Court, (2011), the court held, **"*If the facts Thompson alleges are true, his firing by NAS constituted unlawful retaliation*."** This Court found plaintiff's testimony must be regarded in his best light at this stage. The court below didn't do that, but ***pretended*** it had. Noack's affidavits show much (**USCA5 574-577; & USCA5 582-587),** and the YMCA deposition of Noack does too, although it is YMCA-manipulated and denied Noack "cross-examination" as required by Law (or for him to speak for himself as *pro se*). Much of it was blanked out before being submitted by the YMCA **(USCA5 318-347)**, and Noack had no funds for a copy of it. Yet, the deposition also shows evidence that thwarts summary judgment.

1) ***Alaniz v. Zamora-Quezada*, 591 F.3d 761, 771 (5th Cir. 2009)** pivoting on personal testimony, got to trial. It found prior bad acts prove intent and motive.
2) ***Becker v. ARCO Chemical Co., 207 F.3d 176 (3d Cir. 2000),*** examined the admissibility of evidence of an employer's prior bad acts and reversed the trial court's decision because that court had improperly received as evidence testimony regarding certain prior bad employer acts. This Court now needs to clarify.
3) The court below conflicted with the measure of safety granted to a non-movant in other courts. In ***Burlington Northern & Santa Fe Railway Company v. White*, 548 U.S. 53, 126 S. Ct. 2405 (2006),** the Court remarked,

> *"We refer to reactions of a reasonable employee because we believe that the provision's standard for judging harm must be objective. An objective standard is judicially administrable. It avoids the uncertainties and unfair discrepancies that can plague a judicial effort to determine a plaintiff's unusual subjective feelings. We have emphasized the need for objective standards in other Title VII contexts, and those same concerns animate our decision here."*

4) The court below defied the evidence and violated the intent of the Law – justice.

5) ***Pennsylvania State Police v. Suders*, No. 03-95, 2004 WL 1300153 (U.S. June 14, 2004)** would indicate Noack suffered an adverse, "tangible employment action" via constructive discharge, since it held that constructive discharge ***is*** sometimes **a tangible employment action.** The Court stated that *"for an atmosphere of sexual harassment or hostility to be actionable, the offending behavior 'must be sufficiently severe or pervasive to alter the conditions of [the victim's] employment and create an abusive working environment.'"* Noack ***did*** establish that such an environment resulted in his "constructive discharge ", in his best light, by showing ***"the abusive working environment was so intolerable that…resignation qualified as a fitting response."*** However, the lower courts are in deep conflict with other rulings, as shown.

6) Furthermore, in addition to the "constructive discharge", YMCA actions arguably were accompanied by an "official act" attributable to the employer that had negative consequences to the employee [like "a humiliating demotion," "extreme cut in pay," or a transfer that faced Noack with unbearable working conditions.

7) Noack demonstrated to the courts below that he suffered in that manner in the form of gross humiliation and a veritable change in working conditions that was unbearable. The court below refused to regard the facts, danced around them, and proffered minor facts as if to scoff at Noack's claims. That is a departure from the accepted and usual course of judicial proceedings.

III. The decision below conflicts with established summary judgment principles

A. Factual Issues and Jury Rights

8) Many acts of discrimination existed *within* the statutory period and preceding it, as

shown by a plethora of evidence. YMCA gave some old Law, affidavits shown to be untrustworthy, and half-blanked-out, "twisted" deposition pages.

9) Davis' testimony was proven perjurous. She claimed she never could have *denied* Noack a promotion based on gender due to due to not being his supervisor **(USCA5 353, #3;** through **354, #6),** ***Yet***, Noack showed she signed his promotion documents **(USCA5 562-563)** and *deposed* testimony elaborates on her misdeeds **(USCA5 447-448,** *through* ***ll.*** **13).** So, **disputed facts** and **perjury** exist (although Noack has not had a chance to contend YMCA testimony claims or cross-examine witnesses due to poverty *and* summary judgment preempting a jury trial, violating his ***Seventh Amendment*** and ***due process*** rights).

10) Osborn claimed the "pecan room" (where Noack worked, at the time) had children *"between six (6) weeks and two (2) years old"* **(USCA5 351, #3)**, but common sense, testimony, and documents from the time **(USCA5 574-577; 648-652;)** show Noack working with 3 – 5 year-olds. - That better fits with kids going to "potty" all alone.

11) YMCA counsel, Mr. Helfand, told the labor board the YMCA never knew of any problems with Noack in all his years there **(USCA5 601,¶1; 603)**, yet HR rep. Phariss made many and varied contacts with Noack and his supervisors about his problems (as seen in her *internal investigation*)**[USCA5 601,¶1; 603;** *then* **906** (summary), and **USCA5 286, #7]**, and Patricia Osborn told Noack they were going to meet with Lena (Hunsaker)(an HR rep.), **in 2000**. **(See USCA5 652.)**

12) HR's Phariss, shrewd and calculating, told Egger what to say and ordered things be "*scripted*" **(USCA5 837).** So, who lied to the labor board - Phariss, Osborn, or YMCA counsel? Isn't that a crime? **Someone did it**, and Phariss swore she was

head of YMCA HR during all times relevant to the lawsuit **(USCA5 285, #2).**

13) Records show the 2007 case was dropped by labor officials, without investigation or any questioning of witnesses, upon receiving the false testimony. [See case logsheet, **(USCA5 230-233).]** ***Conspiracy against rights*** **(18 USC 241)** seems evident, and a reasonable inference to all the false testimony could easily be a climate of fear – after all, Davis was black, had years of tenure, and had a lot to lose potentially; and, if Noack was so attacked and driven out after many faithful years, others might not feel safe and may feel compelled to lie. That shows a need for a jury trial to get to the truth (;yet, the perjury, disobedience to court orders, etc. is grounds for default in Noack's favor).

14) When assessing whether the movant met the summary judgment burden, the evidence and all factual inferences therefrom must be viewed in light most favorable to the party opposing the motion. See ***Adickes v. S.H. Kress & Co.,*** **398 U.S. 144, l57 (1970).** Also, trial courts must determine whether a genuine issue of material fact exists rather than *how* that issue should be resolved. Summary Judgment should only be granted **"*when it is clear what the truth is and where no genuine issue remains for trial.*" *United States v. Burket*, 5 Cir., 1968,** 402 F.2d 426**, 430.**

15) The party opposing summary judgment need not respond to it with evidence **unless and until** the movant properly supports it with ample evidence. ***Adickes*****, 398 U.S. at 160.** YMCA never did that. It gave impeached testimony from employees – including perjury, and disputed facts remained.

16) The moving party must show facts for all relevant legal questions are not in

dispute, or else summary judgment will be denied, unless the non-moving party shows no evidence whatsoever. ***Brunswick Corp. v. Vineberg*, 370 F.2d 605, 611-12 (5th Cir. 1967).** The Court must resolve all ambiguities and draw all justifiable inferences in favor of the non-moving party. ***Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).** These things clearly were not done, below.

17) If the record presents factual issues, the court **must** deny the motion and proceed to trial. [***Environmental Defense Fund v. Marsh*, 651 F.2d 983, 991 (5th Cir. 1981)**; ***Lighting Fixture & Electric Supply Co. v. Continental Insurance Co*., 420 F.2d 1211, 1213 (5th Cir.1969)]** – The court below failed.

18) Of many examples, let's see a few. The court below stated, *"…Second, he says that in 2000, he was improperly disciplined for taking a young girl to the bathroom in contravention of the YMCA's policies. In lieu of termination for his misconduct, Noack was transferred to a new facility."*

19) Noack **never** said that: the court simply adopted the YMCA's (contested) version of events. **[See USCA5 576-577**; **582**(dates)**-583** (#2, at top) for relevant plaintiff testimonies**.]** Documents above and **USCA5 648-649** *also* show YMCA policy as fluid. Fact is, Noack was not disciplined, and that shows he did no wrong, as any such conduct form would have appeared in his records. However, his records do show he was a fine employee (as Noack showed in his case).

20) Documents **USCA5 650-551** show a map with notes submitted to his dept. head, Patricia Osborn, showing Noack **obeyed** orders from his (then-)supervisor, Tammy Patterson - a **factual dispute** (- Noack's words being much closer to the event).

21) Documentation from the time backs Noack's version, and YMCA ***lack*** of evidence

that the women doing similar things were ever disciplined is evidence they were not (- *discrimination*). Noack also showed the YMCA *again* applied its own policies according to convenience years later, as they *required* him to break policies (as shown in detail in his case). The court below made **YMCA <u>allegations</u>** <u>(that Noack contested and gave evidence against)</u>. **[**See **Appellant's Reply Brief; pp 6-7, #22-23** *and* **p14, #56-57**, in the Appendix.**]**

22) Testimony **[<u>USCA5 574-575, 577; 583</u> <u>(#2, at top)</u>]** shows the YMCA knew Noack did no wrong and was moved in fear of "bad publicity" from a mother threatening to make a fuss (to get Noack out of there) and to (*supposedly*) "protect" him. **[USCA5 323-327;** *and* **USCA5 <u>577</u>, above,** had been attached to, and submitted with, the (EEOC) affidavit preceding it, in 2000.] Again, its **disputed facts.**

23) The court below omitted important facts; ***and*** errantly stated, *"Fifth, he was reprimanded for sending personal e-mails on work time…."* That was **<u>conjecture</u>**. and that reprimand was ***contested*** **(USCA5 670)** and shows he *forwarded* the email for business reasons, as a YMCA-involved company had public controversy. (See his response.) <u>If that is true</u>, it shows <u>more</u> prior bad acts against him.

24) Page *three* of the opinion below shows, *"…Despite that conversation, Noack worked two hours of unauthorized overtime the next week. When Egger was made aware of the situation, she sent him home because he had completed the maximum number of workable hours that week."* <u>More **untrue statement of facts**</u> (among many).

25) Noack opposed being expected to work overtime for free (*again*), so Egger (his supervisor) laughed and sent him home early the next day, (not the next week), to prevent (more) overtime on ***that*** week (which makes sense). (See **USCA5 1119-**

1122, #69-77.)(**USCA5 512-517, #48, 50-65;** lengthy but detailed.)

26) Facts **[USCA5 840-841,**(write-up)**]** show the "talk" came ***after*** the two hours of overtime; (but, the training required of Noack prior to it brought about those two hours. Egger, surprised, sent him home early, granting those few Friday morning hours. **[**See **USCA5 799** ***(YMCA calendar,*** *August 23****)*****,** *and* **800-801** (*timesheets*).**]**

27) Following that, Egger *knew* Noack had (more) **impending** overtime from staying late in keeping YMCA and state regulations (including due to a report of child abuse), **and** being ***required*** to work alone with special needs kids (so, no time to clean up the site before closing-time)**(**as in **USCA5 835).** The write-up was *pretext*.

28) Multisite directors had imprecise hours due to the nature of their work, (with forty per week as the "official" limit). Noack can't be faulted for not asking permission to do as **required** by YMCA ***and*** TX DFPS rules. He also did not yet have overtime by then. Egger, however, made no move to avert the *impending* overtime, so Noack was written up for **one** hour of necessary overtime worked due to ***Egger's*** neglect. **The court mixed up the weeks, didn't get its facts straight, and held to faulty YMCA allegations contrary to accepted principles and precedents.**

B. INFERENCES AND PRIOR BAD ACTS

29) If reasonable minds might differ on inferences arising from undisputed facts, summary judgment must be denied. See ***Impossible Electronics Techniques, Inc. v. Wackenhut Protective Sys., Inc.,*** **669 F.2d 1026, 1031 (5th Cir. 1982);** ***N.L.R.B. v. Smith Industries, Inc.,*** **5 Cir., 1968,** 403 F.2d 889**, 893;** and ***Keating v. Jones Development of Missouri, Inc.,*** **5 Cir., 1968,** 398 F.2d 1011**, 1013.)**

30) Back in 2000, the Supreme Court stated in certiorari to the court below:

"[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." ***Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) (quoting *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505).**

31) Sure, mere "*petty slights, minor annoyances, and simple lack of good manners*" are not sufficient for a claim, but the courts below ignored the fact Noack's YMCA-problems were **far** worse than that, both during the statutory period and beforehand; and, *"…evidence of prior bad acts is admissible for other purposes, including proof of intent, plan, motive, knowledge, and absence of mistake or accident. This rule is equally applicable to discrimination cases."* ***Alaniz v. Zamora-Quezada*, 591 F.3d 761, 771 (5th Cir. 2009);** [***Referencing Hitt v. Connell*, 301 F.3d 240, 249-50 (5th Cir.2002**)].

32) YMCA never opposed many of the claims in Noack's sworn testimony; and, they are ***"proof…"*** (at the summary judgment stage, *especially*). Again, a ***jury*** tries the facts. The court below ignored those things and paid mere lip-service to the fact all must be viewed in Noack's best light and all justifiable inferences drawn in his favor. ***Adickes v. S.H. Kress & Co.*, 398 U.S. 144, l57 (1970).**

33) The panel ignored prior bad acts of habitual, ongoing discrimination against Noack, including *repeated* assaults. Such bad acts prove *intent, motive, etc.* of later discrimination, retaliation, hostile workplace, IIED, etc., and one or more of the ongoing acts did occurr during the statutory period; so, ***"…the employer may be liable for all".*** See ***National Railroad Passenger Corp., Pettitioner, v. Abner Morgan, Jr.*, 536 U.S. 101, 7 (2002)**. All prior incidents are actionable.

*34)*That case again shows conflict, as indicators were given; such as, ***"when the workplace is permeated with discriminatory intimidation, ridicule, and insult"*** and ***"frequency", "severity", "whether it is physically threatening or humiliating"*** and ***"whether it unreasonably interferes with an employees work performance".*** All were involved, and policy-breaking treatment against Noack in fall, 2007, was also ongoing. Mere lip-service to the Law is not enough.

*35)*Rejecting evidence of ongoing discrimination allowed the court below to whitewash false limits on Noack's discovery and claims. It condoned his being kept from gaining and utilizing evidence *and* his being denied compensation for years of harm.

36)***Fabela v. Socorro Independent School District*** **, 329 F.3d 409 (5th Cir. 2003)** shows a strong signal to ***not*** usurp the authority of juror's. It also shows Noack was held to an **improper burden of proof** at the summary judgment stage. The burden was supposed to be on the YMCA, as Noack showed **direct evidence** of discrimination and retaliation and so must be immune from "burden-shifting".

C. Juries Define "Adverse"

37)The Courts below further ignored Supreme Court opinion in that *juries* define "*materially adverse*". [See ***Burlington Northern & Santa Fe Railway Company v. White*****, 548 U.S. 53, 126 S. Ct. 2405 (2006)** and **Pennsylvania State Police v. Suders, No. 03-95, 2004 WL 1300153 (U.S. June 14, 2004)**.]

38)***Burlington Northern*** stated, "*…the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination*." An *objective* (not subjective) standard was needed in recusal matters (See ***Potashnick v. Port City Construction Co.,*** **609 F.2d 1101,**

1111 (5th Cir. 1980.); and, reason must hold true here. A judge does not have the *"reasonable worker's"* viewpoint. That requires jurors.

39) The ***Burlington*** opinion held that a potentially indefinite suspension without pay ***could*** constitute materially adverse employment action, even where the employer awards full back-pay for the entire period, *and* that reassignment of responsibilities ***could*** (also) constitute *materially adverse* employment action, (even without demotion). Noack also was reassigned and testified discrimination was ongoing. Plus, his great work overburden shows, in effect, a reassignment of responsibilities.

40) Noack alleged repeated physical assaults, ridicule, threats, etc., then showed that, with years of tenure, he had much poorer pay as a *fulltime* multisite director in comparison to two newly-hired, ***part****-time*, ***female*** multisite directors, and that he was forced to violate company policies [against a prior edict of a superior (higher than Egger)], ***and*** he showed he was forced to do his own work and the work of two (unhired) part-time employees – 80 hours worth of work per week, within 40 hours, week after week (for many weeks).

41) A "*reasonable jury*" **could** also find years of unpaid overtime (slave labor) and a huge overburden of work (and other factors) to be "*adverse employer actions*".

C. Material Facts Threshold

42) A material fact issue is ***genuine*** if the evidence is such that a *reasonable jury* could find the fact in favor of the non-moving party. ***Anderson v. Liberty Lobby*****, 477 U.S. 242 106 S. Ct. 2505 91 L.Ed.2d 202; *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 588, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).** In practice, the court below again conflicts with this Court.

43) Mrs. Cadle was shown to be hostile, too, (in an email referencing Cadle), and she made a *derogatory* reference to Noack giving her the "*creeps*" as she acted as a character-assassin against him to HR **(USCA5 914)**, yet Noack's longtime YMCA records show he was an excellent professional with a fine attitude toward others. **(USCA5 606-623; 626-633)** Anyone reading those items may quickly doubt the YMCA version of events and see Noack's problem was in "*crossing*" the YMCA regarding their illegal acts, ***especially if*** adding Noack's sworn testimonies and other facts about his problems and the fact the YMCA perjured itself to the court ***and*** to the labor board, repeatedly withheld evidence (as shown), etc.

44) Also, court may not disregard evidence merely because it serves the interests of the party introducing it. *See* ***Niemi v. NHK Spring Co.*** **, 543 F.3d 294, 300 (6th Cir. 2008)** where **"[*Plaintiff's*] *affidavit, albeit arguably self-serving, is not 'no evidence'.*"** And see ***Rushing v. Kan. City S. Ry. Co.*** **, 185 F.3d 496, 513 (5th Cir. 1999)** (reversed on other grounds) where **"[*M*]*erely claiming that the evidence is self-serving does not mean we cannot consider it or that it is insufficient.*"** So, Noack's testimony **shows** genuine material fact issues remain.

45) The moving party (YMCA, here) bears the initial burden of identifying those parts of the record which demonstrate the absence of any genuine issue of material fact. ***Celotex Corp. v. Catrett,*** **477 U.S. 317, 323 (1986).** Several courts, as we've seen and will yet see, show Noack really destroyed that possibility via his testimony and other facts. Many material facts remained. The court below ***ignored*** all of that **and the Law** and white-washed its impropriety by miswriting their summary to ignore many facts and misconstrue others, as did the district court.

46) Not only did Noack ***not*** have an absence of evidence, he had much evidence, including emails. Some of these the court summarized in part of **page three** of their summary, below.

> *"Shortly after receiving the written reprimand, Noack wrote Egger an e-mail alleging that the YMCA engaged in discriminatory hiring practices. In that e-mail, Noack alleged that she had instructed him not to hire too many African-American people and to keep African-American employees separated from each other. Noack now contends that Egger made a similar statement regarding hiring men. Egger replied by expressing her support for hiring a diverse staff that would reflect the diverse community that the YMCA served."*

47) To begin with, the court below appears to have (again) ***assumed*** something – that Noack's complaint was started by his write-up; but, as **both** the email evidence <u>and</u> his sworn testimony show, the orders to discriminate happened ***prior*** to the write-up. A court must not assume. Plus, Noack's contention that Egger had (*already*) ordered him to discriminate against *men*, too, is seen in that same series of emails, not later (also shown in his testimony).

48) Then, the court below stated, ***"… Egger replied by expressing her support for hiring a diverse staff that would reflect the diverse community that the YMCA served."*** What? - The court just made up a justification for illegal behavior! Yet, in doing so, it admitted Egger's comments were given as a reason for it. Her reason, <u>as Noack proved, *does* violate Title VII</u>, since the employer can**not** demonstrate the policy is job-related and consistent with <u>*business necessity*</u>. **[See 42 U.S.C. § 2000e-2<u>(a)</u> - <u>(k)(1)(A),(m).</u>]** There is no way out: it is discrimination, **by Law**. <u>Workplace segregation</u> was <u>not</u> a business necessity, (especially when the YMCA also had sites staffed by all whites and also by all females). It is a clear admission of guilt, and the court below threw out the Law to do as it wished.

49) The court below later stated on **page eight of its opinion**,(below),

> *"…Noack argues that various e-mails and documents constitute 'de facto admissions of guilt' that show the YMCA's policy of discrimination. Some of those documents were created by Noack himself, such as his e-mails alleging discrimination. As such, they cannot constitute de facto admissions of guilt by the YMCA. See Jackson v. Cal-Western Packaging Corp. , 602 F. 3d 374, 379-80 (5th Cir. 2010) (stating that a mere allegation by the plaintiff does not constitute evidence regarding the veracity of that allegation). Other documents, such as Egger's response to his allegations affirming that the YMCA sought to have a diverse workforce, cannot support a finding of discrimination."*

50) The court below is totally errant, as its citing of ***Jackson v. Cal-Western Packaging Corp.*** **, 602 F. 3d 374, 379-80 (5th Cir. 2010)** is meritless, as testimony *there* was only self-reliant. Noack's email allegations made in the course of business are useful as evidence (and not hearsay), but common sense proof is in Egger's answer.

51) Her answer, as the court noticed (above), ***is*** itself admissible as **direct evidence** in context with Noack's statements. Egger did not only "*express her support for* " illegal discrimination. **Context** shows her remarks **were a direct answer** – a proffered reason for her commands, which her answer confirmed as real. As the courts have said, "*context matters*", and the thread of consecutive emails, in proper order, shows Egger was responding to Noack's allegations. Any ruling otherwise would contradict sound reason and set bad precedent for legal issues in **all** courts of Law.

52) *Answers* are held in context to their questions, and witnesses in court cannot say their words don't count simply because somebody else asked the questions. **So, the YMCA's self-incriminating testimony does prove they practiced discrimination.** Also, related facts cannot be dismissed, such as Davis (a coworker) confessing in the "internal investigation" that they didn't like to have all ***males*** at a

site [-while all females were okay? (*implied, in context*)] Yet, Davis was one whom Noack **proved** had lied in her affidavit regarding anti-male discrimination. Davis was a black, (single mother with foster children), with many years' tenure, **so it is *probative* she feared reprisal**.

53) The Law is clear: Egger's proffered reason ***also*** was illegal. If she was ignorant, her employer should train her better. As is, she confessed a cime. Yet, even *that* was shown to be pretext (since the YMCA had some all female and all white sites). If her answer were true, the YMCA would represent boys and all minorities by similar manipulations. (That too would be illegal unless due to a business necessity.)

54) Since Egger's reason was *pretext*, that in turn corroborates the write-up on Noack also being pretextual - an act of retaliation, as Noack claimed. It further proves his case. ***Again***, instead of improperly putting the burden on Noack via a "*burden-shifting*" framework, the burden should have, by Law, fallen upon YMCA.

55) Furthermore, on page seven of the opinion, the court below stated, *"No evidence found in the record, however, suggests that the female workers in question were similarly situated to him."* **Noack proved totally otherwise** in his petition for rehearing en banc (*denied*) and in the evidence on record. (Such as **USCA5 683; 738-739;** 835**)** Another false statement disproven in that petition was the claim that Noack never before opposed YMCA use of *unnotarized* affidavits (p. 8, there).

56) That last item proves something else. Since the court below affirmed sworn (unnotarized) affidavits as **legitimate evidence** (making up most of the YMCA's "evidence", even though powerfully impeached by Noack as being unreliable), **that decision** also means the court cannot disregard Noack's *own* sworn testimony

(notarized), as if no evidence. [*See* ***Niemi v. NHK Spring Co.*** **, 543 F.3d 294, 300 (6th Cir. 2008)** and ***Rushing v. Kan. City S. Ry. Co*****. , 185 F.3d 496, 513 (5th Cir. 1999)**.] The court below repeatedly based its ruling on assumptions and errors.

57) Yet, even ***if*** Noack had *legitimately* been under the three stage burden-shifting framework in ***McDonnell Douglas Corp. v. Green*****, 411 U.S. 792 (1973)**, there is **Velez v. Thermo King De Puerto Rico, Inc. , *585 F.3d 441 (2009)* (No. 08-1320) (1st Cir Crt),** which held that several aspects of the evidence, taken together, are more than sufficient to support a factfinder's conclusion that defendant was motivated by discrimination (raising a real issue of *material fact*).

58) The **many aspects of Noack's case facts**, evidence, & sworn testimony ***could*** sufficiently support a fact-finder's decision of discrimination. Noack produced many facts, including a chronology of incriminating events and other evidence which, in his best light, shows the YMCA was seeking cause against him, his supervisor full of malice and defaming him, retaliation, and much more. It all fits together severally as sufficient evidence, even though there were individual acts that also do show discrimination themselves – mostly split up and ignored by the courts below.

59) In ***Risch v. Royal Oak Police Dep't*** **(08-1883)(US Sixth Cir. Crt.,2009),** a gender discrimination action under Title VII, summary judgment was reversed where a longtime patrol officer in her department had arguably superior qualification over applicants who received promotions and produced other probative evidence of gender discrimination. Again, **conflict,** as Noack was fulltime, yet two new part-time female multisite directors started at far higher wages despite Noack's years of tenure and experience, job-related education, high GPAs, hundreds of hours of

childcare training, and already being a state-licensed childcare director and YMCA multisite director over five sites (the State maximum) -- superior qualifications.

60) In ***Dawson v. Entek Int'l*** **(No. 09-35844)(Ninth Cir Crt., 2011),** summary judgment regarding retaliatory discharge ***and*** hostile work environment was defeated via circumstantial evidence. The harassment was verbal and seemingly far less pronounced than in Noack's case.

CONCLUSION

61) Fraud, as shown in the evidence, is grounds for dismissing judgment against Noack, **[FRCP Rule 60 (b)(3)].** The district court permitted repeated, **gross** YMCA fraud. Its decision badly impacts petitioner and millions of workers, including men & blacks (and minorities in general), the poor, and all Americans. The decision below begs an official inquiry. Disregarding YMCA fraud - false testimony (to the labor board and the court), withholding of evidence, "*disclosing*" evidence via ***encrypted*** CDs while filing for summary judgment, etc. should send up an immediate "red flag" in all minds. ***United States v. Dunnigan*****, 507 U.S. 87, 8 (1993)** clearly remarks about obstructing justice and perjury, *and* to permit such would signal tolerance of such wrongs against the weak.

62) The court below showed low esteem for the Seventh Amendment and the intent of the founding fathers **and** conflicted with many precedents and the standard of review for summary judgment. It denies the fact that civil trials are based on a preponderance of evidence and so far departs from accepted and usual courses of proceedings and sanctioned such a departure by a lower court that this Court should exercise its supervisory power. Petitioner, ***therefore***, respectfully requests

that his Petition for a Writ of Certiorari to the U.S. Fifth Circuit Court of Appeals be **granted**, as well as any other just orders as This Honorable Court may confer.