

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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July 11, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-11362-U

Case Style: Jacqueline Lewis v. City of Union City, Georgia, et al

District Court Docket No: 1:12-cv-04038-RWS

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.**

For the purpose of the upcoming en banc rehearing in the above referenced case, the court desires for counsel to focus their briefs on the following issue:

The Supreme Court has held that in order to make out a prima facie case of discrimination under Title VII of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment, or 42 U.S.C. § 1981, a plaintiff must prove, among other things, that she was treated differently from another "similarly situated" individual. *See Tex. Dep 'tof Cmty. Affairs v. Burdine*, 450 U.S. 248, 258 (1981) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973)). What standard does the phrase "similarly situated" impose on the plaintiff: (1) "same or similar," (2) "nearly identical," or (3) some other standard?

APPELLANT'S EN BANC BRIEF SHALL BE SERVED AND FILED ON OR BEFORE AUGUST 20, 2018 by 5:00 p.m. APPELLEES' EN BANC BRIEF SHALL BE SERVED AND FILED ON OR BEFORE SEPTEMBER 19, 2018 by 5:00 p.m. An en banc reply brief shall be filed on or before October 3, 2018 by 5:00 p.m. NO EXTENSIONS WILL BE GRANTED. Parties should format their briefs according to Federal Rules of Appellate Procedure 28 and 32 and shall contain the title "En Banc Brief". Each brief must adhere to the page and type-volume limitations delineated in Rule 32(a)(7). Twenty (20) copies of the en banc briefs should be filed (appellant's in blue covers, appellees' in red covers and any reply in gray covers). The parties are expected to insure that all parties receive a copy of their briefs before the close of business on the day of filing. PAPER COPIES OF THE BRIEFS SHOULD BE RECEIVED BY THE NEXT BUSINESS DAY. The filing of an en banc amicus brief is governed by 11<sup>th</sup> Cir. R. 35-8.

**All Counsel** is requested to submit 20 copies of their original opening panel briefs, appendices

and supplemental authorities prior to August 20, 2018.

Oral argument will be conducted the week of October 22, 2018 in Atlanta, Georgia. Each party will be allotted 30 minutes per side for oral argument. Counsel will receive subsequent correspondence regarding the specific time of oral argument.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jenifer L. Tubbs

Phone #: 404-335-6166

BR-1CIV Civil appeal briefing ntc issued