IN THE

*Supreme Court of the United States*

October Term 2025

**ANNIE LAURA RAY**
**Appellant-Petitioner**

**vs.**

**COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT, STEVEN GALLOWAY, JONATHAN CHAMPAGNE LINDA HUEBER, WENDY MONICAL, BECKY DANFORD, MATT DAMBORSKY, RAY SISSON, JAMES BROUSSARD, AND JACKIE GOTCHER**
**Respondents**

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# ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

**FOR THE FIFTH CIRCUIT**
**NO. 24-20227**

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the court erred in applying former standards of disability law to pandemic related disability issues, including health, work, and safety standards questions.

2. Whether Respondent's policy mandates constitute discrimination when used to deny Petitioner's accommodation requests necessitated by Covid-19 related disability/medical concerns in contravention of the Americans with Disabilities Act

3. Whether the Court erred in concluding that Petitioner's noncompliance caused a breakdown in the interactive process

4. Whether the trial court erred in accepting the pleading of Respondent's counsel as summary judgment evidence, when no such assertion was made by the Respondent.

5. Whether the trial court violated Federal Rule of Civil Procedure 56 by granting summary judgment to the Respondent as issues of material fact existed which precluded same.

6. Whether Petitioner's Constitutional Rights were violated by denial of her property right to continued employment in an environment where her life and liberties would be assailed.

## LIST OF PARTIES/CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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## CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held corporation holding or owning more than 10% of the corporations stock involved with this case known to Petitioner, other than the Respondent itself.

## LIST OF PROCEEDINGS

Petitioner filed the trial court cause in the United States District Court for the Southern District of Texas, Houston Division on January 15, 2023.

Petitioner moved for Summary Judgment on January 30, 2024. (ROA.122-Dkt# 51),amending same on February 22, 2024. (Dkt # 58). Respondent moved for Summary Judgment on January 29, 2024. (Dkt # 48). On March 22, 2024, the trial court issued a Memorandum and Order denying Petitioner's Motion for Summary Judgment and granting summary judgment to the Respondent, Columbia Brazoria Indpt School District. (Dk # 67).

The Petitioner filed a Motion to Alter Judgment on April 19, 2024. (Dkt # 69). Same was denied on April 22, 2024 (Dkt # 71). Petitioner then filed its Notice of Appeal to the Fifth Circuit Court of Appeals on May 18, 2024.(Dk # 72).

The Fifth Circuit Court of Appeals affirmed the judgment of the trial court on April 28, 2025. Petitioner filed a Motion for Rehearing which was denied on June 16, 2025. A final judgment and "mandate"[1] was issued on June 23, 2025.

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[1] Mandate is contained in quotation marks because Petitioner considers said document to be a final judgment, rather than the mandate and disputes the nature of the document in a Motion to Accept same out of Time.

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## STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifth Circuit affirmed the decision of the trial court-Southern District of Texas, Houston Division on June 06, 2025. Petitioner's timely Motion for Rehearing was denied on June 16, 2025. Final judgment and mandate issued on June 23, 2025.

The Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1254.

## OPINIONS BELOW

The Fifth Circuit Court of Appeals in Annie Ray vs. Columbia Brazoria Independent School District et al , Docket No. 4:23-cv-00145,
decided and filed its opinion on April 28, 2025 in Cause No. 24-20227, affirming the District Court's denial of a grant of summary judgment to the Petitioner's claim for wrongful discharge and granting Respondent's Motion for Summary Judgment, as set forth in the Appendix hereto. The opinion was not designated for publication.

The Fifth Circuit denied Petitioner's Motion for Rehearing in the unpublished opinion on or about June 16, 2025. Petitioner sought a stay and a Rehearing En Banc on June 23 2024. Same was rejected by the Fifth Circuit and mandate/ judgment was issued on June 23 2024.

## DATE OF JUDGMENT SOUGHT TO BE REVIEWED

The date of the judgment sought to be reviewed is April 28, 2025 and June 16, 2025 (denial of Motion for Rehearing).

## STATEMENT OF THE CASE

Petitioner appealed the trial court's grant of Respondent's Motion for Summary Judgment to the Fifth Circuit Court of Appeals, because issues of material fact precluded said grant. Petitioner also appealed the Denial of her Motion for Summary Judgment, as she was entitled to summary judgment as a matter of law.

Petitioner, due to a myriad of health concerns and underlying conditions (disabilities) sought an accommodation due to Center for Disease Control (CDC) guidelines which indicated that persons with certain disabilities or underlying health conditions were predisposed to deleterious health risks, including death, if contracting Covid-19. Petitioner, sought an accommodation to teach virtually from home to decrease the likelihood of contracting CoVid-19.

As an alternative to telework, Petitioner also sought to teach in a more restricted area, which would prevent less exposure to the larger student body and staff population. Respondent denied both her requests and failed or refused to engage in the mandated interactive process of the Equal Employment Opportunity Commission's, hereinafter referred to as EEOC.

Consequently, Petitioner took temporary disability leave from the Respondent, hereinafter referred to as District, CBISD, school, or employer. As a result thereof, in March of 2021, the CBISD denied the renewal of her contract (terminated her) on the basis of excessive absenteeism. Petitioner then brought legal action alleging discrimination on the basis of disability. Petitioner also alleged

discrimination on the basis of age, race, sex/gender and retaliation.

After discovery, Petitioner sought but was denied Summary Judgment on the bases that the district failed to engage in the interactive process and failed to provide her with an accommodation. Such failure or refusal necessitated her taking temporary disability leave. Said absence is the basis for her nonrenewal/ termination.

Respondent also sought and was granted Summary Judgment, on the basis that Petitioner was not a qualified individual with a disability as she could not perform the essential functions of the job. In addition to same being a fact issue which precluded a grant of summary judgment, same was not espoused by the District as a basis for her nonrenewal and was therefore improperly considered by the trial court.

Petitioner appealed to the Fifth Circuit Court of Appeals which affirmed the decision of the trial court. It is from these decisions that Petitioner seeks this Writ of Certiorari, as said denial affects the application of the **Americans with Disabilities Act** of 1990, as amended 2008. Petitioner also seeks this Writ of Certiorari because the termination of her employment was violative of the **United States Constitution**, as set out infra.

## INTRODUCTION OF RELEVANT FACTS

Petitioner served as a school teacher in the Respondent school district, for approximately twenty (20) years without any negative information in her employment file. In fact, she received commendations for outstanding performance

during her twenty year employment history.

On March 13, 2020, Greg Abbott, Governor of Texas, declared Covid-19 a disaster. Therefore, the Respondent closed its campuses. All students were then taught virtually from Mid-March through the end of the school year in May, 2020.

Subsequently, Respondent notified all teachers to report to school for annual teacher-in service training in August, 2020. Petitioner complied.

Prior to said in-service, the school drill team and football teams reconvened practices. Some of said students contracted and spread Covid-19. After learning of same, Petitioner met with her supervisor to discuss her anxiety regarding returning to in-person teaching, due to the apparent spread at the school and due to her following health conditions: hypertension, diabetes, kidney disease, obesity, macular degeneration, proliferative diabetic retinopathy, and eye disease. [2] (ROA.1399, (ROA.576,1219 p 83: 14-20 ). Said conditions, coupled with being older and Black placed her at "high risk" of catching CoVid-19 or dying therefrom, thereby necessitating additional treatment for anxiety.

Due to the foregoing disabilities, medical concerns, and anxiety over catching Covid-19, Petitioner sought an accommodation to teach virtually from home or to be assigned to an area in which she would have less student and staff contact. Said accommodation was denied due to a recently implemented District policy requiring all teachers to return to their respective campuses for in-person student instruction. (Moody Depo pg.24:18-28:2). Petitioner followed said verbal request

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[2] See medical information; Sealed document 52 (ROA.2097 )

with a written request which also outlined her disabilities. Respondent offered no other options nor had discussions with Petitioner regarding appropriate alternative accommodations, stating that he didn't know what else they could have provided her. (Moody Depo 28:1-6).

Said denial resulted in Petitioner first seeking a ten day request for sick leave . Same is granted for only a ten day period, beyond the amount contained in an employee's leave bank. (ROA.1486.P34:16-35:2, ROA.1487 Pg,87:2-10)

Petitioner was directed to submit a " disability leave form" by the Benefits Coordinator, Renee Bullard.(ROA.1674-1675). After completing and submitting the necessary forms, Petitioner no longer reported to school due to her belief that she was on temporary disability leave. Petitioner appeared monthly at the school district office to pay her insurance premiums for health, life, and perhaps dental. At no time during these visits was she asked for documents nor informed that she was not in compliance with disability leave procedures.

On or about March 24, 2020, Petitioner received a nonspecific notice that her contract was not being renewed, with 34 potential reasons contained therein. (ROA.1591-1592). On or about March 30, 2021, Petitioner requested specific information regarding the basis for her nonrenewal (ROA.1443) and on April 07, 2021 was provided with the response that she had exhausted all available leave and had not reported for work. (ROA.1587,1588, 1591), therefore her contract was not being renewed.

Petitioner sought to appeal the nonrenewal of her contract through a

grievance procedure. During the grievance procedure regarding this matter on or about May 18, 2021, Superintendent Galloway failed and/or refused to allow Petitioner and the school board to discuss Petitioner's disability status and to present information pertaining to same. (ROA.1160) interjecting that disability would not be considered, as set forth below in the excerpt from that grievance procedure:

> Female Trustee Bd member: So in order to be on disability, you just have to file an insurance claim?
>
> Galloway: I'm not gonna speak to the disability, cause that, that's not part of my purview. My purview is that, right here, that we don't have the medical note submitted to the district. So I, I can't speak. . .
>
> Ray: That's what I asked
>
> Galloway: ... I can't speak to disability. I don't have, that's, that's a benefit we offer not, we don't, we're not locked in to any of that. We don't have proof. I don't have any information whether she's approved, denied, if she get's paid ...
>
> First of all, we don't, we don't on disability paperwork. It's gonna have to be medical documentation, so there is, I want to clarify, there is no, there is no requirement for you to turn in disability work. That's not, we don't, we don't work in the disability world, it would be the doctors ...

During the "hearing", some of the School Board of Trustee members claimed that they had no knowledge why she was off from work nor that she was on temporary disability leave. (ROA.1168). However, a recording played by the benefits coordinator during the hearing refutes the alleged lack of district knowledge, as the benefits coordinator asked Petitioner whether she had begun receiving her disability payments, during the recorded call.

The Superintendent did not ask for any medical documentation during the time that she was off (ROA.508), nor did anyone from the Respondent district ask for information pertaining to her absence. During the superintendent's deposition (ROA.663 pg.54:9-17), he stated that he did not ask for such information because he was not entitled to same.

The CBISD School Board of Trustees upheld the principal's and superintendent's decision not to renew Petitioner's contract. Petitioner, then filed suit for wrongful termination on the basis of disability and age pursuant to the **Americans with Disabilities Act,** 42 U.S.C.A. §§ 12101 et seq, hereinafter referred to as the ADA, the **Age Discrimination in Employment Act of 1967**, as amended; 29 U.S.C. §§ 621 et seq; the **Older Worker's Benefit Protection Act of 1990.** She also pled discrimination on the basis of race, **Title VI of the Civil Rights Act of 1964**, 42 USC 2000d et seq , discrimination on the basis of sex , **Title VII of the Civil Rights Act of 1964**, 42 USC 2000 e and retaliation. These claims are not discussed herein for page limitations concerns and because the major basis for termination seems premised on discrimination on the basis of disability.

## REASONS FOR GRANT OF WRIT OF CERTIORARI .

Covid-19 was a global pandemic which affected both the United States, as well as the world. Consequently, it is incumbent upon this Court to enforce the rules promulgated pursuant to **Americans with Disabilities Act** of 1990 as amended and the EEOC guidelines with respect to Petitioner and other disabled

persons who were terminated with respect to their disabilities in connection with the Covid-19 virus from 2020 to the present.

Certiorari must be granted to determine whether the Petitioner must lose her constitutionally guaranteed rights to life, liberty and property pursuant to the **United States Constitution**, Amendment Fourteen, in favor of subjugation of said rights due to her public employer's mandate of physical presence at the jobsite which could result in Covid related physical impairment or death. Certiorari must also be granted to determine whether a statutory definition of a qualified person with a disability may be altered in favor of the employer or whether a disability must be analyzed upon the totality of the circumstances.

Certiorari should be granted in order for this Court to determine whether a state employer may issue a policy mandate which affects the disabled with respect to the denial of accommodations pertaining to Covid-19 which are violative of the both the substantive and procedural due process rights of the Petitioner. It was/is incumbent on the Courts to ensure non-discriminatory policies be implemented, without job loss, and positively aver that any system which has afforded remote work to maintain its business must also afford remote work as a reasonable accommodation in order to protect the life of the Petitioner, pursuant to the Fourteenth Amendment of the **United States Constitution.** The Court should further examine whether Petitioner's " right to life" should be analyzed pursuant to the Equal Protections afforded thereunder as compared to vulnerable populations.

Moreover, a decision from this Court is necessary to establish boundaries, as

well as precedent should the pandemic recur. The dissipation of the ravages of the pandemic must not be the basis for negating the effects of the loss of a financial means of survival to the Petitioner. (Property right)

The Fifth Circuit's grant of summary judgment to the Respondent is contrary to the legislative intent of the **ADA**. Summarily dismissing same resulted in quelling the strength of the **ADA**--"de-teething" said act with respect to the Petitioner specifically and to the disabled, generally in contravention of **Federal Rule of Civil Procedure** 56 (a) which precludes summary judgment when there is disputed issues of material fact. (See **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 251–52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)), thereby warranting reversal.

Additionally, Certiorari should be granted due to the split of authority among other circuits and with the Supreme Court with respect to the necessary imposition of the EEOC interactive process, guidance from the Centers of Disease Control, and the application of the **Americans with Disabilities Act** § 42 U.S.C. 12112 § 9. Though many of the uncertainties regarding Covid-19 have passed regarding its transmission due to the development of vaccines to prevent it, and the dissipation of overwhelming death rate, it yet remains incumbent upon this Honorable Court to examine disability, accommodations, and employer response thereto in protecting the disabled. Only this Court can resolve the circuit split and restore the full measure of protection that Congress guaranteed to vulnerable employees with disabilities.

## SUMMARY OF THE ARGUMENT

Petitioner, a disabled employee, sought an accommodation, at the beginning of the Fall Semester for the 2020- 2021 school year. CBISD denied the accommodation of telework, due to the mandate for all teachers to return to school, without considering Petitioner's predisposition to contracting Covid-19 due to her disabilities and underlying health conditions. Moreover, the District failed to engage in the interactive process to discuss other options for accommodations in violation of the **ADA**.

As a result, Petitioner took District authorized temporary disability leave, which is provided for in the **Texas Education Code** §21.409 (a). Even though the District posits that her leave was an accommodation, it nevertheless terminated her for excessive absences during the period that she was on disability leave.

Petitioner had a constitutionally protected right to procedural and substantive due process which was denied her in the Respondent's initial decision to deny her an accommodation and its subsequent decision to nonrenew her contract, without benefit of a hearing. Petitioner had both a property right in her continued employment pursuant to both the terms of her contract and to the **Texas Education Code** which prevented her termination while out on disability leave.

Moreover, Petitioner had Constitutionally guaranteed rights to her property interest in her employment. Additionally, Petitioner had a right to life and liberty through the preservation of her bodily integrity. She chose her life and health over the school (governmental) mandate to return which could expose her to ill health or

death in light of the Covid-19 raging uncontrollably.

The trial court erred in its grant of summary judgment to the Respondent on the premise that Petitioner could not perform the essential functions of her job (a matter for jury determination), as that was not the reason raised by the Respondent for her termination. The trial court further erred in failing to find that Petitioner had been discriminated against, as a matter of law, on the basis of disability by Respondent's failing to engage in the interactive process, failing to provide an accommodation to Petitioner, and causing the Petitioner to be terminated.

## ARGUMENT AND PRESENTATION OF ISSUES

### I.

### WHETHER THE COURT ERRED IN APPLYING FORMER STANDARDS OF DISABILITY LAW TO PANDEMIC RELATED DISABILITY ISSUES, INCLUDING HEALTH, WORK, AND SAFETY QUESTIONS.

As heretofore stated, Petitioner sought an accommodation during the height of the Covid-19 pandemic due to her underlying medical conditions and disabilities. The pandemic raised complex legal questions regarding whether COVID-19 is a disability and/or other whether medical conditions or disabilities which increased susceptibility to Covid qualifies as a disability pursuant to the **Americans with Disabilities Act of 1990**, 42 U.S.C. 12101 et seq, and as amended 2008, hereinafter referred to as **ADA**. Petitioner contends that they do.

Petitioner is a person with a "disability" because she has "a physical or mental impairment that substantially limits one or more major life activities of

such individual...." 42 U.S.A. § 12102(1). "[M]ajor life activities include, but are not limited to, caring for oneself,..... seeing, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2). Her status as a disabled person has never been challenged by the district, because at a minimum, the District was aware that at least one of her disabilities affected a major life activities (seeing).[3] With her increased anxiety (physician determined disability) due to the advent of Covid, the major life activities of concentrating, thinking, communicating, and working were also affected.

Petitioner sought telework as an accommodation, in addition to other(s). The EEOC's publication ***What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (EEOC COVID Guidance)*** (Update May 28, 2021) contained a discussion and analysis of telework which is important and pertinent to the instant case. EEOC provided an overview of cases discussing same and some are as follows:

In **Peeples v. Clinical Support Options, Inc.**, 487 F. Supp. 3d 56 (D. Mass. 2020), an employee obtained a preliminary injunction to preclude his termination for seeking to work remotely due to asthma and respiratory conditions during the pandemic. Despite being able to do all functions of their job remotely, the employer ordered all managers to return in person and denied the plaintiff's request to continue telework.

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[3] The District was aware of her visual disability, as her campus engaged in a fundraiser for her to defray the expenses of her eye treatments.

The district court held that asthma is a disability in the context of COVID-19 and that "[t]he risk of irreparable harm to Plaintiff – in the form of possible serious consequences of an infection if they are not permitted to telework – cannot be discounted." **Peeples** at 65 . The **Peeples** Court agreed with the Plaintiff that " the loss of employment creates a likelihood of a cascade of further negative consequences, including, at least in the short-term, the likely loss of employer-provided health insurance. The **Peeples** Court further employed the "totality of the circumstances" analysis (discussed infra) to determine whether a plaintiff has a disability **Id** at 63, finding that it did. The Court determined that pursuant to the requirements for injunctive relief, the plaintiff would likely succeed on its failure to accommodate claim. The Court further found that the Defendant employer failed to engage in a meaningful interactive process.

In another **ADA** case, **Madrigal v. Performance Transportation, LLC**, 2021 WL 2826704 (N.D. Cal. July 7, 2021), the Plaintiff had diabetes as does Petitioner. After being released from the hospital for pneumonia, doctors were concerned that his diabetes put him at high risk of catching Covid-19. Ten days after determining that there was no suitable accommodation that could be provided to Madrigal, his job terminated him.

The court confirmed that diabetes is "qualifying disability under the Cal. Code Regs. title 2, § 11065(d)(2)( c )", stating further that "It is by now well-accepted that having diabetes also increases the risk of serious illness or death from COVID-19, a disease that affects the respiratory system as well as other body

systems. See *People with Certain Medical Conditions, Centers for Disease Control and Prevention* (May 13, 2021)." The Court further found the employer's denial of the employee's request for reasonable accommodation, without discussing any alternatives, constituted a violation of the duty to engage in the interactive process.

Though **Milteer v. Navarro County**, 652 F Supp.3d 754, 756 (N.D.Tex 2023), has been reversed on other grounds, it cites a relevant holding in ***Silver v. City of Alexandria,*** 470 F.Supp.3d 616, 621-22 (W.D. La. 2020) which is still good law-- that during COVID-19 pandemic, whether a plaintiff has a disability should be judged by the **"totality of the circumstances**," holding that:

> ***In sum, consideration of .... documented serious underlying medical situation***, in light of the pandemic's existence,***[totality of the circumstances] is the proper way to make the disability determination here***. It is not the reverse, as the defense suggests. [Emphasis added]

See also **Frederick v. Allor Mfg., Inc**., No. 220CV12790TGBRSW, 2022 WL 598746 (E.D. Mich. 2022), at *5; **Perry v. Norton Hospitals.** Civil Action, No.3:21-cv-00192-U.S. District Court, W.D. Kentucky, Louisville Division p. 19.

Therefore, based upon the foregoing, the Court committed reversible error by failing to recognize and apply the appropriate (pandemic) standards in determining whether Petitioner was a qualified person with a disability and whether she was entitled to an accommodation.

## II.

## WHETHER RESPONDENT'S POLICY MANDATES CONSTITUTE DISCRIMINATION WHEN USED TO DENY PETITIONER'S ACCOMMODATION REQUESTS NECESSITATED BY COVID RELATED DISABILITY/MEDICAL CONCERNS IN CONTRAVENTION OF THE AMERICANS WITH DISABILITIES ACT

The **ADA** makes it unlawful for an employer to "discriminate against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). To establish an **ADA** discrimination claim, a plaintiff may present "direct evidence that [she] was discriminated against *because of* [her] disability or alternatively proceed under the burden-shifting analysis articulated in **McDonnell Douglas Corp. v. Green**, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)." **Rodriguez v. Eli Lilly & Co** ., 820 F.3d 759, 764 (5th Cir. 2016). The burden shifting analysis requires plaintiff to establish her prima facie case of discrimination by showing that she: (1) has a disability, has a record of a disability, or was regarded as disabled (medical history cited supra); (2) was qualified for the job; (20 years of commended service) and (3) was subject to an adverse employment decision on account of her disability (contract nonrenewed) **Lily** at 765. The Petitioner made that showing, set forth in **McDonnell Douglas**.

However, such a showing is unnecessary, as Petitioner had direct evidence of discrimination, as the Respondent school district admitted that 1) it failed to engage in the interactive process and 2) that it failed to afford Petitioner any accommodation. 3) The District's superintendent stated that the reason she was not

afforded the opportunity to teach virtually was due to the mandate for all staff to report/return to school. (ROA.122,69:14-18). No other options were discussed. This matter is not disputed. 4) Petitioner was terminated for the accommodation Respondent provided (disability leave).

Due to the Covid-19 virus, all school District teachers were mandated to teach from home (virtually) during the Spring 2020 semester. Therefore, the expertise, skill, and technology (ROA.1860; pg 26:15-22) was already available in the District for virtual teaching/remote learning.

In a referenced EEOC document[4], the EEOC defines a reasonable accommodation as a "change in the work environment that allows an individual with a disability to have an opportunity to apply for a job, perform its essential functions, or enjoy equal benefits and privileges of employment . At #35 of the same document, telework is considered an effective control strategy to prohibit the spread of Covid-19. (See No. 10). Another EEOC Guideline [5] finds telework to be an acceptable reasonable accommodation, absent undue hardship. As a caveat, the parties must meet and discuss an alternative reasonable accommodation. (Question 14). Same was not done in the instant case.

In addition to teaching virtually, Petitioner also sought to teach in an area

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[4] (Https://www.eeoc.gov/fact-sheet/pandemic-preparedness-workplace-and-americans-with-disabilities- act #23)

[5] Equal Employment Opportunity Comm'n, Work at Home/Telework as a Reasonable Accommodation (Oct.27, 2005), https://wwww.eeoc.ov/facts/telework.html; https://www.eeoc.gov/fact-sheet/work-hometelework-reasonable-accommodation

with less exposure to the student body and staff. Respondent, District, via Superintendent Galloway mentioned other areas with less traffic from which she could have taught, such as the Outback and G Building (ROA.193-71:13-17; ROA.193-73:1-74:10,74:17-23). Moreover, he acknowledged that those spaces could have been designated for her use. (ROA.193:74:7-10, 74:17-75:1), without hardship to the District.

Once Petitioner made a request for an accommodation, the duty to engage in the interactive process triggered the employer's obligation to participate therein to determine the appropriate accommodation . 42 U.S.C. § 12112(b)(5)(A)." The responsibility for fashioning a reasonable accommodation is shared between the employee and employer. 29 C.F.R. § 1630.9, App. (1995). However, no such exploration of options was had between the Petitioner and Respondent as required by the **ADA,** 42 U.S.C. 12112(b)(5) nor the guidelines promulgated by EEOC due to the unwillingness of the Respondent.

The Court in **EEOC v. Chevron Phillips Chem. Co., LP**, 570 F.3d 606, 621 (5th Cir. 2009) found that:

> Once an employee makes such a request, however, the employer is obligated by law to engage in an"interactive process": "a meaningful dialogue with the employee to find the best means of accommodating that disability." ***Tobin v. Liberty Mut. Ins. Co.***, 433 F.3d 100, 108 (1st Cir.2005).

When an employer does not engage in a good faith interactive process, that employer violates the ADA-including when the employer discharges the employee instead of considering the requested accommodations." **EEOC** at 621 citing

**Cutrera v. Bd. of Supervisors of La. St. Univ.**, 429 F.3d 108, 113 (5th Cir.2005).

Additionally, the Respondent knew that Petitioner was on leave due to the District's failure to grant her an accommodation. The District posits that her leave was an accommodation (ROA.1775). If that were the case, the District is precluded from terminating (non renewing) her contract for said accommodation that it allegedly knowingly afforded her, thereby acknowledging and regarding her as a person with a disability, pursuant to the **ADA**.

Discrimination is rarely articulated verbally. However, it was in the instant case. Any other false explanation of the employer which is unworthy of credence, supports an inference of discrimination, even without evidence of defendant's true motive. **Russell v. McKinney Hosp. Venture**, 235 F.3d 219, 225 (5th Cir 2000). No further evidence of discriminatory animus is required because "once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation. **Laxton v. Gap**, 333 F.3d 572, 578 (5th Cir 2003) citing **Reeves v. Sanderson Plumbing Prods., Inc.**, 530 U.S. 133, 147-148; 120 S.Ct. 2097, 2108-09. Petitioner satisfied its burden in this regard.

Respondent posits that Petitioner was nonrenewed for her "excessive absenteeism". However, her absenteeism was due to being forced to take leave because the District failed to afford Petitioner an accommodation. Because Respondent admits this leave was an accommodation, the explanation of termination due to excessive absenteeism is pretextual and unworthy of credence ad lacks logic. Respondent's termination of Petitioner was an intentional act of

discrimination and/or a violation of the ADA.

## III.

## WHETHER THE COURT ERRED IN CONCLUDING THAT PETITIONER'S NONCOMPLIANCE CAUSED A BREAKDOWN IN THE INTERACTIVE PROCESS.

The trial court erred further in its finding that:

> Any breakdown in the interactive process, then, is traceable to Ray, not CBISD. *See Hoskins v. GE Aviation*, 803 F. App'x 740, 745 (5th Cir. 2020) (per curiam) ("If an employee fails to provide requested documentation to substantiate a claim of disability and thereby causes a breakdown in the interactive process, the employer has not violated the ADA."). Ray has failed to raise a genuine dispute as to CBISD's participation (or lack thereof) in the interactive process (Opn page 8)

This ruling fails for the following reasons:

First, the evidence clearly and unequivocally reveals that upon Petitioner requesting an accommodation, the Respondent failed to engage in the interactive process. Secondly, the District never sought documentation to substantiate a claim of disability. Thirdly, the Benefits Coordinator stated that all documentation processed for disability claims is handled by the insurer, rather than the District.

Petitioner submitted a letter to her supervisor Moody, which spelled out the nature of her disabilities. Moody indicates that he saw a letter from Ray identifying the nature of her disabilities, in which she expressed that due to same, she was at high risk of catching CoVid-19. (ROA.1868; pg 57:19-58:21). When asked whether any documentation had been requested from her by the Respondent regarding her conditions (disabilities), he stated that he could not recall. (ROA.1868; pg 58:21) See also ROA.1307). Superintendent, Galloway finally admitted during his deposition,

that he did not ask Petitioner for any documents pertaining to her disability leave because he had no right to do so. (ROA.1934 pg. 54 lines 3-17).

The Benefits Coordinator, Ms. Bullard, revealed that she did not seek to obtain disability leave (medical) information from Petitioner, as that was a different process through AFS (American Fidelity Insurance Company), the company which handled disability leave requests. She indicated that though regular sick leave is handled by the supervisors. (ROA.1261, lines 3-12), however, disability leave is handled by the insurance company. Forms are turned into Bullard for forwarding to the insurer (AFS) (ROA.1261, lines 13-21). (ROA.1263, line 7-ROA.1264, line 8.) After Petitioner submitted said forms to Bullard, Bullard then transmitted them to AFS, after which she is then "out of the loop." She further acknowledged that neither the superintendent nor anyone else inquired of her (Bullard) regarding Petitioner's medical documents or leave status. (ROA.1294-1295, line 2).

Pursuant to the Columbia Brazoria Independent School District Policy:

> An employee's entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different and each may be granted by its own terms. Atty.Gen.Op. H-352 (1974)

The Attorney General Opinion referenced therein is set forth below:

> In 1973 the Legislature added Sec. 13. 905 to the Code (Acts 1973, 63rd Leg., Rt W., ch. 470, p. 1276). It requires that a certified full time employee of a school district be given a leave of absence for temporary disability "at any time the employee's condition interferes with the performance of regular duties..... During such a leave of absence **the contract of employment of the employee may not be terminated by the school district.** [Emphasis added]

The Attorney General opinion goes on to State that:

> While Sets. 13.904 and 13.905[6] of the **Education Code** are closely related, the two leaves, are different and each must be determined by its own terms. **Sick leave** in Sec. 13.904 **is primarily concerned with pay for time off from work because of sickness**. Section 13.905 **deals with protection of tenure and the right to return to active employment during a more extended period of disability.** [Emphasis added]

The trial court further erred in finding that Petitioner was noncompliant with the production of leave request documents as same were tendered to the District via the benefits coordinator and then to the insurer. The Respondent never asked for any. The evidence clearly shows that the Respondent violated both its policy and State law in terminating/ nonrenewing Petitioner's contract during the period in which she was on leave pursuant to an "accommodation" it granted her. Moreover same is violative of the **Americans with Disabilities Act** § 12112 (a) which prohibits the discharge of employees on the basis of disability.

## IV.

## WHETHER THE TRIAL COURT ERRED IN ACCEPTING THE PLEADING OF RESPONDENT'S COUNSEL AS SUMMARY JUDGMENT EVIDENCE AS NO ESSENTIAL FUNCTION ASSERTION WAS MADE BY RESPONDENT

In response to Petitioner's claims that she was not provided an accommodation, and wrongfully terminated, Respondent's counsel proffered the argument that she was not entitled to an accommodation, as she was not a qualified disabled person because she could not perform the essential functions of her job.

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[6] **Texas Education Code** 13.904 and 13.905 has been recodified to Texas Education Code §§ 22.003 and 21.409 respectively in 1995.

Said argument was improperly before the court for consideration.

Even though this Petition shall discuss the issue of essential functions, Petitioner contends that an exegesis of the law in this area is misplaced because it was not the basis given by Respondent for nonrenewal/ termination of Petitioner. Additionally, the argument was propounded by counsel and was not proper summary judgment evidence. Finally, it was tendered in contravention of the **Texas Disciplinary Rules of Professional Conduct** for Attorneys. Each argument shall be dealt with in turn.

***Essential Functions***

Relying on an old (year 2013) unsigned job description (CBISD Bates stamped 196-199) and the argument of counsel, the trial court cited on page 7 of its opinion that:

> The district court determined that in-person attendance was essential to Ray's role as a teacher. Indeed, this court has recognized that "there is general consensus among courts, including ours, that regular work-site attendance is an essential function of most jobs," especially when "the position is interactive." *Credeur v. La. Through Off. of Att'y Gen.*, 860 F.3d 785, 793 (5th Cir. 2017).

Said job description was not credible, not relevant, and not admissible. Said document was not authenticated and did not bear the signature of the Petitioner.

With respect to Petitioner's contract, the only applicable language contained therein indicates that she can only be terminated for good cause. Good cause was not established nor defined by the Respondent. (See Resp Bates 294-296).

The Court gave deference to the essential functions issue over the

accommodation issue. Same is improper because the order matters. If the issue of whether Respondent can perform her job with an accommodation is satisfied, the essential function aspect is never reached.

In **Barber v. Nabor Drilling Inc.**, 130 F.3d 702, 708 (5th Cir 1997), the court delineated between essential functions of a job and marginal functions (as set forth in the EEOC guidelines at 29 C.F.R. § 1630.2(n)) stating that an essential function is the reason that the job exists - to perform that function (in this instance-teaching) and can only be performed by a limited number of highly specialized persons with the ability to perform that function. **Barber** at 707 goes on to state that the Court can not determine which functions are essential and which are marginal stressing that doing so "usurps" the function of the jury:

> If we venture to second-guess then we simply usurp the most critical function of the jury in ADA cases, i.e., the injection of some indispensable common sense in the determination of what is or is not an essential function. When a statutory scheme such as the ADA necessitates some seemingly arbitrary line-drawing exercise, courts of law do well to refer the question to the jury....

Most importantly, the essential functions argument was not raised by the District as a basis for affording or denying Petitioner the accommodation of virtual teaching nor in determining that Petitioner's contract should not be renewed. Respondent simply denied Petitioner's request to teach virtually, due to its mandate that all teachers return to the campus for the Fall semester. Respondent discriminated against Petitioner as a matter of law with respect to providing an accommodation. Therefore, there is no basis in fact for the court's ruling.

***Pleadings Do Not Constitute Summary Judgment Proof***

The issue for consideration herein is whether the Court's ruling premised upon said false argument could be the basis for summary judgment. Petitioner either had a disability, a record of, or had been "regarded as a person with a disability" pursuant to **Americans with Disabilities Act ADA of 1990**, 42 U.S.C. 12102, Sec 1. Had she not been determined to be disabled, she would not have been afforded the "accommodation" of leave by the District. Respondent, through counsel nor the courts, may not now denounce Respondent's disability.

The skillful research and writing of Respondent's counsel proffered the "essential functions" argument. However, pleadings do not constitute summary judgment proof. **Hidalgo v. Sur. Sav. & Loan Ass'n**, 462 S.W.2d 540, 543 (Tex.1971). More importantly, the Respondent has never stated that Petitioner could not perform the essential functions of her job if teaching virtually. Petitioner's doing so the prior semester negates that notion.

The **Texas Disciplinary Rules of Professional Conduct** require an attorney to engage in zealous representation of its clients. (See Preamble). Petitioner contends that in the instant case, said zealous representation has crossed an ethical line, because it has caused Respondent's counsel to submit patently false bases to the Court regarding why the Petitioner should be deemed a person who is not disabled under the statute, thereby seeking to justify her termination, when the reason has been clearly espoused by Respondent. Same resulted in the litigation extending beyond its reasonable time frame, a decline in Petitioner's health to an

extent that she can no longer take care of herself (residing currently in a nursing home facility) and increased litigation expenses, including seeking this Petition for Writ of Certiorari.

The **Texas Disciplinary Rules of Professional Conduct** §§3.01 and 3.03 prohibit asserting or controverting an issue that is frivolous or knowingly false. Said rules further prohibit counsel to take a position that unreasonably increases the costs, burdens of litigation, or that unreasonably delays the matter. § 3.04.

Respondent's counsel filed knowingly false pleadings and briefing in this cause. More specifically, the opposing counsel knew the following:

1) That the District's failure to provide a telework accommodation was due to its mandate for Petitioner and all other staff to return to work;

2) That others could manage Petitioner's classroom if she were allowed to telework as coaching staff were basically free until athletics at the end of the school day. [7]

3) Opposing counsel knew that Petitioner had also sought to teach in another locale within the school and that the District avowed that same would not result in undue hardship nor would teaching virtually;

4) The District never contacted Petitioner about her disability leave nor asked for any documentation with respect thereto;

5) The superintendent had called Petitioner's time off an "accommodation"

In spite of knowing the foregoing, Respondent's counsel still proferred untrue

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[7] Petitioner had alleged that, but for race, she could have been placed in "in school suspension " and another disciplinary classroom with few students during this time, however, the coaches were placed there to fill time until their coaching duties at the end of the day. Respondent countered that said practice was not racism but "cronyism" which defeated a racial discrimination claim.

statements regarding Petitioner's request for accommodations and the District's response thereto.

**Argument of Counsel Led to Improper Analysis**

Opposing counsel's summary judgment pleading led the trial court to examine Petitioner's termination in light of an essential functions analysis, rather than a blatant denial of an accommodation, without exploration of how and where Petitioner could perform her job duties. Moreover, it led the trial court to become a fact finder with respect to the essential functions analysis, concluding wrongfully.

The Fifth Circuit in **Montague v. United States Postal Service**, 2023 WL 4235552 (5th Cir. 2023) found that:

> Whether a requested accommodation would fundamentally alter a particular job is generally a fact determination. As we've explained, "[f]act finders must determine whether a function is 'essential' on a case-by-case basis." Id. (quoting *LHC Group*, 773 F.3d at 698).

Summary judgment is not to be used as a tool to determine matters which require factual analysis and/or to deprive a litigant of its day in Court. The Supreme Court in **Perry v. Sindermann**, 408 U.S. 593, 599, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972), held that there exists a genuine dispute regarding whether the college refused to renew a teaching contract on the basis of a constitutionally protected right, thereby prohibiting summary judgment without full exploration of that issue. **Perry** applies in the instant case because summary judgment should not have been granted herein without a full exploration of Petitioner's rights.

In addition to the trial court substituting its opinion for that of a jury , it

further erred as it gave preferential deference to the essential functions analysis over the interactive process analysis. In order to satisfy the mandates of the **ADA** and the interactive process guidelines promulgated by the EEOC, it is first necessary to ascertain whether the job, with accommodations, can be performed by the disabled person. To reiterate, the order matters.

The trial court and the Fifth Circuit committed reversible error by finding that Petitioner was not able to perform the essential functions of her job with an accommodation, as same was 1) a premature inquiry considered prior to analyzing the exploration of accommodations during the required interactive process phase. The order matters. Additionally, it was 2) improperly before the Court as no such "essential function" assertion was made by the District thereby making same an improper basis for the trial court to grant summary judgment on. 3) Moreover, same is a fact issue which must be determined by a jury, as set our supra. The Court committed reversible error in grating summary judgment to Respondent given the foregoing.

## V.

## WHETHER THE TRIAL COURT VIOLATED FEDERAL RULE 56 BY GRANTING SUMMARY JUDGMENT TO RESPONDENT AS ISSUES OF MATERIAL FACT EXIST WHICH PRECLUDE SAME

Petitioner sought summary judgment on the basis that she was denied an accommodation and that the Respondent school district failed to engage in the interactive process with her to determine what accommodations, if any, could be provided to her in order to perform her job. Respondent sought summary judgment

on the basis that Petitioner could not perform the essential functions of her job if she taught virtually (accommodation). To reiterate, that was never the argument of the Respondent.

> "[t]he appropriate inquiry [on summary judgment] is '**whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.**' " *Septimus v. Univ. of Houston, 399 F.3d 601, 609 (5th Cir.2005)* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).Emphasis added]

The Court views the evidence in the light most favorable to Plaintiff as the non-movant and resolves all factual disputes in his favor, as it must on summary judgment. See **Reeves v. Sanderson Plumbing Prods., Inc.,** 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000).

The trial court and 5th Circuit did exactly what case law prohibits by weighing evidence in favor of Respondent which should have been submitted to a jury.The trial court placed itself in the role of fact finder, rather than deny summary judgment as required by the **Federal Rule of Civil Procedure** 56.

The statements of the District clearly show that:

1) that the interactive process was not employed; 2) that it would not operate as a hardship to the District to have placed Petitioner in another area of the building or campus with less student and faculty flow to allow her to teach virtually; 3) that Respondent did not request medical records from the Petitioner regarding her disability leave, acknowledging that it was not entitled to same; 4) that no analysis was utilized to determine whether Petitioner could perform the

essential functions of her job with accommodations; 5) that her long term disability was deemed an accommodation. (ROA.1775) and 6) that the District fired her due to absences associated with both her disability and accommodation.

Whether Petitioner was a qualified individual with a disability who could perform the essential functions of her job was an issue of material fact, precluding summary judgment for the Respondent, had it been examined pursuant to proper submission and in the proper order, thereby prohibiting a grant of summary judgment to Respondent. On the other hand, Petitioner met the legal qualifications to prove that she was disabled and entitled to an accommodation as a matter of law. She was thereby entitled to summary judgment as a matter of law.

## VI.

## WHETHER PETITIONER'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY THE DENIAL OF HER PROPERTY RIGHT TO CONTINUED EMPLOYMENT IN AN ENVIRONMENT WHERE HER LIFE AND LIBERTIES WOULD BE ASSAILED

Petitioner's constitutional rights were violated by the employment decisions Respondent made with respect to her. Both the denial of due process and a right to be heard with respect to the provision of an accommodation and prior to an adverse employment action (termination/ nonrenewal of contract) violates the due process rights guaranteed by the **United States Constitution**, Amendment Fourteen. Additionally, she suffered a loss of property interest in her employment, due to her need to preserve her life.

The **United States Constitution**, Amendment Fourteen § 1 provides in

pertinent part:

> ...Nor shall any State deprive any person of life, liberty, or property, without due process of law

Procedural due process, at a minimum, requires the opportunity to be heard at a meaningful time and in a meaningful manner."**Mullane v. Central Hanover Bank** (1950), 339 U.S. 306, 314 . **Mathews v. Eldridge**, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976). A meaningful time is clearly prior to an adverse employment action.

Petitioner was denied due process at the time of the request for the accommodation. No notice was given prior to Petitioner's meeting with the school principal. It is undisputed that Petitioner was afforded no meaningful avenue to resolve or be heard regarding the District's failure to engage in the interactive process with her or be heard regarding the loss of means to support herself by having to take a forced leave of absence.

Further the decision to nonrenew/terminate her contract was likewise made without benefit of notice and a hearing. After Petitioner was notified that her contract was not renewed for the following school year, Petitioner appeared before the school board to "appeal" that decision made by the school principal and ratified by the District Superintendent. Her denial of accommodations and nonrenewal of her contract without a hearing prior to the decision to terminate her was in contravention of due process requirements for a hearing in a meaningful time and manner. The order matters.

To prevail on a substantive due process claim in the public employment context, a plaintiff must show two things: (1) that she has a property interest or right in her employment and (2) that the public employer's termination of the interest was arbitrary or capricious. **Lewis v. University of Texas Medical Branch**, 665 F.3d 625, 630 (5th Cir.2011). A property interest in employment may be created by ordinance or implied contract **Moulton v.City of Beaumont**, 991 F.2d 227, 230 (5th Cir.1993). The Petitioner, herein had an actual contract, thereby making it unnecessary to find an implied contract.

To state a Fourteenth Amendment due process claim under § 1983, "a plaintiff must first identify a protected life, liberty or property interest and then prove that governmental action resulted in a deprivation of that interest." **Gentilello v. Rege**, 627 F.3d 540, 544 (5th Cir. 2010) (quoting **Baldwin v. Daniels**, 250 F.3d 943, 946 (5th Cir. 2001)).

As heretofore stated, Petitioner had a property interest in continued employment. After 20 years of successive renewals of her employment contracts (tenure) was implied and presumed, as she had done nothing to breach said contract and good cause had not been demonstrated to justify nonrenewal as set out supra. Therefore Petitioner had a reasonable expectation of continued employment.

Additionally, she had a right to life and liberty through the preservation of her bodily integrity----- choosing life and health over the school (governmental) mandate to return without regard for her health or life. The Court in **Doe v. Taylor Indep. Sch. Dist.**, 15 F.3d 443, 445 (5th Cir. 1994) stated that it

undisputed "that schoolchildren do have a liberty interest in their bodily integrity that is protected by the Due Process Clause of the Fourteenth Amendment." Such a ruling must be extended to faculty, as well. Pursuant to information disclosed in Galloway's deposition, students were given the option to return to the classroom during the Fall Semester of 2020 to protect them from Covid exposure, but the faculty and staff were not provided that option. (Exh 1, Steven Gallowy Deposition-Protocols for Return).

This disparate treatment either "burdens a fundamental right [or] targets a suspect class." **Romer v. Evans,** 517 U.S. 620, 631 (1996) This impacts on persons with disabilities which makes the Respondent "vulnerable under the Equal Protection Clause."

In **Valentine v. Collier** , 993 F.3d 270 (5th Cir. 2021), the Court examined the exposure of inmates to Covid-19 at a Texas Department of Criminal Justice prison under the Eighth Amendment to the **United States Constitution**. As stated in **Valentine** at 281 , "Because the Eighth Amendment applies to the states through the Fourteenth Amendment, an ADA violation that is also an Eighth Amendment violation actually violates the Fourteenth Amendment. In **Valentine**, the court examined the health risk to inmates pertaining to the Covid-19 virus. The court examined whether deliberate indifference was shown to said inmates.

> Deliberate indifference requires that "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."

CBISD showed deliberate indifference to the health needs and disabilities of Petitioner. As the **United States Constitution** is interpreted to ascribe risk of bodily integrity and harm to children and inmates, (vulnerable populations), it should have been so ascribed to other individuals, whose life or health was at risk due to the Covid-19 virus, such as the Petitioner. The Covid-19 was no respecter of persons. If exposure of the virus to inmates constituted cruelty, failure to protect teachers was likewise cruel and violative of the ***Equal Protection Clause*** of **the United States Constitution**, Amendment Fourteen which provides:

> All persons born or naturalized in the United States.....,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.

The Court in **Gentilello** at 544, in examining the tenure rights of a professor, stated that " To enjoy a property interest in employment, an employee must "have a legitimate claim of entitlement" created and defined "by existing rules or understandings that stem from an independent source such as state law ...." **Bd. of Regents v. Roth**, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Petitioner has cited the **ADA** statutes and Texas statutes (supra) which prevent her termination while out on disability leave.

Additionally, Petitioner was denied the right to life- being mandated to choose her job or her life. Petitioner contends further that for equal protection purposes, her life is as important as those of individual inmates who were exposed to and died from Covid-19 in a Texas prison population as well as the students she

taught. The district employed a standard of deliberate indifference to the life and/or health concerns of the Petitioner and placed more value on that of its student body than its teachers, thus denying her equal protection under the law.

The above referenced failures constituted a violation of the **United States Constitution**, Fourteenth Amendment.

## CONCLUSION

In conclusion, in spite of the clear and unequivocal showing that the Respondent's reasons for terminating the Petitioner were unworthy of credence and violative of the **ADA**, the Fifth Circuit, in the case at bar, still negated that discriminatory animus was at issue, questioning whether the Petitioner was a qualified disabled person, thereby making a finding of fact that the Petitioner could not perform the essential functions of her job via telework while ignoring other possible accommodations. As same was inappropriately raised by CBISD's counsel and was contrary to the District's assertions for nonrenewal, same should never have been interjected into this case by Counsel and was improperly before the Court of Appeals. Consequently, writ of certiorari must be granted.

The Respondent district does not refute that she had a disability. In fact, the Respondent states that giving her the time off (disability leave) was an accommodation. If so, the District may not then terminate her for the accommodation that it provided.

Genuine issues of material fact exist which precluded a grant of summary judgment to the Respondent. Said summary judgment grant to Respondent

constitutes reversible error.

The trial court committed further error by denying Petitioner's summary judgment because Petitioner established her entitlement thereto. Had CBISD not refused to engage in the interactive process and explore appropriate accommodations, Petitioner would have had no need to take disability leave. The testimony of the Respondent's superintendent revealed that Petitioner could have been accommodated in other areas of the building without causing a hardship to the Respondent. Therefore, Petitioner has established that she was entitled to summary judgment as a matter of law.

Stating that it had no right to disability medial information, the District failed to request medical documentation regarding her temporary leave of absence. Consequently, same can not now be the basis for the trial court's finding of refusal to produce same nor the District's basis for termination.

The essence of this case is whether CBISD failed to provide Petitioner an accommodation on the basis of disability and whether its refusal to engage in the interactive process resulted in discrimination on the basis of disability. It did. More importantly, the trial court erred in analyzing the instant case under pre-pandemic standards- ignoring all relevant law during the height of the pandemic and thereafter.

Finally, Petitioner was deprived of life, liberty, and/or property, without due process of law, as guaranteed by the **United States Constitution**, Fourteenth Amendment, with respect to her property interest in her continued employment, as

well as her interest in preserving her actual life. Also she was denied equal protection under the Fourteenth Amendment, as well. It is therefore necessary for this Honorable Court to find reversible error and grant this Writ of Certiorari.

**PRAYER**

For all of the foregoing reasons identified herein, Petitioner respectfully requests that this Court grant this Petition for Writ of Certiorari, review and reverse the judgment and decision of the United States Court of Appeals for the Fifth Circuit and remand the matter to the Southern District of Texas for trial on the merits regarding Petitioner's wrongful discharge and provide her with such other and further relief to which she is justly entitled.

Respectfully submitted,

/s/ V.L. Davis

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