No. 24A366

In The

Supreme Court of the United States

—♦—

ANGELA W. DEBOSE,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondent.

—♦—

NOTICE OF APPEAL TO THE UNITED STATES FROM THE THE ELEVENTH CIRCUIT

—♦—

To the Honorable Justice Clarence Thomas, Associate Justice of the United States Supreme Court and Circuit Justice for the Eleventh Circuit:

Re: Application for Stay of Mandate, Injunction Order, and this Proceeding – USA11 23-13380

Petitioner Angela DeBose requests a Stay to prevent the injunction order and judgment from taking effect while Petitioner's petition is being considered. In Case No. 22-13380, the Eleventh Circuit Court of Appeals entered an Opinion and Order on February 8, 2024 for the United States of America et al., (**EXHIBIT A**), and denied the Motion(s) for Rehearing and Rehearing En Banc on August 28, 2024. The Court of Appeals denied the Petitioner's Motion to stay the mandate, pending her appeal to the United States Supreme Court, on September 26, 2024. A Notice of Constitutional Question is pending investigation by the Florida Attorney General. The Eleventh Circuit has not yet certified to the attorney general that Florida's Vexatious Litigant Law statute has been questioned. Under Rule 5.1, the attorney general may

intervene within 60 days after notice is filed or after certification by the court, whichever is earlier. As of the date of this application, the Eleventh Circuit has not rejected the constitutional challenge. Furthermore, the Petitioner has a pending action in the Eleventh Circuit—Case No. 24-10350. Courts have uniformly recognized that a stay is warranted, if not essential, "when, as here, a prior case which may have preclusive effect over the instant proceedings is pending on appeal." *Univ. of Colo. Health at Mem'l Hosp. v. Burwell*, 233 F. Supp. 3d 69, 87 (D.D.C. 2017). Therefore, the standard in a case like this is to stay[] proceedings pending resolution of the appeal.

A party must file a petition for a writ of certiorari with the United States Supreme Court within 90 days after the denial of a timely filed petition for rehearing. The 90-day period begins on the date of the denial, not the date the mandate was issued. The present deadline is November 26, 2024, the week of the Thanksgiving holiday and the time of Petitioner's daughter's wedding. Petitioner requests a Stay of 90 days from the (latest) date of final decision.

APPLICATION TO STAY

I . INTRODUCTION

Petitioner Angela DeBose respectfully asks the Court to stay the judgment or order of the Middle District of Florida pending appeal. Rule 8(a) provides that a party ordinarily must first move in the district court for "(A) a *stay of the judgment or order of a district court pending appeal*; (B) approval of a bond or other security provided to obtain a stay of judgment; or (C) an order suspending, modifying, restoring, or

granting an injunction while an appeal is pending." The Petitioner moved the district court to stay, modify, alter, vacate, or dissolve its injunction while Petitioner's appeal is pending, *denied.* The Petitioner also moved the Eleventh Circuit Court of Appeals to Stay its Mandate, pending her appeal to the Supreme Court, *denied.*

REASONS FOR GRANTING A STAY

Direct appeal to the Supreme Court is the appropriate avenue of review of decisions of three-judge courts granting or denying an injunction. See 28 U.S.C. § 1253 which provides:

> **Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.**

The injunction order was issued by the district court without prior notice and hearing, as specified under 28 U.S.C. § 1253. This eviscerated the Petitioner's right of a direct appeal to the Supreme Court, leaving her bound by a district court decision rendered by a single judge, without discovery or other pretrial [or trial] proceedings, and the subsequent difficulty in scheduling a hearing to dissolve, vacate or modify the injunction.

The Petitioner was entitled to a stay of enforcement pending appeal upon posting a sufficient *supersedeas* bond or other security under Florida Vexatious Litigant Law, 68.093 and Fed.R.Civ.P. 62(b). Notably, a district court may, however, in its discretion, grant a stay without requiring the posting of a bond or other security. *See In re Nassau County Strip Search Cases,* 783 F.3d 414 (2d Cir. 2015)

(per curiam); *Dillon v. City of Chicago*, 866 F.2d 902, 904-05 (7th Cir. 1988); *Fed. Prescription Serv. Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 757-58 (D.C. Cir. 1980); *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979); *Trans World Airlines, Inc., v. Hughes*, 515 F.2d 173, 176 (2d Cir. 1975).

II. LEGAL STANDARD

This Court follows the well-accepted principles underlying 28 U.S.C. § 2101(f), which is the statutory authority for the Supreme Court to grant a stay pending certiorari. Because staying the mandate is a form of temporary injunction that stops the normal litigation process, the court's inquiry centers on whether the adverse party can show both a likelihood of success on the merits and that she will suffer irreparable harm without a stay.

III. ARGUMENT

The district court indefinitely stayed discovery during the entire proceeding, though discovery was necessary to gather facts in order to defend against the motion. See *Wilderness Soc. v. Griles*, 824 F.2d 4 (D.C.Cir.1987); *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550 (11th Cir.1985). The district court misapplied the "preliminary peek analysis" under *Feldman v. Flood*, 176 F.R.D. 651 (M.D. Fla. 1997). Notably, in *Feldman*, the district court granted a temporary stay of discovery until a hearing on the motion to stay and the underlying motion to dismiss. The denial of discovery resulted in irreparable harm to the Petitioner because it impeded her ability to defend against the motion. *Feldman* holds a stay of discovery is not

appropriate unless pending dispositive motion would dispose of entire action. *Id.* The motion to dismiss requesting other relief by the private company and private individual only sought their dismissal as parties and the claims against them. Finally, with regard to discovery, "[a] Rule 12(b)(6) motion is intended to test the legal sufficiency of the complaint. However, the complaint need only set forth 'a short and plain statement of the claim . . . giving the defendant fair notice of the claim and the grounds upon which it rests.'" Rule 8(a)(2); See also *Evans v. McClain of Ga., Inc.*, 131 F.3d 957, 964 n.2 (11th Cir. 1997). Such simplified "notice pleading" should be made possible after the liberal opportunity for discovery and the other pretrial procedures established by the Rules.

The injunction order was issued by the district court without prior notice and hearing, as specified under 28 U.S.C. § 1253. The district court held *no hearings* at all—not even on the matter depriving the Petitioner of First Amendment protected speech on a claim of vexatiousness. See *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285–86 (11th Cir. 1990), expressing the Eleventh Circuit has generally cabined our constitutional irreparable injuries to First Amendment violations. District judges may designate magistrates to "hear and determine any pretrial matter" with listed exceptions that include "motion[s] for injunctive relief, for judgment on the pleadings, for summary judgment" in addition to motions to dismiss for failure to state a claim. 28 U.S.C. § 636(b)(1)(A) (2006). Magistrate judges may, however, conduct hearings, including evidentiary hearings, and submit proposed findings of fact and recommendations for disposition in any of

the listed exceptions. Id. § 636(b)(1)(B). The district court failed to accord Petitioner constitutional due process (i.e., prior notice and hearing). The ban on speech was throughout the pendency of the motion to dismiss requesting other relief and continued after the district court's issuance of the injunction order. This was an "ongoing violation of the First Amendment." *FF Cosms. FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017). Such a violation, even for a minimal period of time, constitutes irreparable injury. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1271–72 (11th Cir. 2006).

The motion reviewed by the district court requesting "other relief" was filed by legal representatives on behalf of defendants Greenberg Traurig, P.A. and McCrea, a private company and private individual. The motion was not filed on behalf of state University of South Florida Board of Trustees, which filed a separate motion to dismiss under Rule 12(b)(6), failure to state a claim on the basis of res judicata. The Eleventh Circuit order and opinion misstates this fact. The state university attempted to incorporate the motion to dismiss requesting other relief on appeal. Importantly, the four prongs in *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365, 172 L. Ed. 2d 249, 21 Fla. L. Weekly Supp. 547 (2008) were not satisfied by these private actors. The failure led to an insufficient record on appeal since the private company and private individual presented only extrinsic materials to support its motion to dismiss requesting other relief. See *McKinney v. Starbucks Corp.*, 77 F.4th 391 (6th Cir. 2023) where in an 8-1 opinion, the Supreme Court reversed the Sixth Circuit, holding that district courts must apply the traditional

preliminary injunction standard when considering a request for an injunction. This standard, articulated in Winter is applicable to all other litigants seeking preliminary injunctions, and requires that a party seeking a preliminary injunction must establish: (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest. This is a high burden, as courts recognize that a preliminary injunction is an extraordinary equitable remedy that is never awarded as of right. Thus, the deprivation of First Amendment speech by the district court can be upheld if "narrowly tailored to serve compelling state interests." See e.g., *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Strict scrutiny is applied and is a notoriously difficult test to survive. *Otto v. City of Boca Raton*, 981 F.3d 854, 861-62 (11th Cir. 2020). The failure by the district court to apply the correct legal standard will cause irreparable injury. The First Amendment deprivation of speech requested by the private company and private individual did not serve a compelling state interest under strict scrutiny. Private actors are generally not considered state actors. Their private interests were not sufficiently compelling to subordinate the interests of Petitioner Ms. DeBose.

The Supreme Court's criteria to grant a Stay are satisfied. The stay is not "immoderate" in time and scope. *Trujillo v. Conover & Co. Comms., Inc.*, 221 F.3d 1262, 1264 (11th Cir. 2000); *Blinco v. Green Tree Servicing LLC*, 366 F.3d 1249, 1252-53 (11th Cir. 2004). A stay pending resolution of Petitioner's appeal, is justified and properly limited in duration. A stay will not unduly prolong the litigation nor

prejudice the Respondents. There is a "reasonable probability that four justices will vote to grant certiorari and a reasonable possibility that the Supreme Court justices will vote to reverse because the district court followed an irregular procedure, creating no record (i.e., transcripts of hearings or pretrial [or trial] proceedings). See e.g., *State Farm Fire and Casualty Co. v. Levine*, 837 So. 2d 363 (Fla. 2002)(requiring that the alternative ground asserted for affirmance be "in the record"). The criteria for a stay are very similar to that for injunctive relief. See *Rubin v. United States*, 524 U.S. 1301, 1301–2, 119 S. Ct. 1 (1998) (Rehnquist, C.J., as Circuit Justice) (applicant for stay must show (1) that denying stay and enforcing lower-court judgment would cause irreparable harm; (2) likelihood of certiorari will be granted; and (3) likelihood that Supreme Court, having granted certiorari, will ultimately reverse lower-court judgment).

1. Irreparable harm

The irregular procedure followed by the district court will cause Petitioner the irreparable harms identified above. These injuries are not outweighed by any threatened harm to the private company and private individual because the government has "no legitimate interest" in these private actors to deprive Ms. DeBose of First Amendment Speech. Similarly, a preliminary injunction is not contrary to the public interest because it is in the public interest to protect First Amendment rights. See id.

2. Likelihood of success on the merits

Petitioner argues a high likelihood of success on the merits exists because of the state court's and district court's denial of First Amendment Speech and Fourteenth Amendment due process. In *Dykes v. Hosemann*, the Eleventh Circuit stripped a Florida judge of judicial immunity for actions clearly violating the due process clause, (743 F.2d 1488, 1496 [11th Cir. 1984]). Judge Hatchett stated that everyone should be held liable for due process violations, particularly the very people trained in due process—i.e., judges. (*Dykes v. Hosemann*, 776 F.2d 942, 954-55 [11th Cir. 1985]). No matter how narrowly-tailored the injunction order by the district court was written, it should not have been issued at all because Florida's Vexatious Litigant laws were invalidly applied. The private company and private individual are not the government and serve no compelling state interest. The underlying state court injunction is unconstitutionally overbroad and invalid. The state court order misapplied an Administrative Order that expressly precluded its application to prefiling orders issued under the Florida Vexatious Litigant Law § 68.093, Florida Statutes. Both the state court and district court orders invalidated § 68.093 because the Petitioner was not accorded mandatory notice and an injunction hearing. The Petitioner was deprived of the opportunity to secure approval of a bond or other security provided to obtain a stay of judgment, though this is required under § 68.093.

3. Likelihood of certiorari or reversal

Because the Petitioner has shown a likelihood of success on the merits, the remaining requirements necessarily follow. See *Otto*, 981 F.3d at 870. The Petitioner

suffered an irreparable injury because there is an ongoing, indefinite violation of her First Amendment protected speech rights [and her Fourteenth Amendment due process rights].

IV. CONCLUSION

For the above and foregoing reasons, Petitioner Angela DeBose requests a Stay of the mandate, the injunction order, and this proceeding to file her Petition for Writ of Certiorari during the pendency of the Constitutional Question/Investigation and Case No. 24-10350. Following a final/rehearing decision, the Petitioner asks for 90 days from the latest decision date to file her Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Angela W. DeBose

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October 5, 2024

Certificate of Service

I hereby certify that a copy of the foregoing has been filed via mail delivery service to the Clerk of the Supreme Court as well as via the Supreme Court's electronic filing system. A copy of the foregoing has been served via email delivery to all counsels of record for Respondents.

/s/ Angela W. DeBose

Angela W. DeBose

EXHIBIT A

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-13380

Non-Argument Calendar

ANGELA W. DEBOSE,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
THIRTEENTH JUDICIAL CIRCUIT,
RONALD FICARROTTA,
Chief Judge, in official capacity,
ELIZABETH GADDY RICE,
GREGORY P. HOLDER, et al.,
Individually and Official Capacities,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cv-02127-SDM-AAS

Before WILSON, LUCK, and BLACK, Circuit Judges.

PER CURIAM:

Angela Debose, a licensed attorney proceeding *pro se*,[1] appeals the district court's dismissal of her second amended complaint. Debose asserts the court abused its discretion when it imposed a limited injunction enjoining her from filing further lawsuits about her employment at the University of South Florida (USF) without the signature of an attorney barred in Florida or the Middle District of Florida. Debose also contends the court erred in granting the Appellees' motion to dismiss based on *res judicata*. After review,[2] we affirm the district court.

[1] Although *pro se* pleadings are normally liberally construed, *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998), that rule does not apply to a licensed attorney, *see Olivares v. Martin*, 555 F.2d 1192, 1194 n.1 (5th Cir. 1977).

[2] We review an injunction against litigants who abuse the court system for an abuse of discretion. *Harrelson v. United States*, 613 F.2d 114, 116 (5th Cir. 1980). "The exercise of the court's inherent powers is reviewed for abuse of discretion." *Pedraza v. United Guar. Corp.*, 313 F.3d 1323, 1328 (11th Cir. 2002). "Because *res judicata* determinations are pure questions of law, we review them *de*

I. DISCUSSION

A. Limited Injunction

Federal courts have the power to manage their own dockets. *Smith v. Psychiatric Solutions, Inc.*, 750 F.3d 1253, 1262 (11th Cir. 2014). That power "includes broad discretion in deciding how best to manage the cases before them." *Id.* (quotation marks omitted). The Supreme Court has stated a litigant's constitutional right of access may be counterbalanced by the traditional right of courts to manage their dockets and limit abusive filings. *In re McDonald*, 489 U.S. 180, 184 (1989). District courts possess the power to issue pre-filing injunctions "to protect against abusive and vexatious litigation." *Martin-Trigona v. Shaw*, 986 F.2d 1384, 1387 (11th Cir. 1993). We have explained a court has "a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others" and a litigant "can be severely restricted as to what he may file and how he must behave in his applications for judicial relief" as long as he is not "completely foreclosed from *any* access to the court." *Procup v. Strickland*, 792 F.2d 1069, 1074 (11th Cir. 1986) (*en banc*) (emphasis in original).

The district court did not abuse its discretion by granting a limited injunction against Debose from filing further lawsuits about her employment at USF without the signature of a lawyer barred in Florida or the Middle District of Florida. The court found

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novo." *Norfolk S. Corp. v. Chevron, U.S.A., Inc.*, 371 F.3d 1285, 1288 (11th Cir. 2004).

Debose had brought a multitude of prior claims in both federal and state court regarding the same issues and same Appellees. *See Martin-Trigona*, 986 F.2d at 1387. While Debose argues the injunction violated her rights, the injunction did not completely foreclose her from filing any new claims because it allows her to file claims regarding her employment at USF as long as an attorney signs off on the filing. *See Procup*, 792 F.2d at 1074. The court also did not abuse its discretion by using its inherent authority to issue this injunction as it is allowed to control its own dockets. *See Smith*, 750 F.3d at 1262.

B. Res Judicata

Res judicata bars the parties to a prior action from relitigating the same causes of action that were, or could have been, raised in that prior action, if that action resulted in a final judgment on the merits. *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001). *Res judicata* "generally applies not only to issues that were litigated, but also to those that should have been but were not." *Delta Air Lines, Inc. v. McCoy Restaurants, Inc.*, 708 F.2d 582, 586 (11th Cir. 1983). The bar applies where four factors are shown: (1) the prior decision was rendered by a court of competent jurisdiction, (2) there was a final judgment on the merits, (3) both cases involve the same parties or their privies, and (4) both cases involve the same causes of action. *In re Piper Aircraft Corp.*, 244 F.3d at 1296.

As to the third factor, we have explained "privity" comprises several different types of relationships and generally applies "when a person, although not a party, has his interests adequately

represented by someone with the same interests who is a party." *E.E.O.C. v. Pemco Aeroplex, Inc.*, 383 F.3d 1280, 1286 (11th Cir. 2004). As to the fourth factor, "[i]n general, cases involve the same cause of action for purposes of *res judicata* if the present case arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action." *Israel Disc. Bank Ltd. v. Entin*, 951 F.2d 311, 315 (11th Cir. 1992) (quotation marks omitted). "In determining whether the causes of action are the same, a court must compare the substance of the actions, not their form." *In re Piper Aircraft Corp.*, 244 F.3d at 1297 (quotation marks omitted). "The test for a common nucleus of operative fact is whether the same facts are involved in both cases, so that the present claim could have been effectively litigated with the prior one." *Lobo v. Celebrity Cruises, Inc.*, 704 F.3d 882, 893 (11th Cir. 2013) (quotation marks omitted).

The court did not err when it granted the USF Board of Trustees and its members, Greenberg Traurig, P.A., and Richard McCrea's motion to dismiss based on *res judicata*. Debose's prior state and federal cases had final judgments on the merits. *See In re Piper Aircraft Corp.*, 244 F.3d at 1296. The previous state court and federal court cases involved the same parties or their privies. *See Penco Aeroplex*, 383 F.3d at 1286. In Debose's previous complaints, she sued the USF Board of Trustees and its members, Greenberg Traurig, and McCrea. All of Debose's cases arose out of the same nucleus of operative facts as the current case because all of Debose's claims concern or stem from her employment and firing from USF. *See Israel Disc. Bank Ltd.*, 951 F.2d at 315. Therefore, the

district court did not err when it found *res judicata* barred all of Debose's claims against the USF Board of Trustees and its members, Greenberg Traurig, and McCrea.

II. CONCLUSION

The district court did not abuse its discretion when it granted a limited injunction against Debose from filing further lawsuits about her employment at USF without the signature of a lawyer barred in Florida or the Middle District of Florida. The district court also did not err when it granted the USF Board of Trustees and its members, Greenberg Traurig, and McCrea's motion to dismiss based on *res judicata*. Accordingly, we affirm.[3]

AFFIRMED.

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[3] Debose did not raise the issue of whether the court erred in granting the United States and Thirteenth Circuit's motion to dismiss for absolute immunity on appeal and thus abandoned that argument. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (stating "[w]hen an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, [s]he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed"). Debose did not discuss the court's ruling granting judicial and sovereign immunity in her initial brief, only discussing it in her reply brief, and has also abandoned that argument. *See id.* at 682-83 (explaining an appellant also abandons a claim when, among other things, she raises it for the first time in her reply brief).