

25-7101

CASE NO.

ORIGINAL

USAP5 Case No. 24-30343

IN THE UNITED STATES SUPREME COURT

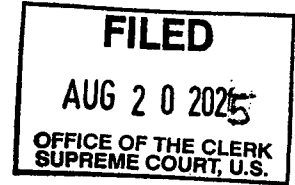
Michelle Horvath

Petitioner,

Vs.

Solar Refrigeration & Appliance Service, Incorporated

Respondent



ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Respectfully Submitted

By: 

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A.

QUESTIONS PRESENTED

- (1.) Whether the Petitioner's petition for damages states a claim for Employment Discrimination under Title I and V of the American Disability Act of 1990, as amended 42 U.S.C. §12101 et seq., and 12201, et seq.
- (2.) Whether the Petitioner's secured Constitutional, Civil Rights, and Statutory Rights violated by the District and Appellate Courts?
- (3.) Did the Fifth Circuit Court of Appeals erred by classifying Petitioner's appeal as frivolous and dismissing all issues presented on appeal?
- (4.) Whether the order and judgment of the U.S. District Court Eastern District of Louisiana erred by granting FRCP Rule 56(a) Summary Judgment to Defendant Solar Refrigeration & Appliance Service, Inc. as a matter of law?

B.

LIST OF PARTIES

All parties to this Appeal are listed in the caption of the case on the cover page.

C.

TABLE OF CONTENTS

Document	Page
A. QUESTIONS PRESENTED FOR REVIEW.....	2
B. PARTIES INVOLVED.....	2
C. TABLE OF CONTENTS.....	3
D. TABLE OF CITED AUTHORITIES.....	4
E. OPINIONS BELOW.....	6
F. JURISDICTION.....	6
G. CONSTITUTIONAL AND STATUTORY PROVISIONS.....	6
H. STATEMENT OF THE CASE.....	8
I. REASONS FOR GRANTING THE WRIT.....	11
1. The judgment is contrary to precedents of the U.S. Supreme Court, Fifth Circuit Court of Appeals, and other circuit courts.	
2. The statutory interpretation and application of the district and appellate courts adversely affected petitioner's constitutional and civil rights.	
3. To prevent manifest injustice certiorari should be granted.	
J. CONCLUSION.....	14
K. APPENDICIES.....	15

D.

TABLE OF AUTHORITIES

Case	Page
Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524, 29 L. Ed. 746.....	14
Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958). (citing U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980)).....	13
Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).....	11
Diamond v. Chakrabarty, 100 S. Ct. 2204, 447 U.S. 303, 65 L. Ed.2d 144.....	14
Freytag v. C.I.R., 111 S. Ct. 2631, 501 U.S. 868, 115 L. Ed.2d 764.....	14
Haines v. Kerner, 404 U.S. 519, 520-21. 92 S. Ct. 594, 596, 30 L. Ed.2d 652 (1972).....	11
Lavespere v. Niagara Machine & Tool Works, Inc., 910 F.2d 167 (5 th Cir. 1990).....	12
Marshall v. Jerrico, Inc., 446 U.S. 238 (1980), (citing Withrow v. Larkin, 421 U.S. 35 (1975)).	7
Matsushita Elec. Indus, Co. v. Zenith Radio, 475 U.S. 574, 586 (1986).....	12
Monell v. Department of Social Services, 465 U.S. 658, 98 S. Ct. 2018, 56 L. Ed.2d 611 (1978).....	13
Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed.2d 492 (1961).....	13
Renaud v. Abbott, 116 U.S. 277, 29 L. Ed. 629, 6 S. Ct. 1194.....	13
Standard v. Olesen, 74 S. Ct. 768, 98 L. Ed. 1151.....	14
White v. Bloom, 621 F.2d 276.....	11
Williams v. Pennsylvania, 136 S. Ct. 1899, 1905-06.....	7

CONSTITUTION AND STATUTORY PROVISIONS

U.S. Constitution Article III § clause 1.....6
U.S. Constitution First and Fifth Amendment.....6
U.S. Constitution Seventh Amendment.....7
42 U.S.C. §§ 12101, et seq., 12111, et seq.....10, 11
28 U.S.C. § 1254.....6
28 U.S.C. § 1291.....6
28 U.S.C. § 1654.....10
28 U.S.C. § 1331.....6
28 U.S.C. § 1343.....6
Title VII of the Civil Rights of 1964, 42 U.S.C. § 1983.....11

RULES

FRCP Rule 56(a).....6, 11, 13

E.

OPINIONS BELOW

On or about June 20, 2025, the Fifth Circuit Court of Appeals sustained the District Court and dismissed the Petitioner's appeal as frivolous, after being in review for a year.

On April 30, 2024, the United States District Court for the Eastern District of Louisiana, (DK# 39) granted FRCP Rule 56(a) Summary Judgment in favor of Solar Refrigeration & Appliances Service, Inc.

F.

JURISDICTION

The United States Supreme Court has jurisdictional authority to judicially review this case pursuant to 28 U.S.C. § 1254. The United States Fifth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291, and United States District Court Eastern District of Louisiana had jurisdictional authority to hear and decide this case pursuant to U.S. Constitution Article III § 2 Clause 1 and 28 U.S.C. §§ 1331, 1343. Review is sought from the Fifth Circuit Court of Appeals order dated May 29, 2025 and June 20, 2025 which Petitioner was never notified of the decision by the court.

G.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The U.S. Constitution 1st Amendment states, Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. U.S. Constitution 5th Amendment, No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land of naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived on life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. **Marshall v. Jerrico, Inc.**, 446 U.S. 238 (1980), (citing *Withrow v. Larkin*, 421 U.S. 35 (1975), **Litkey v. United States**, 510 U.S. 540 (1994)). At core of this due process jurisprudence is the recognition that self-interest on the part of the judge is incompatible with due process. **Williams v. Pennsylvania**, 136 S. Ct. 1899, 1905-06.

The trial court relied on fraudulent misrepresentations by attorney Jill Willhoft in rendering its decision.

The trial court permitted unethical circumvention of the judicial process and affirmed by the Fifth Circuit Court of Appeals in favor of Solar defendants against the rights of petitioner. The complaint contains the elements for stating a claim under ADA statutes that was not controverted by opposition or evidence of Solar defendants.

3. U.S. Constitution 7th Amendment states, in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States of the United States, then according to the rules of the common law.

Despite petitioner's demand for trial by jury the trial court conducted a bench trial and reached a determination of the facts based on the deceptive tactics and practices of attorney Jill Willhoft on behalf of Solar defendants.

4. Civil Rights Act of 1964, 42 U.S.C. § 1983. Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Pursuant to FRCP Rule 19(a), Anthony and Corrine Caruso are indispensable defendant parties, who should not have been dismissed as a defendant in this case. As proprietors and general manager acting in the management of affairs of Solar Refrigeration & Appliance Service, Inc., it was imperative to include these defendants to petitioner's cause of action but dismissed by the court.

H.

STATEMENT OF THE CASE

Michelle Horvath, a qualified disable individual, is a white female residing in the jurisdiction of Louisiana, who was hired by Solar Refrigeration & Appliances Service, Inc., as a Customer Service Representative (CSR) on July 7, 2019, and worked until she was terminated by owner and general manager Corrine Caruso on April 30, 2020, in a second time in June 2020, and finally on October 30, 2020.

Despite being able to perform the essential functions of her job duties, Solar Refrigeration & Appliance Service, Inc. general manager Corrien Caruso terminated her

employment for failing to return to work and misrepresented in the trial proceedings that she was not a qualified individual with a disability and was unable to perform essential functions of her job position.

Michelle Horvath was fired and rehired three times during the elimination period, while receiving disability insurance benefits for injury and illness sustained during the course and scope of performing her job duties by general manager Corrine Caruso.

Also, during her tenure of employment at Solar Refrigeration & Appliance Service, Inc., Ms. Horvath slipped and fell down the stairs and reported her injury to manager Corrine Caruso and was threatened and prevented from filing a Louisiana Workers' Compensation claim. As the manager, Corrine Caruso threatened to terminate her employment and deny a workers' compensation claim, if Ms. Horvath decided to file a claim.

Purporting to be legitimate, Solar Refrigeration & Appliance Service, Inc. procured a judgment through the unethical, immoral tactics and practices, intentional fraudulent misrepresentations of attorney Jill Willhoft of Liskow and Lewis. The complaint factually alleged the necessary elements to state a claim under the American Disability Act, but was circumvented by the court's adoption of the defendant's illicit maneuvering and deceptive misrepresentations to promote their disposition.

Petitioner avers that due to the tactics and practices of adversary counsel a fair and impartial trial was unobtainable in violation of her due process of law.

PROCEDURAL AND FACTUAL BACKGROUND

On October 30, 2020, Michelle Harvoth was terminated by Corrine Caruso alleging failure to return to work while receiving disability insurance benefits.

On November 17, 2020, Ms. Horvath in accordance with 29 C.F.R. part 1614, et seq. exhausted administrative remedy by filing a claim with the EEOC.

On August 22, 2022, EEOC composed a one-hundred twenty-one pages (121) report and issued Michelle Horvath a Notice of Right to Sue Letter.

On November 10, 2022, Petitioner filed a Complaint for Damages and Request for Trial by Jury in the U.S.D.C. for EDLA, DK #22-4463, alleging that Solar Refrigeration & Appliance Service, Inc., Anthony and Corrine Caruso violated federal laws prohibiting employment discrimination on the basis of disability pursuant to the Rehabilitation Act of 1973, 29 U.S.C. § 701-96, et seq., American Disability Act of 1990, as Amended 42 U.S.C. § 12101-12102, et seq., 12111-12112, et seq., and 42 U.S.C. § 12133. DK #1

On February 2, 2023, Counsel Jill Willhoft for defendants filed an answer denying the allegations with affirmative defenses. DK #7.

On June 7, 2023, counsel filed an answer to the complaint on behalf of Solar Refrigeration & Appliances Service, Inc. DK #23.

On September 27, 2023, the trial court conducted a scheduling order setting April 2, 2024, as the deadline for conducting discovery. DK #28.

On April 2, 2024, counsel for Solar Refrigeration & Appliance Service, Inc. move for FRCP Rule 56 (a) motion for summary judgment, witness and exhibit list. DK #39 and 40.

On April 12, 2024, Order issued transferring the case from the Magistrate to District Court Judge Sara S. Vance. DK #44.

On April 30, 2024, the court issued order and reasons and granted summary judgment in favor of Solar Refrigeration & Appliance Service, Inc. DK # 45 and 46.

On April 30, 2024, Petitioner timely filed a Notice of Appeal. DK #48.

On July 17, 2024, the Fifth Circuit Court of Appeal was docketed case no. 24-30343.

I.

REASON FOR GRANTING WRIT

1.) To prevent manifest injustice and enforce the secure protected constitutional and civil rights of the petitioner and avoid institution of an independent action to obtain justice.

The court misinterpreted and misapplied Title I and V as amended, 42 U.S.C. § 12101, et. Seq. and 42 U.S.C. § 12201, et seq., granting FRCP Rule 56(a) summary judgment causing irreparable harm to petitioner. At all relevant times, Michelle Horvath was a qualified person with a disability capable of performing her job duties. The district court and appellate court ignored the evidence in the case and relied on fraudulent misrepresentations of adversary counsel Jill Willhoft, who represented the employer.

Pursuant to 28 U.S.C. § 1654, proceeded in the capacity of pro se. Because the Plaintiff is pro se, the Court has a higher standard when faced with a motion to dismiss, **White v. Bloom**, 621 F.2d 276 makes this point clear and states: A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively, **Haines v. Kerner**, 404 U.S. 519, 520-21. 92 S. Ct. 594, 596, 30 L. Ed.2d 652 (1 972), and take them as true for purposes of deciding whether they state a claim. **Cruz v. Beto**, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).

The action taken by the judiciary will necessitate filing of an independent action to obtain justice.

2.) The judgment is contrary to U.S. Supreme court precedent, Fifth Circuit Court of Appeals, and other circuit courts on the issue of summary judgment.

Federal Rule of Civil Procedure 56 instructs that summary judgment is proper if the record discloses no genuine issue as to any material fact such that the moving party is entitled to judgment as a matter of law. No genuine issue of fact exists if the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. *Matsushita Elec. Indus, Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986).

Certainly, a rational minded person and jury could have ruled in favor of Michelle Horvath based on the alleged factual contentions in the complaint and supportive evidence in the record of the court. Pursuant to Louisiana Rules of Professional Conduct rules 3.3 and 8.4, attorney Jill Willhoft failed to act with candor and improperly influenced the judgment of act in complicity with illicit interpleading.

Before a court can find that there was no genuine material factual issues, the court must be satisfied that no reasonable trier of fact could have found for the nonmoving party, or in other words, that the evidence favoring the nonmoving party is insufficient to enable a reasonable jury to return a verdict in her favor. *Lavespere v. Niagara Machine & Tool Works, Inc.*, 910 F.2d 167 (5th Cir. 1990).

The Fifth Circuit Court of Appeals adopted the disposition of the district court, after holding the appeal on review for an entire year and dismissed the case as frivolous. Counsel for Solar defendants withheld evidence, suppressed the truth, made fraudulent misrepresentations, and stole documentation belonging to Michelle Horvath. Counsel failed to cooperate with discovery and failed to notice opposing counsel of pleading summary judgment.

Counsel's tactics and practices violated Michell Horvath's constitutional right to due process that was sanctioned by the trial and appellate courts.

The U.S. Supreme Court has stated that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it".

Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958). (Citing **U.S. v. Will**, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980).

The limitations inherent in the requirement of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. **Renaud v. Abbott**, 116 U.S. 277, 29 L. Ed. 629, 6 S. Ct. 1194.

The United States District Court and Fifth Circuit Court of Appeals affirmation of dismissal of petitioner's federal claims pursuant to FRCP Rule 56(a) was in violation of U.S. Constitution and Civil Rights Act of 1964, 42 U.S.C. § 1983. Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

This Court in the matter of **Monroe v. Pape**, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed.2d 492 (1961), and **Monell v. Department of Social Services**, 465 U.S. 658, 98 S. Ct. 2018, 56 L. Ed.2d 611 (1978), recognized Congress Original Intent in enacting section 1983. This Court began accepting an expansive definition of rights, privilege and immunity and held that the act

does cover the actions of state and municipal officials, even if they had no authority under state statute to act as they did in violating someone's federal rights.

3.) The petitioner's appeal should have been interpreted with leniency and expansively because of her pro se litigant status but the courts held a pro se litigant to the standards of an attorney.

It is for Congress, not the courts, to write the law. **Standard v. Olesen**, 74 S. Ct. 768, 98 L. Ed. 1151. Once Congress has spoken it is the province and duty of the judicial department to say what the law is. **Diamond v. Chakrabarty**, 100 S. Ct. 2204, 447 U.S. 303, 65 L. Ed.2d 144. Courts are not at liberty to create statutory exceptions where Congress has declined to do so. **Freytag v. C.I.R.**, 111 S. Ct. 2631, 501 U.S. 868, 115 L. Ed.2d 764. The court is to protect against any encroachment of Constitutionally secured liberties." **Bovd v. U.S.**, 116 U.S. 616.

The trial court violated Michell Horvath's U.S. Constitution 7th Amendment right to redress her grievance by jury trial, and conducted a bench trial dismissing indispensable parties and ignoring the genuine issues of material facts that precluded summary judgment.

J.

CONCLUSION

For the foregoing reasons presented and argued herein, a writ of certiorari is warranted to prevent manifest injustice and enforce procedural and substantive due process rights of petitioner.

Respectfully Submitted