Case No. _____

Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

William R. Noack,

Plaintiff,

v.

YMCA, of the Greater Houston Area

Defendant,

District Court: case 4:08-cv-03247

Fifth Circuit Court of Appeals:

case 10-20312

MOTION FOR LEAVE TO FILE *IN FORMA PAUPERIS*

Pursuant to U.S. Supreme Court Rule 39, I present this **Motion for Leave to File *In Forma Pauperis***. I was granted permission to proceed *in forma pauperis* in **district court**, and filed my motion to proceed *in forma pauperis* in U.S. Fifth Circuit Court of Appeals, pursuant to **F.R.A.P. 24(a)(3).**

I seek redress as Petitioner, *pro se* and *in forma pauperis*, in my civil case of William R. Noack v. YMCA of the Greater Houston Area, and also file in this Court my **Petition for a Writ of Certiorari** to the U.S. Fifth Circuit Court of Appeals.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on (date) _____, (Signature) _____.

William R. Noack
Petitioner / Plaintiff-Appellant, ***pro se***

(personal contact info. redacted)

No. _____

Supreme Court of the United States

William R. Noack,

***Petitioner*,**

v.

YMCA, of the Greater Houston Area

Respondent.

On Petition for a Writ of Certiorari to the

United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

William R. Noack

Petitioner, pro se

(personal contact info. redacted)

QUESTIONS PRESENTED

1. **May the court below annul, via plaintiff's poverty, both judicial equity and his Seventh Amendment right to a trial by jury?**

2. **May the court below conflicts with sufficiency of evidence standards in granting summary judgment against plaintiff?**

3. **May the court below ignore established summary judgment principles in making its ruling against plaintiff?**

PARTIES TO THE PROCEEDING

(All parties to this proceeding appear in the caption of the case.)

Petitioner is ***William R. Noack,*** ***(****Plaintiff-Appellant).*

Respondent is ***YMCA, of the Greater Houston Area,*** *(Defendant-Appellee)*

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PETITION FOR WRIT OF CERTIORARI

Petitioner, William R. Noack, respectfully asks this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit regarding.

OPINIONS BELOW

The **opinion** of the United States Court of Appeals for the **Fifth Circuit** is reprinted in **Appendix B,** and the **Fifth Circuit decision denying rehearing *en banc*** is **reprinted in Appendix C.**

The **decision** of the United States District Court, **So. District of Texas,** is **reprinted in Appendix A.**

JURISDICTION

The decision of the Court of Appeals panel was rendered on **March 16th**, 2011. The court below *denied* Respondent's petition for rehearing *en banc* on **April 18th**, 2011. This petition is timely filed within 90 days of that date. The jurisdiction of this Court is invoked under **28 U.S.C. § 1254(1).**

STATUTORY AND CONSTITUTIONAL PROVISIONS

U.S. Constitution, Seventh Amendment:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

28 U.S.C. § 1254(1):

" Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; "

(Additional citations are in the Appendix.)

STATEMENT OF THE CASE

1) Petitioner requests this Court grant a writ of certiorari to the United States Court of Appeals for the Fifth Circuit. This case was initially filed October 31st, 2008, in U.S. District Court, So. District of TX, as Civil Action No. **H-08-3247**, alleging unlawful employment practices in-cluding discrimination and retaliation, under **Title 42 U.S.C. section 2000e** et. sec. as amended by the **Civil Rights Act of 1991**. Summary judgment for Defendant was granted March 29th, 2010.
2) Noack filed his Notice of appeal April 20th, 2010, and the Fifth Circuit rendered an opinion against Noack, March 16th, 2011. Noack filed a *petition for rehearing en banc*, due to blatant irregularities, but the court below treated it as a petition for (panel) rehearing before the same judges: it was then denied, April 18th, 2011. Respectfully, people in authority rarely their errors, so Noack petitioned *en banc*, as was his right. I, William Noack, writing in the narrative third person as legal formats compel, do again pursue my own due rights and justice, despite poverty and no legal training. I pray this highest of U.S. Courts hear me now, sincerely.

I. Statement of Facts

A. Overview and History of Ongoing Abuse

3) Plaintiff, Noack, alleges years of ongoing discrimination at the YMCA. Allegations include anti-male bias in many ways, including placing him out of a position and also refusal of a position. Noack showed YMCA reasons were inaccurate and pretextual. However, he immediately withdrew his year-2000 claim before EEOC had time to investigate or intervene. EEOC likely had the claim less than 3 days (as shown in Noack's case), and its withdrawal showed his uncertainty.

4) Mr. Noack filed another claim in 2007, after years of discrimination. The TWC claim was transferred to EEOC. Noack proved blatant YMCA false testimony (apparently perjury) to the labor board and perjury in other affidavit testimony filed in court. He showed EEOC then closed the claim, evidently without questioning of YMCA witnesses (as per EEOC logsheets), **(USCA5 230-231).**

5) In affidavits, **(USCA5 576-577; 582-587)**, Noack alleged discrimination, retaliation, hostile workplace, etc. and the *ongoing* nature of the acts against him. Such acts included differing work based on gender, repeated physical assaults (by hand and by thrown objects), repeated threats of physical assault, rampant ridicule and other demeaning and gender-biased behavior. **USCA5 579-581** tell much in response to a labor official's request for information. (And see **USCA5 574-575**.)

6) Other documents **(USCA5 588-596)** sent to a TWC investigator (in response to a request for more information) show Cadle, a coworker, impersonated Noack to her elderly mother (who worked for him). Egger and others laughed. **(USCA5 594)**

7) Also, Noack forwarded an email sent to him, due to the nature and business of it.

He sent it to others in the YMCA for consideration, as the YMCA did business with the company involved. That company was embroiled in a national religious dispute and the YMCA was a "Christian" organization and averse to bad publicity. Noack was quickly written up by the female executive director (of that time).

8) Noack claims the YMCA *withheld* same and equal support for staffing his afterschool programs (compared to female coworkers), for years, and was compelled to work unpaid overtime for years. YMCA paid the overtime wages upon his notice of resignation. Their internal investigation admitted incorrect timekeeping.

B. *"I Hate Men!"* Rant, Orders to Discriminate, and More

9) Noack's boss (Egger) once walked into the shared office area ranting, *"I hate men!"*, **(USCA5 583, #2**, *top***)** looking in his direction, and others in the office allegedly emailed anti-male jokes (as shown by one submitted in records). **(USCA5 813-816)**

10) Noack was hiring students of Prairie View A&M University – a traditionally black college – and worked on building collaborative YMCA efforts with that university and also the local ISD there. He claims he was told to discriminate against both blacks and men. He alleges that after refusing to discriminate and refusing to continue working unpaid overtime, the YMCA mistreated him more.

11) Noack alleges he was quickly threatened with termination, the entire office told to not write accurate time on timesheets – only straight hours (regardless of when they worked), and that he was given a conduct report for unauthorized overtime. Noack claims the write-up was unjustified due to his being the only staff there with special needs children, YMCA and TX DFPS obligations, and TX regulations regarding a report of in-home child abuse required his immediate supervisory

attention and reporting on, ASAP, as per State Law. Noack also claims the overtime could have been avoided by his supervisor, as she knew of the incident and late hours and there were more days in that week, so his supervisor *could* have arranged for someone else to cover for him so he could avoid overtime (but did not).

12) Noack was forced by Egger to break a YMCA edict and policy that nobody work alone with children – something that could have cost him the loss of his sites. **(USCA5 694)**. Noack alleges Egger became irate and incited others against him. Email evidence supports that and his claim that Egger defamed him to superiors when she alleged he spent so much time on a document – (*though she also said she didn't know what he was working on)* - that he in effect typed at what amounts to less than **7** words per minute (as Noack showed in his case).

13) Noack showed a chronology (of documented events) wherein Egger tried to find something to use against him before writing him up, that he was being forced to do the work of three jobs (-a total normally of 80 employee hours) in forty hours per week (for many weeks), that he was hindered thereby from getting State-required childcare duties done (via supervisory nonsupport in staffing and in orders to discriminate), that his (female) coworkers spied on him, and that Egger and her office friends secretly went out and took childcare documents from one of the sites licensed in his name – documentation TX DFPS requires be kept onside daily and which YMCA later finally admitted to having taken.

14) Also, documentation showed Noack was unreasonably ordered to stop using his computer when he needed it for *greater* priorities (- other work *and* HR matters). Documents show Egger ordered Noack to divulge computer and phone passcodes

contrary to policy. (Tech personnel already had remote access to computers.)

15) YMCA HR documents show an admission the YMCA had a preference of anti-male discrimination and then that one of Noack's coworkers was hostile toward him in personal remarks. Contrary to YMCA's claim to the labor board that they had **never** known of any problems with Noack **in all his years** at the YMCA (until they received their copy of the claim against them), the YMCA's own internal investigation stated they had been in contact with Noack and his supervisors repeatedly about his problems in fall, 2007, **and** other documents show they also met with him regarding Noack's year 2000 claim. Documentation shows YMCA said it would send an affidavit testifying to the same, which would be perjury, also.

II. Proceedings Below

A. District Court

16) Noack, plaintiff-petitioner, filed his lawsuit, Civil Action No. **H-08-3247**, on October 31st, 2008 in U.S. District Court, So. District of Texas, with Magistrate Nancy K. Johnson presiding over the preliminaries. Plaintiff alleged unlawful employment practices including discrimination and retaliation under **Title 42 U.S.C. section 2000e** et. sec. as amended by the **Civil Rights Act of 1991.**

17) He alleged YMCA engaged in unlawful acts based on his gender and the race and gender of others *and* because he resisted YMCA violations of wage Laws. He claims YMCA acts adversely impacted him, were neither job-related nor consistent with business necessity, and that he was deprived of equal employment opportunities in violation of **42 U.S.C. Section 2000e (2)(a).**

18) A scheduling conference was held before Magistrate Judge Nancy K. Johnson on

February13th, 2009. After months of difficulty obtaining discovery material, Noack sent a Request to Comply with Requests for Production (filed July 21nd, 2009), showing intent to file a motion to compel. A hearing held August 10th, 2009, discussed his first Requests, partly granted/partly denied. Magistrate Johnson acknowledged, then refused, Noack's request that she consider recusal.

19) The YMCA requested Summary Judgment August 28th, 2009, before fully complying with court orders to disclose data on wages.

20) Noack protested YMCA failure to disclose (court ordered discovery) as grounds for default in his favor or other penalties (all refused). [See **FRCP Rule 37 (b)(2)].** His Second Motion to Compel also did not produce favorable results regarding YMCA pay data that had been withheld although partially-disclosed documentation had begun to show discrimination. The data *not* provided was for a black coworker, while another black coworker's wages showed evidence of discrimination. Magistrate Johnson refused to enforce her order without stated reason and without fine or penalty on the YMCA. Noack's request for reconsideration was denied.

21) March 29th, 2010, Summary Judgment was granted for defendant, YMCA. On April 20th, 2010, Noack filed his Notice of appeal.

B. Tampering With Evidence and Appellate Court

22) The transcripts were illegally edited to eliminate references Noack had revealed as reasons showing his need for the transcripts (as told to proffer by district court). Noack (*pro se*) filed a motion and sworn affidavit in the court below – *oddly* refused and rejected, although relevant to the case and beyond district court jurisdiction. Noack was told the court below was only going to regard what was already in the

district court record. The tampering also changed statements alluded to in district court **(USCA5 1009, ¶2 - 4)**.

23) Page 5 of the February 13th, 2009 hearing transcript omits the court's statement about requested damages back to 2000 where it was said that it would be *"…for the court to decide"*, and more, although transcripts must be "verbatim". Noack, *pro se*, filed a motion for the withheld evidence (ordered in district court) and for accurate transcripts, submitting sworn testimony of personal knowledge of their inaccuracy. The court below denied the request. **(**The relevant Order is in the **Appendix.)**

24) The **Fifth Circuit Court** rendered an **opinion** against Noack, March 16th, 2011, and Noack filed a ***petition for rehearing en banc***, due to gross irregularities, but the court below only treated it as a petition for panel rehearing (before the same judges) and **denied it, on April 18th, 2011**, citing **FRAP 35**; yet, **FRAP 35** has no such rule (*suggested, below*) stating *en banc* rehearing is only allowed via referrals from the panel. Rather, it *is* a course of action for litigants in Noack's situation.

25) The court below permitted violation of due process and conflicts with many precedents. Many *and* major facts have been *completely* ignored, others down-played, and many separated as if to make them ***seem*** isolated. The opinion below is very corrupted, but due to page-limits, Noack is limited to only *some* areas**.**

26) The U.S. Supreme Court has jurisdiction under **28 U.S.C. § 1254(1)** and **U.S. Constitution, Article III, Section 2.** This jurisdiction is appropriate since the proceedings progressed through appellate level in matters of federal Law and also involve the U.S. Constitution.

27) The court below conflicts with decisions of other U.S. courts of appeals on similar

important matters, has far departed from accepted and usual courses of judicial proceedings and sanctions such departures by a lower court so as to call for an exercise of this Court's power. Also, the court below decided important questions of federal law in conflicts with relevant decisions of this Court and in areas that have not been, but should be, settled by this Court.

28) Noack contested similar matters as in this petition, throughout his opposition to summary judgment against him - in both district court and the court below. **Both courts gave a mere nod to the Law,** then disregarded both Law and facts, as well as incorrectly restating facts and making assumptions. (See **USCA5 1101, #6, *and* 1117-1118, #63-64**; *and* **1107, #31; USCA5 1113, #49;** for example.) They also refused to abide by the spirit and intent of the Law, and did not address important issues raised by Noack. The truth of such things, however, cannot fully or easily be noticed without fully reviewing case data, as the parameters have grown larger and the constraints less able to fit them with each progression.

REASONS FOR GRANTING THE WRIT

I. <u>The decision below annuls, via plaintiff's poverty, both judicial equity and his Seventh Amendment right to a trial by jury.</u>

29) ***<u>Aladdin Oil Co. v. Texaco, Inc.</u>*, 603 F.2d 1107, 1112 (5th Cir.1979)** upheld that,

> *"We believe that summary (judgment) procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.' "*

*30)*Here, as in the above*, "motive and intent play leading roles"*, and "*hostile witnesses thicken the plot"*. The latter is evident in Noack's direct evidence, testimony, proofs the YMCA withheld evidence, and proofs the YMCA repeatedly gave false testimony (to the labor board and to the court). Additionally, as a nonprofit organization that is heavily affected by public and corporate opinions due to its intake of numerous donations of doubtless great dollar amounts, the YMCA cannot lack a ***probative***, great *"motive and intent"* that **could** *"play leading roles"*.

*31)*This case wreaks of hostility in the workplace such that repeated physical assaults and threats of the same are sworn to have occurred (and not denied by the YMCA) and factual evidence shows anger, defamation, character-assassination, and a situation requiring a jury trial to get to the truth, especially since the YMCA showed itself unreliable in testimony and also has withheld court-ordered evidence.

*32)*However, Noack, impoverished, could not afford depositions. He also could not extract affidavits from unwilling witnesses. The YMCA withheld evidence for months, wasting Noack's discovery time. He never got to any part of discovery beyond Requests for Production – in fact, he didn't get past that, as the district court, twice,(without giving any reason) refused to make the YMCA comply with court discovery orders when evidence began showing in Noack's favor and the YMCA withheld a significant part of the ordered evidence. (Wage information on LaQuana Lang, a black coworker, has been withheld after other coworker's wages began showing discrimination. – Noack alleged retaliation in part due to refusal to discriminate.)

33)Motions for summary judgment should be granted only when "*the pleadings,*

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." **Fed. R. Civ. P. 56 (c). Noack was never able to have** "*depositions, answers to interrogatories" or even "affidavits" from hostile witnesses.* He did not have due process, and denial of a trial by jury further ensured that he did not.

34) The **U.S. Declaration of Independence** sheds light on the true context and meaning of the U.S. Constitution, and "context matters". It quickly states"…*the Laws of Nature and of Nature's God entitle them…"* **and** *"…all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed…*" **Then,** *"… organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.*" (See **Appendix**)

35) Over-eager summary judgment that favors the rich and abuses the poor does not "…*secure these rights*", and it does not "…*seem most likely to effect their Safety and Happiness."* It is oppression. Workers get bound into employment-contracts that deny them rights and require arbitration; yet, they have no freedom to refuse, as assistance in times of unemployment is often related to seeking and finding employment with others – employers whom they must sign away their rights to. This erosion of personal liberty and justice in favor of the rich must change, or the U.S. may attain anarchy.

36) Poor workers (like Noack) who are wronged by employers cannot afford attorneys,

yet the legal system is set up for use by attorneys. Anyone with a job and no legal training has little chance to meet sudden document deadlines while trying to learn to jump through all the proper legal "hoops", and they risk losing via technicality. Noack produced hundreds of documents, but the YMCA stonewalled on production for months; yet, Law requires production within 30 days, and Noack had included very similar language in his requests as the YMCA had used. YMCA disobedience wasted months of discovery time never made up for by the district court.

37) Courts are hurried by backlogs, and a poor *pro se* litigant is a hindrance to the speed of the system as wealthy employers evade and casually disobey court orders without consequence, *although* one consequence, by Law, is default in plaintiff's favor. [See **FRCP Rule 37(b)(2)(vi)**.]

38) If the subject and context of the **Seventh Amendment** is "… *to secure… rights, …and* ***to effect their Safety…*****",** lack of due process and rampant, unbridled summary judgment is not conducive to that, as the people are instead being robbed of their wellbeing. That is unjust and violates the intent of the "founding fathers". (**Seventh Amendment** is reprinted on p.13, below, and in the **Appendix.**)

39) Summary judgment has decreased trials and helped clear dockets, but not all "cleared" cases are meritless. *Convenience* too often trumps the Constitution. The Supreme Court held Seventh Amendment "*common law*" was English common law of 1791. Summary judgment didn't exist under that and violates its principles.

40) "Useful" and "just" are not synonyms. Even Hitler's actions may have seemed *useful* for his goals, but they were not *just*. Summary judgment was not ordained by the founding fathers and has abused the poor, including Noack.

*41)*The **U.S. Constitution, Seventh Amendment** states, *"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."*

42) If trial by jury were only intended for the rich, our Constitution would have said so – such as "landowners only", etc. Justice is <u>for all</u> (as in our <u>Pledge of Allegiance</u>).

*43)*Noack, despite his poverty, was not appointed requested counsel, nor did the court attend to the issue beyond the first hearing. YMCA, besides stonewalling, also pretended to have sent many documents which Noack proved it hadn't; and, by the time Noack got a hearing on a motion to compel, discovery was essentially over.

*44)*Noack never got to do interrogatories or requests for admissions, and without funds for depositions <u>nor ability to compel unwilling witnesses to give affidavits</u>, Noack had no chance to cross-examine or question anyone at all. **That makes the case unfairly lopsided in testimony – no equity at all.** YMCA's deposition of Noack, was an interrogation. Law says, *"examination and cross-examination…as they would at trial".* [**FRCP, Rule 30(C)(1)]** As ***pro se*,** Noack ought to have been allowed to speak for himself relevant testimony at his deposition, but wasn't.

45) Noack's hearing transcripts were tampered with after he was told to give good reason for having them at government expense, yet the court below refused to accept his sworn testimony about their corruption *and* his motion for *verbatim* manuscripts (as required by Law).

46)There has been no justice, but rather a court-assisted rape of Noack, following an economic rape by his employer which has wrecked him (financially) so that he has

now lived in a tent for over two years without electricity, after losing car, job and career. A tyrant ruler might be proud of such abuse, but it is not what our founding fathers imagined in the **Seventh Amendment**.

II. The court below conflicts with sufficiency of evidence standards in granting summary judgment against plaintiff.

47) The YMCA cannot carry its initial burden. At best, the YMCA gives a basic "he said, she said" argument, defendant's word against Noack's. Yet, Noack had facts to back his arguments, proved the YMCA was "fibbing", and more.

48) The Fifth Circuit panel conflicts with **many** precedents about the level of evidence needed to defeat summary judgment. ***Fabela v. Socorro Independent School District*** **, 329 F.3d 409 (5th Cir. 2003)** – (5th Cir. Crt.), shows relevant personal testimony (like Noack's) ***is*** sufficient evidence. Noack's sworn affidavits and deposition statements offer much relevant conflict with YMCA testimony. ***Jurors*** decide who is telling the truth.

49) ***Harris v. Robison Jewelers*** **(No. 09-1490), (Sixth Cir., 2010)** *and* ***Churchwell v. Bluegrass Marine, Inc.*** **, 444 F.3d 898, 904 (6th Cir. 2006**) *both* show that plaintiff's testimony is sufficient to show a genuine issue of material fact.

50) ***Head v. Glacier Nw. Inc.*** **, 413 F.3d 1053, 1058 (9th Cir. 2005)** shows ***"[A] plaintiff's testimony may suffice to establish a genuine issue of material fact."*** Likewise, the court held, in ***Britton v. U.S.S. Great Lakes Fleet, Inc.*** **, 302 F.3d 812, 818 (8th Cir. 2002)**, that **"[*Plaintiff's] testimony alone created a genuine issue of material fact*[.]"**

51) ***Rosario v. Dep't of the Army*****(No. 08-2168)(US First Cir. Crt., 2010),** showed

sufficient evidence for a jury to find conduct against her was **"*so severe or pervasive that it altered the terms or conditions of her employment*."** Noack's case includes allegations of "constructive discharge", hostile workplace, IIED, etc. Summary judgment was vacated and remanded, as a *reasonable jury* **could** find that Rosario met her burden to show conduct that created a ***hostile work environment***. Conflict, then, exists as to standards of judgment.

52) Yet, evidence in ***Rosario*** seems slight compared to Noack's. She suffered alleged ongoing *verbal* harassment, seemingly petty acts like throwing her food away, etc.; but, considered **together and in context**, that court held it was enough.

53) Discrimination against Noack included being put out of a position and kept from yet another position (each due to gender bias), discriminatory jokes, retaliatory disciplinary action, **repeated, ongoing physical assaults**, threats of the same, proven disparate pay, unpaid overtime, demeaning work assignments, etc. - much of it mentioned in sworn testimony and some via documents, too.

54) YMCA's internal investigation referred to "*any other employees*" (with unpaid overtime)**(USCA5 907, *ll.* 3-4)**, implying there had been someone - Noack. Female coworkers claimed it had not happened to them, thus making that a discriminatory act against Noack (male), also. The court below ignored facts.

55) Another conflicting case, ***EEOC v. Boeing Co.*** **(No. 07-16903) (US 9th Cir. Crt, 2009),** reversed summary judgment where EEOC showed **adequate evidence** by which a *reasonable jury* could conclude Boeing's reasons were pretextual. About one employee, the Court held that demeaning comments regarding women in general showed **"direct" evidence** of sexually discriminatory animus.

56) Her supervisor had, two years prior, referred to her as a "little girl" and made a "joking" inquiry as to whether she "broke a nail". The court decided those ***"…comments constitute at least some evidence of discriminatory animus."*** They could not be passed off as merely inadmissible "stray remarks". Noack's sworn testimony claims Egger ranted, ***"I hate men!"*** **[USCA5 583, #2** (top)**]** and many other problems; so, the opinion below conflicts, here, too.

57) Much more was dismissed in Noack's case ***as if*** it were merely insufficient "petty slights". There is nothing petty about being ***repeatedly physically assaulted,*** an unjustifiable disciplinary write-up, **clandestined seizure of state-required childcare documents** (at one of Noack's afterschool sites licensed in his name as director), failure to provide equitable staffing support – which hindered Noack's state & YMCA-required functions as well as precipitating his being **required to do his own fulltime duties *and* those of two other (unhired) part-time staff in only 40 hours (for many weeks),** Noack's supervisor requiring him to *break* YMCA policies, **no provision for bathroom breaks for hours (with full knowledge that Noack had been to the ER with kidney problems** – though they had joked about it**)**, and much more. **(See USCA5 574-577; & USCA5 582-587;** *and other evidence submitted***.)**

58) No "*reasonable worker*" would consider such working conditions "*petty*", especially with sworn testimony and evidence showing discrimination against him went on for years. Prior bad acts show intent, and the decision below conflicts strongly with other courts (and itself) in regard to ***pretext*** and ***sufficiency of evidence.***

59) In ***Thompson v. North American Stainless, LP,*** **No. 09-291, U.S. Supreme**