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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

ROBIN BOUEY,

APPELLANT, Case No.: 5D17-3241

v.

ORANGE COUNTY SERVICE UNIT,
ORANGE COUNTY CLASSROOM TEACHERS ASSOCIATION, AND
ORANGE EDUCATION SUPPORT PROFESSIONAL ASSOCIATION,

APPELLEES.
____/

PETITONER'S INITIAL BRIEF

JURISDICTION

This court does have jurisdiction in this instant case.

The Respondents, the Orange County Service Unit is an unrestricted asset of the Orange County Classroom Teachers Association (OCCTA) and Orange Education Support Professional Association (OESPA) is a labor organization that represents employees who work for Orange County Public Schools public government that employed 15 or more employees during the relevant period and are subject to the Act. OCSU, OCCTA, and OESPA are not three separate entities and do share a common owner, which is the membership, Presidents, and Board of Directors. OCSU, CTA, and OESPA is a joint employer and/or an integrated enterprise and all employees must be counted; which were excluded in the Middle District court when the Judge erred and did not count Raymond Bunker, Steve Conti, and other were not employees of OCSU, OCCTA, and OESPA which there were being over 15 employees if properly counted.

> This "corporate fiction will be disregarded when the corporation is the alter ego or business conduit of a person," and when observance of the corporate form would work in an injustice. Dietel v. Day 492 P.2d at 455.

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1. INTRODUCTION

Pursuant to 29 C.F.R. 102.46(h), Petitioner Robin Bouey ("Bouey") hereby submits its Brief in support of its exceptions to the Administrative Judge's Decision in this case.

Petitioner falls under the protected class as an African American female and is filing an appeal due to the Respondents act on grounds generally applicable to a protected class. This has been ongoing and affected Petitioner since 2012 and the Respondents continues to violate State and Federal laws that prohibit discrimination, retaliation, harassment, and a hostile work environment in the workplace. There are other minorities that have been subjected to Respondents actions and a fair and thorough investigation should have been conducted by the Florida Commission on Human Relations (FCHR).

The Decision issued by Administrative Law Judge (ALJ) J. Bruce Culpepper was erroneous for several reasons: First, it relied on the Respondents Motion to Dismiss that was misleading and mischaracterize that the Petitioner's Petition was not timely filed with the FCHR despite the fact that it was received and accepted by Tammy Barton, Clerk of the Court and FCHR's General Counsel. This case would not have moved forward for a hearing to be scheduled by the Division of Administrative Hearings Office (DOAH). This is the type of behavior, I have witnessed firsthand Respondents numerous attempts to confuse the courts by mischaracterizing and misrepresenting the facts in committing fraud upon the U.S. District Court, Orlando Division and the Eleventh Circuit Court to prevent Petitioner from defending her claim. Evidence is the basis of jurisprudence and it is being compromised as the Respondents have made every attempt to confuse the courts by mischaracterizing and misrepresenting the facts in Petitioner's lawsuits. Further, the Respondents have not responded or challenged Petitioner's prima facie evidence that shows fraud was committed upon the court by stating they did not have 15 or more employees and incorporate the Orange County Service Unit as a Corporation on April 15, 2015; 12 days prior to the Summary Judgment Order granted in favor of Respondents (“Defendant’) on April 27, 2015, during the relevant period and all employees were under the control of the two labor unions, Orange County Classroom Teachers Association (OCCTA) and its unrestricted asset the Orange County Service Unit (OCSU), and the Orange Education Support Professional Association (OESPA). This decision exceeded the authority of the FCHR and ALJ when they ruled that the Respondents did not meet the threshold according Section 760.02(7), and Florida Statutes 42 U.S.C. §2000e(b).

The ALJ erred when an Order issued in favor of Respondents untimely filed Motion to Dismiss.

The FCHR and ALJ is confused with the standard that the Supreme Court has set out for Title VII retaliation claims with the standard applicable to Title VII discrimination claims. It then applied the wrong test to this case. Because of the federal government’s interest in a proper interpretation of Title VII, the United States offers its views to the Court pursuant to Federal Rule of Appellate Procedure 29(a).

FCHR’s failed to seek out the truth, they simply reviewed the Respondents responses only and concluded its investigation without any shred of evidence that was in Respondent’s possession. All of the Respondents delegated its right to control the terms of Petitioner’s employment. In fact, Michael Cahill, President of OCCTA and William Humphrey, President OESPA made the first and second motion to wrongfully terminate Petitioner. If the FCHR had requested the necessary documents Petitioner requested them to seek information this would have shown FCHR that Respondents had employed 15 or more employees they would have never issued the Determination for No Reasonable Cause. This was the second failed attempt made by both the Equal Employment Opportunity Commission (EEOC) and the FCHR. Therefore, a joint employment and/or integrated enterprise relationship did exist.

The rule of the decisions does not fit FCHR's determination.

FCHR should not have only applied Section 760.02(7) but should have also included Section 760.02(9) and 42 U.S.C. §2000e(c), and any and all State and Federal laws. Petitioner worked for the two labor unions, OCCTA and OESPA and its unrestricted asset OCSU personnel committee that is made up of both unions President's and the same elected Officers, Board of Directors, and membership. The OCSU is merely considered to be the personnel committee with no bylaws only the policies and procedures implemented by both of the unions based on an agreement as OCSU is solely funded by the two union's membership's monthly union dues from their employer Orange County Public Schools (OCPS) that is transmitted directly to OCCTA and OESPA. OCCTA and OESPA Presidents then transfer funds into a separate bank account directly to OCSU to pay the employees' salaries. OCSU is an unrestricted asset and alter ego of OCCTA and OESPA.

Further, it has been established by ALJ J. Bruce Culpepper that the above-styled parties OCSU, OCCTA, and OESPA "collectively referred to as "Respondents" in the ALJ's Order of Dismissal and Order Relinquishing Jurisdiction that the labor unions are my employers and are not identified as separate entities as the Respondents would like for you to believe. In addition, in the Jorge Vazquez FCHR No.: 201700653 Charge of Discrimination case filed with FCHR has also established that OCCTA is identified as our employer; a labor union. Contrary to the Respondents Response to FCHR, dated April 17, 2017 in the Vazquez case, The Eleventh Circuit court did not rule on the fraud upon the court and it was not roundly rejected; another misrepresentation of the truth. Unfortunately, FCHR took absolutely no action to request or preserve any financial records or even interview any witnesses to seek the allegations Petitioner alleged and requested to receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice, as defined by the Florida Civil Rights Act of 1992 and Section 760.06(5). In addition, pursuant to Section 760.06 (6) FCHR failed to issue subpoenas for, administer oaths or affirmations to and compel the attendance and testimony of witnesses or to issue subpoenas for and compel the production of books, papers, records, documents, and other evidence pertaining to any investigation or hearing convened pursuant to the powers of the commission. "In conducting an investigation, the commission and its investigators shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The authority to issue subpoenas and administer oaths may be delegated by the commission, for investigations or hearings, to a commissioner or the executive director". None of the Petitioner's witnesses were interviewed by FCHR.

II. RESPONDENT DID VIOLATE FLORIDA CIVIL RIGHTS ACT OF 1992, SECTIONS 760.02 – 760.11

> (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.
>
> (b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment

opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

III. THE TRIAL COURT ERRED IN DENYING PETITIONER THE RIGHT TO A HEARING AND A DECISION IN THE CASE

Pursuant to Section 120.57, ALJ J. Bruce Culppepper erred when he did not conduct a hearing under this subsection that Petitioner should have be afforded an opportunity to respond, to present evidence and argument on all issues involved, cross-examine or challenge or rebut the Respondents material. Petitioner should have been able to show proof of Respondents motives, opportunity, intent, preparation, plan knowledge identity, or absence of mistake or accident. Petitioner timely filed her Petition for Hearing. ALJ did not consider Petitioner's case to be erroneous or determine that Petitioner did not comply with the essential requirements in its Order of Dismissal; therefore, the ALJ should have reviewed the complete record on the docket. The records should consists of the following; in which, an official transcript was not available because the August 23, 2017 hearing was cancelled by the ALJ.

1. The Notice and Summary of grounds
2. Evidence received
3. All written statements submitted
4. Any decision overruling objections
5. All matters placed on the record after an ex parte communication
6. The official transcript
7. Any decision, opinion, order, or report by the presiding office

The Commission based its decision on its finding that Petitioner's employer employed less than 20 employees, which is a prerequisite to filing a claim under the Florida Civil Rights Act of 1992 ("FCRA").

Exception No. 1, Pages 1-2 The ALJ failed to find that Charging Party's photo that was similar to a mugshot was circulated during the OCCTA Election consisted, in part, of malicious and untrue statements against Petitioner, and therefore, the Petitioner lost the protection of the Act. It is unlawful employment practice for a labor union to retaliate and/or harass their employees. On September 29, 2016, Petitioner reported the incident to Respondents Counsel and never received a response. This exception is based on the ALJ's failure to conduct an hearing to allow Petitioner's to elicit testimony and develop a full and complete record regarding Respondents maliciously displayed of Petitioner's photo that like similar to a criminal mugshot without any explanation to those in receipt of the photo during a OCCTA election that occurred in a public government facility. Petitioner has not received a court order banning her from residing in the State of Florida or freely to go to any public and government places.

Exception No 2, Page 2, the DOAH states, Respondents employed less than 20 employees, which is conflicting with the law that requires less than 15 employees. The Title VII of the Civil Rights Act of 1964 prohibits employers with at least 15 employees, as well as employment agencies and labor unions, from discriminating in employment based on race, color, religion, sex, and national origin. It also prohibits retaliation against persons who complain of discrimination or participate in an EEO investigation. Retaliation against an applicant or employee who has engaged in protected activity, The OCSU, OCCTA, and OESPA have jointly filed IRS Form 990s showing all of the above parties are Petitioner's employers and must be considered as her joint employers and/or an integrated enterprise, leaving no other alternative, but to count the overwhelming number of Respondents of 15 that worked over 20 consecutive weeks. The records in my possession is undisputable and further supports Petitioner's claims that FEA and OCCTA are Bouey's true employers and every employee who were paid under the same IRS FEIN Number 59-0951212.

Exception No 3, Page 3, Para 5, states FCRA is a pattern after Title VII of the Federal Civil Rights Act of 1964, as amended. The following Title VII of Civil Rights Act of 1964 was not considered nor was the Reconstruction Amendments noted in the recommendation.

The Fourteenth Amendment to the United States Constitution was proposed by Congress on June 13, 1866. The amendment addresses citizenship rights and equal protections of the laws, and was proposed in response to issues related to treatment of freedman following the war. The Due Process Clause prohibits state and local government officials from depriving persons of life, liberty, or property without legislative authorization. This clause has been used by federal judiciary to make most of the Bill of Rights applicable to the states, as well as to recognize substantive and procedural requirement that state laws must satisfy. The Equal Protection Clause requires each state to provide equal protection under the law to all people within its jurisdiction. Petitioner's deserved to exercise her rights according to the matter of law. FCHR and DOAH has jurisdiction to have moved this case forward and not acted on Respondents untimely filed Motion to Dismiss.

Exception No 4, Page 5, Para. 8, Petitioner provided very limited evidence as she did not expect to litigate case on the DOAH docket, but expected to attend the scheduled hearing on August 23, 2017. Petitioner was still in the discovery period with pending subpoena duces tecums awaiting the records via mail and the prima facie evidence in her possession that would have been produced at the hearing scheduled on August 23, 2017; which was cancelled. To date, Petitioner does not have any idea what evidence was reviewed to make this determination to close the case.

Exception No 5, Page 6, Page 5, Para 13, Petitioner can show that the protected activity and the adverse action are not completely unrelated. Petitioner has sufficient evidence of knowledge of the protected expression and that there was a close temporal proximity between this awareness and the adverse action. Petitioner was denied her due process rights.

Exception No 4, Page 6, Page 6, Para 17, If the hearing proceedings had taken place like the case law used in DOAH recommendation there would have been evidence that indicated past and prospective candidates and/or elected officials refuse to hire Petitioner while out of work based on the discriminatory practices of her employers and the retaliation that was ongoing from 2012 through 2015. Respondents threatened and removed witnesses from cooperating in Petitioner's case and still today, fearing retaliation from her former employers.

STATEMENT OF THE CASE

On November 9, 2016, Petitioner filed her Charge of Discrimination with FCHR. Petitioner's Charge of Discrimination asserts retaliation and harassment towards her since her discharge on June 12, 2012 due to a photo that was similar to a criminal mugshot that circulated to approximately 20 people that involved the employees of the Florida Education Association (FEA), American Federation of Teachers (AFT), Orange Education Support Professional Association (OESPA), and Orange County Teachers Association (OCCTA). Petitioner filed a claim of discrimination against the Respondents in Federal Court in 2014.

On October 9, 2016, Petitioner filed a Charge of Discrimination Complaint with the Florida Commission on Human Relations. After an investigation was conducted by the FCHR they concluded the Determination had no reasonable cause.

On July 5, 2017, ALJ J. Bruce Culpepper issued an Order of Dismissal and Order Relinquishing Jurisdiction back Florida Commission of Human Relations (FCHR).

On May 9, 2017, all parties were served the Initial Order stating the summary of procedures to follow.

On May 15, 2017, a notice of appearance was filed by Attorney Lisa Fountain requesting the above-styled cause to be served on the undersigned.

On May 22, 2017, a Notice of Hearing by Video TeleConference was scheduled on July 11, 2017 relating to the issue of allegations of a discriminatory employment practice and retaliation under the authority of Chapter 120, Florida Statutes; and Florida Administrative Code

Chapter 28-106, Parts I and II. In addition, Petitioner received the Order of Pre-Hearing Instructions to conduct discovery promptly; which she did and paid for over 7 subpoenas that were served by Attorney's Legal Services, Inc.

On June 9, 2017, all parties received the Order Rescheduling Hearing by Video TeleConference for the final hearing scheduled on August 23, 2017, at 9:30a.m at sites in Orlando and Tallahassee, Florida and all other provisions of the first Notice of Hearing and of the Order of Pre-hearing Instructions shall remain in full force and effect. All parties agreed to a summary hearing pursuant to all Notice and Orders issued by the Administrative Law Judge J. Bruce Culpepper.

On June 14, 2017, Respondents attempted to intimidate the Petitioner to withdraw prima facie evidence filed in the DOAH Hearing with filing a Motion to Strike; which was never filed. The Respondents threatened to sanction Petitioner's previous Attorney's during a conferral when they notified Respondents Counsel that they planned to amend Petitioner's Amended Complaint dated March 28, 2014 to include OCCTA, OESPA, and FEA. At a minimum, this would include your status report and the transcript from the settlement conference.

On July 4, 2017, an Order of Dismissal and Order Relinquishing Jurisdiction was issued by the Administrative Law Judge J. Bruce Culpepper, not due to Petitioner's failure to appear at the hearing because the hearing was cancelled but due to a baseless Motion to Dismiss filed by the Respondents on May 30, 2017. Petitioner did file some of her prima facie evidence prior to this dismissal and it should have been considered by the lower court and the additional evidence received through subpoenas that had been served. Judge J. Bruce Culpper declared all above Respondents to be joint employers unlike the FCHR.

FINDINGS OF FACT

This court does have jurisdiction in this instant case.

Petitioner was under an employment contract with OCSU, OCCTA, and OESPA. Petitioner had to conduct her own due diligence in obtaining prima facie evidence to prove that the Respondents acted in an unlawful manner by misrepresentation and now would like to claim immunity for such actions. Over the past 5 years, Petitioner turned over every stone to present clear and convincing evidence against Respondents unlawful actions. Now that the Respondents clearly understand all of the pleadings filed with the Federal Court that Petitioner filed were a misrepresentation and/or fraud upon the court based on their Respondents Response to Charge of Discrimination and Retaliation in the Jorge Vazquez v. Orange County Classroom Teachers Association, FCHR No.: 201700653 should not be permitted to declare "absolute immunity". Why should the Respondents ("Defendants") Counsel be granted immunity when they have caused irreparable harm to Petitioner and my family by this unlawful termination, discrimination and retaliation that defamed Petitioner's character and reputation politically and professionally? Contrary, to the Respondent's Counsel seeking immunity they still continue to deny that Petitioner's true employer is OCCTA by misrepresenting the prima facie evidence in the possession of FCHR, DOAH, and the Federal Courts. This evidence was obtained from the Florida Department of Economic Opportunity, Florida Department of State, Division of Corporations, U.S. Internal Revenue Services, and the Public Employees Relations Commission (PERC) which was unknown to Petitioner as she did not oversee the financial records while employed with the union and the Respondents never produced when Petitioner requested the records. Petitioner produced and preserved evidence after conducting her own investigation and filed newly discovered evidence in her Motion 60b on October 13, 2016 in the Middle District, Orlando Division and the Respondents and their Counsel still continue to deny the authentic records in the possession of the State Agencies and Federal courts. FCHR, DOAH and this court should not consider Respondents using their best judgment as the following facts were gleaned from the Pro Se Litigant throughout the judicial proceedings since her wrongfully termination. Immunity should **NOT** bar all claims in this charge. (emphasis added) Respondents failed to

disclose relevant information requested by the Petitioner that has always been in their possession. This would not have occurred if Counsel had properly consulted with their clients thoroughly and diligently when handling their legal matters as required under the Professional Code of Conduct.

Further, Attorney Lindsay Natalie Oyewale, was hired by the Florida Education Association (FEA), the State Affiliate that represents all local unions throughout the State of Florida. Attorney Oyewale conducted a sham investigation which resulted in Petitioner's wrongful termination. Jorge Vazquez ("Jeorge") filed a complaint with The Florida Bar File No. 2017-30,188 (9D) against Attorney Oyewale and the committee found no probable cause findings for further disciplinary proceedings, however, they made it very clear in a letter to Attorney Oyewale that the committee did not condone her conduct in the investigation that included both Mr. Vazquez and Petitioner. Attorney Oyewale met with Petitioner's peers without the Union President Jim Matrille at the time and failed to obtain sworn statements from the staff instead she summarized what she believed in her own mind to be the truth but when Petitioner shared the Investigative Report to our Union President Jim Matrille we later found out there were false and misrepresentation of the facts stated in her 3-day investigation report, dated June 7, 2012. Also, Attorney Oyewale summarized conversations that she had with Orange

County Public Schools Management Team, the unions adversary in an effort to compound the allegations against Petitioner. Our union adversaries often violated Weingarten rules against the teachers and classified employees when Petitioner attended discipline and grievance meetings and was not pleased with Petitioner when she protected the employee's contractual rights. Petitioner conducted herself in a professional manner; contrary to what the Respondents will mischaracterize as being the truth. Nor was any of the union members that Petitioner had represented in the alleged charges were not interviewed nor was any statement obtained from them. It is clear that Attorney Oyewale had no interest to seek the truth during her 3-day investigation. The Florida Bar sent a serious and strong message in the letter to Attorney Oyewale's as follows:

> "conduct in this instance did not warrant formal discipline, the committee believes it was not consistent with the high standards of our profession. The committee hopes that this letter will make you more aware of your obligations to uphold these professional standards and you will adjust your conduct accordingly"

Petitioner's due process rights were violated when Attorney Oyewale included both Mr. Vazquez and Petitioner's alleged charges in her Investigative Report that was presented to Petitioner's my employer; the labor union's elected Officers of OCCTA and OESPA. A single vote was taken to terminate both Mr. Vazquez and Petitioner; which Petitioner did not have the same charges. Unlike Jorge Vazquez, Petitioner was not charged with the misuse of the company's credit card to pay for her personal car insurance, excessive use of the credit card for meals, or threatening any employee. Petitioner continues to stand by the truth that Mr. Melamed was fully aware that Petitioner would utilize the company credit card for whatever the Union Members Insurance Company did not pay for the rental car. In fact, Mr. Melamed approved and paid the credit card bill. Petitioner does not owe the union any monies; in fact, they never paid Petitioner her bonus prior to her termination. It was obvious that Respondents goals were to compound both Vazquez and Bouey's alleged charges into one document; Attorney Lindsay Oyewale's Investigative Report did convince the Officer's of the Uniton to terminate Petitioner while on an approved medical leave. There were questions raised by the Officers, but these are the same individuals that teach in the classroom or transport students to school every day and looked for the UniServ Directors to represent them because they did not have the training, knowledge and did not believe an Attorney would be dishonest about how the investigation was orchestrated by Mr. Melamed unlawful discriminatory practices. Prior to Petitioner's termination she requested an investigation for the discriminatory practices and the very same person Mr. Melamed who was committing the crime conducted the investigation. The Officers were told that they had to make a decision that night during this meeting held on June 7, 2012 preventing the Union Officer's from making the best sound judgment and to avoid liability of any civil suits to be filed against them and as you now can see their swift and reckless actions forced Petitioner to file ongoing lawsuits against the Respondents putting her life on hold to be completely exonerated, awarded compensation damages, and to be made whole for the Respondents continued discrimination and retaliation towards her. Petitioner received a letter via mail of her termination on June 13, 2012 while on approved medical leave after requesting FMLA protection. Pursuant to the Fourteenth Amendment applied the Bill of Rights' Fifth Amendment guarantee of due process of law to the states it also provides that the states may not deny any person within their jurisdiction "the equal protection of the laws" and applies to the "Equal Protection Clause" to the federal government and to all U.S. citizens in the decision of Bolling v. Sharpe, that the U.S. Supreme Court ruled that the Fourteenth Amendment's Equal Protection Clause requirements apply to the federal government through the Fifth Amendment's Due Process Clause.

On January 13, 2012, I was representing a teacher at a Step III grievance meeting and she left the meeting under distress causing her to crash her car into Petitioner's passenger side door of while on duty. A police report was made and her insurance company covered all but $200 due to the former Executive Director Barry Melamed calling a mandatory meeting so Petitioner was unable to return the rental car after the repair shop informed her that my car was ready for pickup so the insurance company refused to cover the additional days.

PETIIONER'S RETALIATION CLAIM

Mr. Melamed demonstrated anger towards Petitioner when he learned she became aware that he created a letter on the union's letterhead writing a letter of recommendation for our adversaries Chief Negotiator for a vacant Superintendent position with the Seminole County School Board without the Union Officer's knowledge. Mr. Melamed was verbally reprimanded for his actions due to the ongoing resistance of negotiating contract language and adequate teacher and classified employees increased salaries during collectively bargaining. This was the same Chief Negotiator that worked with Mr. Melamed when he was not cleared for access to the schools pursuant to the Jessica Lunsford Act. In addition, this is the same Chief Negotiator that Petitioner made allegations that he was practicing unlawful discrimination, national origin, and religion. Mr. Melamed strongly demonstrated inclusion with our adversaries as he often directed Petitioner to not file grievances on behalf of the union members that had received discipline as most of the allegations and charges against union members had no merit and/or were not warranted. Mr. Melamed began to meet with our adversaries in private meetings without the member or Petitioner, their assigned representative, to discuss their cases and would later threaten Petitioner if she filed the grievance he would be a witness for OCPS, the adversary.

Petitioner could not compromise her integrity and feared the union member would file a duty of fair representation (DFR) with the Public Employees Relations Commission (PERC). It would have been very hard to convince the union member to withdraw their grievance after Petitioner met with the member and reviewed OCPS's violations of the contract during the initial meeting and after the grievance had been signed by the union member. Petitioner always believed if there were no violation of the contract no grievance should be filed. Petitioner always stated, she was fired by her union activities through our adversaries without no protection only for it to be used against Petitioner to terminate her employment.

Mr. Melamed created the pretext charges against Petitioner four months later in retaliation after Mr. Melamed refused to post a newly created Charge UniServ Director position that was required to be posted. Petitioner met with Mr. Melamed and asked if he would post the position and he stated no. Petitioner advised Mr. Melamed that she would file a grievance because she had seniority, she was qualified for the position, and it was a violation of her employment contract. Mr. Melamed demoted Petitioner as the Lead Advocacy UniServ Director and started delegating Petitioner's job responsibilities to the two white male employees Jim Matrille and Jim Demchak whom she had trained because they had no prior experience when hired from out of state. Petitioner received a stipend from the elected Union Officers for the training. The two white male UniServ Directors were hired after two African Americans were forced to resign in lieu of termination by the former Executive Director James Conlon (white male) who was later forced to resign after one year in his position. Mr. Melamed later resigned in lieu of termination for reasons of misrepresenting the facts and his continued yelling outburst and conflicts towards the former OCCTA President Diana Moore and members of OCCTA and OESPA. Respondents have not produced any unsatisfactory evaluations towards Petitioner performance because there were only effective evaluations since her tenure in 2008. Petitioner was subjected ongoing derogatory and sexual comments from the male employees. Even in Attorney Lindsey Oyewale Investigative Report she misrepresented the truth when she stated, Petitioner engaged in a relationship with Mr. Vazquez which is not true. Petitioner heard sexual comments made from Jim Demchak to Jorge Vazquez, “asking did you get that”. Petitioner heard comments that she was dating Mr. Melamed. Petitioner attended and after work dinner with other colleagues and the former OCCTA President Michael Cahill, to Petitioner’s surprise, ME TOO was embarrassed and feared retaliation to report President Cahill when he took his hand and placed on her head and pushed her head towards his groan area at Dubdread’s golf course. This incident occurred in the presence of Elton Wright, an OCCTA Officer and he failed to take any action against President Cahill because he was running for re-election. This is the first time Petitioner has reported this incident as she watched several victims is openly report sexual harassment and felt the courage to report to this court.

Petitioner was blocked from visiting schools which was one of her job responsibilities but the white males and females were not denied access by our adversary, OCPS. Petitioner was simply told just come back to the office.

Petitioner witnessed an initial investigation against Jim Matrille (white male) and Jim Demchak (white male) and it quietly went away with no discipline or any action taken for missing grievance timelines but were given more administrative responsibilities as Petitioner had seniority. Petitioner signed an agreement with her labor union officer Selene Fossitt and was later forged by the Respondents former Executive Director Barry Melamed and was later misrepresented by the Respondents as a Last Chance Agreement. Nowhere is this agreement that Petitioner should have been able to grieve was denied and Petitioner's previous Attorney

Gary Wilson made the argument at the Arbitration held in 2013. Petitioner did file a complaint with the Orange County Sheriff's Office and her only option was to file a civil suit.

After Petitioner was wrongfully terminated she received email correspondences that was forwarded from Union Officer's and members alleging Petitioner had gained access to the union office and had stolen the union's property; which was untrue;

After Petitioner was wrongfully terminated she applied for a position with the Central Florida Leadership Council which is made up of several labor unions in Central Florida after was not hired. Petitioner was a self employed political consultant for several years on National, State, and local Political Elections and prior to being terminated Petitioner was assigned to the unions political committee and after Petitioner was wrongfully terminated no candidate would come near Petitioner in fear of not receiving an endorsement and financial contribution from the labor unions.

Petitioner's labor union employer, our State Affiliate FEA, American Federation of Teachers (AFT), and the National Education Association (NEA) our National Affiliates was indeed an adverse action that harmed Petitioner because when Petitioner was terminated she could have worked as a Political Consultant to earn an income and take care of her family as a single parent; instead she lost income.

Petitioner's minor son at the time was subjected to harassment at Petitioner's home when Respondents process server intimidated and threatened Petitioner's son to open the door and refused to wait for Petitioner to arrive to serve the subpoena. Respondents Counsel was notified and no action was taken.

Pursuant to Florida Statutes 120.57, Hearsay shall not be sufficient in itself to find findings and that is exactly what FCHR took in considering with Mark Mitchell's Affidavit as he was not employed during the relevant period of the Petitioner's wrongful termination and he lied about Petitioner disrupting a union meeting when subpoenas were served in 2014. Respondents claim is that he did not know Petitioner but he did prior to him resigning from FEA during her employment and returning as the Executive Director for OCCTA, OCSU, and OESPA. Mr. Mitchell is the same individual that sent a picture of Petitioner that was similar to a criminal mugshot and after Respondents filed his unverified affidavit Mr. Mitchell was no longer employer with Petitioner's labor union's former employer.

The United States has a substantial interest in this appeal, which involves an important question of law regarding the prohibition against retaliation set forth in Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. 2000e-3(a). The Attorney General enforces Title VII against public employers, 42 U.S.C. 2000e-5(f)(1), and the Equal Employment Opportunity Commission (EEOC) enforces the statute against private employers, 42 U.S.C. 2000e-5(a) and (f)(1).

At issue in this appeal is the proper standard for determining an "adverse action" when a plaintiff alleges retaliation in violation of 42 U.S.C. 2000e-3(a). Even FCHR agreed with Petitioner.

The lower tribunal court erred in holding that the anti-retaliation provision of Title VII, 42 U.S.C. 2000e-3(a), requires a plaintiff to show a "serious and material change in the terms, conditions, or privileges of employment," when controlling Supreme Court law requires only that "a reasonable employee would have found the challenged action materially adverse," such that it "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006) (citations and internal quotation marks omitted).

> In Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006), the Supreme Court ruled that Title VII's anti-retaliation provision, 42 U.S.C. 2000e-3, provides broader protection to employees from adverse action than its anti-discrimination provision, 42 U.S.C. 2000e-2, and that the anti-retaliation provision is not limited to discriminatory actions that affect the terms and conditions of employment. Id. at 64, 68. The Court explicitly rejected the view that the anti-retaliation provision prohibits only adverse actions such as those involving "hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." Id. at 64 (citation omitted). The Court explained that the "scope of the anti-retaliation provision extends beyond workplace-related or employment-related retaliatory acts and harm," such that actionable retaliation is not limited "to so-called ultimate employment decisions." Id. at 67 (citations and internal quotation marks omitted). Under the standard adopted by the Court in Burlington Northern, a plaintiff in a Title VII retaliation case must show only that "a reasonable employee would have found the challenged action materially adverse, 'which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.'" Id. at 68 (citations and internal quotation marks omitted).

Petitioner, employee of the labor union, alleges that her employer retaliated against her for complaining about discrimination, retaliation, and filed a lawsuit.

Petitioner was unable to testify at the DOAH hearing, that her immediate supervisor Barry Melamed, who was the alleged harasser, yelled, demoted, retaliated, created a hostile work environment, and forged her signature. Petitioner was denied her FMLA protection while on approved medical leave misrepresenting they employed 15 or more employees. Respondents continued these actions up and until Petitioner filed her complaint with FCHR on October 9, 2016. Petitioner was affected by tangible injury, harm, and suffered loss of salary. Burlington Northern demonstrates its controlling standard for finding an actionable adverse action under Title VII's anti-retaliation provision. In Petitioner's claim, she is engaged in activity protected by Title VII and did give notice to the Respondent's Counsel. In addition, Petitioner did suffer loss of income when she was discharged and turn to self employed again in an effort to continue to work for political candidates and was turned down from any employment opportunity in the Central Florida area.

Petitioner cites a Burlington Northern. See Webb-Edwards, 525 F.3d at 1031 for the proposition that an adverse action is "[a] tangible employment action constitut[ing] significant change in employment status such as hiring, firing, failing to promote, reassignment with significantly different responsibilities or a decision causing a significant change in benefits." Doc. 72, at 24 (brackets in original; quoting Webb-Edwards v. Orange Cty. Sheriff's Office, 525 F.3d 1013, 1031 (11th Cir. 2008)).

SUMMARY OF ARGUMENT

Thus, under Title VII, Petitioner's employer was a labor union with more than 15 members.(*Id.at 17*). This satisfies the jurisdictional threshold for Title VII. Even without the integrated enterprise doctrine CTA is still Mrs. Bouey's Employer as evidenced by her recently discovered unemployment records which clearly list CTA as her employer and identified by the ALJ J. Bruce Culpepper and D.R. Alexander. In the opinion, Justice Scalia was clear that he was trying to avoid the very situation that Defendant is currently trying to create in this case. It is not about who was working on a given day, who clocked in at what time, going through thousands of pages of records, who was sick on Thursday, etc. The Court concisely and aptly stated:

Under the interpretation we adopt, by contrast, all one needs to know about a given employee for a given year is whether the employee started or ended employment during that year and, if so, when. He is counted as an employee for each working day after arrival and before departure. *Id*. at 211. That's it.

In determining whether these employees are independent contractors depends largely on the application of the thirteen factors articulated by the Supreme Court in Community for Creative Non Violence v. Reid, 490 U.S. 730 (1989).

> (1) the hiring party's right to control the manner and means by which the product is accomplished; (2) the skill required; (3) the source of the instrumentalities and tools; (4) the location of the work; (5) the duration of the relationship between the parties; (6) whether the hiring party has the right to assign additional projects to the hired party; (7) the extent of the hired party's discretion over when and how long to work; [8] the method of payment; (9) the hired party's role in hiring and paying assistants; (10) whether the work is part of the regular business of the hiring party; (11) whether the hiring party is in business; (12) the provision of employee benefits; and (13) the tax treatment of the hired party."

By applying the "Reid Test" the Court will find that Defendants' Shop Stewards and ARs are not independent contractors but considered employees for the purposes of federal-court subject-matter jurisdiction over Title VII claims against the Respondents in its capacity as an employer.

In two Title VII discrimination civil lawsuits during the past three years, Defendants have managed to elude disclosure of their corporate structure and production of relevant employee financial records needed for employee numerosity for Title VII jurisdiction using an assortment of unethical tactics. Defendants consistently frustrated the discovery process and eventually produced only what they wanted to produce to avoid liability for violating discrimination laws under Title VII of the Civil rights Act of 1964.During the period of 2014 through 2017, the Respondents ("Defendants") have claimed that the Orange County Service Unit is a separate and single entity. As a result, employees of the OCSU, CTA, OESPA, FEA, AFT, and NEA were not counted towards the employee numerosity for the purpose of Federal-Court subject-matter jurisdiction in the Title VII claims against the Respondents in their capacity as an employer. However, newly discovered evidence has shown that OCSU was not a separate entity apart from the CTA, OESPA, FEA, AFT, and NEA. Although the Respondents never disclosed their exact corporate form to Petitioner or the Court, the Plaintiff discovered that on April 16, 2015, the Defendants Incorporated OCSU with the Florida Department of State Division of Corporations. The circumstances surrounding the Defendants' Incorporation of OCSU and letter from the FEA employee Amber Sword, Director of Financial Services are suspicious and should require a closer look by FCHR and this court and the that the Petitioner was employed by, had over 100 shop stewards combined The shop stewards, were hired, compensated, controlled, and Petitioner was terminated by the union's Presidents and their elected officers. These facts make the shop stewards employees.

> In Daggitt v. UFCW, UFCW claimed it did not meet this fifteen-employee threshold. The District Court denied summary judgment, finding that UFCW in fact met the employee threshold because the union's shop stewards counted as employees for purposes of jurisdiction under Title VII, Daggitt v. United Food & Commercial Workers Int'l Union Local 304A, 59 F. Supp. 2d 980, 984 (D.S.D. 1999). The District Court found that for the relevant time periods UFCW had approximately fifty union stewards, Daggitt, 59 F. Supp. 2d at 982. In reviewing the District Court's determination that the UFCW's shop stewards are employees of the union for purposes of federal-court subject-matter jurisdiction over Title VII claims against the union in its capacity as an employer, we apply the ordinary standards of appellate review.

> The courts also noted that the union president possessed authority to replace stewards and to fill steward vacancies between elections. Such control over the termination and hiring of stewards is enough, in these circumstances, to find that the union had a measure of control over the manner and means by which the stewards performed their duties. In sum, we hold that the union stewards of UFCW are "employees" of the union for purposes of establishing jurisdiction over the union under 42 U.S.C. 2000e(b).

Respondents ("Defendants") have claimed they OCSU is a separate entity from OCCTA and OESPA and as such, does not have the necessary 15 or more employees to be considered an employer for Title VII jurisdiction. However, newly discovered evidence will show that OCSU is not a separate entity but a joint employer, integrated enterprise and/or an Alter Ego for OCCTA.

The Supreme Court long has recognized that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." Heckler v. Chaney, 470 U.S. 821, 831 (1985) (citing, inter alia, Confiscation Cases, 74 U.S. (7 Wall.) 454 (1869)). As the Court explained, "[t]his recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement." Id. at 831. It also is rooted in the Constitution. "[A]n agency's refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor in the Executive Branch not to indict -- a decision which has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to `take Care that the Laws be faithfully executed.' U.S. Const., Art. II, § 3." Id. at 832. The district court's holding, which sanctions judicial intrusion into the Justice Department's prosecutorial decisions about what cases not to bring, rests on the implausible assumption that Congress meant to upset this tradition.

CONCLUSION

I humbly ask this court to reverse and remand for relief for compensations damages from the effects of this unlawful employment and retaliation practice by the Respondents that did occur against Petitioner. I am African American female that falls under the protected class and should not continue to fear retaliation and harassment by my former employers because the necessary documents to prove my allegations are not being properly reviewed and considered Petitioner's prima facie evidence produced and preserved with FCHR, DOAH, State and Federal courts. Based on this decision, I am made to feel that anywhere the union shows up I am banned from going into public places in Orlando the place that I reside and pay taxes and I have not received a court order banning me from residing in Florida or freely going to public and government places. I ask this court to have mercy on Petitioner and make her whole.

However, the Supreme Court held in Burlington Northern that the standard for finding an adverse action under the anti-retaliation provision, 42 U.S.C. 2000e-3(a), differs from the standard for finding an adverse action under the substantive discrimination provision. In reaching this conclusion, the Court focused on differences in the statutory language.

The Supreme Court in Burlington Northern emphasized that Title VII's substantive provision prohibiting discrimination makes it an unlawful employment

In Crawford v. Carroll, 529 F.3d 961, 973 (11th Cir. 2008), this Court acknowledged that Burlington Northern had announced a "decidedly more relaxed" adverse action standard for retaliation claims than for substantive discrimination claims. "[T]he Burlington Court effectively rejected the standards [previously] applied by this court * * * that required an employee to show either an ultimate employment decision or substantial employment action to establish an adverse employment action for the purpose of a Title VII retaliation claim," the Crawford Court said. Id. at 973-974 & n.14 (ruling that the pre-Burlington Northern standard requiring a "serious and material" change in the terms, conditions, or privileges of employment does not survive). This Court stressed that the difference in standards matters: "The two standards are distinct and different and * * * the Burlington standard applies to a wider range of employer conduct." Id. at 974 n.14. Applying the Burlington Northern standard to the facts of the case before it, the Crawford Court held that an unfavorable performance review "clearly might deter a reasonable employee from pursuing a pending charge of discrimination or making a new one." Id. at 974; see also Grant v. Miami-Dade Cty. Water & Sewer Dep't, 636 F. App'x 462, 468 (11th Cir. 2015); Barnett v. Athens Reg'l Med. Ctr., 550 F. App'x 711, 714 (11th Cir. 2013), cert. denied, 134 S. Ct. 2312 (2014); Worley v. City of Lilburn, 408 F. App'x 248, 250 (11th Cir. 2011).

Wherefore, Appellant respectfully request the Court to remand and reverse the case to the lower tribunal for the above reasons and award any further relief that this Court deems appropriate.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This is to certify that this brief complies with Federal Rule of Appellate Procedure 32(g)(i). This Appellant's Initial Brief is submitted in 12-point Times New Roman font, and it contains 8,192 words.

___/s/________________________
Robin Bouey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27Th day of February, 2018, I filed the Appellant's Petitoner's Initial Brief foregoing electronically transmitted to the 5DCA, 300 South Beach Street, Daytona Beach, Florida 32114 and via U.S. Mail to the Appellees Counsel, Sniffen & Spellman, P.A., 123 North Monroe Street, Tallahassee, Florida 32301.

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