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24-11336-J

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA
(Appellant/Plaintiff)

v.

ALLSTATE INSURANCE COMPANY
(Appellee/Defendant)

On Appeal From The
United States District Court, Florida, Middle District
3:20-cv-00905-MMH-LLL

APPENDIX TO APPELLANT'S REPLY BRIEF

Elias Makere, FSA, MAAA
Appellant/Plaintiff ("Employee X")
PO Box 324
Hobart, IN 46342
P: 904.294.0026
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ORAL ARGUMENT REQUESTED

Tuesday, December 24, 2024

TABLE OF CONTENTS | VOLUME II-D | USFLMD DOCKET (Pertinent)

ID	Date	Title	Page
D01	4/26/24	Appellant's Motion for Relief	0003
D02	5/30/24	Appellant's Constitutional Challenge	0009

TABLE OF CONTENTS | VOLUME II-E | EMAILS (Pertinent)

ID	Date	Title	Page
E01	12/20/24	Mapping of Issues-on-Appeal	0012

TABLE OF CONTENTS | VOLUME II-P | PUBLIC RECORDS (Pertinent)

ID	Date	Title	Page
P01	12/14/20	FCHR Corruption: Wilson v Florida	0019
P02	5/28/21	FCHR Corruption: Wilson v Florida (Am...	0023

ID	Title	Page
-	Certificates (CIP, Service)	0026

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905

Makere v Allstate

VOLUME 02
ITEM 01*
PAGES 0003 - 0008

SHORT TITLE: Employee X's Motion for Relief

DATE ENTERED: 4/26/2024

DOC TYPE: Party Filing

TRIBUNAL: US District Court, Florida, Middle District

CASE NO: 3:20-cv-00905

CASE CAPTION: *Makere v Allstate*

LINK: <https://ecf.flmd.uscourts.gov/>

DOC: 118

* NOT ENTIRE DOCUMENT | PERTINENT EXCERPTS ONLY
(1st, 5th, 8th, 9th, and 10th pages only)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	<u>Case No (LT)</u>
Plaintiff	)	3:20-cv-00905-MMH-LLL
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

PLAINTIFF’S MOTION FOR RELIEF FROM JUDGMENT

Plaintiff, ELIAS MAKERE, on this 26th day of April 2024, respectfully asks this Court to relieve Plaintiff from the ruling that it entered on March 26, 2024. The ruling was titled “*Order Granting...Summary Judgment*” {#108} (hereinafter “That Order”).

Although Plaintiff finds this district judge to be more honorable than every other official [who has intercepted his pursuit of a trial-by-jury], his injuries still remain. Thus, he seeks relief.

Key Points:

- A.) Points timely; remand; errant dismissal; preserve appeal; etc.
- B.) Grounds reversible errors

Table of Contents:	
Context	2 nd Page
Motion	3 rd Page
Certificates	11 th Page

Title VII charges – for the limited purpose of examining timeliness (ie, “*statute of limitations*”).

13. Nine months after that – on March 26, 2024 {#108} – this Court granted Plaintiff’s motion for judicial notice [of the correct filing date] (§9, *supra*). However, That Order simultaneously entered summary judgment in favor of Defendant (on the basis of administrative timeliness). A decision that claimed that the [correct] filing date no longer mattered (contrast with §8 *supra*).

II. Analysis

14. Plaintiff filed both of his administrative charges on time.
- a) He filed his First Charge within 365 days of [one of] Defendant’s discrete acts of discrimination (§1 *supra*);^{1/}
 - b) He filed his Second Charge within 365 days of another batch of Defendant’s discrete acts of discrimination (§5 *supra*)^{2/}.
15. Plaintiff’s Second Charge relates back to his First Charge; thereby linking the continuing nature of Defendant’s unlawful conduct.
16. With explicit language, Plaintiff’s Title VII counts incorporated all of Defendant’s discrimination (§11 *supra*). Thereby debunking That Order’s [false] contention that his Title VII charges only addressed certain timeframes in Defendant’s misconduct.

“We find, however, that the court below did not give appropriate consideration to appellants' posttrial motion to set aside the judgment pursuant to Rule 60(b)(3). Thus, we remand to the district court for rehearing on that motion...”

– Anderson v Cryovac, 862 F.2d 910 (1st Cir. 1988)

25. Altogether, this Court has the “*inherent power*” to correct its orders/judgments.

IV. Application

26. For the instant case, this Court is well-positioned to exercise that “*inherent power*”.

27. First, this Court can restore the *continuing nature* of Plaintiff's cause of action. Doing so via the *relation back provision* (among other things).

a) see Rule 15(c) Fed. R. Civ. P.;

b) see 60Y-5.001(4) FAC;

c) see 29 CFR §1601.12; 29 CFR §1603.12; 29 CFR §1626.8; and

d) see McKinney v. VA Surgical, 284 Va. 455 (S.E.2d 27 2012).

28. Secondly, this Court can remand the state charges (Segura v. Hunter Douglas, 184 F. Supp. 2d 1227 (USFLMD 2002)).

29. Plus, this Court can remove the manifest injustice that has blanketed this case (Agro Dutch v. USA, 589 F.3d 1187 (Fed. Cir. 2009)).

30. Moreover, this Court can remedy the unconstitutionality of the FCHR's trespasses-against-Plaintiff (*Bounds v. Smith*, 430 US 817 (1977)). As well as the unconstitutionality of the state agency's determinations. Determinations which – in the instant case – were null & void.^{4/}

V. Nature of Relief Sought

31. Plaintiff seeks reversal on the grounds of:

- a) the relation back provision (found in Title VII; the FCRA; etc.);
- b) remanding state charges (pendent jurisdiction);
- c) the plausibility standard (*Ashcroft v. Iqbal*, 556 US 662 (2009));
- d) the administrative timeliness calculation (*Woodham v. BCBSFL*, 829 So.2d 891 (Fla. 2002));
- e) the FCHR's unconstitutional conduct (ie, covering for Defendant with timeliness obstructions);
- f) the unconstitutionality of FCHR determinations (§760.11(3) FS);
- and
- g) more.

32. Moreover, Plaintiff seeks preservation (of all appealable issues) for his potential appeal (Rule 3-1 11th Cir. R.).

CONFERRAL

Today – Friday, April 26, 2024 – Defendant told Plaintiff (via email) that it opposes this motion. Its short communication (1-sentence/17-words), however, prompted Plaintiff to outline the aforementioned points (ie, timeliness calculation, unconstitutionality, etc.). Yet, Plaintiff's exhausted efforts to *confer in good faith* (pursuant to Local Rule 3.01) were to no avail (as Defendant repeated its boilerplate objection).

Thus, Plaintiff believes the foregoing presents a compelling (ie, *manifest injustice; unconstitutional proceeding/provisions*) and important (ie, *reversible issues*) reason for obtaining the requested relief.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to reverse the *Order Granting Summary Judgment* {#108}; thereby letting the parties fully litigate this case.

Dated this 26th day of April 2024.

Respectfully submitted,

/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
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Hobart, IN 46342
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APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905

Makere v Allstate

VOLUME 02

ITEM 02*

PAGES 0009 - 0010

SHORT TITLE: Employee X's Formal Notice of a Constitutional Challenge

DATE ENTERED: 5/30/2024

DOC TYPE: Party Filing

TRIBUNAL: US District Court, Florida, Middle District

CASE NO: 3:20-cv-00905

CASE CAPTION: *Makere v Allstate*

LINK: <https://ecf.flmd.uscourts.gov/>

DOC: 127

* NOT ENTIRE DOCUMENT | PERTINENT EXCERPTS ONLY
(1st page only)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	<u>Case No (LT)</u>
Plaintiff	)	3:20-cv-00905-MMH-LLL
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

**PLAINTIFF’S FORMAL NOTICE OF
PLAINTIFF’S CONSTITUTIONAL CHALLENGE
(OF TWO STATE STATUTES)**

PLEASE TAKE NOTICE that Plaintiff, ELIAS MAKERE – on this 30th day of May 2024 – hereby formalizes his challenge of two state statutes’ constitutionality. Pursuant to Rule 5.1 Fed. R. Civ. P. (among other authorities), the statutes which he challenges are §760.06 FS and §760.11 FS.

Key Points:

- A.) Points permissible bribery; “reasonable cause” determinations;
B.) Grounds 1st Amendment; 7th Amendment; 14th Amendment

Table of Contents:

Context	2 nd Page
Details	3 rd Page
Certificates	10 th Page
Exhibits	11 th Page

SPECIFIC
ELECTRONIC
RECORDS

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905

Makere v Allstate

VOLUME EM
ITEM 01*
PAGES 0012 - 0017

SHORT TITLE: Stipulation of Mapped Points-on-Appeal

DATE ENTERED: 12/20/2024

DOC TYPE: Emails | Between Appellant-Appellee

TRIBUNAL: n/a

CASE NO: 3:20-cv-00905

CASE CAPTION: *Makere v Allstate*

LINK: n/a

DOC: n/a

* NOT ENTIRE EMAIL CHAIN | PERTINENT EMAILS ONLY
(1st, 2nd, and 4th/Last emails only)

From: Justice (Actuarial) <justice.actuarial@gmail.com>
Sent: Friday, December 20, 2024 11:45 AM EST
To: Doud, Kimberly <KDoud@littler.com>
cc: Robertson, Lauren C. <LCRobertson@littler.com>; Filmore, Michelle <MFilmore@littler.com>
Subject: Issue Mapping (?) | 24-11336 | Makere v Allstate | Employment Discrimination | Issues-on-Appeal

Good Morning Allstate,

May you please confirm (or correct) the way you've mapped your issues-on-appeal [to my issues-on-appeal]?

##	My Iss-on-App	Your Iss-on-App	Your Quote	¿?
01	I	1	"In Issue I, Appellant argues the District Court erred when it dismissed his FCRA claims based on the FCHR's prior administrative adjudication because Appellant alleges the District Court based its ruling on the wrong filing date for the 2019 Charge."	
02	II	5	"However, in Issue II, Appellant argues the District Court committed reversible error when it applied collateral estoppel as a bar to Appellant's Section 1981 claims based on his termination and pre-termination acts of discrimination (Count VII)"	
03	III	5	"However, in Issue III, Appellant attempts to challenge this Court's ruling, arguing for the first time on appeal Rule 15(c)'s relation back doctrine would have prevented summary judgment in favor of Allstate on Appellant's Title VII claims."	
04	IV	8	"First, regarding the car-bicycle collision, Appellant alleged Allstate caused him to receive phone calls, death threats, and mail taunts centered around praying to God. [Id., ¶¶ 86-90]."	
05	V	3	"In Issue V, Appellant argues for the first time on appeal the District Court should have remanded Appellant's FCRA claims to state court rather than addressing the merits of those claims (and dismissing them)."	
06	VI			
07	VII	4	"Additionally, Appellant asserts his Notice of Appellant's Constitutional Challenge, challenging two state statutes in his Third Amended Complaint and Motion for Relief from Judgment, should have prompted the District Court to remand his case. [USCA11 Doc. 20-1, Brief at 48]"	

08	VIII	2	"Appellant now, in Issue VIII , asserts for the first time on appeal, the District Court committed manifest injustice when it clarified its 2/8/21 Partial Dismissal Order in its Summary Judgment Order"	
----	------	---	--	--

Please reference/compare the two attached documents – to aide your mapping.

Please accord:

- [Rule 1 Fed. R. App. P.](#);
- [Rule 47\(b\) Fed. R. App. P.](#);
- [Mark v. Singletary, 62 F.3d 1295 \(11th Cir. 1995\)](#)
 - "Issues not clearly raised in the briefs are considered abandoned."
- [Local Rule 2-1 11th Cir. R.](#);
- [Local Rule 28-1\(h\) 11th Cir. R.](#);
- [Local Rule 28-2 11th Cir. R.](#); and
- more

Purpose [of this mapping] = (1) crystallize issues-on-appeal; (2) prevent miscarriage of justice; (3) streamline judicial proceedings; (4) deter further falsehoods [from you]; (5) streamline federal appeal; (6) and more.

Please answer as soon as you can.

- Note: due to time constraints, I will follow-up with you by phone to get your confirmation/correction(s).

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
 Federal Case No.: 3:20-cv-00905 | (Allstate, USFLMD)
 Federal Case No.: 4:21-cv-00096 | (Early, USFLND)
 11th Cir. Case No.: 21-11901; 22-13587
 904.294.0026 | justice.actuarial@gmail.com | www.TextBookDiscrimination.com
 3709 San Pablo Rd. S. #701
 Jacksonville, FL 32224

Ancient Proverb: For every wrong there is a right.

From: Doud, Kimberly <KDoud@littler.com>
Sent: Friday, December 20, 2024 2:08 PM EST
To: Justice (Actuarial) <justice.actuarial@gmail.com>
cc: Robertson, Lauren C. <LCRobertson@littler.com>; Filmore, Michelle <MFilmore@littler.com>
Subject: Re: Issue Mapping (?) | 24-11336 | Makere v Allstate | Employment Discrimination | Issues-on-Appeal

Mr. Makere:

The briefing speaks for itself. No additional response is necessary. Thank you.

Kimberly Doud

Office Managing Shareholder

407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax

KDoud@littler.com

Pronouns: She/Her



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From: Justice (Actuarial) <justice.actuarial@gmail.com>
Sent: Tuesday, December 24, 2024 12:15 PM EST
To: 'Doud, Kimberly' <KDoud@littler.com>
cc: 'Robertson, Lauren C.' <LCRobertson@littler.com>; 'Vega, Eddie' <EVega@littler.com>; 'Filmore, Michelle' <MFilmore@littler.com>
Subject: Re: Issue Mapping (?) | 24-11336 | Makere v Allstate | Employment Discrimination | Issues-on-Appeal

Dear Allstate,

Please answer **before 5:00 PM EST today (12/24/24)**. I cannot afford to wait beyond that deadline. For the sake of convenience, I'm going to repeat the prompt.

- Do you disagree with the mapping that I provided?

##	My Iss-on-App	Your Iss-on-App	Your Quote	¿?
01	I	1	"In Issue I , Appellant argues the District Court erred when it dismissed his FCRA claims based on the FCHR's prior administrative adjudication because Appellant alleges the District Court based its ruling on the wrong filing date for the 2019 Charge."	
02	II	5	"However, in Issue II , Appellant argues the District Court committed reversible error when it applied collateral estoppel as a bar to Appellant's Section 1981 claims based on his termination and pre-termination acts of discrimination (Count VII)"	
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04	IV	8	"First, regarding the car-bicycle collision , Appellant alleged Allstate caused him to receive phone calls, death threats, and mail taunts centered around praying to God. [<i>Id.</i> , ¶¶ 86-90]."	
05	V	3	"In Issue V , Appellant argues for the first time on appeal the District Court should have remanded Appellant's FCRA claims to state court rather than addressing the merits of those claims (and dismissing them)."	
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07	VII	4	"Additionally, Appellant asserts his Notice of Appellant's Constitutional Challenge , challenging two state statutes in his Third Amended Complaint and Motion for Relief from	

			<i>Judgment, should have prompted the District Court to remand his case. [USCA11 Doc. 20-1, Brief at 48]"</i>	
08	VIII	2	<i>"Appellant now, in Issue VIII, asserts for the first time on appeal, the District Court committed manifest injustice when it clarified its 2/8/21 Partial Dismissal Order in its Summary Judgment Order"</i>	

Please reference/compare the two attached documents – to aide your mapping.

Please accord:

- [Rule 1 Fed. R. App. P.](#);
- [Rule 47\(b\) Fed. R. App. P.](#);
- [Mark v. Singletary, 62 F.3d 1295 \(11th Cir. 1995\)](#)
 - *"Issues not clearly raised in the briefs are considered abandoned."*
- [Local Rule 2-1 11th Cir. R.](#);
- [Local Rule 28-1\(h\) 11th Cir. R.](#);
- [Local Rule 28-2 11th Cir. R.](#); and
- more

Purpose [of this mapping] = (1) crystallize issues-on-appeal; (2) prevent miscarriage of justice; (3) streamline judicial proceedings; (4) deter further falsehoods [from you]; (5) streamline federal appeal; (6) and more.

Please let me know if you disagree with that mapping (**before 5:00 PM EST Today (12/24/24)**).

- Note: due to time constraints, I will follow-up with you by phone to get your confirmation/correction(s).

Thank you,

Elias Makere, FSA, MAAA | Civil Litigant
Federal Case No.: 3:20-cv-00905 | (Allstate, USFLMD)
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Ancient Proverb: For every wrong there is a right.

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APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905

Makere v Allstate

VOLUME PR
ITEM 01
PAGES 0019 - 0022

SHORT TITLE: FCHR Director's Whistleblower Complaint

DATE ENTERED: 12/24/2020

DOC TYPE: Non-Party Filing

TRIBUNAL: Florida Commission on Human Relations, The

CASE NO: 2021-28179

CASE CAPTION: *Wilson v. FCHR*

LINK: <https://FCHR.MyFlorida.com/>

DOC: --

Date Stamp (FCHR Use Only)

FLORIDA COMMISSION ON HUMAN RELATIONS
 4075 Esplanade Way, Room 110, Tallahassee, Florida 32399

**WHISTLE-BLOWER ACT RETALIATION
 CHARGE OF DISCRIMINATION**

A. PERSONAL INFORMATION		FCHR No.	
Name Michelle Wilson		E-Mail Address Michelle.wilson1991@yahoo.com	Date of Birth 02/03/1966
Mailing Address 9 Sparrow Path		Home Telephone Number (area code) 850-425-1997	
City, State, and Zip Code Crawfordville, FL 32327		Work (if possible to call you there) 850-425-1997	
B. LIST THE STATE AGENCY OR INDEPENDENT CONTRACTOR THAT DISCRIMINATED AGAINST YOU.			
Name	Contact Person Cheyanne Costilla	Telephone Number	
Florida Commission on Human Relations		850-488-7082	
Street Address 4075 Esplanade Way #110	City, State, and Zip Code Tallahassee, FL 32399	County Leon	
C. CAUSE OF DISCRIMINATION BASED ON – Check appropriate box (es)		DATE MOST RECENT DISCRIMINATION TOOK PLACE (month, day, year)	
☒ RETALIATION		October 15, 2020	

D. DISCRIMINATION STATEMENT

I believe that I have been discriminated against in violation of the Public Whistle-blower's Act, §§112.3187-112.31895, Florida Statutes for the following reasons:

The public whistleblower statute has three elements: (1) protected conduct, (2) adverse action; and (3) a connection between the protected conduct and the adverse action.

The "adverse action" element is easy. Charging party Wilson was fired as Executive Director of the Florida Commission on Human Relations on October 15, 2020, after 17 years' tenure with the agency.

Ms. Wilson also suffered numerous additional cognizable adverse actions. It is useful to discuss these additional adverse actions in connection with their nexus with the protected conduct rather than to discuss the three elements separately.

Beginning in 2018, two Commissioners, Jay Pichard and Latanya Peterson, began a campaign to either fire Ms. Wilson or make her life so unpleasant that she would quit. Mr. Pichard was antagonistic because his business had been the target of charges of discrimination to FCHR that he thought should have been processed differently. Section 760.11(3), Florida Statutes, requires that, "the commission shall investigate the allegations in the complaint," and that, "the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred" Mr. Pichard, smarting from the charges against his small company, felt aggrieved

FCHR Charge Form – Revised January 9, 2015

that Ms. Wilson would not violate the statute to the extent of dismissing certain "frivolous" charges without the appropriate administrative review. Ms. Wilson explained that procedural changes would require the legislature amending the statute and, following that, the agency amending the pertinent sections of the Florida Administrative Code. Mr. Pichard was unforgiving on this point and continued thereafter to seek replacement of Ms. Wilson. Ms. Wilson took FMLA leave from October, 2018, to January, 2019. This caused displeasure to Ms. Peterson and set in motion a course of hostility in which she joined Mr. Pichard's efforts to oust Ms. Wilson or to harass her into resigning.

Ms. Peterson had been disciplined for an ethics violation in the Clay County School District in 2014, an offense that was highly publicized in her 2018 losing campaign for Clay County school board. In the wake of that loss, Ms. Peterson appeared to be at professional loose ends. Some of her conduct as an FCHR Commissioner caused Ms. Wilson to believe that Ms. Peterson was seeking Ms. Wilson's job and using her position on the Commission to sabotage Ms. Wilson.

Mr. Pichard started going behind Ms. Wilson's back to get documents and oral information from the Human Resources Director, Jackie Steele - an employee with resentments and antagonisms against her supervisor, Ms. Wilson, whom Ms. Wilson eventually fired. FCHR recently settled a case with Ms. Steele about that firing, but the settlement is irrelevant to the point at issue here, which is that Mr. Pichard, as a Commissioner, violated formal policy by going around the Executive Director to seek information surreptitiously from a subordinate employee. Ms. Wilson's objections to that conduct are another example of protected conduct. The clandestine flow of information from Ms. Steele to Mr. Pichard continued. The information became part of Mr. Pichard's private archive that he could spin in support of his objective of firing Ms. Wilson.

Though Donna Elam and other Commissioners rebuked and admonished Mr. Pichard for his abuse of staff members, they never lived up to their obligations to take formal action to curb his misconduct.

An issue with FCHR's funding for housing discrimination from HUD straddled 2018 and 2019. In short, HUD dumped an unprecedentedly large workload on FCHR - a load the agency had neither the staff nor the budget to handle. Mr. Pichard seized on the opportunity to seek a finding of wrongdoing against Ms. Wilson, from Florida's Chief Inspector General, Melinda Miguel, whose report cleared Ms. Wilson. HUD issued a Performance Improvement Plan (PIP) that FCHR could not meet with current staffing levels. The agency sought help from the governor's office, but that office declined to recommend new positions to the legislature, so none were funded. The HUD Region IV Director Carlos Osegueda proposed a suspension of FCHR from federal funding for its housing unit. Mr. Pichard invited Mr. Osegueda to an FCHR committee meeting without notifying Ms. Wilson. Mr. Pichard, and Ms. Peterson communicated with Mr. Osegueda before his visit. Mr. Osegueda said he wanted the removal of Ms. Wilson, Chief of Investigations Jacquelyn Dupree, and longtime housing investigator Regina Owens. This caused Ms. Owens to file a charge against Mr. Osegueda with his superiors at HUD. In 2019, the Florida Legislature finally appropriated funding for the staffing necessary to clear the housing backlog. However, Mr. Osegueda still recommended that FCHR be removed from the federal/state partnership. Assistant HUD Secretary Farias issued a humiliating rejection of the recommendation by Mr. Osegueda. The HUD issues were substantially resolved.

However, during the HUD furor, Commissioners, especially Pichard and Peterson, continued the effort to undermine and displace Ms. Wilson. The Commission panel handling the HUD issue, consisting of Peterson, Pichard, and McCambry, voted "no confidence" in Ms. Wilson and sought to have the whole Commission affirm the vote, which would be tantamount to firing Ms. Wilson. Due to lack of quorum, this hung-over Ms. Wilson's head for several meeting dates and damaged her ability to manage the agency. When a quorum finally appeared in September 2020, the "no confidence" vote came out in Ms. Wilson's favor. This resulted, in part, from Mr. McCambry saying he no longer wanted to replace Ms. Wilson because the HUD matter had been resolved satisfactorily and now the firing issue being raised by Mr. Pichard was about employment cases, not housing cases. Mr. Pichard was pushing the vote in gratification of his long-standing grievance about not enough cases being processed within 180 days. Under § 760.11(7), if FCHR finds "no cause" on an employment case within 180

days, that charging party's only remedy is a hearing before the Division of Administrative Hearings (DOAH). At that hearing, the DOAH Administrative Law Judge (ALJ), may award reinstatement, back pay, and attorney's fees and costs, but no intangible or punitive damages. The employer may appeal that result to FCHR. If the employee prevails there, she may renounce her DOAH victory and appeal to the First District Court of Appeal for a jury trial *de novo*. That is the only way to get to court. In the 28 years of existence of the statute, that has never happened. So an FCHR "no cause" finding is a kiss of death to any possibility of a jury trial and anything but a fairly modest recovery in most cases.

It is for that reason that Mr. Pichard and others facing discrimination charges push so unremittingly for FCHR to close cases in fewer than 180 days and to close them with a "no cause" finding.

After rejecting the "no-confidence" motion against Ms. Wilson, the Commission voted to adopt a format and standards for evaluating her at the next meeting in October. In violation of the Agency's Governance Policy, the Commission had failed for three years to issue Ms. Wilson's annual evaluation, despite her requests. This is important to anyone in the executive director slot because it helps her keep her job and keep good relations with the governing board. The evaluation provides a clear statement of what the employee needs to change or correct and what new directions to pursue. It affords a more objective means of measuring performance. The last evaluation was in 2017 and it was unanimously favorable to Ms. Wilson.

Ms. Wilson's protests against not being evaluated are clearly protected conduct. The board's failure to evaluate for three years is plainly the sort of misfeasance, malfeasance, gross mismanagement expressly forbidden by the whistleblower statute. The malfeasance applies because the violation was willful and flagrant. Indeed, in 2019, in furtherance of her efforts to fire Ms. Wilson, Ms. Peterson, acting as Chair, removed Ms. Wilson's scheduled evaluation from the meeting agenda. In doing so, she asked Executive Assistant, Casey Snipes, not to tell Ms. Wilson. In 2018, the evaluation was again removed from the agenda at Mr. Pichard's behest because he wanted to establish a performance review methodology.

Governor DeSantis filled several long-vacant positions on the Commission. Ms. Wilson believes that Mr. Pichard contacted some or all of them in violation of the Sunshine law at Chapter 286 to poison them against Ms. Wilson. A "no confidence" vote on Ms. Wilson was not on the October agenda. Such a vote would have been an earthquake in the employment law community and would have fetched a large attendance at the meeting if lawfully noticed. What was noticed in compliance with Sunshine law was the decision scheduled at the previous meeting to establish an evaluation framework and standards for Ms. Wilson. The vote of "no confidence" was unlawfully taken up at the meeting of October 15, 2020. Ms. Wilson was fired illegally.

Ms. Wilson's additional protected conduct includes repeated objections to conversations about agency business among and between Commissioners against the advice of agency counsel; objections to individual Commissioners giving direction to staff in violation of Governance Policy; objecting to Commissioner Peterson calling for the firing of an employee; objecting to Commissioners retaliating to her FMLA leave. As stated above, the main adverse action was being fired in retaliation for refusal to violate the law on case investigations.

Ms. Wilson demands the full relief to which she is entitled by law.

I REQUEST TO BE AFFORDED FULL RELIEF TO WHICH I AM ENTITLED TO UNDER THE LAW(S).

E. VERIFICATION. Under penalties of perjury, I declare that I have read the foregoing complaint of discrimination and that the facts stated in it are true. I will advise the agency if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

SIGNATURE OF COMPLAINANT

DATE

APPENDIX

11TH CIRCUIT COURT OF APPEALS

24-11336-J

Appeal From

US District Court, Florida, Middle District

3:20-cv-00905

Makere v Allstate

VOLUME PR
ITEM 02*
PAGES 0023 - 0025

SHORT TITLE: FCHR Director's Whistleblower Complaint
 (Amended)

DATE ENTERED: 5/28/2021

DOC TYPE: Non-Party Filing

TRIBUNAL: Florida Commission on Human Relations, The

CASE NO: 2021-28179

CASE CAPTION: *Wilson v. FCHR*

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From: [Rick Johnson](#)
To: ["John Scotese"](#)
Cc: ["Kelly Thomas"; rick@rej-law.com](#)
Subject: 071: F.C.H.R. Case No. 202128179
Date: Friday, May 28, 2021 3:42:47 PM

Mr. Scotese:

Please accept this as the Amended Charge you requested, though we believe it could also (and perhaps more properly) be considered a response to an investigative inquiry arising from the original charge. We think investigations rather than amended charges are the proper vehicle for obtaining information that fills in the picture of a sequence of events described in a whistleblower charge.

You asked for more specifics on Michelle Wilson's protected conduct. A good example came near the end of her tenure on August 18, 2020.

A five-member panel of the Commission consisting of Jay Pichard (Chair), Donna Elam, Derrick McGhee, Dawn Hanson, and Al McCambry had been commissioned to review the HUD issue described in our original charge. The panel, at this meeting, was tasked with recommending performance measures after a discussion of the Commission's progress in meeting the HUD goals. FCHR had, by then, met HUD's standards, but not much about HUD came up at the meeting. Mr. Pichard steered the discussion to meeting the 180-day compliance deadline for completing investigations of employment discrimination claims. As he had made clear throughout his tenure, he wanted the 180-day deadline met consistently by issuing "no-cause" determinations on charges at intake, rather than after investigation.

One of FCHR's knowledgeable employees, Joe Cash, provided a breakdown of the 180 day issue and projected that the Commission would not only meet, but exceed, the performance goals if two additional positions were established.

After a lengthy discussion, Ms. Wilson passionately, but professionally, declared to the panel that she believed it was unfair to expect staff to meet performance measures without having the necessary staffing and resources. She pointed out that FCHR is bound by the Florida Statutes and the rules of the Florida Administrative Code to perform a fair and neutral investigation, not just go through the motions or dismiss cases at the very outset. She made it clear to the panel that she would not direct the staff to close an investigation prematurely just for the sake of meeting a 180-day standard. She specifically asked the panel to share with her exactly what their expectations were, given this challenging situation of not having the resources to process FCHR's caseload within 180-days. The law has an answer: finish the investigation in a longer time. She also asserted that demanding an employee to close a case prematurely was unfair to both parties and that it could be detrimental to the agency's core value of providing fair and impartial investigations as well as exposing FCHR to consequences for unlawful conduct. She said the answer is to provide the resources FCHR needs to meet the 180-day deadline or change the law. Otherwise, FCHR will have to go on taking longer in some cases. It is not an option to just break the law.

Mr. Pichard, as was his custom, demanded that FCHR finish the investigations in 180 days and dismiss some without investigation. Derrick McGhee supported that view. A "no-confidence" vote immediately followed:

1. Elam –No
2. McCambry –No
3. Hanson – Yes
4. Pichard- Yes
5. McGhee- Yes

The full commission did not sustain the 3-2 no-confidence vote against Ms. Wilson the first time. But the lines were drawn and the issues defined. The vote that fired Ms. Wilson on October 15, 2020, was over exactly the same issues.

Other protected conduct occurred on July 20, 2020, when Ms. Wilson called for compliance with the Governance Policy which called for establishment of performance measures. The Commission resisted compliance with that binding regulation. Ms. Wilson went unevaluated for several years and was fired without the existence of any current standards by which her performance could be measured. The commissioners wanted to fire her for not dismissing discrimination charges at the intake stage, but they obviously could not formalize that unlawful performance measure.

On 07/03/20, Jay Pichard specifically asked Ms. Wilson for “flexibility” to “save businesses.” By this he meant dismissing employment discrimination charges at intake, without investigation, issuing a “no cause” finding so charging parties could not go to court. Ms. Wilson declined, reiterating to Pichard and the board that the commission’s job, by law, was to investigate claims as a neutral fact finding agency and not to favor either party to a complaint. Pichard repeatedly asked the same question hoping to get a different response from the General Counsel. To our knowledge, he never did.

On 8/10/20, Ms. Wilson sought enforcement of the Governance Policy when she requested to know what evaluation process was being used to evaluate her so she could have an opportunity to meet/exceed expectations. Nothing was established during a panel discussion. Rule violations persisted despite these objections.

Please ask us specifically for any other information you need to process the charge.

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CIP

United States Court of Appeals
Eleventh Circuit

24-11336-J
Makere v Standard

{unchanged}

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Makere v Allstate, 24-11336

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Lower Tribunal:

Lambert, Laura

Magistrate

Howard, Marcia

District Judge

Parties:

Allstate Insurance Company
(NYSE: ALL)

Appellee

Makere, Elias (FSA, MAAA)

Appellant

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11th Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of December 2024, I electronically filed the foregoing with the Clerk of Courts by using PACER; which will send a notice of electronic filing to the attached service list.

/s/ Elias Makere

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Link to Underlying Complaint ([HTML](#), [PDF](#), [Video](#)) | *Makere v Allstate*

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