided and filed October 2, 2024, denying petitioner's timely filed petition for Panel rehearing, is set forth in the Appendix hereto (App.51a-52a).



JURISDICTION

The decision of the Court of Appeals for the Eleventh Circuit was entered on August 5, 2024; and its Order denying petitioner's timely filed petition for Panel rehearing, was decided and filed on October 2, 2024 (App.1a-25a; 51a-52a). In addition, on December 16, 2024, Mr. Justice Thomas of this Court granted petitioner's Application to extend the time to file his petition for writ of certiorari from December 31, 2024, until January 30, 2025 (*Rodemaker v. City of Valdosta Board of Education et al.*, Dkt. No. 24A586).

This petition for writ of certiorari is filed within the time granted petitioner by Mr. Justice Thomas' order of December 16, 2024. 28 U.S.C. § 2101(c). Revised Supreme Court Rule 13.3.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).



RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND JUDICIAL RULES

United States Constitution, Amendment V:

No person shall . . . be deprived of life, liberty, or property, without due process of law

42 U.S.C. § 1981:

Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

- (b) For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
- (c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1983:

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

42 U.S.C. § 1985(3):**(3) Depriving persons of rights or privileges**

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . , the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*:

An Act . . . [t]o enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

UNLAWFUL EMPLOYMENT PRACTICES**§ 2000e-2**

(a) Employer practices

It shall be an unlawful employment practice for an employer-

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

.....

- (m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

ENFORCEMENT PROVISIONS

§ 2000e-5

(a) Power of [EEOC] to prevent unlawful employment practices The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

(b) . . . Whenever a charge is filed by or on behalf of a person claiming to be aggrieved . . . the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, . . . within ten days, and shall make an investigation thereof . . . If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. . . . If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. . . . The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

....

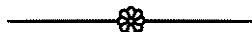
(f)

(1) If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice.

....

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders (1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the

complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission



STATEMENT OF FACTS

Petitioner Alan Rodemaker (“petitioner” or “Rodemaker”), a white resident of Georgia, coached football at Valdosta High School as an assistant coach in 2010 and was promoted to head coach in 2016. During his first year, he led the football team to the Georgia State championship for Division 6A schools, the first time in eighteen years. In the next three seasons, the football team twice made it to the quarterfinals of the State football championship. After the 2019-2020 season, with most of the team returning, the school was poised to contend for another State football title.

Petitioner received exemplary reviews as both a football coach and gym teacher. There were no complaints or evidence of misconduct in his personnel file. Throughout his tenure at Valdosta High School, petitioner was an employee of respondents City of Valdosta

School District and/or its Board of Education (collectively, “respondent” or “the School Board”). For the school year 2020, the School Board offered—and petitioner accepted—an employment contract on an annual basis, as he had done for the preceding ten years. Thus petitioner’s contract as Head Football Coach for the 2019-2020 school year expired on June 30, 2020.

Anticipating this event, in January of 2020, the Superintendent of Valdosta City Schools (Dr. William Cason) (“Cason”—an African-American—recommended that the School Board renew petitioner’s contract for another year. The Board’s nine-member composition had recently changed from five white members and four African-American members to five African-American members and four white members. The African-American members are respondents Warren Lee, Liz Shumphard, Tyra Howard, Debra Bell, and Kelisa Brown (“respondents” or “the Board’s black majority”).

On January 28, 2020, the Board took up Cason’s recommendation that petitioner’s contract be renewed. Instead of approving his recommendation, respondent Warren Lee, contrary to Board policy and custom, requested that petitioner’s contract be considered separately from the contracts of the other 150 School employees up for renewal, making petitioner the *only* employee identified on a separate list from the one identifying the other School employees recommended by Cason.

The Board met in executive session outside of the public’s hearing; it then returned to public session and voted 5-4, with every one of the Board’s black majority voting not to renew petitioner’s contract as Head Football Coach. None of respondents who voted not to renew

petitioner's contract provided a reason for his/her vote during the Board's public session.

Facing public outcry over the Board's vote along racial lines, Cason's recommendation to renew petitioner's contract as Head Football Coach was again placed before the Board when it met on February 11, 2020. Five African-American members of the public urged the Board to reaffirm its decision for mostly racial reasons while seven others, both African-American and Caucasian, urged the Board to renew petitioner's contract for various non-racial reasons. After meeting in executive session, the Board again voted 5-4 along racial lines not to renew petitioner's contract. As before, *none* of respondents provided a reason for voting against petitioner during the Board's public session. Yet it was plain from the prior statements, communications and actions of the Board's black majority that race was a motivating factor in their non-renewal of petitioner's contract.

Unable to find a black candidate to replace petitioner as head football coach and to cover up its ill-advised decision to terminate petitioner, the Board's black majority voted—again along racial lines—to hire a controversial white football coach who was tied to illegal recruiting of football players, leading the Board to rescind its offer of employment in April of 2021. Later in 2021, the Board hired an African-American candidate on an interim basis but he was far less qualified than petitioner and he too was associated with recruiting violations while coaching in college.

Believing these facts proved that racial animus was a motivating factor in the refusal by the Board's five-member black majority to renew his employment contract, petitioner on March 27, 2020, filed a charge

of racial discrimination against respondent Board as his employer with the Equal Employment Opportunity Commission (“EEOC”) pursuant to 42 U.S.C. § 2000e-5 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”). He filed a second charge of racial discrimination against respondent School District with the EEOC on July 15, 2020.

On April 24, 2020, petitioner also brought a civil rights action in the federal district court for the Middle District of Georgia under 42 U.S.C. §§ 1981 & 1983, against the five members of the Board’s black majority acting in their individual capacities alleging that their conduct, acting under color of state law, in refusing to renew his contract, violated his right to the equal protection of the laws as well as his right to make and enforce contracts without regard to race (*Rodemaker v. Shumphard*, Civil Action No. 7:20-cv-00075-HL, or “*Rodemaker I*”). The Board’s black majority moved to dismiss arguing that they were immune from suit because there was no clearly established law indicating that they were acting illegally when they voted not to renew petitioner’s contract. On December 1, 2020, the district court denied their motion to dismiss.

On December 15, 2020, the Board’s black majority filed an immediate interlocutory appeal from the denial of their motion to dismiss consistent with *Plumhoff v. Rickard*, 572 U.S. 765 (2014) and *Mitchell v. Forsyth*, 472 U.S. 511 (1985). Six months later, on June 8, 2021, the court of appeals in an unpublished opinion vacated the district court’s order, remanding to the district court for the dismissal of petitioner’s complaint because “Rodemaker has not stated a race discrimination claim under §§ 1981 and 1983, including that, but-for his race, the [respondents] would have renewed his contract.”

Rodemaker v. Shumphard, 859 Fed. Appx. 450, 452-453 (11th Cir. 2021).

While this interlocutory appeal by the Board's black majority was proceeding in the court of appeals, the EEOC on March 22, 2021, issued petitioner a "right to sue letter" consistent with 42 U.S.C. § 2000e5(f)(1), a condition precedent to petitioner bringing an action within ninety (90) days against the Board as his employer for discrimination under Title VII, a ninety-day period which expired on June 20, 2021. *See* 42 U.S.C. § 2000e-5(f)(1). After the court of appeals ruled on June 8, 2021, dismissing his civil rights action, petitioner timely filed his Title VII action against the Board itself on June 18, 2021, in the federal court for the Middle District of Georgia, two days before the 90-day period provided by § 2000e-5(f)(1), expired (Civil Action No. 7:21-cv-00076-HL, or "*Rodemaker II*").

Petitioner's Title VII complaint against the Board in *Rodemaker II* alleged the same central facts alleged in his prior civil rights complaint against the Board's black majority, *i.e.*, that the Board twice voted not to renew petitioner's contract along racial lines and that this conduct by the Board amounted to reverse workplace discrimination, entitling him to compensatory damages, including front and back pay, as well as punitive damages and attorney's fees arising from this discrimination. He also claimed that the Board's black majority, acting as the Board's agents, conspired together for race-based reasons not to renew his employment contract.

The members of the Board's black majority moved to dismiss the complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6). The Board itself moved for summary judgment arguing that it was in privity with the five members of the Board's black majority

named as defendants in *Rodemaker I* and that petitioner's Title VII suit in *Rodemaker II* was the same cause of action as petitioner's civil rights action in *Rodemaker I* (App.26a-27a;31a;39a). On August 31, 2022, the district court, Lawson, J., entered an Order granting both motions (App.26a-50a).

The district judge rejected the idea that the Board's black majority could be sued in their individual capacities under Title VII because this statutory remedy lies only against the Board as petitioner's employer, not its agents; he ruled that petitioner's conspiracy-based claims were devoid of any allegation depriving him of a specific constitutional right and that a conspiracy to violate rights protected by Title VII cannot be the basis for a conspiracy claim under 42 U.S.C. § 1985 (3); and he concluded that these allegations did not survive the intracorporate conspiracy doctrine that agents of the Board cannot conspire among themselves or with the Board (App.32a-37a).

Judge Lawson next ruled that *res judicata* principles barred petitioner from raising claims under Title VII against the Board in *Rodemaker II* because petitioner's *Rodemaker I* civil rights suit involved the same parties or their privies and because it was the same cause of action as *Rodemaker II* (App.39a). That is, *res judicata* bars the filing of claims which were raised or could have been raised in the earlier proceeding (App. 40a-41a). Since *Rodemaker I* and *Rodemaker II* spring from the same nucleus of facts and because there was privity between the five individual members of the Board in *Rodemaker I* and the Board itself in *Rodemaker II*, the only remaining inquiry was whether petitioner could have raised his Title VII claims in *Rodemaker I*, thereby making these two civil actions the same cause

of action for purposes of invoking *res judicata* (App.41a-45a).

Petitioner asserted that by the time he received his “right to sue” letter from the EEOC on March 22, 2021, a condition precedent to bringing his Title VII action against the Board, his civil rights action was *already* before the court of appeals for resolution of the district judge’s refusal to dismiss petitioner’s complaint; and the district court was therefore without jurisdiction to entertain motions on his part to either stay the matter or amend his complaint so that his Title VII claims could be included in that proceeding (App.45a-46a). These circumstances made it impossible for petitioner to have raised his Title VII claims in *Rodemaker I*, preventing the invocation of *res judicata* (*Id.*).

The district judge rejected this argument. He ruled that regardless of the need to first exhaust his administrative remedies before bringing a Title VII suit, petitioner engaged in a form of “claim splitting” barred by notions of claim preclusion or *res judicata* (App.47a-48a). The district court, in fact, blamed petitioner for the procedural circumstances:

[Petitioner] could, and should, have raised the Title VII claim in the previous lawsuit. Rather than wait for the EEOC to investigate his discrimination claim and to issue a right to sue letter so that he could pursue his Title VII claims and his [civil rights] claim in a cohesive action, [petitioner] instead chose to rush to the courthouse to seek immediate justice for his allegedly unlawful termination. Even without the right to sue letter in hand, [he] could have filed his civil rights action [and] then requested a stay to await the letter and

to amend his complaint. He did not, electing instead to split his claims.

(App.48a-49a). The motion judge accordingly dismissed petitioner's Title VII complaint against the Board on grounds of *res judicata* (App.49a-50a).

Petitioner appealed this *res judicata* ruling in favor of the Board. On August 5, 2024, a Panel of the court of appeals issued a published opinion unanimously affirming the district judge's rulings (App.1a-25a). As for the Board's *res judicata* defense, the Panel disagreed with petitioner's claim that the timing of the EEOC's issuance of its "right to sue" letter made it impractical, if not impossible, for him to have raised his Title VII claims in *Rodemaker I* (App.23a-24a). As the Panel ruled, "[w]e have held that the fact a plaintiff did not have when he filed his first lawsuit a right to sue letter that was necessary for the claim he raised in his second lawsuit does not prevent it from being barred by *res judicata*" (App.24a, citing *Jang v. United Techs. Corp.*, 206 F.3d 1147, 1149 (11th Cir. 2000)).

According to the Panel, *Jang* stands for the proposition that "plaintiffs may not split causes of action to bring, for example, state law claims in one suit and then file a second suit with federal causes of action after receiving a 'right to sue' letter" (*Id.*). As the Panel concluded, petitioner seeks to relitigate a dispute already decided in *Rodemaker I*, having had "full and fair opportunity to litigate" the dispute in that first lawsuit. *Res judicata* principles therefore barred *Rodemaker II* (App.24a-25a).

On October 2, 2024, the Panel denied petitioner's timely filed petition for Panel rehearing (App.51a-52a). In addition, on December 16, 2024, Mr. Justice Thomas

of this Court granted petitioner’s Application to extend the time to file his petition for writ of certiorari from December 31, 2024, until January 30, 2025 (*Rodemaker v. City of Valdosta Board of Education et al.*, Dkt. No. 24A586).



ARGUMENT

A. To Require Petitioner to Include His Title VII Claims Not Yet Accrued Within His § 1983 Complaint Against School Board Members Individually or Forfeit Those Claims to the Bar of *Res Judicata* Disregards Settled Law That *Res Judicata* Does Not Bar Emergent Claims Against a New Defendant Accruing After Petitioner Filed His Initial Lawsuit and It Undermines Congress’ Intent to Give Victims of Employment Discrimination Parallel, Independent Remedies to Insure Full Redress for Their Injuries

None of the Board’s five black members gave reasons for refusing to renew petitioner’s contract for the 2021 school year despite his proven record of success. Yet communications among themselves and with others made plain their intent, *i.e.*, to ensure that the next head football coach was African-American instead of white. To this end, the Board delivered a reverse discrimination “racial hit” on petitioner because he is white and despite the recommendations by the school’s principal and the District’s superintendent that he be rehired.

Congress provided petitioner two overlapping remedies to redress the Board's blatant, race-based employment discrimination: (1) he could file a civil rights complaint against Board members in their individual capacities under 42 U.S.C. § 1983, for depriving him of his equal protection rights acting under color of state law; and (2) he could file a charge of workplace discrimination against the Board itself as his employer with the EEOC under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, await its investigation, and then bring a civil action against the Board for workplace discrimination once the EEOC issued its right-to-sue letter.

Petitioner—as was his right—elected to pursue *both* remedies. He immediately filed a Title VII charge of discrimination against the Board with the EEOC (and later against the School District as well) and then began a separate civil rights action against individual Board members in federal district court claiming a denial of the equal protection of the laws and his right to make and enforce contracts without regard to race. When Board members filed an interlocutory appeal from the denial of their motion to dismiss in the civil rights action, the EEOC was still investigating petitioner's charge of racial discrimination under Title VII.

Both courts below ruled that where petitioner's Title VII charge of workplace discrimination was not yet exhausted at the EEOC level, petitioner was obliged either to (1) wait until his right-to-sue letter issued to bring all his claims at once; or (2) if he had already filed his civil rights action, request a stay to await the EEOC letter and then amend his civil rights complaint to add the Title VII claim against the Board once the

right-to-sue letter issued. Without these procedural maneuvers, both courts ruled that petitioner's Title VII suit in *Rodemaker II* was barred by *res judicata*.

The procedure imposed on petitioner obligated him as a civil rights plaintiff either (1) to wait out the pendency of his Title VII administrative proceeding *before* filing his civil rights complaint lest he forfeit his Title VII claims by failing to do so; or (2) include within the ongoing civil rights proceeding his Title VII claim which had not yet accrued against a new defendant, *i.e.*, the Board itself, which was not yet a party to the civil rights complaint, in federal district court which at the time lacked the jurisdiction to grant an amendment of his civil rights complaint.

Petitioner submits that neither choice honors Congress' intent that *both* these overlapping, independent remedies of § 1983 and Title VII be employed liberally and harmoniously in order to provide full relief to victims of workplace discrimination. First, regardless of whether it was even possible to amend petitioner's civil rights complaint, filed in April of 2020, to include his Title VII claims once they accrued in March of 2021, those Title VII claims were *not* duplicative of the § 1983 action and should not have been barred by *res judicata*. They were brought against a new defendant, alleging a different theory of liability, requiring a different standard of proof, and providing a different remedy for employment discrimination. As a matter of law, petitioner had no legal obligation to amend his § 1983 complaint to include his Title VII claims once they accrued; he could simply bring another suit based upon these later-accruing claims, which he did.

Second, there is no evidence anywhere that Congress intended that civil rights plaintiffs must wait

out the pendency of Title VII administrative proceedings before filing their civil rights complaints, lest they forfeit their Title VII claims by failing to do so. To conclude otherwise would engraft a waiting period onto § 1983’s statutory framework which does not exist and which Congress *never* intended. Nor is there any indication that Congress intended that § 1983 suits in any way limit the relief due victims of workplace discrimination under Title VII.

Simply put, *Rodemaker I* and *Rodemaker II* are *not* the same cause of action for purposes of *res judicata*. Obligating petitioner to include Title VII claims not yet accrued within his civil rights complaint or forfeit those Title VII claims to the bar of *res judicata* disregards settled law that there is no *res judicata* bar for newly emergent claims accruing against a new defendant *after* petitioner filed his initial lawsuit, even though based upon a common nucleus of operative facts; and it undermines Congress’ intent to give victims of workplace discrimination overlapping, independent remedies so that they will have full redress for their workplace injuries.

This exceptionally important federal question about the viability of the parallel, overlapping remedies Congress made available to the victims of employment discrimination has therefore been decided “in a way that conflicts with relevant decisions of th[e] Court.” Supreme Ct. Rule 10(c). A writ of certiorari should issue to the court of appeals to vacate the Panel’s decision and provide guidance about the parallel, independent remedies Congress made available to victims of workplace discrimination under Title VII and § 1983, respectively, remanding the matter back to the district

court for trial of petitioner’s Title VII claims against the Board

B. Discussion

For *res judicata* to apply, there must be (1) a final judgment on the merits; (2) rendered by a court of competent jurisdiction; (3) with parties in privy; and (4) the same cause of action involved. *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1238 (11th Cir. 1999). If even one of these elements is missing, *res judicata* cannot apply. *Kaiser Aerospace & Elecs. Corp. v. Teledyne Indus., Inc.*, 244 F.3d 1289, 1296 (11th Cir. 2001). The essence of *res judicata* is that the claim sought to be raised in the later action was either raised *or could have been raised in the prior proceeding*. *Federated Dep’t Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). *Parkline Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979) (emphasis supplied).

Courts dismissing duplicative claims have done so where the claims not only arose out of a common nucleus of operative facts but also where they accrue at the same time or at least within the time period where amendment as of right was still available. See, e.g., *Davis v. Norwalk Econ. Opportunity Now, Inc.*, 534 F. App’x 47, 49 (2d Cir. 2013) (“[A]ll of the claims [plaintiff] raises now were or could have been brought in that action.”). But while the claims here arose from a common nucleus of operative facts, petitioner’s § 1983 claims accrued much earlier (February of 2020) than his Title VII claims (March 22, 2021) and when his Title VII claims did accrue, they could not possibly have been added to the § 1983 proceeding by amendment.

Petitioner could not have raised his Title VII claims in his prior § 1983 case until he received a right-to-sue letter on March 22, 2021. *See* 42 U.S.C. § 2000e-5(f)(1)-(3). It was only then that petitioner's Title VII claims accrued for purposes of filing suit and obtaining relief. As the Court wrote in *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 105-106 (2013), a cause of action accrues when “the plaintiff can file suit and obtain relief.” *Id.* quoting *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferber Corp. of Cal.*, 522 U.S. 192, 201(1997). *See Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393-394 (1982) (right-to-sue letter is condition precedent to filing Title VII action). Until March 22, 2021, then, petitioner's Title VII claims had not yet accrued.

By this time, however, the Board members' interlocutory appeal in the § 1983 action remained *sub judice* in the court of appeals, leaving the district court without jurisdiction to grant any amendment adding Title VII claims to his § 1983 complaint, even if petitioner had attempted to include it. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58-59 (1982). *Garcia v. Burlington N. R.R.*, 818 F.2d 713, 721 (10th Cir. 1987) (Once . . . [an] appeal is taken, the] district court is “. . . divested of jurisdiction . . . [with] any subsequent action by it . . . null and void.”). For this reason alone, the Panel was wrong to conclude that even without a right-to-sue letter, petitioner was dutybound to seek amendment of his § 1983 complaint to include his Title VII claims or be barred by *res judicata* from thereafter raising them in another action.

C. The Title VII Action Is Not the Same Cause of Action as Petitioner's § 1983 Suit.

Even if the district court had jurisdiction to amend petitioner's § 1983 complaint to include his Title VII claims, he was not legally bound to seek amendment for two reasons: *First*, his Title VII lawsuit is an entirely *new* cause of action for purposes of applying *res judicata*. It required a *new* defendant, *i.e.*, the Board itself rather than any individual member, and *new* proof that a protected characteristic like race was just one "motivating factor" for the adverse employment action, *see Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 174 (2009). § 1983, however, is a broader law that allows plaintiffs to sue state actors individually for intentionally violating a federal right under color of state law when "but for" race, it would not have suffered the loss of a legally protected right." *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. ___, ___; 140 S. Ct. 1009, 1019 (2020) (emphasis supplied). Even though the Board itself cannot be sued under § 1983, these two remedies complement each other in employment discrimination cases; a plaintiff may bring such claims under either statute, or both. *Notari v. Denver Water Dept.*, 971 F.2d 585, 587 (10th Cir.1992). *Bradley v. Pittsburgh Board of Educ.*, 913 F.2d 1064, 1078-1079 (3d Cir. 1990).

Second, because petitioner's Title VII claims had not yet accrued when he filed his § 1983 complaint in April of 2020, *res judicata* cannot bar these new Title VII claims, even if based on common facts. Instead, he could simply bring another suit based upon these later-accruing claims, as he did in *Rodemaker II*. In *Bank of N.Y. v. First Millennium, Inc.*, 607 F.3d 905, 919 (2d Cir. 2010), for example, noteholders in an earlier

lawsuit were barred from bringing another lawsuit on notes which matured after the first lawsuit. *Id.* The court of appeals reversed, holding that “[c]laim preclusion does not bar claims, even between identical parties, that arise after the commencement of the prior action.” *Id.* Accord, *Storey v. Cello Holdings, LLC*, 347 F.3d 370, 383 (2d Cir. 2003) (“Claims arising subsequent to a prior action need not . . . have been brought in that prior action; . . . they are not barred by *res judicata*.”).

In *Whitfield v. City of Knoxville*, 756 F.2d 455, 460-463 (6th Cir. 1985), the court agreed, rejecting a suggestion, similar to the Panel’s suggestion here, that petitioner should have waited for exhaustion at the EEOC level and then filed both claims at once, finding that such a requirement “would, in effect, engraff a waiting period” onto the prior action’s statutory framework which the legislature did *not* intend. *Id.* at 462-463. Similarly, there is no evidence here that Congress intended that civil rights plaintiffs must wait out the pendency of Title VII administrative proceedings before filing a civil rights complaint, lest they forfeit their Title VII claims to the bar of *res judicata* by failing to do so. To conclude otherwise engraffs a waiting period onto § 1983’s statutory framework which Congress *never* intended.

As a matter of both law and logic, where the second action adduced claims which did not exist when the first action was filed and which could not possibly have been then sued upon, the earlier judgment “does not constitute a bar to the [later] suit.” *Lawlor v. Nat’l Screen Serv. Corp.*, 349 U.S. 322, 327-328 (1955). That both suits involved the same wrongful conduct is not decisive since a course of conduct frequently gives rise to more than a single cause of action. *Id.* at 327. *S.E.C.*

v. First Jersey Securities, Inc., 101 F.3d 1450, 1463 (2d Cir. 1996). In *Nevada v. United States Irrigation District*, 463 U.S. 110, 130 n.12 (1983), the Court noted that a cause of action can be the commission of a separate “legal wrong,” an analysis qualifying petitioner’s Title VII claims as a separate cause of action. *Id.* quoting *Baltimore Steamship Co. v. Phillips*, 274 U.S. 316, 321 (1927). Thus under *Heimeshoff, supra*, petitioner’s Title VII claims accrued on March 22, 2021; this is when he could first file suit and obtain relief under Title VII. 571 U.S. at 105-106.

For purposes of *res judicata*, the scope of litigation is framed by the complaint when it is filed. *Proctor v. LeClaire*, 715 F.3d 402, 412 (2d Cir. 2013). *Curtis v. Citibank*, 226 F.3d 133, 139 (2d Cir. 1999). When petitioner filed his § 1983 in April of 2020, his Title VII claims had not yet accrued and “could not possibly have been sued upon” within *Lawlor*. Once they did accrue in March of 2021, petitioner could have sought to amend his § 1983 complaint to add his Title VII claims—but he was not required to do so. *Proctor*, 715 F.3d at 412-413. *First Jersey Securities, Inc.*, 101 F.3d at 1464. *Headley v. Bacon*, 828 F.2d 1272, 1275 (8th Cir. 1987). As explained *supra*, he could not do so in any event because the district court lacked jurisdiction to grant the motion.

Petitioner’s failure to seek amendment—whether because of impossibility or because he wished to file a separate civil action alleging Title VII violations—should not be penalized by barring through *res judicata* his later suit based on these later accruing Title VII claims. See *Curtis*, 226 F.3d at 139; *First Jersey Securities, Inc.*, 101 F.3d at 1464. Instead, the Panel should have acknowledged that petitioner had *no* obligation to file

amendments to his § 1983 complaint to stay abreast of subsequent events involving his Title VII claims; he could “simply bring a later suit [based] on those later arising claims.” *Curtis*, 226 F.3d at 139 citing *First Jersey Securities, Inc.*, 101 F.3d at 1464.

Nothing in *Jang v. United Techs. Corp.*, 206 F.3d 1147 (11th Cir. 2000) disturbs this analysis. There two successive suits both involved the *same parties*; the first suit resulted in a judgment *on the merits* of plaintiff’s ADA claim even though he lacked a right-to-sue letter; and the second suit consisted of the *same ADA cause of action*, this time with the right-to-sue letter. *Id.* at 1148-1149. The court called this “claim splitting,” barred by *res judicata*. *Id.* at 1149.

Jang cannot apply here because *Rodemaker I* was *not* a judgment on the merits of his Title VII claims since that litigation never addressed those claims; and *Rodemaker II* was timely brought only *after* petitioner received his right-to-sue letter, making his Title VII claims fully accrued for purposes of suit against a *new party*, the Board itself as petitioner’s employer. Thus *Rodemaker II* is a different, newly emergent cause of action than *Rodemaker I*; the splitting of claims is not implicated; and *res judicata* does not apply. If *Jang* can somehow be read to justify the Panel’s decision, it was wrongly decided and should be disregarded.

Petitioner submits that under Congress’ carefully crafted administrative scheme creating the right to sue employers under Title VII, a plaintiff’s exhaustion of his administrative remedies is *itself* an element of his cause of action which must be accomplished before the right to sue can be legally recognized under *Heimeshoff*, 571 U.S. at 105-106. As such, petitioner’s Title VII claims *before* March 22, 2021, were entirely

inchoate and did not themselves create a right to sue before then for purposes of any *res judicata* analysis.

D. Congress' Intent to Give Victims of Workplace Discrimination Overlapping, Parallel Remedies.

In *Beardsley v. Webb*, 30 F.3d 524, 527-528 (4th Cir. 1994), the court decided that the 1991 Civil Rights Act giving Title VII claimants the right to recover compensatory and punitive damages did not mean that Title VII was now the exclusive remedy for claims of employment discrimination by public employees. *Id.* at 526-528. Quoting the Court's decision in *Alexander v. Gardner-Denver Company*, 415 U.S. 36, 44-50 (1974), it concluded that Title VII remains "designed to supplement, rather than supplant existing laws [like § 1983 and that] the legislative history of Title VII manifests a congressional intent to allow an individual to pursue *independently* his rights under both Title VII and any other applicable state and federal statutes." *Id.* at 527 (emphasis supplied).

Beardsley underscores the point that Title VII and § 1983 are *not* mutually exclusive remedies but rather complementary avenues by which employees can seek redress for discrimination in the workplace. This dual-pathway framework enhances protection against employment discrimination by providing victims, as Congress intended, with multiple instruments of relief thereby increasing the likelihood of effective deterrence and remedy. *See Beardsley*, 30 F.3d at 527. *See also Alexander*, 415 U.S. at 48 n.9; *Williams v. Pa. Human Relations Comm'n*, 870 F.3d 294, 298-300 & n.15 (3d Cir. 2017) ("The crucial consideration is what Congress intended;" its intent is clear: Title VII is a stand-alone, parallel statutory remedy for workplace discrimination;

§ 1983 may overlap with Title VII to vindicate rights independently conferred by the Constitution); *Johnson v. City of Fort Lauderdale*, 148 F.3d 1228, 1230-1231 (11th Cir. 1998) (congressional intent is to retain § 1983 as a parallel remedy with Title VII for public sector employment discrimination).

The Panel’s decision obligating petitioner to include Title VII claims not yet accrued within his § 1983 complaint or forfeit those Title VII claims to the bar of *res judicata* denies petitioner his Title VII remedies and undermines Congress’ intent that Title VII be available as an independent, parallel statutory remedy for workplace discrimination, a remedy which can sometimes overlap with § 1983, so that victims of workplace discrimination have full redress for their injuries.

E. The Due Process Deprivation.

Barring a cause of action that was never fully litigated to a final judgment in the earlier action unjustly “blockades [an] unexpected path [] that may lead to the truth.” *Brown v. Felson*, 442 U.S. 127, 132 (1979). Petitioner’s Title VII claims received *no* hearing on the merits in *Rodemaker I*; and those claims were then barred by *res judicata* in *Rodemaker II*. This scenario denied petitioner a fair hearing on his Title VII claims and resulted in a denial of due process. *See Taylor v. Sturgell*, 553 U.S. 880, 892-893 (2008); *Lewis v. Casey*, 518 U.S. 343, 346 (1996); *Proctor*, 715 F.3d at 414, citing *Allen v. McCurry*, 449 U.S. 90, 101 (1980). *See also Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1217 (11th Cir. 2017) (Tjoflat, J., dissenting).



CONCLUSION

For the reasons identified here, a writ of certiorari should issue to the Eleventh Circuit court of appeals to vacate the Panel's decision and provide guidance about the parallel, independent remedies Congress made available to victims of employment discrimination under Title VII and § 1983, respectively, and then to remand the matter back to the district court for a trial of petitioner's Title VII claims against the Board; or the Court should provide petitioner with such other relief as is fair and just in the circumstances.

Respectfully submitted,

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