No. 24A_____

IN THE SUPREME COURT OF THE UNITED STATES

Alan Rodemaker,

Petitioner,

vs.

City of Valdosta Board of Education or, in the alternative,
Valdosta City School District; Warren Lee, Liz Shumphard,
Tyra Howard, Debra Bell, and Kelisa Brown, all individually
as agents of the Valdosta Board of Education
or the Valdosta School District,

Respondents.

On Application for Extension of Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITIONER ALAN RODEMAKER APPLICATION TO JUSTICE THOMAS TO EXTEND TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

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December 12, 2024

To the Honorable Clarence Thomas, as Circuit Justice for the Eleventh Circuit:

Pursuant to Supreme Court Rules 13.5, 22.2, and 30.3, petitioner Alan Rodemaker ("petitioner" or "Rodemaker") respectfully applies for a thirty (30) day extension of the time within which to petition this Court for a Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit up to and including January 30, 2025. The Court of Appeals issued its published opinion on August 5, 2024 (see App.1a, *infra*). On October 2, 2024, the Court of Appeals denied Rodemaker's petition for Panel Rehearing (see App.27a, *infra*). Absent an extension of time, Rodemaker's petition for certiorari would therefore be due on December 31, 2024. Petitioner is filing this Application at least ten (10) days before that date pursuant to Supreme Court Rule 13.5. This Court would have jurisdiction over the judgment of the court of appeals pursuant to 28 U.S.C. § 1254(1).

In support of the good cause to warrant such an extension under Rule 13.5, petitioner submits the following:

1. Petitioner seeks review of an Eleventh Circuit published opinion which ruled that petitioner's dismissed civil rights complaint brought under 42 U.S.C. §§ 1981 & 1983, for reverse discrimination against five black members of the School Board acting individually (*Rodemaker I*) operated to bar under principles of claim preclusion petitioner's subsequent Title VII suit (*Rodemaker II*) against the School Board itself seeking redress for its race-based refusal to renew his employment as high school football coach.

2. In order to rule that claim preclusion or *res judicata* applied to bar this second suit, the Panel had to find that the School Board members sued in their individual capacities were in privity with the Board itself which was the defendant

in the second suit *and* that the causes of action for both civil actions were the same.

3. Relying on this Court's decision in *Taylor v. Sturgell*, 553 U.S. 880, 893-896 (2008), the Panel concluded that the School Board members sued in their individual capacities in *Rodemaker I* were in privity with the School Board in *Rodemaker II*. In addition, it ruled that *Rodemaker I* and *Rodemaker II* grew out of the same operative facts and therefore were the same cause of action for purposes of applying the doctrine of claim preclusion to bar petitioner's second suit against the School Board. It accordingly affirmed the district court's grant of summary judgment in favor of respondents in *Rodemaker II*.

4. Petitioner believes that this latter ruling by the Panel that his two lawsuits constitute the same cause of action warrants review by this Court because it comes within Supreme Court Rule 10(c)'s guidance which point toward the granting of a petition for certiorari, i.e., when "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by th[e] Court, or has decided an important federal question in a way that conflicts with relevant decisions of th[e] Court." Petitioner also believes there is the possibility that confusion or conflict among the Circuits on this issue may provide another reason for a certiorari grant within the meaning of Rule 10.

5. The undersigned attorney has just been retained by petitioner and has endeavored to decide whether this issue warrants review by this Court. After his initial research, he believes the issue does deserve review by the Court but because the petition is due to be filed on or before December 31, 2024, there is not enough time to brief the issue adequately for this Court and have the petition printed, filed

and served. Petitioner needs this additional time of thirty (30) days in order to prepare the petition. In addition, the preparation and printing time for this petition falls squarely in the holiday season, and my legal printer has informed me that they are low staffed during the last week of the year and have limited capacity to print and bind books.

6. Petitioner is not aware of any prejudice which will be caused respondents by the granting of this Application. If the Court grants the extension, the circumstances of the case will not change either for respondents or for petitioner. The extension will simply allow petitioner the time necessary to research and write the petition, and to get it formatted and printed properly.

7. In further support of this extension request, petitioner notes that his claims brought under Title VII in *Rodemaker II* could not have been brought in his earlier civil rights action (*Rodemaker I*) because a procedural bar (i.e., the 180-day requirement concerning the EEOC's right-to-sue letter) existed to his filing immediately in federal court. Specifically, petitioner's Title VII's claim did not accrue until after the 180-day period had run. See *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 104-105 (2013) (finding that a cause of action "accrues...when the plaintiff can file suit and obtain relief," and that an ERISA claim accordingly does not accrue until the statutorily required pre-suit procedures have been exhausted.). But by that time, petitioner's civil rights action in *Rodemaker I* had already survived a motion to dismiss, an order which was appealed; the case was then in the court of appeals; and there was then no jurisdiction in the federal district court to entertain

any new claims by petitioner.

8. In these circumstances, a plaintiff like petitioner cannot be precluded from litigating his later claim on the basis of an earlier claim where, for factual or procedural reasons, he could not bring the later claim at the same time as the earlier claim. In *Bank of N.Y. v. First Millennium, Inc.*, 607 F.3d 905, 919 (2d Cir. 2010), the Second Circuit considered the preclusive effect of an earlier suit where noteholders were barred from bringing suit until the notes matured which occurred well after the first suit was filed. As the court concluded, "[c]laim preclusion does not bar claims, *even between identical parties*, that arise after the commencement of the prior action." *Id*. (emphasis supplied). Accord, *Storey v. Cello Holdings, LLC*, 347 F.3d 370, 383 (2d Cir. 2003) ("Claims arising subsequent to a prior action need not, and often perhaps could not, have been brought in that prior action; accordingly, they are not barred by *res judicata*.").

9.The Sixth Circuit agrees. In *Whitfield v. City of Knoxville*, 756 F.2d 455, 460-463 (6th Cir. 1985), it held that a second suit under the ADEA was not barred by claim preclusion when the ADEA's requirement that a plaintiff institute an administrative proceeding and then wait 60 days prevented him from filing his ADEA claims in the prior proceeding. *Id*. In doing so, the court rejected the suggestion— the same one made by the Board below—that petitioner could have merely waited until the 60-day period had run before filing both claims at once, finding that such a requirement "would, in effect, engraft a waiting period" onto the statutory framework which the legislature did *not* intend. *Id*. at 463.

10. In the same sense, there is no evidence that Congress intended that civil rights plaintiffs must wait out the pendency of Title VII administrative proceedings before filing, lest they risk forfeiting their Title VII claims. Se *Murray v. UBS Securities, LLC*, 2015 WL 769586 at *4 (S.D.N.Y. 2/24/2015). While in some cases a plaintiff could request leave to amend his complaint to add the Title VII claims, it was impossible here given the Board members' appeal in the first suit and the district court's lack of jurisdiction during and after that appeal to even consider such an amendment. But even so, the "plaintiff has no continuing obligation to file amendments to the complaint to stay abreast of subsequent events; plaintiff may simply bring a later suit on those later-arising claims," as he did here. Accord, *Curtis v. Citibank*, 226 F.3d 133, 139 (2d Cir. 1999).

11. All of this law of the Second and Sixth Circuits supports the proposition that because his claims under Title VII in *Rodemaker II* were unavailable at the time he brought his civil rights suit in *Rodemaker I*, those Title VII claims are not duplicative and should not have been dismissed on the basis of claim preclusion.

12. Barring a cause of action that was never fully litigated to a final judgment unjustly "blockades [an] unexpected path [ ] that may lead to the truth." *Brown v. Felson*, 442 U.S. 127, 132 (1979). As such, this scenario does not meet the requirements of due process because it denies a fair hearing on claims which could not have been raised in the earlier proceeding. See *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1217 (11th Cir. 2017) (Tjoflat, J., dissenting).

For all these reasons, petitioner respectfully requests that the time within

which he may petition this Court for a writ of certiorari be extended thirty (30) days from December 31, 2024,, to and including January 30, 2025.

Dated: December 12, 2024

Respectfully submitted,

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