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No. _____

In the
Supreme Court of the United States

BILLY TORAIN, *PETITIONER*,

v.

ILLINOIS HUMAN RIGHTS COMMISSION, ILLINOIS DEPARTMENT OF
HUMAN RIGHTS, AND LEAVE NO VETERAN BEHIND, LLC,
RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE ILLINOIS APPELLATE COURT
FIRST JUDICIAL DISTRICT*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a state civil rights agency violates the Due Process Clause, consistent with *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), when it assures a complainant that a race claim is part of the charge, misleads the complainant into believing the claim will be investigated, and then dismisses the case for failure to include the very claim the agency promised to investigate.

2. Whether a state civil rights agency and reviewing courts violate the Due Process Clause and the Supremacy Clause when they resolve credibility and intent disputes without a hearing, in direct contravention of a binding federal injunction (*Cooper v. Salazar*, 2001 U.S. Dist. LEXIS 17952 (N.D. Ill. 2001)), the State Legislators revocation of the agency's authority to make such determinations (Public Act 94-0146), and the agency's own published notice forbidding such determinations at the investigative stage.

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***ON PETITION FOR WRIT OF CERTIORARI
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Petitioner Billy Torain respectfully petitions for a writ of certiorari to review the judgment of the Illinois Appellate Court, First District in this case

OPINIONS BELOW

The Illinois Appellate Court issued an unreported summary order under Illinois Supreme Court Rule 23(e)(1), available at *Torain v. Illinois Human Rights Commission*, 2024 IL App (1st) 240080-U (Dec. 6, 2024) (App. 4a). The order of the Illinois Appellate Court denying rehearing was entered on January 13, 2025 (App. 17a). The order of the Illinois Supreme Court denying the petition for leave to appeal was entered on May 28, 2025 (App. 3a). The final order of the Illinois Human Rights Commission was entered on December 12, 2023 (App. 19a). The dismissal order of the Illinois Department of Human Rights was entered on January 18, 2023 (App. 26a).

JURISDICTION

The Illinois Appellate Court, First District, entered judgment on December 6, 2024. It denied rehearing on January 13, 2025. The Illinois Supreme Court denied Petitioner's petition for leave to appeal on May 28, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a). This petition is filed within 90 days of that order.

CONSTITUTIONAL, STATUTORY, REGULATORY, AND JUDICIALLY NOTICED PROVISIONS INVOLVED

U.S. Const. art. VI, cl. 2 (Supremacy Clause) (App. 56a):

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

U.S. Const. amend. XIV, § 1 (Due Process Clause) (App. 57a):

"...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

775 ILCS 5/7A-102(D)(2) as amended by Public Act 94-0146 (effective July 8, 2005) (App. 46a – 50a):

"The determination of substantial evidence is limited to determining the need for further consideration of the charge pursuant to this Act and includes, but is not limited to, findings of fact and conclusions, as well as the reasons for the determinations on all material issues ~~and questions of credibility.~~"

56 Ill. Admin. Code § 2520.430(f) (App. 51a):

"The Department shall neither rely on nor make credibility determinations without affording the parties the rights of confrontation and cross-examination..."

31 Ill. Reg. 14815 (Amendment to 56 Ill. Admin. Code § 2520.430 eff. October 19, 2007) (App. 52a):

"The adopted amendment articulates the Department's practice of

neither relying on or making credibility determinations.”

Illinois Department of Human Rights “Credibility Notice to Parties” (App. 53a – 54a):

“If the resolution of the charge of discrimination requires believing the evidence of one party over another party, the Department will make a finding of Substantial Evidence...”

STATEMENT

I. Administrative Proceedings and Procedural Violations.

On October 18, 2021, Petitioner Billy Torain filed a charge of discrimination with the Illinois Department of Human Rights (IDHR), alleging race and retaliation on the cover sheet, and sex discrimination, harassment, failure to hire, and additional retaliation in the narrative. (App. 34a – 38a). IDHR produced its “Credibility Notice” acknowledging its obligation under a federal court injunction to refrain from making credibility findings without affording confrontation and cross-examination. (App. 54a – 55a). Petitioner submitted over 100 pages of evidence, including more than 40 contemporaneous emails supporting his claims.

On November 19, 2021, Torain asked the IDHR if his race claims needed amendment. (App. 44a) The IDHR said no further noting that race was on the first page of the charge, and a supervisor approved to cover it in the investigation. *Id.* Despite this assurance, the IDHR later refused to investigate race, stating the allegations “had not been properly raised.” (App. 28a). On January 30, 2023, the IDHR dismissed Petitioner’s claims for lack of substantial evidence (App. 25a – 26), deciding all material factual disputes in Leave No Veteran Behind’s (LNVB) favor identifying the following key disputes:

1. Whether Petitioner's harassment complaints, including a June 21, 2021, misconduct allegation ('eating at post' see June 28, 2021, email (App. 43a)), were minor work-related actions or retaliatory;
2. Whether LNVB's report of Petitioner's conduct on April 29, 2021, was true in the face of his May 1, 2021, and supporting affidavit. (40a - 41a and 45a);
3. Whether LNVB declined to rehire Torain in August 2021 due to his poor performance on January 19, 2021 (App. 39a – 40a), conduct on April 29, or in retaliation because of his internal and external discrimination claims.

The IDHR resolved each dispute without allowing the parties to confront or cross-examine each other as required by its Credibility Notice procedure. (App. 54a – 55a) Petitioner timely appealed to the Illinois Human Rights Commission (IHRC).

II. Commission and Judicial Review

Without holding a hearing, the IHRC adopted the IDHR's findings and dismissed Petitioner's claims—either as beyond the scope of his charge (race, App. 19a n.3) or unsupported by substantial evidence. The Illinois Appellate Court affirmed, rejecting Petitioner's argument that the Department's credibility determinations voided its decision. Although Petitioner raised this as a jurisdictional defect rooted in statutory limits, the court treated it as a forfeited procedural claim. (App. 14a ¶50). The Illinois Supreme Court denied review but granted Petitioner's motion for judicial notice of governing law—including Public Act 94-0146 (eff. July 8, 2005), which revoked the Department's statutory authority

to make credibility determinations (App. 49a ¶ 2), § 2520.430(f), the IDHR's Credibility Notice, and the controlling Illinois Register rule. (App. 47a–55a). That ruling eliminated any factual dispute and squarely presents the legal question now before this Court: whether a state agency may disregard a binding federal injunction and its own law without consequence.

SUMMARY OF THE REASONS

This case presents entrenched violations of due process by Illinois's civil-rights enforcement system — violations that repeat this Court's decision in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), openly defy a federal injunction in *Cooper v. Salazar*, 2001 U.S. Dist. LEXIS 17952 (N.D. Ill. 2001), insulate state-court rulings and mislabel preserved federal questions as “forfeited.”

For more than four decades, Illinois has been on direct notice of this Court's command that statutory discrimination claims cannot be extinguished by agency error. For nearly a quarter-century, it has been under a permanent injunction forbidding its civil rights agencies from resolving credibility disputes without hearings. Yet the State continues both practices, and its appellate courts have entrenched them through issuance of nonprecedential summary orders.

The systemic nature of these violations elevates the case beyond a local dispute. The State processes thousands of discrimination charges annually, and its “investigate first” model mirrors those used in many other jurisdictions. Only this Court can enforce its precedents in *Logan* and *Cooper*, restore uniform due process protections, and ensure that state agencies and courts remain bound by federal law.

REASONS FOR GRANTING THE PETITION

Nearly fifty years ago, this Court held in *Logan* that Illinois violated due process by dismissing a discrimination claim due to its own administrative error. Here, the IDHR told Petitioner that race was “noted in the first page of the charge” (App. 34a and 44a) and approved for investigation, *Id.*, yet it refused to investigate. The IHRC affirmed dismissal, claiming race “was not included in the charge” (App. 19a n.3)—the very procedural sleight *Logan* forbids. This case reflects systemic defiance of binding precedent. A review is warranted for at least four independent reasons.

1. ***Logan* Repeated.** The IDHR promised to investigate Petitioner’s race claim, then erased it by claiming race was never charged—arbitrarily extinguishing a statutory right this Court has already protected.
2. ***Cooper* Defied.** Nearly 25 years after the federal injunction in *Cooper*, the IDHR still violates it by resolving credibility disputes during investigations.
3. **Judicial Ratification.** Rather than correct these violations, Illinois courts insulate the agencies by labeling preserved federal questions as ‘forfeited,’ in conflict with both federal supremacy and Illinois’s own jurisdictional rules.
4. **National Importance.** Nearly fifty years after *Logan* and twenty-five after *Cooper*, Illinois still engages in practices this Court forbids—defying federal injunctions and the Supremacy Clause. If one state can nullify

federal law with impunity, others may follow, eroding constitutional uniformity and denying civil-rights complainants the due process this Court guarantees.

Each reason independently justifies certiorari. Together, they reveal a pattern of systemic defiance that calls for this Court's intervention.

I. Repeating Logan: The IDHR Extinguished Petitioner's Race Claim Through Its Own Error.

In *Logan*, this Court held that a complainant's statutory right to pursue discrimination charges cannot be lost through agency error. *Logan*, 455 U.S. at 423–34. It condemned Illinois's Fair Employment Practices Commission for terminating Logan's charge after failing to convene a timely conference, despite his full compliance. Four decades later, the IDHR—its successor—commits the same violation:

- **Assurance**. "Race" (designated by the IDHR as Counts B & E) was listed on the first page of Petitioner's charge as a basis for his complaint. (App. 34a). Petitioner emailed the IDHR to confirm the scope of his race claims. The IDHR confirmed that a supervisor approved race for investigation. (App. 44a)
- **Erasure**. The agencies later reversed course, dismissing the race claims. (App. 28a; 19a n.3). They declared they 'lacked jurisdiction' because the claims were not 'properly raised' in the charge and were therefore removed. *Id.*
- **Nullification**. IDHR promised to investigate Petitioner's race claim, then

erased it—arbitrarily extinguishing a statutory right that this Court’s precedent protects.

This is *Logan* repeated. Indeed, the violation here is even starker: the IDHR induced Petitioner’s reliance before nullifying his claim.¹

II. Defying Cooper: The IDHR Resolved Credibility Disputes Despite a Federal Injunction and Absent Statutory Authority.

In *Cooper*, the Northern District permanently enjoined IDHR from resolving credibility disputes at the investigatory stage without affording complainants the rights of confrontation and cross-examination. *Cooper*, 2001 U.S. Dist. LEXIS 17952, at *13–15 (N.D. Ill. 2001). Judge Shadur explained that reliance on an investigator’s credibility evaluation improperly conflates investigation with adjudication, depriving complainants of due process. Yet nearly twenty-five years later, the IDHR continues to do exactly that.

- **IDHR’s Analysis of Harassment Counts.** Petitioner alleged sex-based harassment, hostile remarks, and retaliation after filing complaints. (App. 30a–31a). LNVB denied harassment, characterizing the remarks as work-related and unrelated to sex or retaliation. *Id.* This created a direct credibility dispute—exactly what *Cooper*, the Illinois Legislature through Public Act 94-0146 (App. 49a ¶(D)(2)), and IDHR’s Credibility Notice forbid the agency from resolving. (App. 49a, 54a–55a).
- **IDHR’s Analysis of Failure to Hire Counts.** Petitioner alleged LNVB

¹ “[T]he State may not...destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement.” *Logan*, 455 U.S. at 432.

refused to rehire him because he was male and in retaliation for his discrimination complaint. (App. 32a–33a). LNVB denied bias, citing performance and conduct issues instead. *Id.* The IDHR resolved this direct conflict in LNVB’s favor, a credibility determination barred by *Cooper*, by the Illinois Legislature through Public Act 94-0146 (App. 49a ¶(D)(2)), and by its own Credibility Notice. (54a – 55a).

- **IDHR’s Determination.** In open defiance of *Cooper* and its own Credibility Notice, the IDHR dismissed Petitioner’s claims as vague or non-actionable, credited LNVB’s account of all material facts, and withheld the disputes from referral to the IHRC for a hearing.

The IDHR went further, falsely claiming to quote Petitioner’s harassment allegations “verbatim from the charge” in paragraphs “a” and “b.” (App. 28a – 29a). This was contrary to his actual allegations. (App. 35a ¶4). The agency omitted critical facts, including that Petitioner escalated his complaint to LNVB’s Board President, that his internal complaint was rejected, and that his supervisor’s conduct continued unchecked. This is not a credibility dispute; it is suppression of objective evidence—the very selective reporting *Cooper* condemned. *Cooper*, 2001 U.S. Dist. LEXIS 17952, at 23. As in *Logan*, Illinois, extinguished a statutory right by disregarding material evidence in the record, including contemporaneous emails dated January 19, May 1, and June 28, 2021 (App. 39a – 43a), and a third-party affidavit (App. 45a), all of which directly contradicted LNVB’s account. Yet neither the IDHR nor the IHRC addressed this evidence, and the Illinois Appellate Court

affirmed without doing so, either entrenching the very maneuver this Court forbade in *Logan*.

When Illinois openly defies a federal injunction, it invites other states to do the same. No state may nullify federal law or undermine the Supremacy Clause. Only this Court can ensure uniform adherence to the due process principle that factual disputes must be resolved through a fair opportunity to be heard.

III. Illinois Courts Ratified The Violations Instead of Correcting Them.

Rather than correcting these violations, the Illinois courts entrenched them. The Appellate Court affirmed dismissal without addressing contemporaneous emails or a third-party affidavit that directly contradicted LNVB's account. (App. 14a ¶50, 38a–44a). It treated Petitioner's jurisdictional objection—that IDHR lacked authority to resolve credibility disputes after *Cooper* and Public Act 94-0146—as a forfeited procedural claim. (App. 49a ¶(D)(2)). And the Illinois Supreme Court denied review, even while granting judicial notice of the very laws that revoked IDHR's authority. (App. 18a, 46a–54a). By insulating these ultra vires acts from review, Illinois courts compounded the agency's violations and entrenched systemic defiance of federal supremacy.

- **Preservation**. Petitioner raised the federal credibility and due process issues at every administrative stage, and in his appellate briefing.
- **Mislabeling**. The Illinois appellate court nonetheless deemed the questions “forfeited,” not waived by silence, but forfeited despite preservation. (App. 16a ¶ 50)

- **Conflict.** Illinois law itself recognizes that state agencies are “creatures of statute” with no powers beyond those conferred by law; the IDHR engaged in ultra vires actions, which are void. *City of Chicago v. Fair Employment Practices Commission*, 65 Ill.2d 108, 112 (1976).
- **Precedent.** For almost a century, Illinois has recognized that jurisdictional defects “may be attacked at any time, in any court, either directly or collaterally.” *Barnard v. Michael*, 392 Ill. 130, 135 (1945).
- **Pattern.** The IDHR and IHRC’s actions are not limited to Petitioner’s case, as their actions produce non-precedential summary orders under Ill. S. Ct. R. 23(e)(1). In *Miner v. Illinois Human Rights Comm’n*, 2024 IL App (5th) 220648-U; *Messina v. Illinois Human Rights Comm’n*, 2024 IL App (1st) 221930-U; and *Dale v. Illinois Human Rights Comm’n*, 2024 IL App (4th) 240434-U, multiple appellate court orders upheld IDHR dismissals that resolved disputed evidence at the investigative stage, adopted by the IHRC and affirmed on appeal. Such conduct is systemic and is squarely barred by *Cooper*, the Illinois Legislature (Pub. Act 94-0146, App. 49a ¶(D)(2)), and the IDHR’s credibility procedures. (App. 54a – 55a).

By insulating the agencies rather than correcting them, the state courts entrenched the very violations that this Court’s precedents in *Logan* and *Cooper* forbid.

IV. The Questions Presented Are of National Importance.

The systemic problems identified above are not confined to Petitioner’s case.

They recur across Illinois appellate districts and are entrenched by nonprecedential summary orders issued under Illinois Supreme Court Rule 23(e)(1), including Petitioner's own. This pattern elevates this case beyond a local dispute to a matter of national importance based on the following:

- **Repeating *Logan*.** IDHR extinguishes claims by administrative fiat after misleading complainants, just as the FEPC did in *Logan*.
- **Defying *Cooper*.** Illinois agencies continue to resolve credibility contests at the paper stage, despite a permanent federal injunction in *Cooper*. If Illinois openly defies a federal court order, there is little reason to expect compliance in other states where no injunction has been entered. Only this Court can ensure uniform adherence to due process principles of fairness that factual disputes require a hearing.
- **Broad Reach.** Illinois, through its IDHR, processes thousands of discrimination charges annually and uses the same 'investigate first' structure employed in other jurisdictions.
- **Need for clarification.** Only this Court can enforce its precedents in *Logan* and *Cooper* against successor agencies and restore the uniform application of due process in state civil-rights enforcement.

Together, these errors present precisely the kind of entrenched constitutional conflict this Court should resolve. Illinois has repeated the deprivation condemned in *Logan*, openly defied the federal injunction in *Cooper*, and insulated those violations through judicial refusal to enforce federal supremacy. The result is that

complainants lose statutory civil rights not through their own conduct, but through the State's unlawful procedures. With preserved issues and a clean record, this case is the ideal vehicle for the Court to restore uniformity, safeguard due process, and ensure that state agencies and courts remain bound by federal law.

CONCLUSION

The decision below squarely conflicts with this Court's precedent. In *Logan*, this Court held that a statutory discrimination claim cannot be extinguished by agency error. Yet Illinois did exactly that. In *Cooper*, a federal court permanently barred the IDHR from resolving credibility disputes without hearings. The Illinois Legislature reinforced that limit in Public Act 94-0146, which revoked the Department's authority to make credibility determinations. Yet Illinois defied both the injunction and its own statute. And by labeling these ultra vires acts "forfeited," the Illinois courts insulated violations that both federal and state law treat as jurisdictional defects.

This Court's review is essential. The record is complete, the issues preserved, and the questions presented are purely legal. Left uncorrected, the decision below provides a blueprint for states to nullify civil rights through procedural traps, credibility shortcuts, and forfeiture labels. Only this Court can enforce the Supremacy Clause, restore due process, and ensure that statutory civil rights remain protected nationwide.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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