No.________

# IN THE

# SUPREME COURT OF THE UNITED STATES

JOSEPHAT MUA AND
FRANCOISE VANDENPLAS,

*Petitioners*

v.

STATE OF MARYLAND; CALIFORNIA CASUALTY INDEMNITY EXCHNAGE; MARSDEN & SELEDEE,

*Respondents*

**On Petition For A Writ Of Certiorari to the U.S Court of Appeals for the Fourth Circuit**

# PETITION FOR A WRIT OF CERTIORARI

**JOSEPHAT MUA – Pro se AND**
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Friday, May 18th, 2018

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Pro Se Litigant's pleadings are to be constructed liberally and held to less stringent standards than Formal Pleadings drafted by lawyers. If the Court can reasonably read Pleadings to state a valid claim on which litigation could prevail, it should do so despite failure to cite proper legal authority, confusion, legal theories, poor syntax and sentence construction or litigant's unfamiliarity with Pleading requirements. *See Boag v. MacDougall, 454 U.S. 364, 70 L. Ed. 2d 551, 102 S. Ct. 700 (1982). See also Haines v. Kerner, 404 U.S. 519, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972); See Green v. Branson, 108 F.3d 1296 (10th Cir. 1997); Simmons v. Abruzzo, 49 F.3d 83 (2d Cir. 1995); Fernandez v. U.S., 941 F.2d 1488 (11th Cir. 1991)*

**Now Comes** Petitioner Josephat Mua and Francoise Vandenplas herein, pro se, and request that this court issue a Writ of Certiorari to the U.S Court of Appeals for Fourth Circuit denying to review respectfully prays that a writ of certiorari issue to review the judgement below.

## OPINIONS BELOW

On April, 4th, 2017, the U.S District Court issued an opinion finding no error. (See Pet. App. 4a-18a). The opinion of the U.S Court of Appeals was issued on November 9th, 2017 (See Pet. App. 24a-26a) and affirmed finding no error as well. (Pet. App. 27a- a30). The opinions of both courts appear on various websites on the internet. (Mua et al v., California Casualty Indemnity Exchange et al) etc;

## JURISDICTION

On December 19th, 2017, the U.S Court of Appeals for Fourth Circuit denied petitioners' timely Motion for rehearing and rehearing en banc.(Pet. App. 34a). On December 27th, 2017, the court issued mandate (Pet. App. 35a). On March 09th, 2018 Petitioners filed an Application (17A1032) to extend the time to file a petition for a writ of certiorari from March 19th, 2018 to May 18th, 2018. On March 29th, 2018 Application (17A1032) was granted by The Chief Justice extending the time to file until May 18th, 2018. This Petition is timely filed and the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and Supreme Court Rules 10(a), (b), (c). The case is related to other four appeals pending before this court not yet assigned a case Number. These related appeals are currently pending to be assigned a number under the following; Docket for 17A1035, Docket for 17A1034, Docket for 17A1033 and Docket for 17A1031. The Appeal is also related other appeals recently dismissed by the U.S Court of Appeals for the Fourth Circuit. (See U.S Court of Appeals for Fourth Circuit Docket #: 17-2031

Josephat Mua v. The Attorney General; Court of Appeals Docket #: 17-2029 Maryland; Josephat Mua v. Board of Education of PG Co; Court of Appeals Docket #: 17-2027 Josephat Mua v. Board of Education of PG Co.; Court of Appeals Docket #: 17-2025 Josephat Mua v. The O'Neal Law Firm, LLP; The appeal is also related to Josephat Mua v. The O'Neal Firm, LLP currently pending in the District of Columbia Court of Appeals 18-DA-0001; The Appeal is also related to the U.S District court case No. 8:11-cv-01198-PJM Mua v. Board of Education of Prince George's County currently pending in the U.S District Court. The appeal is also related to Petition Docket No. 406 September Term, 2017 which is under review by the U.S District Court of Maryland under U.S District court case No. 8:11-cv-01198-PJM Mua v. Board of Education of Prince George's County.

This Court has jurisdiction over the appeal in this cause under Title 28, United States Code, § 1291, which provides for an appeal from a final order of the U.S Court of Appeals for Fourth Circuit as well as the highest state court in Maryland and in Washington DC, and asserted under 28 U.S.C. § 133, as this case presents federal questions arising under Title VI and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq, the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681, et seq, as amended; and the Fair Debt Collections Practices Act (FDCPA), 15 U.S.C. 1692, et seq. This Court also has supplemental jurisdiction of state law claims under 42 U.S.C. § 1988.

## RELEVANT STATUTORY PROVISIONS

The National Origin Discrimination Act under Title VI and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq, Federal Arbitration Act ("FAA"), notwithstanding the provisions of the National Labor Relations Act ("NLRA"), the Fair Credit Reporting Act (FCRA), Fed. R. Civ. P. 23 and 29 U.S.C. § 216(b); the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq.; 15 U.S.C. 1681, et seq, as amended; and the Fair Debt Collections Practices Act (FDCPA), 15 U.S.C. 1692, et seq.is reprinted; Racketeer Influenced and Corrupt Organizations Act (RICO) under 18 U.S.C. § 1961. This Court has jurisdiction to hear this Case and to adjudicate the claims stated herein under Title VII, 28 U.S.C. § 1331, 28 U.S.C. § 1367

The Fourteenth Amendment provides in pertinent part "... 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 law ...".

The Maryland State Bar Rules of Professional Conduct provide in pertinent part ".... a lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent...."

The Maryland State Bar Rules under PREAMBLE: A LAWYER'S RESPONSIBILITIES states the following [1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

Under Federal Arbitration Act ("FAA"), it states in part that;

Arbitration clauses reflect the parties' preference for non-judicial dispute resolution, which may be faster and cheaper. These benefits are eroded, and may be lost or even turned into net losses, if it is necessary to proceed in both judicial and arbitral forums, or to do this sequentially. The worst possible outcome would be to litigate the dispute, to have the court of appeals reverse and order the dispute arbitrated, to arbitrate the dispute, and finally to return to court to have the award enforced.

## STATEMENT OF THE CASE

On or around May 12th, 2016, Petitioners Mr. Josephat Mua and Mrs. Francoise Vandenplas brought a civil action in the U.S Federal District Court against the Appellees California Casualty Indemnity Exchange and Marsden & Seledee and the State of Maryland after engagement in an organized scheme under color of law. On February 15th, 2017, the U.S District Court of

Maryland granted Motion to dismiss filed by Appellee California Casualty Indemnity Exchange (CCIE) and Marsden and Seledee ("MS") when there were issues in genuine dispute. (Pet. App. 1a) The District Court also granted Motion to strike the notice of removal and denied Motion for sanctions and for a pre-filing injunction and the clerk was directed to close the case. On March 20th, 2017, the U.S District Court issued an opinion after Appellants filed a motion for writ of mandamus (Pet. App. 2a-3a). On April, 4th, 2017, the U.S District Court issued an opinion finding no error. (See Pet. App. 4a- 18a). On April 24th, 2017, the U.S District Court denied Motion to reopen case even after new evidence was presented (Pet. App. 19a). On June 6th, 2017, the U.S District Court denied Motion for a three judge Court. (Pet. App. 19a-21a). On June 8, 2017, the U.S District Court denied Motion to Supplement Brief and Motion for Mandamus and mailed back documents without docketing the evidence. (Pet. App. 22a-23a).

The opinion of the U.S Court of Appeals for Fourth Circuit was issued on November 9th, 2017 (See Pet. App. 24a-26a) and affirmed finding no error as well. (Pet. App. 27a- a30). The Court issued a warning to the Petitioners when similar cases on appeal from the U.S District Court due to fraud were pending before the U.S Court of Appeals for Fourth Circuit. On November 16th, 2017, the U.S Court of Appeals for Fourth Circuit denied leave to file a supplement. (Pet. App. 31a). Stay of mandate by the court was issued on November 27th, 2017 (Pet. App. 32a). On December 1, 2017, the U.S Court of Appeals for Fourth Circuit denied Motion for leave to file evidence. (Pet. App. 33a). On December 19th, 2017, the U.S Court of Appeals for Fourth Circuit denied the petition for rehearing and rehearing en banc. (Pet. App. 34a). On December 27th, 2017, the court issued mandate (Pet. App. 35a). On December 27th, 2017, the court returned undocked evidence to the U.S District court (Pet. App. 36a). On January 2nd, 2018, the court denied Motion to stay mandate. (Pet. App. 37a).

Appellee State of Maryland engaged violations of Law in Maryland by interfering with Petitioners due process rights on multiple cases when the state covered up misconduct committed by Appellee M&S and CCIE in Montgomery County. The State of Maryland also engaged in cover ups involving Board of Education for Prince George's County. In the original case, the U.S District Court in Maryland dismissed Federal Case No. 8:10-cv-03291-PJM Johnson et al v. Prince George's County Public Schools et al and gave the Plaintiffs thirty (30) days to refile individual complaints in accordance with the Court's comments (See Federal Case 8:10-cv-03291-PJM Document 42 Filed 04/28/11 Page 1 of 1). Petitioner Mr. Mua filed Federal case

No.8:11-cv-01198-PJM on May 05/2011 in Maryland. This case was originally a collective and class action brought by Individual and Representative Petitioner Mr. Josephat Mua and others on his own behalf and on behalf of the members of the proposed classes identified in Federal Court (See Federal Case 8:10-cv-03291-PJM.). Named Petitioner Mr. Mua and putative class members are similarly situated under Fed. R. Civ. P. 23 and 29 U.S.C. § 216(b) and violations of Title VII as they suffered identical wage losses under this illegal pay policy driven by violations of Title VII in Maryland and extended to Washington DC through Appellee O'Neal Law Firm, California Casualty Indemnity Exchange (CCIE), Marsden & Seledee (M&S) and agents of state of Maryland working under color of law.

Petitioner Mr. Mua and Petitioner Mrs. Vandenplas are adult residents of Silver Spring, Maryland. Petitioner Mr. Mua is a former employee of Board of Education of Prince George's County (PGCPS) whose employment was terminated by Defendant Board of Education for Prince George's County on June 18th, 2010. Mr. Mua was, within the three years preceding the filing of this lawsuit, employed as a Technical Support Technician II. He was also a certified teacher with Tenure who worked for the Board of Education for Prince George's County at the same time. Mr. Mua's right to sue letter issued by EEOC on February 8$^{th}$, 2011 attached herein as (Pet. App. 38a) See U.S District Court Record Federal Case 8:11-cv-01198-PJM Document 57-1 Filed 03/15/12 Page 1 of 1 and is incorporated herein by reference. Petitioner Mr. Mua is a member of a labor union, ACE-AFSCME, Local 2250 (the "Union"). Petitioner's employment is governed by a collective bargaining agreement between Defendant PGCPS and the Union. Petitioners' contractual rights include the right to be discharged from employment only in accordance with the terms of the collective bargaining agreement, or such other regulations as may apply to Petitioner's employment and which constitute a part of Petitioner's employment agreement with PGCPS.

That, PGCPS, the State of Maryland, it's agents, three other Unions led by AFSCME International, ACE-AFSCME Local 2250, Maryland State Education Association, Dr. Lilian Lowery the former Maryland State Superintendent, Marsden and Seledee, California Casualty Indemnity Exchange (CCIE) and others engaged illegal services of Appellee O'Neal Firm in order to cause problems for Petitioner Mr. Mua in Washington DC in retaliation by filing falsified claims in violation of his union contract. The Board also engaged the services of Marsden and Seledee to filed falsified claims in Maryland at the same time. That, the Appellee

O'Neal Firm filed a frivolous law suit at the beckoning of the State of Maryland, PGCPS, the State Superintendent of Schools Dr. Lilian Lowery, AFSCME International, ACE- AFSCME Local 2250, MSEA, PGCEA Unions and other coconspirators to violate the rights of the Petitioner Mr. Mua and his family in Washington DC in addition to other violations occurring in Maryland. The tortious interference of lawyers Raouf Abdullah, Mr. Bryan Chapman, Mr. Robert Cappell, Mr. Mitch Batt, Antonnet Sunkari and others was part of an organized scheme to deny him and his family justice.

Petitioners Mr. Mua and Mrs. Vandenplas filed Complaint alleging violation of Title VII and in original suit and during administrative appeal Petitioner Mr. Mua stated he and a putative class and collective had been denied overtime wages and were facing discrimination and retaliation after grievances had been filed. PGCPS still continues to violate wage and hour laws and has been a willful violator for many years. The Federal court is currently reviewing issues with ties to this case. Petitioner Mr. Mua requested help from U.S. Senator Chris Van Hollen due to the nature of the violations without much success. PGCPS Supporting Personnel cannot be discharged except in accordance with the Disciplinary Action provisions of the Regulations for Supporting Personnel (the "Regulations," copy attached as Federal Case 8:11-cv-01198-PJM Document 83-2 Filed 06/28/12 Page 1 of 12). Those provisions require that when an employee appeals a notice of discharge, PGCPS must schedule an appeal hearing "not less than five (5) or more than thirty (30) working days after the receipt of the request." (Federal Case 8:11-cv-01198-PJM Document 83-2 Filed 06/28/12 Page 1 of 12, at Article VII, Appeals, par. 1.) PGCPS sent Petitioner Mr. Mua a letter dated June 18, 2010, discharging Petitioner from his employment with PGCPS. Petitioner Mr. Mua filed a timely Appeal of Notice of Termination. Petitioner sought to have a hearing scheduled within the mandated time period. Nevertheless, Defendants failed and or refused to schedule a hearing during the 30-working day time period required by the Regulations.

By letter dated October 14, 2010, counsel for Petitioner notified Defendants that almost four months had passed since Appellant submitted his Appeal of Notice of Termination, and that no hearing had yet been scheduled. (See U.S District court record Federal Case 8:11-cv-01198-PJM Document 79-4 Filed 06/15/12 Page 1 of 2.) Counsel further notified Defendants that their failure to comply with the contractual requirements of the Regulations constituted a material breach of Appellant's employment agreement with PGCPS. The letter demanded reinstatement, back pay, and lost benefits. By letter dated October 26, 2010, only in reaction to the correspondence from Appellant's counsel alleging breach of contract and demanding reinstatement, did PGCPS finally schedule an appeal hearing for Petitioner Mr. Mua. That appeal was scheduled for Friday, November 12, 2010. (See U.S District Record Federal Case 8:11-cv-01198-PJM Document 155-1 Filed 05/10/18 Page 1 of 1). (See Federal Case 8:11-cv-01198-PJM Document 79-5 Filed 06/15/12 Page 1 of 2); also Federal Case 8:11-cv-01198-PJM Document 83-4 Filed 06/28/12 Page 1 of 2); See Federal Case 8:11-cv-01198-PJM Document 79-6 Filed 06/15/12 Page 1 of 2; (See Federal Case 8:11-cv-01198-PJM Document 79-7 Filed 06/15/12 Page 1 of 3; In response to the proposed hearing date – which was scheduled for a date almost five (5) months after the June 18, 2010 decision to discharge the Appellant – Appellant's counsel contacted Mr. Roger C. Thomas, Esq., General Counsel for PGCPS. Appellant's attorney requested Mr. Thomas to agree to a stay of the administrative hearing while Mr. Mua submits his claim for breach of contract to the Court for its review. By letter dated October 27, 2010, Mr. Thomas refused to agree to the requested stay and maintained that the administrative hearing would proceed on November 12, 2010, as scheduled. (See U.S District Court Record Federal Case 8:11-cv-01198-PJM Document 155-2 Filed 05/10/18 Page 1 of 2). Petitioner filed on this date a Complaint for breach of contract, setting forth Defendants' material breach of the parties' employment agreement by failing to schedule an appeal hearing within the 30-day contractual period required by the Regulations. Petitioner seeks reinstatement, back pay, lost benefits, costs, and attorneys' fees. However, due to retaliation, PGCPS engaged the services of the Appellee O'Neal Firm, Thatcher Law firm, Bryan Chapman, Mitch Batt, Robert Cappell, Sunkari Antoinett, ASASP Union, Maryland State Education Association and others in this actions in retaliation in order to undermine Petitioner Mr. Mua and his cases in Maryland. "Absent the Court's intervention on an *ex parte* basis, Petitioner will suffer immediate, substantial, and irreparable harm if the administrative hearing is permitted to be held as scheduled on November 12, 2010", petitioner wrote through his counsel. The circumstances of Petitioners' appeal involve issues that are factually involved and substantively sensitive. Petitioner Mr. Mua's employment was terminated in retaliation for Petitioner's whistleblowing actions, identifying and complaining about substantial improprieties occurring in the PGCPS school system and Prince George's County government which continues to occur. An administrative hearing on Petitioner Mr. Mua's discharge appeal required more than six days of testimony by Petitioner and other potential witnesses familiar with the wrongdoing of which the Petitioner Mr. Mua complained long ago and which continues to occur. Such a proceeding has already been expensive for parties, disruptive, and a source of tremendous anxiety and consternation for Petitioner Mr. Mua as well as for potential witnesses who may be asked to testify about wrongdoing by PGCPS while still currently being employed by the school system.

In light of PGCPS's material breach of the parties' employment agreement and tortious interference of counsels including Appellee O'Neal Firm and other identified in this action, PGCPS and state of Maryland has waived the right to affirm its decision through a discharge appeal hearing, and Petitioner Mr. Mua should be reinstated. Petitioner Mr. Mua is appealing to this Court concerning these issues due to willful violations Appellees O'Neal Law Firm, Bryan Chapman, Maryland Office of the Attorney General, Maryland State Board of Education and others committed in the courts below. The review of this case at once with the other cases makes sense in order for the court to review all the issues and understand what has been going on.

In addition, Appellee O'Neal Firm and Marsden and Seledee was caught red handed carrying water for PGCPS and California Casualty Indemnity Exchange and the unions in the lower courts by filing retaliation lawsuits. There is enough evidence to pursue some of the claims in arbitration as the Appellee O'Neal law firm and Marsden & Seledee were used to engage in fraudulent activity working closely with others in Maryland and in Washington DC. That, the holding of an administrative hearings and review while this issue is pending before the Court has been divisive, expensive, time-consuming, and prejudicial to Petitioner Mr. Mua. Upon this Court's determination that Appellee PGCPS, State of Maryland, Marsden & Seledee, Appellee O'Neal Firm, Maryland State Education Association materially breached their obligations to Petitioner Mr. Mua, the court will hear the case as one case, reverse the adverse decisions and remand the case for jury trial. That, Petitioner Mr. Mua will be entitled to reinstatement and the review of the appeal hearing in this court will be rendered moot except issues for title VII to be reviewed and related claims in the Superior Court in Washington DC or the U.S Federal court in Maryland.

Defendant PGCPS working with Appellee O'Neal Firm, State of Maryland and other coconspirators delayed the scheduling of a hearing on Petitioner's discharge appeal for two (2) years and then sat on the case for years. Petitioners complained of fraud and tried without much success to remove cases to Federal court for help. (See U.S Record Federal Case 1:16-cv-01435-

ELH Document 23 Filed 07/15/16 Page 1 of 6 and exhibits of the two cases) Defendant PGCPS has had no legitimate interest in suddenly demanding the immediate scheduling of a hearing after being responsible for substantial delay while Appellant sought to compel his procedural rights. Defendant PGCPS cannot have it both ways – they cannot be permitted to delay scheduling Hearing when they deem it in their best interests to put Appellant off, but then when such a tactic backfires and justifies a demand for reinstatement, suddenly claim that a hearing must be held imminently and now raise other defensive mechanism to deny Petitioner Mr. Mua justice including filing misleading Motions to dismiss the cases below.

The lifting of stay of the U.S Federal District Court Case 8:11-cv-01198-PJM would serve the public interest in enforcing compliance by administrative agencies with their own administrative and contractual obligations to employees. When our public officials are permitted to deviate from their obligations at the expense of individuals, the result is increased cynicism by the public and an undermining of the individual's belief in principled, law-based government. Undersigned pro se litigant Mr. Mua through counsel spoke with PGCPS's General Counsel Roger Thomas, Esq., on Friday, November 5, 2010, and advised him that counsel would be appearing in Chambers on Monday, November 8, 2010, at 1:30 p.m. to present a Motion, and Mr. Thomas advised that he was available to appear at that time. A copy of the Complaint and Motion of the just the concluded case was emailed to Mr. Thomas on the morning of November 8, 2010, prior to being filed with the Court.

This Court and U.S Federal Court in Greenbelt Maryland is aware of the issues as the Defendant PGCPS mislead the court after tortious interference of counsels in the court previously. The Federal court was aware of the cases just concluded in the State court. (See U.S District Federal case 8:11-cv-01198-PJM Case Document 99-4 Filed 09/17/12). The Federal Court knew what the Defendant PGCPS strategy was. Now this court can review all issues in the best interest of justice. Petitioner Mr. Mua as a resident of Maryland has a right to fair representation and protection of his rights under the law. The Court first stayed this case until the administrative appeal process had ended in the lower court. (See U.S District Court record Federal case 8:11-cv-01198-PJM Document 81 Filed 06/19/12). That, Again the Court issued a ruling which was to the advantage of the Defendant PGCPS as the agents of the board engaged in cover ups and recruited other friends including the agents of the state of Maryland to facilitate the discrimination and retaliation with the help of Appellee CCIE and Appellee Marsden &

Seledee. That, Defendant PGCPS, State of Maryland and Appellee O'Neal Law Firm already knew the outcome of the administrative hearings on June 18th, 2012. The hearing was held after the deadline (which in itself was a breach of due process. The hearing examiner (administrative law judge Troll) issued flawed conclusions of law report which was not supported by the record and ignored overwhelming evidence of discrimination and retaliation.

That, the Defendant PGCPS working with Appellee O'Neal Firm and others failed to hold the hearing within the stipulated time frame "not less than five (5) days or no more than thirty (30) working days. – The Defendant held the hearing after two (2) years. Petitioner Mr. Mua immediately filed a grievance with the union after his termination. Petitioiner Mr. Mua received poor representations from the union which resulted in a determination that uphold the decision to terminate the Petitioner Mr. Mua after the Union ACE-AFSCME Local 2250 was interfered with by Maryland State Educator Association Attorney Mr. Damon Felton interfered with the arbitration. (See District Court Record Federal Case 8:11-cv-01198-PJM Document 155-3 Filed 05/10/18 Page 1 of 1) The union had demanded arbitration before termination occurred. (See District Court Record Federal Case 8:11-cv-01198-PJM Document 155-4 Filed 05/10/18 Page 1 of 1). Letter for wrongful termination was mailed out on June 22, 2010. (See District Court Record Federal Case 8:11-cv-01198-PJM Document 155-5 Filed 05/10/18 Page 1 of 1). That, under the terms of the collective Bargaining agreement and the Maryland School laws and Regulations, Petitioner Mr. Mua had a right to Appeal that decision to the Board of Education for Prince George's County (County Board) which he did on June 30, 2010. From June 30, 2010 to July 12, 2012 the Defendant PGCPS delayed the matter. The Defendant PGCPS conspired with the Appellant's legal counsels Mr. Raouf Abdullah, Bryan Chapman, Robert Cappell, Mitch Batt and others before this court to defeat justice by delaying the administrative hearing after it begun and interfering/tampering with transcripts after closely working with Bradford Associate/ BDR and agents of the state of Maryland to derail justice by eliminating those parts which were prejudicial to the Appellee PGCPS. That, after the Petitioner Mr. Mua filed a court action, then Defendant PGCPS then scheduled a hearing. Petitioner Mr. Mua believes that this was just pretext for continuing to delay this matter and cause Petitioner Mr. Mua further harm. The hearing which was scheduled on June 14, 2012 was scheduled only to allow Petitioner Mr. Mua only ten minutes to make his final arguments; however, a decision from the state board took another one and half years and failed to resolve the issues due to conflict of interest by President

Charlene Dukes was awarded U.S 10 million dollars to start a charter school by Dr. William Hite Jr. Petitioner Mr. Mua sued the State Superintendent of schools, Dr. Lillian Lowery, Dr. Kevin Maxwell, Dr. Alvin Crawley, Abbey Hairston and others involved in the violations of the law against the Petitioner Mr. Mua in the U.S Federal court. However, the U.S Federal Court failed to issue summons in the case to the dismay of the public. Part of that case is being applied will be pending in this court. Petitioner Mr. Mua and his wife Petitioner Vandenplas has suffered enough and his ambition in life is to work hard to support his family and maintain his good name. The Defendant PGCPS and Appellee O'Neal Law firm working with others in Maryland have taken away Petitioner Mr. Mua's ability to support his family and have tarnished his good name in retaliation.

Petitioner Mr. Mua as an immigrant to this country worked hard to get an education and to be a good citizen. He is requesting this court and as a court of last resort to review the violations to make sure justice is done. Appellee O'Neal Law firm, State of Maryland, Marsden & Seledee, CCIE and other Appellees have been getting away with these deliberate violations. That, the EEOC issued the Petitioner Mr. Mua the "right to sue letter" as shown (See U.S District Court Record Federal Case 8:11-cv-01198-PJM Document 57-1 Filed 03/15/12 Page 1 of 1). The Appellant Mr. Mua filled cases in Federal court within 90 days as required by the statue. In this regard, Appellant Mr. Mua requests this court to stay the proceedings so that all issues could be resolved at the same time by the U.S Supreme Court and the U.S District Court in Maryland. That, Ineffective legal representation was a basis for some of the cases being dismissed after the State of Maryland officials working under color of law engaged in retaliation and failed to deliver the entire record to the Prince George's County Circuit Court in retaliation. That, there has been a pattern of lawyers committing misconduct led by Appellee O'Neal Firm and failing deliberately to represent the Petitioner Mr. Mua even in the basic lay out of a defense. Several "deliberate" missteps were performed by different lawyers working closely with the Defendant PGCPS and Appellee O'Neal Law firm at different stages of the Petitioner's cases in Maryland. Some of the misleading took place in the U.S Federal court in Maryland after the court dismissed (Negligent Supervision and Retention) which was not part of the complaint. (See U.S Federal case 8:11-cv-01198-PJM Document 15 Filed 11/01/11). That, the U.S Federal court in Greenbelt Maryland also cited ineffective representation or lack of competence on the side of lawyers during the earlier hearing involving Mr. Bryan Chapman who was working closely with

Appellee O'Neal Firm. That, the Defendant PGCPS, Appellee State of Maryland and Appellee O'Neal Firm, Marsden & Seledee abused the legal process by conspiring with other attorneys who engaged in misconduct in Maryland at the beckoning of the Unions, Defendant PGCPS and others engaged in public corruption in Maryland in order to defeat justice. They also played with legal technicalities and misled the Federal court and the lower courts in order to have the courts dismiss actions stayed by the order of the Courts issued on August 14th, 2014 and June 18th, 2012. Appellee O'Neal Firm, Bryan Chapman, Mitch Batt, Raouf Abdullah, Robert Cappell, ASASP, MSEA, blatantly abuse the judicial court system should not be dismissed without reviewing all the factors. For Example, the Court was suggesting that the Board of Education (BOE) was going to reinstate the Petitioner Mr. Mua which was one of the reasons why he was dismissing the wrongful termination with prejudice in Maryland after appellee O'Neal Law Firm, Bryan Chapman, Mitch Batt et al engaged in misconduct in both state and Federal courts. Petitioners respectfully request this honorable Court to issue a Writ of Certiorari. That, the whole administrative hearing process led by Appellee O'Neal Law Firm, State of Maryland, PGCPS turned out to be a judicial farce. Facts on the ground have vindicated the Petitioner Mr. Mua's allegations that the BOE members in PGCPS and the Board staff were corrupt as most staff are mentioned in the Petitioner's case have since subsequently been terminated for corruption and other offenses. PGCPS CEO Dr. Kevin Maxwell is resigning due to public corruption. That, under Dr. Kevin Maxwell, the Public corruption has been very high than any other time and in the history of PGCPS. That, Petitioner Mr. Mua request this court to review the rulings and help lift the stay in the original case in order to have a jury trial. Petitioner Mr. Mua requested Governor Larry Hogan to launch immediate investigations of all corruption cited by the Petitioner Mr. Mua as report has already been made with the police and the FBI sometimes ago. Currently there is an ongoing investigation concerning fraudulent grade changes and a petition pending to be forwarded to the Maryland Governor. (See https://www.ipetitions.com/petition/no-confidence-vote-on-dr-kevin-maxwell-and-a#.Wuax6qwdtlU.twitter) That, Petitioner Mr. Mua has requested the Federal Court to order an examination of the issues and if the Federal Court finds investigations are not required based on the evidence presented, the court should let the jury decide on the issues based on the evidence presented before the Court already. That, in the interest of Justice, Petitioners Mr. Mua and Mrs. Vandenplas requests the court to issue a Writ of Certiorari as this case is based on major violations currently underway in Prince George's

County in which the current CEO Dr. Kevin Maxwell with major ties to this case has offered to resign at the end of this school year.

Petitioners' appealed this case in good faith due to urgent issues interconnected and due to judicial concerns. The case also presents first impression in this court. Petitioners present this opportunity to use the well-reasoned rationale of persuasive authority as well as public policy arguments to advocate their position in the interest of the public.

A review of this case by this court is justified and prudent because some intervening circumstances involving the state of Maryland, the respondent Board of Education of Prince George's County, California Casualty Indemnity Exchange, the International Union (AFSCME) et al, Prince George's County, Mr. Roger C. Thomas, Esq. (former Chief Legal Counsel for Board of Education of Prince George's County), the Court of Special Appeals for Maryland and the Federal Court personnel in Greenbelt Maryland are engaged in a conspiracy to defeat justice.

Petitioners respectfully argues this court to review this case in the interest of justice due to the violations of law by the state of Maryland. The removal of related cases due to Fraud was proper because the Petitioners sought to enjoin actions which were currently in progress in the U.S District Court in Baltimore and in Greenbelt Maryland. The U.S Court of Appeals for the Fourth Circuit failed to review and instead chose to award the appellees who engaged in misconduct. (Documents showing fraud can be found at Mua et al v. Maryland et al Appeal: 17-1426 Appeal: 17-1426 Doc: 28 Filed: 07/24/2017 Pg: 54 of 152)

## BLACKBALLING

Since 2011, Petitioner Mr. Mua has been blackballed by the State of Maryland institutions due his opposition to corruption in Maryland. Petitioners Mr. Mua and Mrs. Vandenplas filed this case due to misconduct by the Appellees after the State of Maryland engaged in concealment of the Documents filed in Montgomery County and in every court in Maryland. There is a casual connection with the misconduct and the violations committed by the appellees. The Federal Courts below had ties with the Maryland court of special appeals were most of the misconduct took place. This case was initiated in part due to violations by the state of Maryland and the actions of Maryland Court of special appeals. Part of the problem was the local ties to this dispute which are interconnected to the Former Chief legal counsel of the Board of Education for Prince George's County Mr. Roger Thomas Esq.

Even though Mr. Roger Thomas does not work directly for the Board of Education for Prince George's County anymore, he controls large parts of the court system within Maryland and beyond and still works for Board of Education for Prince George's County as a contractor. After having been fired for misconduct and fraud which was widely publicized by Washington Post. In his website, he lists as being currently the chairman of the Character Committee for the Fourth Appellate Judicial Circuit, and formerly served as deputy People's zoning Counsel for Prince George's County, Maryland. Throughout litigation against Mr. Roger Thomas starting with various cases in Prince George's County Circuit Court, Mr. Thomas has committed various aspects of real fraud and misconduct initiated during the administrative appeal hearing which is now part of this case. For Example, Mr. Thomas working under color of law changed the job description during administrative appeal to cover up illegal acts of the Board of Education. Evidence was presented below but was ignored. Other Aspects in which the Maryland court of Special appeals ignored overwhelming evidence is the finding that Petitioner Mr. Mua was not prejudiced. During the administrative appeal and the hearing in the state Board of Education for Maryland, Petitioner Mr. Mua did raise these issues that witnesses had died, others moved away as shown in the District court record

The court of Special Appeals for Maryland issued several diverse opinions which was in retaliation after Petitioner Mr. Mua reported to this court failure to adjudicate and finalize administrative appeal by court of special appeals due to conflict of interest. In U.S Court of Appeals for Fourth Circuit Docket #: 15-2048, shortly after that, the Maryland court of special appeal issued a back dated order with a falsified stamp and mailed a copy to the Petitioner Mr. Mua on or around December 10th, 2015. The Maryland Court of Special Appeals ignored overwhelming evidence of discrimination, breach of contracts, violation of FMLA, tortious interference of counsels and other violations due to retaliation.

On or around August 15th, 2011, Appellee Mitchell Batt working closely with the retired Hon. Judge Sherrie L. Krauser, Associate Judge, Prince George's County Circuit Court, 7th Judicial Circuit and Mr. Roger Thomas worked closely to have cases filed in Prince George's County Circuit Court dismissed. See Mua v. Board of Education of Prince George's County CAL1035227 and CAL1030484. Mr. Batt with others engaged to undermine the rights of Petitioner Mr. Mua. Retired Hon. Judge Sherrie L. Krauser who initially oversaw the case is married to now retired Chief Judge Krauser who issued the diverse opinion in the administrative case recently and ignored the overwhelming evidence. There was an ongoing relationship between Appellee Mr. Batt, Thatcher Law Firm, the O'Neal Firm and others which is something this court should review in the best interest of justice.

In addition, Petitioner Mr. Mua faced retaliation from the clerk of the court for Maryland court of Special Appeals Mr. Greg Hilton after he send the email to him clarifying the issues on April 22nd 2016. When petitioner Mr. Mua arrived on Monday April 25th, 2016, the Deputy clerk was very upset for sending the email exposing the situation that employees had left early. Petitioner Mr. Mua remained calm throughout the ordeal and it took an intervention of an older assistant clerk to calm the Deputy Clerk down after she confirmed to her that Petitioner Mr. Mua was there on April 22nd, 2016. Then she calmed down.

Other illegal conduct involves the Appellee working closely with Mr. Roger Thomas to conceal Petitioners briefs filed in state court in Maryland and interference of his previous lawyers to hide critical documents. This is part of a wider scheme to make sure petitioners fail and never succeed. Petitioner Mr. Mua has noticed the speed in which opinion documents involving their cases are quickly uploaded and the local newspaper in Annapolis uploads to their sites misleading the public information which is defamatory compiled by the court in retaliation to mislead the public. Petitioners have a right to fair trial. Even though Petitioners respect the courts, they disagree with many of the misleading opinion issued in retaliation because Petitioner Mr. Mua complained. Petitioners have a right to fair trial which is explicitly proclaimed in Article 10 of the Universal Declaration of Human Rights, the Sixth Amendment to the United States Constitution, and Article 6 of the European Convention of Human Rights.

The latest violation involves Appellee CCIE in which Petitioners have become aware that CCIE conspired to enrich themselves through a scheme by transferring Petitioners to progressive insurance (a company they own and control) and then charged the petitioners at higher rate in retaliation. Petitioners were forced to change home insurance to another insurance. The continuous violations by appellees are ongoing. The petitioners' car insurance coverage remains with the same Progressive which is controlled by CCIE. For Example, after the U.S Court of Appeals for Fourth Circuit dismissed Court of Appeals Docket #: 16-1584 on December 1, 2016, shortly after that, California Casualty Indemnity Exchange conspired with Farmer insurance to have Petitioners transfer their car insurance to Farmer insurance in California. Petitioners received several calls on weekly basis including on December 12, 2016 – Time 4:29;

Telephone - 426-565-3232; December 14,2016 - Time 2:24 – Telephone- 426-565-3232; December 15, 2016 -Time 9:20- Telephone 213-336-3199; This latest attempt is to try and conceal their illegal activities which have been ongoing for a while. There are many situations in which the petitioners have been affected which is a violation of their rights.

## REASONS FOR GRANTING THE WRIT

**Issue 1.** Should Title VII protect an employee from retaliation for informing his employer of racially offensive workplace conduct that, if repeated often enough, would create a hostile work environment?

**Issue II.** If a court rules that the Appellant has not offered sufficient evidence to establish a hostile-work-environment claim, does that ruling necessarily preclude the Petitioner from showing that he reasonably believed that the harassment he complained about was unlawful?

**Issue III.** Can a Court ignore Due Process violations involving the Appellees and others connected to the dispute due to organized schemes be awarded attorney fees in light of willful misconduct in state and in Federal courts?

**Issue IV.** Whether the U.S Federal Court can ignore Fraudulent Joinder of the claims which arise out of the same transaction, series of transactions, or occurrence?

**Issue V.** Whether it was proper for the lower court to dismiss the action after significant misconduct by the Appellees working with the state agencies and others under color of law to violate rights guaranteed by the U.S Constitution?

**Issue VI.** Whether the Federal Courts can endorse Criminal behavior and award attorney fees to the appellees and whether judgement obtained by unlicensed Debt collector is void.

## A. CAUSES AND OPERATING FACTS COURTS OVERLOOKED.

Addressing Petitioner Mr. Mua's hostile-work-environment claim first, the Court should review and acknowledge that interference of counsel in the middle of a title VII Claim is —indeed highly offensive and name calling Petitioner Mr. Mua out of his name derogatory and done in retaliation which is highly offensive. This is because Petitioner Mr. Mua paid more than $300,000 in attorney fees, but the state Board of Education in Maryland ruled against him due to conflict of interest after Dr. Charlene Dukes received $10 million for Charter school.

In addressing Petitioner Mr. Mua's retaliation claim, the state Court did not address the Title VII issues presented in this court. That an employee who reports offensive conduct is not protected from retaliation? Petitioner Mr. Mua has an objectively reasonable belief that the conduct he is reporting has created an actionable hostile work environment or he has a basis for concluding it is likely to create such an environment if left unchecked under such personnel with a history of retaliation and sexual harassment such as Mr. Calvin Hawkins who has been convicted before by Federal Court of same violations. (See Federal Case 8:09-cv-03431-PJM Document 1 Filed 12/23/09 Page 1 of 17). Mr. Calvin Hawkins continues to engage in same conduct and have made a female Sherriff Tara Maxwell to quit her job due to retaliation this year (2018). Mr. Hawkins who is a friend to the County Executive Rushern Baker III is heavily protected by the establishment in Prince George's County. There was no analysis proper analysis, hearing or discovery done to address the issues which are ongoing. This court should review the record of this case and let it proceed based on evidence.

During the Union administrative appeal, Donald P. Kopp, Member dissented as to Mr. Mua's claims.(See *Federal Case 8:15-cv-02249-PJM Document 5-6 Filed 09/14/15 Page 1 of 5*) He disagreed with the panel majority that dismissal of his case concerning multiple violations connected to his hostile-work- environment. (See also https://laborboards.maryland.gov/wp-content/uploads/sites/9/2014/05/PSLRB-SV-13-08-Dissent-Kopp-5.29.13.pdf.) He argued that "there is no specific statement from the union at any of the times indicated in the majority list of dates when charging party should have known that identifies why charging party should have known at that particular time. There is no standard identified for reaching such a conclusion. To the contrary, Appellant received repeated reassurances from the President of the Union Ms. Shirley Adams, an official in whom he should have been able to rely. Ultimately, I believe it was reasonable for Appellant to rely on the promises and reassurances provided to him by the highest elected official of the union. Thus, I am not satisfied that another reasonable person, without benefit of hindsight, should have known sooner than charging party did that the union would not honor its promises. That being the case, I believe the charges were timely filed. But the lower court failing to correct after Appellant Mr. Mua's lawyers were compromised, it creates issues for this court and the public. Appellant Mr. Mua has been on this case now for more than ten years. As problems begun in 2006. The court should either refer this case for settlement or to the jury for trial on merits since the county has shown a wiliness to settle the issues. The same goes with the Maryland Attorney General. Appellant Mr. Mua recently met with Maryland Attorney General Brian Frosh and Maryland Senator Chris Van Hollen concerning major violations of the consumer in Maryland and they will be reviewing the issues. In the interest of justice, the court should reopen the case or refer the case for mediation in the interested of justice.

**Issue I. Should Title VII protect an employee from retaliation for informing his employer of racially offensive workplace conduct that, if repeated often enough, would create a hostile work environment**

This Court has held that an employee who reported offensive workplace conduct to his employer is not protected against retaliation unless he had, at the time, an objectively reasonable belief that the offensive conduct he was reporting was severe or pervasive enough to create an actionable hostile work environment or that a plan to create such an environment was being implemented. Appellant Mr. Mua reported offensive conduct because it was severe and pervasive enough to create a hostile work environment. Appellant Mr. Mua presented evidence to the court and it was not reviewed which caused prejudiced due to the delays.

This significant restriction on Title VII's protection against retaliation conflicts with the duty that employees have under Title VII to avoid or minimize their damages and obstructs the process that the Supreme Court has prescribed to enable employers to fulfill their duty to protect their employees from hostile work environments. The Petitioner Mr. Mua therefore urges this Court to consider the rule adopted previously by this court and hold that employees engage in protected opposition for retaliation purposes if they complain about racially offensive conduct that would create a hostile work environment if repeated often enough.

A.) **Victims of harassment have a duty to report the harassment to their employers before the harassment creates a hostile work environment.**

Harassment victims, like tort victims, have a duty to avoid or minimize damages, and that means they have a duty to report racially offensive conduct *before* it becomes actionable. The Supreme Court made this duty clear in *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998). Title VII, the Court noted, —borrows from tort law the avoidable consequences doctrine.‖ *Ellerth*, 524 U.S. at 764. A harassment victim therefore —has a duty to use such means as are reasonable under the circumstances to avoid or minimize the damages'that result from violations of the statute.‖ *Faragher*, 524 U.S. at 806. The only way he can avoid those damages is to report the harassment to the employer before it becomes actionable. Indeed, he cannot recover damages that he could have avoided had he reported the harassment earlier. *Id.* at 806–07 (—If the Appellant unreasonably failed to avail himself of the employer's preventive or remedial apparatus, he should not recover damages that could have been avoided if she had done so.‖). *Faragher* and *Ellerth* involved harassment by supervisors, but a victim of co-worker harassment has the same duty to alert the employer to the harassment, so the employer can address it. *Howard v. Winter*, 446 F.3d 559, 567 (4th Cir. 2006) (—‗[T]he law against harassment is not self-enforcing and an employer cannot be expected to correct [co-worker] harassment unless the employee makes a concerted effort to inform the employer that a problem exists.'‖). Since harassment victims have a duty to avoid damages by reporting the harassment before it becomes actionable, § 704(a) should be interpreted to protect such complaints. 42 U.S.C. § 2000e-3(a).

Conversely, employees have no duty to endure harassment silently until they can form an objectively reasonable belief that an actionable hostile environment is present or imminent, and neither of Title VII's principal objectives—preventing discrimination and making victims whole—is served by requiring them to do so. And by depriving such employees of protection from retaliation, the *Jordan* rule undermines these principles. The Supreme Court expressed the concern in *Crawford v. Metropolitan Government of Nashville*, 555 U.S. 271, 279 (2009), when it stated that § 704(a) should not be interpreted to leave employees in a catch-22 between not reporting harassment and reporting harassment with no protection against retaliation.

**Issue II. If a court rules that the Appellant has not offered sufficient evidence to establish a hostile-work-environment claim, does that ruling necessarily preclude the Petitioner from showing that he reasonably believed that the harassment he complained about was unlawful?.**

The primary objective of Title VII —is not to provide redress but to avoid harm. ‖ *Faragher*, 524 U.S. at 805–06. Employers have a duty to prevent and avoid violations of Title VII by supervisors. *Id.* at 806. Similarly, if employers do not address co-worker harassment they know about or should have known about, they can be held liable under a negligence theory. *Howard*, 446 F.3d at 567. But in either case employers often cannot prevent hostile work environments from taking place unless employees alert them to the harassing conduct that, if not corrected, will create the hostile work environment.

Employee complaints about racially offensive conduct that is not yet actionable are therefore essential to enable employers to avoid violations. —If Title VII's prohibitions against sexual harassment are to be effective,‖ this Court has acknowledged, —employees must report improper behavior to company officials.‖ *Matvia v. Bald Head Island Mgmt., Inc.*, 259 F.3d 261, 269 (4th Cir. 2001); *see also Howard*, 446 F.3d at 567 (—‗[A]n employer cannot be expected to correct [co-worker] harassment unless the employee makes a concerted effort to inform the employer that a problem exists.'‖). The Supreme Court accordingly stated in *Ellerth* that —Title VII's deterrent purposes‖ would be best served if employees —report harassing conduct *before it becomes severe or pervasive*.‖ 524 U.S. at 764 (emphasis added). Indeed, putting aside Appellant Mr. Mua's termination, this appeal-and-correction process apparently did not work the first time around: Mr. Mua complained about hostile discriminatory work environment and offensive conduct; the employer failed to investigate and instead engaged in cover up including paying off attorneys hired by the Appellant Mr. Mua in order to keep everything under wraps. Due to the delay of the case, witnesses have died starting with the Union Director Mr. Richard Putney, Tapsiru Conteh who was beckoned to testify against Appellant Mr. Mua has also died. He was willing to testify in court before he died suddenly here in Prince George's County.

In addition, it often happens that the harasser harasses more than one employee, but no one victim knows about (or has admissible evidence showing) all the instances of harassment. An employer trying to forestall actionable hostile work environments would want to know that several employees independently find the harasser's conduct racially offensive. For this reason, also, employees are encouraged to report racially offensive conduct before it becomes actionable, and they should be protected from retaliation if they do so. As the Supreme Court has stated, —Interpreting the antiretaliation provision to provide broad protection from retaliation helps ensure the [employee] cooperation upon which accomplishment of the Act's primary objective depends.‖ *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67 (2006).

Under the —if repeated‖ standard, the district court should reopen the case on Appellant Mr. Mua's retaliation claim. Loudly and angrily calling Appellant Mr. Mua "Zamuda", "Felix Mbemba" and go back to Africa are racially offensive conduct that if repeated often enough would result in a hostile work environment. *See White v. BFI Waste Servs., LLC*, 375 F.3d 288, 297 (4th Cir. 2004) (finding sufficient evidence of a hostile environment where Appellant 's supervisors repeatedly called him and other black employees —porch monkey‖ as well as —nigger,‖ —jigaboo,‖ and other racial slurs); *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir. 2001) (—To suggest that a human being's physical appearance is essentially a caricature of a jungle beast goes far beyond the merely unflattering; it is degrading and humiliating in the extreme.‖); *Tawwaab v. Virginia Linen Serv., Inc.*, 729 F. Supp. 2d 757, 776 (D. Md. 2010) (―[C]omparing an African-American to a monkey is a degrading and outrageous form of race-based harassment.‖). Mr. Pierre Dickson was both direct and indirect supervisor of Appellant Mr. Mua, but he was more powerful at the Help Desk than Shanita Anderson was, and he was involved romantically with Shanita Anderson and other female coworkers in PGCPS.

**Issue III. <u>Can a Court ignore Due Process violations involving the Appellees and others connected to the dispute due to organized schemes be awarded attorney fees in light of willful misconduct in state and in Federal courts?</u>**

The U.S Court of Appeals for Fourth Circuit awarded attorney fees to the Appellees in violation of due process of the law. This honorable Court should review the numerous violations committed by the appellees and reverse. Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. (*Marchant v. Pennsylvania R.R., 153 U.S. 380, 386 (1894)*) Exactly what procedures are needed to satisfy due process, however, will vary depending on the circumstances and subject matter involved. (*See Hagar v. Reclamation Dist., 111 U.S. 701, 708 (1884)*) A basic threshold issue respecting whether due process is satisfied is whether the government conduct being examined is a part of a criminal or civil proceeding. The appropriate framework for assessing procedural rules in the field of criminal law is determining whether the procedure is offensive to the concept of fundamental fairness. In civil contexts, however, a balancing test is used that evaluates the government's chosen procedure with respect to the private interest affected, the risk of erroneous deprivation of that interest under the chosen procedure, and the government interest at stake. Petitioners in this case have been denied due process rights which is guaranteed under the law. The lower courts failed to review and enforce contracts which the Appellees CCIE violated in this case. The Court also failed to hold a hearing in this case in violation of fundamental rights of the Petitioners. There were many violations in the Courts below including withholding of mail, change of time stamp on official documents by the State of Maryland officials working under color of law. Petitioners raised these issues with the courts but were ignored. Courts interpret contractual agreements between parties. Sometimes the parties dispute over the meaning of the contract, and sometimes the dispute concerns an infraction against the rules that hold people accountable to the contract. No matter whether the dispute is about a criminal activity or a civil action, each individual party to the process, litigant, is guaranteed a protected right to due process. The Constitution, the people's contract with the government, enumerates this protection no matter the race, gender, age, socioeconomic status, or personal ability of any individual involved in a legal dispute. Not only is each individual to receive due process (equity and standardization of procedure), they are also to be treated equally by the judicial system in spite of any factor of birth, situation, or circumstance.

**Requirement of Fundamental Fairness**

It is well-settled that a "fair trial is a basic requirement of due process" and this fundamental concept "applies to administrative agencies as well as courts". The past few years have certainly been traumatic for Prince George's County Public Schools. Educators such as Petitioner Mr. Mua, parents, and students in PGCPS have had to weather the storm after storm after storm. For most of the issues that have come across the public's attention, there are parallels with other school districts. Yet there is one issue that in its scope is truly unique to Prince George's County Public Schools: the placement of hundreds of its staff on administrative leave, often for many months at a time, during the 2010-2017 school years. In this case, Defendant PGCPS failed to submit entire record including transcripts for the hearing during the local board hearing to the Maryland state level. (See Federal Case 8:15-cv-02249-PJM Document 27-13 Filed 12/28/15 Page 1 of 2)

It is difficult to find another district that had an administrative leave crisis like this one. In 2014, the Baltimore Sun reported leave statistics for some other districts in the region, (see http://www.baltimoresun.com/news/maryland/sun-investigates/bs-md-warehousing-teachers-20140927-story.html) with Baltimore County taking the lead at 230 employees on leave in a year at a district similar in size to PGCPS. Most recently, Providence Public School District in Rhode Island had a spike in administrative leave cases this year involving new reporting requirements. However, the district revised its policy by the middle of December, as it was quick to recognize the inherent problem in having too many teachers on leave.

In the case of Prince George's County, a whole school year went by and local news outlets had to run several stories before district leaders would even acknowledge that there was a problem. In fact, a June 1, 2017 release from PGCPS defended the district's handling of the situation, saying "No price is too high for a child's well-being."

It's an interesting statement, considering the thousands of students whose academic well-being were harmed by the sudden departure of their highly qualified teachers, often for weeks or months at a time. Not only did the leave situation cost the district almost $10 million, it also did serious damage to the academic progress of students in all grades. Substitute teachers work hard in challenging circumstances, but they are not paid to be the full-time professionals that are expected to be there to serve the students of Prince George's County. There have been varying reports of the number of teachers on leave in 2016-2017. The Washington Post and Fox5 News outlets reported the number to be over 900 total employees placed on leave after Board member Edward Burroughs III spoke out. Recently, the Prince George's County Education Association (PGCEA) has stated in its communications that hundreds of teachers and more than 600 have been placed on leave without due process of the law. If we take the PGCEA figure, multiply that by five instructional hours in a day, and then multiply that figure by a ballpark estimate of 50 instructional days lost per teacher on leave, the product is 75,000 hours of lost instruction by certified teachers. The impact is then multiplied by the number of students affected. While many elementary school teachers are in self-contained classrooms, PGCPS often has students in upper elementary grades go to different teachers for different subjects, and teachers at this level often interact with 50 or more students on a daily basis. Middle and high school teachers frequently teach six classes, with their impact reaching well over a hundred students.

Of course, that scenario didn't happen in just three schools. Instead, this was diffused among one of the largest districts in the nation. However, the impact would have been much the same as thousands of students across the district faced academic uncertainty. Administrative leave of public employees should be an act of last resort, and often when it happens it is newsworthy. By putting hundreds of staff on leave, PGCPS created an overwhelming situation where no individual case seemed newsworthy but collectively the cases caused a massive problem.

For many PGCPS students, the loss of instruction over such a length of time can have long-term effects no wonder the PGCPS Management has resorted to fraud to boost graduation rates which has been investigated and the county found to have been involved. Students who lose months or weeks of quality instruction at any grade can feel the impact for years to come as they get promoted to higher grade levels without having adequate instruction to prepare them for the next level. While much has been made of the graduation rate scandal in PGCPS, the administrative leave issue can have effects on academic performance and graduation rates for years to come, very likely dwarfing the impact of the graduation rate scandal. Again, there is a diffusion effect, as the administrative leave crisis creates problems over the course of many years. Concentrated problems get noticed, but diffused problems can be more deadly. A key point is made in the PGCEA communications. In the union's statement on the current PGCPS board structure, the first problem cited was, "More than 600 educators placed on administrative leave in 2016-17 without due process and at the expense of stable student learning."

**ARGUMENT AND OTHER LEGAL BASIS**

The key legal basis is a Supreme Court decision in 1985 in *Clevleand Board of Education v. Loudermill*. Essentially, the decision in this case determined the employment of public sector employees can be considered a type of property right, and disciplinary action that may affect that right must be preceded by some sort of hearing prior to a suspension or termination that would affect the employee's income. Before the hearing, the employee should be given an explanation of the charges against them and an explanation of the employer's evidence. (See an example of a Loudermill letter template from another organization (See https://www.umass.edu/humres/sites/default/files/NOTICE%20OF%20LOUDERMILL%20HEARING%20TEMPLATE.pdf) The employee must then be afforded the opportunity to respond and present their side of the story. This process, when done correctly, should greatly reduce the amount of false positives found in employers' investigations. Case law has set the standard quite low for what is required of a public employer (See McDaniels v. Flick and Duchesne v. Williams). However, the court would expect our school district to uphold the highest of standards for our students and the employees that serve them, hweverthat is not the case as set forth in this article. (http://mrsc.org/Home/Stay-Informed/MRSC-Insight/Archives/Taking-the-Mystery-out-of-Loudermill-Meetings.aspx)

The agency within PGCPS that is responsible for coordinating investigations and disciplinary decisions is the Employee Labor Relations Office. This office was not overwhelmed in 2010 and might have been would have been overwhelmed with cases in the 2016-2017 school year. However, having a backload of cases does not absolve any agency from its legal requirements. Perhaps this is what PGCEA was getting at in their statement. If the Employee Labor Relations Office did not fulfill their Loudermill obligations in each and every case, then PGCPS has neglected its responsibilities. It is not enough to merely call something a Loudermill hearing. It must follow the guidelines set forth. It also must be based in already established PGCPS

Administrative Policies. The full contents of these policies can be found here.>> (See http://www.pgcps.org/administrativeprocedures/ )

Further complicating matters is the Administrative Procedure dealing with administrative leave, A.P. 4156, which was revised on August 8, 2017. This procedure (as written during the 2016-2017 school year, as this section was amended for the revised version) states, "When temporary administrative leave is granted, the requesting manager will ensure that the affected employee is advised to remain at home and away from all PGCPS property and functions, until advised otherwise by the Employee and Labor Relations Office." There are obvious logical reasons for this statement, but there is a major side effect when hundreds of staff are on leave for months at a time. There is a risk for an employee on leave in having any communication with colleagues, as that could be perceived as interfering with the investigation. However, investigative delays do not prevent others who are at the school from communicating about the events in question and altering their understandings. This provides an inherent disadvantage for the accused.

As the number of cases mounted, there would have been an incentive to make sure that the added leave proved greater finding of wrongdoing. This creates an investigative bias. If the number of leave cases increases by 600%, there should be a correlated increase in determination of guilt. Could there have been investigative error in trying to achieve this balance, whether conscious or unconscious? Certainly, that is a possibility. The court therefore should reopen this case to determine what has been happening and to issue direction for the entire district to follow due to ongoing major corruption currently underway in Prince George's County.

The court should reopen and review all issues to make a proper determination. But again, what happens when Witnesses die, and the state court of appeals fails to correct the issues after prejudice? As already shown, the 2016-2017 administrative leave situation has long-term impacts on both students and staff, and a full accounting is necessary. Recently, the graduation rate scandal led to an audit commissioned by the state Board of Education. Whether done by an outside entity or done internally and transparently, PGCPS should provide for a complete review of what happened, so remediation, where applicable, can take place. This review should be supported by this court, all administrators, board members, legislators, and other public officials as a way for PGCPS to rebuild confidence with the public and its employees. Already a petition to the Maryland Governor Larry Hogan is underway.

What would such a review look like? First and foremost, it would identify the staff who are victims of retaliation and discrimination as this is a county wide issue. The report would also identify students in PGCPS who spent a significant part of their year without a regular teacher or support staff in a critical academic subject. Those students and their families should be offered some sort of extra academic assistance if they are found to be having difficulty in later years in that critical academic subject. Not only would this be great to the public, but it could also benefit graduation rates in the coming years and build confidence with employees. In addition, a review of this case should establish whether or not the Appellant truly received due process as required by public employees' Loudermill rights and the district's own administrative procedures. If due process was not granted and/or policies were not followed in an employee's investigation and a disciplinary action was taken, that action should be reconsidered. This is what Administrative law Judge Brian Zlotnick found when he reviews the issues and ordered the School system to reinstate the Appellant. That, if Appellee Maryland, M&S, CCIE, Appellee PGCPS seeks to move forward from tumultuous times, it would do well to make things right by the students and staff affected by this situation. While there are many differing opinions on how the district should be governed, surely, the court should review and agree that acknowledging mistakes and seeking to rectify them is a value we wish to instill in our children. It's time for the adults to lead by example and take ownership of this problem once and for all. The cases Mentioned by the Appellees in the courts below were as a basis for res judicata are product of fraud.

In Weidman v. ExxonMobil Corporation, et al., No. 13-2007 (4th Cir., January 8, 2015), the Fourth Circuit confirmed that the "fraudulent joinder" doctrine requires neither an allegation of fraud nor a situation involving a motion to join a new party. The doctrine also applies when there is no possibility of establishing a claim against the non-diverse party. Accordingly, even in the absence of fraud and joinder, the fraudulent joinder doctrine remains a useful tool for parties seeking to maintain federal diversity jurisdiction such as in this case.

Complete diversity is generally required for a federal court to retain jurisdiction based on diversity of citizenship. However, the district court relied upon the fraudulent joinder doctrine as the basis for jurisdiction. As the Fourth Circuit explained, the fraudulent joinder doctrine "saves" diversity jurisdiction when there are non-diverse defendants. While the doctrine was first developed to address cases in which parties purposefully joined non-diverse defendants for the sole, fraudulent purpose of divesting the federal courts of jurisdiction, the Fourth Circuit noted that neither an allegation of fraud nor actual joinder is now required. Instead, a federal court can retain jurisdiction if "there is *no possibility* that the plaintiff would be able to establish a cause of action against the in-state defendant in state court." (emphasis in original). This court should review these errors and reverse.

**Issue IV. Whether the U.S Federal Court can ignore Fraudulent Joinder of the claims which arise out of the same transaction, series of transactions, or occurrence?**

**A. The Supreme Court's Elaboration of Fraudulent Joinder**

The Supreme Court has referenced the fraudulent joinder doctrine on multiple occasions but has made only limited holdings as to the contours of the doctrine. Most modern development of fraudulent joinder jurisprudence has occurred in the lower courts. Nonetheless, the Supreme Court cases provide an important framework for understanding fraudulent joinder and for evaluating the legal standards used in the lower courts today.

The Supreme Court has traditionally been resistant to defendants' attempts to alter the structure of the lawsuit as pleaded by the plaintiff. Generally, "[a] plaintiff is master of her complaint and thus is permitted to preclude removal in some circumstances. In an early case, the Court noted that "[a] defendant has no right to say that an action shall be several which the plaintiff seeks to make joint. . . . [I]t cannot deprive a plaintiff of his right to prosecute his suit to final decision in his own way." (See Ala. Great S. Ry. Co. v. Thompson, 200 U.S. 206, 214-15 (1906) (quoting Powers v. Chesapeake & Ohio Ry. Co., 169 U.S. 92, 97 (1898)) (internal quotation marks omitted). The Court explained that the question of removability must be decided based on the plaintiff's pleadings at the time of removal and that a defendant's showing that liability is several could not alter the case pleaded by the plaintiff. (see also Pullman Co. v. Jenkins, 305 U.S. 534, 537 (1939) (holding that the court of appeals erred in considering the plaintiff's second amended complaint rather than the plaintiff's complaint at the time of the petition for removal). The Court would later explain that "the fact that the defendants might have been sued separately affords no ground for removal," again giving deference to the plaintiff's decision to pursue defendants jointly. (See Jenkins, 305 U.S. at 538.)

**B. FRAUDULENT JOINER**

Since Petitioners had cases pending in the U.S District Court, Petitioners removed all related cases to Federal court. (See Federal Case 1:16-cv-01435-ELH Document 23 Filed 07/15/16 Page 1 of 6; See Federal Case 1:16-cv-01435-ELH Document 23-1 Filed 07/15/16 Page 1 of 7) and the related documents. Petitioners should be allowed to have all issued resolved in one forum in Federal court under the doctrine of fraudulent joinder. To establish fraudulent joinder, the district court requires the litigants to show the requirements for joinder, namely: (1) the claims must arise out of the same transaction, series of transactions, or occurrence, and (2) some question of law or fact common to all parties must be present. The district court did not review under this standard. Petitioners meet both requirements. First, the claims were "logically related and arise from the same series of transactions or occurrences—namely the violation of Title VII, Retaliation, violation of section 1983 etc. Second, the common question of law or fact requirement was satisfied because "[q]uestions of fact common to all [p]laintiffs include the state of Maryland and its state agencies involved in violation of rights. Thus, this court should find that the joinder was proper.

**C. An Exception to § 1447(d) applies in this case.**

an exception to § 1447(d) applies and allows review of this case. First, the U.S District erred by excluding Appellee PK Law Firm from the case. This is an error of law and this court can correct this after errors were made. This Court has the power "to correct a district court that has not merely erred in applying the requisite provision for remand but has remanded a case on grounds not specified in the statute and not touching the propriety of the removal." *Ellenburg,* 519 F.3d at 196 (quoting *Thermtron,* 423 U.S. at 352, 96 S.Ct. 584). A district court exceeds its statutory authority when it remands a case "on grounds that seem justifiable to [the court] but which are not recognized by the controlling statute." *Thermtron,* 423 U.S. at 351, 96 S.Ct. 584.

After *Thermtron,* this Court expounded upon this exception in *Borneman,* 213 F.3d 819. In *Borneman,* a United States postal employee brought assault and battery claims against his manager in state court. *Id.* at 822. The Attorney General then removed the case under the Westfall Act, 28 U.S.C. § 2679(d)(2), certifying that the manager was acting within the scope of his employment and therefore substituting the United States as the defendant. *Id.* at 823. On appeal, this Court recognized the tension between 28 U.S.C. § 1447(d), which gives the district court authority to determine whether jurisdictional statutes have been satisfied.

**D. PROTECTED ACTIVITY**

**1. THIS COURT'S REVIEW IS WARRANTED IN LIGHT OF THE FACT THAT PETITIONER MR. MUA WAS ENGAGED IN A PROTECTED ACTIVITY.**

Petitioner Mr. Mua engaged in a protected activity in good faith to bring about positive change around the world. Petitioner Mr. Mua led a social media following of more than 100,000 followers to bring about social justice due to discrimination and retaliation in Maryland. However, due to a third party retaliation, the Appellees in this case went after Petitioner Mrs Vandenplas as part of third party retaliation due to the fact that she was married to petitioner Mr. Mua. Petitioners Mr. Mua and Francoise Vandenplas had cases pending before the Federal court when this case was initiated after their rights were violated by the appellees. The reason for suing in federal court was due to violations of Title VII and Title VI in the first case filed on May 5th, 2011. (See *8:11-cv-01198-PJM Mua v. Board of Education of Prince George's County*) Since that time, there has been a continuing discrimination and retaliation involving the Appellees and State personnel in both state and Federal court. The Federal court ignored evidence of organized scheme despite overwhelming evidence involving two states with another case pending in the Washington DC Superior court after it was transferred to Federal court in Maryland (See *THE O'NEAL FIRM, LLP, et al. Vs. MUA, JOSEPHAT Case No. 2013 SC3 004261: Washington DC*). The decision to appeal this case was not taken lightly, especially concerning misconduct involving highly connected individuals within Maryland and in Washington DC connected to *O'NEAL FIRM, LLP, et al. Vs. MUA, JOSEPHAT Case No. 2013 SC3 004261* which is an ongoing concern. Petitioner Mr. Mua and his family should not be retaliated against because Petitioner Mr. Mua was engaged in protected activity on behalf of American citizens.

## 2. **<u>Creating Change in Maryland</u>**

During His tenure in Prince George's County, Petitioner Mr. Mua was engaged in a protected activity on behalf of the union members. Petitioner Mr. Mua wrote widely and engaged with the lawmakers to make the county a better place. Petitioner Mr. Mua wrote articles based on information forwarded to him by the union members and collaborated with the media. As a result of the advocacy, Prince George's County went through a transformation which is ongoing. The only problem now has been the retaliation part which has caused damages to him and his family by the Appellees in the cases Petitioners filed in the U.S District Court on December 8th, 2014. Petitioner Mr. Mua won his administrative on November 26th, 2012 and due to retaliation and corruption in Maryland, his classification was changed and his documents concealed with the appeal court in Prince George's County. This is against the state and federal law. On May 25th, 2016, the County lawyer changed the facts and started misleading the court of special appeals for Maryland contrary to the facts. In this case on May 23rd 2016, the appellees retaliated after

Petitioner Mr. Mua wrote an opinion. At the same time federal court dismissed cases brought against Appellee California Casualty Indemnity Exchange while other cases tied to this case was pending at the same court which caused damages to the Petitioners. The dismissal of cases against the Appellees in particular was done with the view to shield the misconduct of the Union officials and attorneys who engaged in discrimination, failed to represent and engaged in organized scheme which is an ongoing illegal activity and a threat to public life in Maryland. This case is tied to other cases currently before this court.

Petitioner Mr. Mua was engaged in a protected activity on behalf of fellow employees and the community. He collaborated with others to write and posted more than 6, 059 articles with an engagement of over 100,000 followers in social media. Petitioner's work online has been viewed more than 1 million times with a growing audience. As a result of these efforts by the petitioner, the Appellee Board of Education of Prince George's County changed its leadership after the Maryland legislature passed a new law **House Bill 1107** which was passed in the 2013 Maryland legislative session. Petitioner Mr. Mua also led other groups in an effort to conserve wildlife and the environment when he started Mulala Conservation Movement with current registered members of more than 30,000 members in linkedin. Petitioner Mr. Mua led more than 10 groups with thousands of followers to bring about education reform in Maryland.

Petitioner was requested by the Prince George's County Executive Rushern Baker to testify on his behalf. However, after petitioner testified in the Maryland senate and the County executive was awarded leadership of the Board of Education of Prince George's County as the appointing authority, Petitioner Mr. Mua was abandoned by the county leadership after he won his administrative appeal. The deception displayed was not in the best interest of the public. United States of America is a country of laws. Appellees and their conspirators should respect the democratic ideals of doing things. In many countries around the world, courts and unconstitutional means and laws are increasingly being used to restrict free inquiry and expression, resulting in a shrinking academic and societal space for dialogue and to provide justice. Wrongful prosecutions and harassment under these laws not only threaten the well-being of targeted individuals, but undermine the quality of academic work and public discourse and deny everyone in society the benefits of expert knowledge, scientific and creative progress, and free expression as shown in this case. In this case, Petitioner Mr. Mua and his family is faced with similar issues and the violations have been ongoing which is a violation of law.

In order to have a Title VII and Title VI action, petitioners have to show that they were engaged in a statutorily protected activity, that employer took an adverse employment action, and there's a nexus between the two. In this case, Petitioner Mr. Mua was engaged in the Prince George's county as a reporter and a writer. He shared his writings widely with the law makers and law enforcement community to help bring proper changes in Maryland. There was a casual connected with his protected activity and the diverse actions taken by the Appellees in conspiracy with the others in this case to defeat justice including bribery of public officials.

Appellees in this case have confiscated petitioners' personal property due to malicious and retaliatory agenda which is part of this case. The malicious activities against the Petitioners were facilitated by the agents of the appellees in this case, Prince George's County, State of Maryland and the Maryland office of the attorney General, Court of Special Appeals of Maryland and others working under color of law as petitioners have discovered later on. In several violations involve white collar crimes by the appellees and are continuing in nature. In order to hide their illegal agenda, the appellees recruited other conspirators to advance their illegal activity.

In dismissing this case, the United States District Court of Maryland in Baltimore Maryland decided an important federal question in a way that conflicts with a decision by a state court of last resort and also so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power in addition to ongoing state cases involving Federal questions. Among the decision cited by the Federal court was a lack of jurisdictions in Title VII and Title VI matters among other issues after union filed various discriminatory grievances on behalf of the Petitioner. This kind of ruling is a departure from the accepted and usual course of jurisdictional events.

The Petitioners respectfully requests this court to call for an exercise of this Court's supervisory power involving similar cases in Washington DC court of Appeals and in Federal District Court in Greenbelt Maryland since the Petitioners are pro se and the state of Maryland is involved in causing tortious acts to the petitioners. Since the petitioners are engaged in issues of public interest, they are respectfully requesting the help of this court to review and vacate the judgements which are based on retaliation to help resolve the issues in the public interest.

**Issue V. Whether it was proper for the lower court to dismiss the action after significant misconduct by the Appellees working with the state agencies and others under color of law to violate rights guaranteed by the U.S Constitution?**

In dismissing this case, the U.S District court in Baltimore Maryland cited Res Judicata and ignored significant fraud committed by the State of Maryland when other cases and claims are pending before the courts. The court also ignored the various violations which were ongoing and the review of the final administrative review by this court. Appellee cites **Res judicata** based on December 10th, 2014 hearing which was fraudulent after various violations including denial of discovery. Petitioners raised the issue of fraud in the state court proceedings to seeking to set aside the state court judgement but were denied. As shown by the record, there was significant fraud involving the trial in the Montgomery county District state court and the lower Federal Courts failed to set aside the judgements after misconduct committed under color of law.

According to Duke law journal, FINAL JUDGMENTS frequently are not accorded the finality the term suggests, and their binding effect may be eviscerated in a number of ways. In appropriate circumstances these judgments may be nullified either directly or collaterally, and occasionally may be attacked via a hybrid proceeding. The final state court judgment, valid on its face, is attacked in a federal court on the ground of fraud as Petitioners presented in this case. The purpose of this comment is to identify the fraudulent conduct for which a federal court will grant relief from a final state court judgment and to ascertain the scope of the relief which may be granted. In *United States v. Throckmorton* the Supreme Court laid down the general rule for granting relief from prior final judgments on the ground of fraud. The Court there was concerned with an attempt to avoid the effect of a final judgment on the ground that the judgment had been based in part on a forged document which had been admitted as evidence. In denying relief, the Court acknowledged that extrinsic or collateral fraud which prevented a losing party from fully presenting his case so that no real contest occurred would be sufficient to set aside a prior judgment, but held that fraud as to any matter which was actually presented and considered in the judgment assailed would be insufficient to support the attacking action.

On various forums both in state and federal court, Petitioners have been unable to present their case due to extrinsic or collateral fraud which has prevented the Petitioners in this case from fully presenting their case due to the Appellees misconduct backed up by agents of the state working under color of law. In this case, an application of the extrinsic-intrinsic distinction is very clear. The court should find that, the fraud charged has prevented the Petitioners in this case from making a full and fair defense of their claims in the lower courts. The U.S Federal District court, Montgomery county District court, Montgomery County Circuit Court relied on fraudulent conduct of Appellees. That, fraudulent conduct of Appellee California Casualty Indemnity Exchange and Appellee Marsden & Seledee prevented the Petitioners from fairly and fully presenting their claims or defenses is extrinsic fraud. The Supreme Court of the United States, must show its utter impartiality and hold that false evidence, tampering of transcripts, change of official stamped documents to insert a different date while prejudicing the Petitioners is a ground for reversal. This court should vacate the judgement of the lower court in the interest of justice.

**A. QUERIES PRESENTED IN THIS CASE ARE TOO SIGNIFICANT**

The Questions Presented in this case are too important to leave unsettled with an affirmance by the Court, and they are guaranteed to recur in the absence of a definitive ruling from this Court. Petitioners thus respectfully request that the Court rehear this case after it obtains a full complement of Justices capable of reaching resolution by a five-Justice majority.

While informal opening brief concerning, a case remanded in state court is, of course extraordinarily rare when the Court has decided an issue, it is quite common where the Court is equally divided, particularly when there is a vacancy. The opening brief should be reviewed and the final administrative agency should be reviewed. Petitions have been granted in the past where the prior decision was by divided Court and it appeared likely that upon reargument a majority one way or the other might be mustered." E.GRESSMAN, ET AL., SUPREME COURT PRACTICE § 15.I.6 (A) at 838 (10th ed. 2013). In such unusual circumstances, the Court has often reheard a case, rather than leave it to an equally divided affirmance. *See MacGregor v. Westinghouse Elec. & Mfg. Co., 327 U.S. 812 (1946); Bruce's Juices, Inc. v. American Can Co., 327 U.S. 812 (1946); Balt. & Ohio R.R. Co. v. Kepner, 313 U.S. 597 (1941); N.Y., Chi. & St. Louis R.R. Co. v. Frank, 313 U.S. 596 (1941); Commercial Molasses Corp. v. N.Y. Tank Barge Corp., 313 U.S. 596 (1941); Toucey v. N.Y. Life Ins. Co., 313 U.S. 596 (1941); United States v. One 1936 Model Ford V-8, 305 U.S. 666 (1938).* "This was particularly true when a new Justice became available to break the tie"—as will eventually be the case here. Id. (citing *Gray v. Powell, 313 U.S. 596 (1941*), and *Halliburton Oil Well Cementing Co. v. Walker, 327 U.S. 812 (1946)).* This is true regardless of whether the vacancy will remain until the Court's next Term. Thus, this Court has routinely held cases over the summer recess before ultimately rehearing them during the subsequent Term. See Halliburton, 327 U.S. 812 (granting rehearing on February 25, 1946), and 329 U.S. 1 (1946) (issuing decision in case reargued on October 23 and 24, 1946); MacGregor, 327 U.S. 812 (granting rehearing on March 11, 1946), and 329 U.S. 402 (1947) (issuing decision in case reargued on November 14 and 15, 1946); Bruce's Juices, 327 U.S. 812 (granting rehearing on March 11, 1946), and 330 U.S. 743 (1947) (issuing decision in case reargued on November 14, 1946); Kepner, 313 U.S. 597 (granting rehearing on April 28, 1941), and 314 U.S. 44 (1941) (issuing decision in case reargued on October 20, 1941); Frank, 313 U.S. 596 (granting rehearing on April 28, 1941), and 314 U.S. 360 (1941) (issuing decision in case reargued on October 16 and 17, 1941); Commercial Molasses, 313 U.S. 596 (granting rehearing on April 28, 1941), and 314 U.S. 104 (1941) (issuing decision in case reargued on October 16, 1941); Toucey, 313 U.S. 596 (granting rehearing on April 28, 1941), and 314 U.S. 118 (1941) (issuing decision in case reargued on October 17, 1941); Gray, 313 U.S. 596 (granting rehearing on April 28, 1941), and 314 U.S. 402 (1941) (issuing decision in case reargued on October 21 and 22, 1941).

This Court's established practice of rehearing cases under the circumstances present here, so that they may be decided by a full complement of nine Justices, makes sense for this case. It ensures that cases important enough for this Court including the ones granted certiorari do not remain unresolved simply because an unexpected vacancy prevents a majority decision. The current vacancy will inevitably be filled, and once it is, the tie will be broken. It makes sense to hold the case for resolution until the Court is capable of resolving it. And indeed, this case illustrates the reasons for that longstanding practice. The Questions Presented here are of profound nationwide importance after the lower courts dismissed this action in a suspicious manner. The case is tied to an upcoming appeal cases in this court after the appellees tied to the Petitioner's union engaged in misconduct and hired an unlicensed debt collector to collect a false dent through fraudulent means in pretext to hurt Petitioners and their families through organized scheme.

**B. <u>THIS COURT'S REVIEW IS WARRANTED IN LIGHT OF THE FACT THAT CIVIL CONSPIRACY INVOLVES THE MARYLAND STATE OFFICIALS AND ITS ONGOING.</u>**

Petitioner Mr. Mua has a viable civil conspiracy, white color, Organized Scheme, negligence claims based on confiscation of their personal property in this case, unreimbursed car rental claims and breach of contract, discrimination *inter alia* due to ongoing retaliation and discrimination involving the State of Maryland and the Appellees in this case. Based on these issues, the court should reconsider and to Quash state court orders and the judgement in this court because of violation of Federal law.

Civil conspiracy is a recognized cause of action in Maryland, and although it borrows the applicable statute of limitations from the underlying torts - here three years. In this case, a cause of action for civil conspiracy accrues when the Petitioners knew or reasonably should have known about the conspiracy which was October 29th, 2015 in this case. Petitioners submitted a Notice of Claim Pursuant to Md. STATE GOVERNMENT code Ann. §12-107 Claims (See U.S. Federal Case 8:14-cv-02070-PJM Document 1-7 Filed 06/26/14 Page 1 of 11). The submission of this notice is mandatory. Even before the U.S Court of Appeals for Fourth Circuit issued Judgements in the upcoming appeal involving Appellee California Casualty Indemnity Exchange, the Appellees had started harassing Petitioners Mr. Mua and Petitioner Vandenplas starting on February 22, 2016 which is a violation of the law.

## C. <u>CIVIL CONSPIRACY CLAIMS ACCRUED AT THE TIME OF DISCOVERY OF THE CONSPIRACY</u>

The court should consider this case based on various factors tied to the conspiracy. A civil conspiracy tort has been defined in Maryland as a "combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal, with the further requirement that the act or the means employed must result in damages to the Plaintiff." *Mackey v. Compass Marketing, 892 A. 2d 479 (Md. 2006); Hoffman v. Stamper, 385 Md. I. 24, 867 A.2d 276, 290 (2005) (quoting Green v. Wash. Sub. San. Comm'n, 259 Md. 206, 221, 269 A. 2d 815, 824 (1970)).* The Plaintiff must prove an unlawful agreement, the commission of an overt act in furtherance of the agreement, and that as a result, the plaintiff suffered actual injury. Hoffman 385 Md. At 25, 867 A. 2d at 290. The civil conspiracy requires a separate tortious act, but if allegations supporting the other elements of the cause of action are made, then the claim is recognized under Maryland law. *See Lloyd v. General Motors Corp, 397 Md. 108, 916 A.2d 257 (2007)* (Setting forth the elements of a separate cause of action for civil conspiracy).

Maryland law has long recognized that the tort of civil conspiracy "borrows" the statute of limitations from the underlying Hong. But Maryland cases have not held that a cause of action for civil conspiracy "accrues" at the same time as the underlying tort. As noted in Lloyd, the cause of action for civil conspiracy has different elements and requires different proof as compared to the underlying tort. *Lloyd v. General Molors Corp., 397 Md. 108. 916 A. 2d 257 (2007)* (the elements of a civil conspiracy claim separate from the underlying tort claim, even if underlying claim required for a conspiracy).

These general principles were discussed in *Prince George's County v. Longtin, 419 Md. 450,19 A A. 3d 859 (2011)* (concurring and dissenting opinion). There in discussing the general framework of Maryland law, the concurring and dissenting Judges noted that each cause of action may have a unique accrual date. The opinion noted that Maryland "[has] adopted what is known as the discovery rule, which now applies generally in all civil actions, and which provides that a cause of action accrues when a plaintiff in fact knows or reasonably should know of the wrong." Longlin, 419 Md. at 504, 19AJd at 891, citing Heron v. Sirader, 361 Md. 258, 761 A.2d 56 (2000) (a cause of action is said to have arisen when facts exist to suppmi each element); Hechl v. Reso/ulion Trusl Corp., 333 Md. 324, 334, 635 A.2d 394,399 (1994); Lumsden v. Design Tech Builders, Inc., 358 Md. 435, 444, 749 A.2d 796, 801 (2000) ("[W]e now hold the discovery rule to be applicable generally in all actions and the cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong."). Because each cause of action possesses distinct elements, Comis should examine each cause of action separately. Not surprisingly, under such an approach, each claim may have a unique accrual date. Longlin, 419 Md. at 504, 19 AJd at 892, citing Heron, 361 Md. at 262, 761 A.2d at 58.

Under the discovery rule, a cause of action for conspiracy accrues when the plaintiff learns of the conspiracy or with reasonable inquiry should have learned of the conspiracy. Courts applying the discovery rule to civil conspiracy claims have reached the same conclusion - the crucial factor is the discovery of the conspiracy, not the discovery of the underlying tort injury. In Siragusa v. Brown. II4Nev. /384, 971 P.2d 801 (/999), the plaintiff alleged a civil conspiracy, among other torts. The defendants claimed that the injury occurred outside of the statutory period. The Nevada Supreme Court, reviewing the impact of the "discovery rule," rejected the defendants' claims -the same claims pressed by defendants here - and held that "an action for civil conspiracy accrues when the plaintiff discovers or should have discovered all of the necessary facts constituting a conspiracy claim." To hold otherwise means that a plaintiff is barred from bringing a claim before she ever discovers or could have discovered the factual predicates for the claim, a direct contradiction of the discovery rule. See also Hill v. A. 0 Smith

Corp., 80 I F.2d 217 (6111 Cir. 1986) (applying Tennessee law and holding that discovery rule when applied to civil conspiracy claims required that Comi look to date of discovery of the conspiracy). In addition, the running of the statute can be tolled by a variety of mechanisms, including a fiduciary relationship between the parties, McBride v. Pishvaian, 402 Md. 572, 937 A.2d 233 (2007); Dual Inc. v. Lockheed Marlin CO!]}.,383 Md. 15 I, 173, 857 A.2d 1095, I 107 (2004), or continuing unlawful acts, Bacon v.Arey, 203 Md.App. 606,40 A.3d 435 (2012); MacBride v. Pishvaian, 402 Md. 572,584,937 A.2d 233 (2007); Dunn v. Rockwell, 225 W.Va. 43,689 S.E.2d 255 (2009) (last overt act tolls the running of the statute of limitations for conspiracy claim even if conspiracy claim is not an independent tort). Here, the accrual date applicable to the civil conspiracy claims is that date the petitioner learned of the conspiracy or should have learned of the conspiracy. Although other tortious conduct is required for a civil conspiracy to be actionable, Maryland law does not require that the same accrual date apply to both causes of action. Like other states, Maryland recognizes that different causes of action may have different accrual dates, and the time of learning about the injury arising from negligence is not the same as the time of learning about the conspiracy. The timeliness of conspiracy claims should be judged by the discovery of the conspiracy, not the discovery of the underlying injury associated with other causes of action. Mr. Abdullah working with the appellees misled Mr. Mua to transfer the case to Montgomery County due to organized scheme in order for Mr. Abdullah who was working closely with the respondents, and other conspirators benefitted unjustly. (See proof of the organized scheme at Appeal: 17-2027 Doc: 31 Filed: 02/14/2018 Pg: 1of 4).

**Issue VI. Whether the Federal Courts can endorse Criminal behavior and award attorney fees to the appellees and whether judgement obtained by unlicensed Debt collector is void.**

Petitioners contend that Appellees in this case and coconspirators in the other cases before this court engaged in tortious acts since the last filing in this court in order to advance illegal agenda while violating the rights of the petitioners. Federal court erred on numerous occasions and took a one-sided approach by refusing to docket evidence, sending documents back to the petitioners after docketing only one page, facilitating misconduct by the appellees and ignoring evidence on several occasions to the detriment of the Petitioners. On several occasions, documents have been tampered with including documents filed by the petitioners in order to favor the appellees unjustly. Judgments obtained by Marsden & Seledee tied to the state of Maryland and the Board of Education of Prince George's county in this case are void due to various violations of Federal law including the fact that Appellee M&S was unlicensed. There is no factual dispute that Marsden & Seledee was operating without a license required by Maryland law when it sought judgments against the Petitioners. The Maryland licensing act sets a minimum requirement to act as debt collector in the State of Maryland and includes criminal penalties for violations. At the time of obtaining judgements against the petitioner, Marsden & Seledee was not licensed to collect debt in Maryland. Marsden and Seledee is now licensed but at the time of collecting fraudulent debt, the insurance company with ties to Petitioner's union owed the Petitioner unreimbursed car rental expenses of close to a thousand dollars. The illegal debt collector also terminated petitioner's car insurance in discriminatory and malicious manner without warning whatsoever. These continuous violations backed up by the state of Maryland are illegal and the court should revisit this case to correct the error. In support of this position Petitioner cite a decision by an Illinois Appellate Court in *LVNV Funding, LLC v. Trice,* 952 N.E.2d 1232 (II. App. 2011). Petitioner's union AFSCME Local 2250 and AFSCME International with ties to the Appellees in this case failed to assist the Petitioners due to discrimination. Petitioners Mr. Mua and Mrs. Vandenplas have been members of the union for many years but the union failed to represent Petitioner Mr. Mua stating that he was not a member of the union despite the union deducting dues from his pay check over the years. This is pure discrimination with malicious intent by the appellees in this case and the unions sued in Federal Court and has no place in modern day America.

This case directly raises the continuing vitality of this Court's decision in *Abood v. Detroit Board of Education, 431 U.S. 209 (1977),* in which the Court held that public-sector employees can be required to pay agency fees, even if they have declined to join the union. Twice in the past several years, this Court has questioned Abood's compatibility with core First Amendment principles. See *Harris v. Quinn, 134 S. Ct. 2618, 2632 (2014)* ("The Abood Court's analysis is questionable on several grounds."); Knox v. Serv. Employees Int'l Union, Local 1000, 132 S. Ct. 2277, 2290 (2012) ("[Abood's] [a]cceptance of the free-rider argument … represents something of an anomaly …."). Only this Court can resolve the pressing constitutional question — which is why the Maryland Court of Appeals and Fourth Circuit had no choice due to tortious interference by the agents of the state and other parties as petitioner just discovered the illegal conduct. The substantial questions this Court identified in other cases in this court such as Harris and Knox should not go unresolved when the Court has a pending case that would enable it to conclusively answer them touching on this case.

In addition, this case squarely presents the question whether public-sector employees who pay union dues and are assisted whatever due to discrimination can be forced to continue paying dues after the union personnel engages in malicious activities including concealing documents in court. There is a circuit split over certain aspects of that scheme and similar schemes affect tens of thousands of public employees every year. That issue, too, both warrants and requires this Court's definitive resolution.

To leave the Questions Presented unresolved would needlessly prolong the prevailing uncertainty on issues that recur constantly and that affect millions of public employees in the more than 50 states that allow agency fees to be collected for fair representation. Moreover, the schemes at issue implicate hundreds of millions of dollars flowing to organizations that spend those dollars advocating on matters of clear public concern. Affirmance by an equally divided Court is never a preferable result, but it is a particularly inappropriate way to dispose of questions that have such profound constitutional and national significance. Moreover, precisely because the issues presented are of such importance, an equally divided affirmance will only defer decision of these pressing questions for another day. Right now, there are multiple cases pending in the lower courts that implicate the Questions Presented. *See Janus v. AFSCME, Council 31, No. 1:15-cv-01235 (N.D. Ill.) (Illinois state employees' challenge to compulsory dues); Cochran v. Jefferson Cnty. Public Sch. Bd. of Educ., No. 3:15-cv- 751 (W.D. Ky.) (school support personnel's challenge to compulsory dues); Lamberty v. Conn. State Police Union, Inc., No. 3:15-cv-00378 (D. Conn.) (state troopers' challenge to compulsory dues); Wagenblast v. Inslee, No. 3:15-cv-05407 (W.D. Wash.) (correctional officers' challenge to compulsory dues and opt-out requirement); Hamidi v. SEIU Local 1000, No. 2:14-cv- 00319 (E.D. Cal.)* (California state employees' challenge to optout requirement). In the absence of a precedential ruling from this Court, at least one of those cases will almost certainly reach this Court in the next several years.

## CONCLUSION

As a matter of first impression definitive guidance is required from this Court to set the standard for the waiver of Attorney-Union Client Privilege (S. Ct. Rule 10(c)). Furthermore, this guidance is required to resolve conflicts between the circuit courts and within the U.S Court of Appeals Fourth Circuit itself (S. Ct. Rule 10(a), 10(b)).

Attorney-Union Client Privilege, while not a Constitutional right, is still a cornerstone of American Jurisprudence. Without the guarantee of this protection from outside intrusion, the judicial system cannot possibly function. Likewise, without the confidence in their unions attorney to honor this privilege, the judicial system will similarly cease to function. Recognizing that there may be specific instances where it is in a defendant's interest to allow counsel to disclose privileged information to the courts and outside parties, this decision must remain with the defendant and not counsel for the appellee. Furthermore, any such agreements must not only be transparent but specific in terms of intent, scope, and clear and unequivocal language, such that any and all persons, with or without legal training, would draw the boundaries of any waiver identically each and every time, regardless whether it is at point of drafting or upon later review. As such, this Court needs to establish a Bright-Line Rule for the waiver of Attorney- Union Client Privilege be it partial or total. As this is a matter with the potential to affect every Attorney- Union Client relationship in the land it is a matter which falls squarely within the purview of this court. Furthermore, the Federal District Court's ruling which not only contradicted State and Federal Law and precedent but itself as well, violated the Petitioner's rights to Equal Treatment and Due Process under the law as guaranteed by the Constitution and therefore should not be allowed to stand as it involves an unreasonable application of clearly established Federal Law as determined by the Supreme Court of the United States. The U.S Court of Appeals for Fourth Circuit failure to correct these errors makes it a matter for this Court. For the reasons discussed above, Petitioners Josephat Mua and Mrs. Francoise Vandenplas respectfully request this honorable Court vacate the judgment and remand the case for a new trial under a new Judge in the interest of justice.

Respectfully submitted,

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