No. 18-1031

In The

Supreme Court of the United States

SYBIL LITTLE,

Petitioner,

v.

CSRA, et al., RICKEY NORRIS, et al.,
JASON PATRICK, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

An EEOC Complaint should not be "strictly interpreted" due process of law should be administered for evidence to be given to the court; contradictions within the rulings of the Eleventh Circuit Court of Appeals should be addressed and interpreted by the Supreme Court. The question presented: How should a court handle an EEOC Complaint? What information should be formally on the Complaint for the court to review?

The United States Supreme Court has decided the definition of a "supervisor" for purposes of assessing liability for unlawful harassment under Title VII should be "when the employer has empowered that employee to take tangible employment actions against the victim, i.e. to effect "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, a decision causing a significant change in benefits." The question presented: When a person with the title of "supervisor" or "manager" creates a hostile work environment by further sexually harassing an employee should the company and supervisor be held responsible personally and financially?

When the management of a company knows an employee has created a hostile work environment against a fellow employee should the company be held responsible?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner, plaintiff below is Sybil Little

Respondents, defendants below are CSRA, Rickey Norris, and Jason Patrick. Respondents counsel are F. Daniel Woods and Allison Fish.

Petitioner General Dynamics Information Technology is doing business as CSRA which is a wholly owned subsidiary of General Dynamics, a mutual company incorporated in the State of Virginia, with its principal place of business in West Falls Church, Virginia. General Dynamics Information Technology has a parent company. The parent company is General Dynamics. It does have shareholders.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sybil Little respectfully petitions for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is unpublished. The Eleventh Circuit's order denying rehearing en banc is unpublished. The order of the district court is unpublished. The report and recommendation of the magistrate judge is unpublished.

JURISDICTION

The judgement of the court of appeals was entered on August 15, 2018. The court of appeals denied a timely petition for rehearing en banc on September 28, 2018. This court has jurisdiction under 28 U.S. Code § 1254(1).

RELEVANT STATUTORY PROVISION

Title VII of the Civil Rights Acts of 1964 provides in pertinent part:

It shall be unlawful employment practices for an employer –

> (a) To fail or refuse to hire to discharge any individual, or to otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin.

42 U.S. Code § 2000e-2(a)(1) provides in pertinent part:

> *"It shall be an unlawful employment practice for an employer . . . to discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."*

STATEMENT OF THE CASE

Little seeks review of the Eleventh Circuit's decision and the Middle District of Alabama with respect to the District Court not allowing time for discovery of the evidence and the Eleventh Circuit for dismissal of the case and the failure to hear evidence brought forth under the Federal Rules of Civil Procedure 901.

The courts have stated a "prima facie case" must be established of Little (1) being a member of a protected group; (2) was subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic; (4) the harassment was sufficiently

severe or pervasive to alter the terms and conditions of her employment and create an abusive working environment; and (5) a basis exists for holding the employer liable on Document Evidence 40 for the District Court and the Opinion of the Eleventh Circuit Court of Appeals.

Little seeks the court to bring guidance to the lower court as to financial responsibilities of a company and supervisors based on case law. The contradictory manner of the Eleventh Circuit against the other Appeal Courts.

Little further seeks the court time in finding an EEOC complaint is the first step of evidence not to be used as an exact map of evidence in a Title VII case. The court contradicted itself on a hostile work environment for an employee in a protected group.

The court review of the Reply Brief being dismissed from record due to the lack of footnotes sometimes that is not required based on case law. There are articles which are written by Justices against footnotes.

REASONS FOR GRANTING THE PETITION

This case presents several reoccurring and consequential questions of federal law: (1) How much information should be in the EEOC Complaint as to concise language; (2) Should the courts allow a period of discovery based on an EEOC Complaint; (3) What

constitutes a supervisor and subsequently who should be held responsible? The Court should review the decision to settle this broad and entrenched conflict and correct the Eleventh Circuit's significant misreading of Federal Rules and Law set forth.

I. THE DIVISION OF THE LOWER COURTS OVER LANGUAGE AND EXPECTATIONS APPLICATION

The EEOC Complaint does not carry enough information to establish a case of right or wrong just a basic statement of the case with the expectations for the case to grow based on the evidence presented. A "prima facie case" will be expected to be brought before the case during the motion for discovery. The framework of Title VII of the Civil Rights Act of 1964, 45 Federal Register 74676(c) (1980), 42 U.S.C. § 1981, 42 U.S.C. § 1983, and 42 U.S.C. § 2000e et seq. are being called into question with further contradictions of the Eleventh Circuit Court of Appeals and the United States District Court of Middle Alabama Southern Division. The Eleventh Circuit has departed from the normal course of law by not granting Little remand back to the District Court in order to exercise her Due Course of Law. The Eleventh Circuit Court of Appeals in App B directly contradicted itself by saying the EEOC complaint should have shown "continuing action"[1] in the EEOC complaint, yet in the ruling in *Gregory v. Georgia Dept. of*

[1] Decision of the 11th Circuit Court of Appeals App B, Page 3, first paragraph, 3rd sentence *Little v. CSRA et al.* Case number 17-13887

Human Resources, 355 F. 3d 1277, Eleventh Circuit (2004) states: "the scope of an EEOC complaint should not be strictly interpreted".

In *Henson v. City of Dundee*, 682 F. 2d 897, Court of Appeals, 11th Circuit (1982) states

> "*Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. A pattern of sexual harassment inflicted upon an employee because of her sex is a pattern of behavior that inflicts disparate treatment upon a member of one sex with respect to terms, conditions, or privileges of employment. There is no requirement that an employee subjected to such disparate treatment prove in addition that she has suffered tangible job detriment.*"

The contradiction of the Eleventh Circuit in how decisions are conducted should be reviewed with guidance awarded for Little. The male/female dynamics should be awarded the same work environment not different just because of sex. When males cannot work with a female in a professional manner the company should step in and offer guidance to the males. When a case has been brought to court based on the disparate treatment of males to females the same treatment should be given in all cases.

A. THE CIRCUIT COURT OF APPEALS FOR OTHER DIVISIONS HAVE HELD THE EEOC COMPLAINT GROWS WITH EVIDENCE TO BRING A "PRIMA FACIE CASE"

The EEOC Complaint is the administrative enforcement brought against a company to show an unlawful working environment. The EEOC will issue a "right to sue" letter to aggrieved party. A plaintiff must then file with the courts within 90 days of receiving the "right to sue" letter based on the date of the letter. The Plaintiff has successfully completed this requirement. A "prima facie case" must then be established (1) belonging to a protected class; (2) subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and created an abusive working environment; and (5) a basis exists for holding the employer liable. Little has stated a case (1) being in a protected group as a white female, (2) thru (4) Little was subjected to unwanted harassment which created a hostile work environment to bring about a subsequently affecting Little's health and work environment causing Little to have a heart attack and hypertension. The Court has held in *Swierkiewicz v. Sorema NA*, 534 U.S. 506 – Supreme Court (2002), *"the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims"* the Court has not allowed Little to present evidence to the case in question by striking the

Reply Brief and further not allowing Oral Arguments or En banc.

In *Smith v. Lockheed Martin Corp.*, 644 F. 3d 1321 – Court of Appeals, 11th Circuit (2011) the court states: *"the plaintiff will always survive summary judgement if he presents circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent"* as the district court did not allow for Discovery to be conducted the evidence was brought to the Eleventh Circuit in the Brief and Reply Brief with Appendixes for both. The Brief was kept; however, the Reply Brief (App D, E, F) was dismissed for lack of footnotes was the argument brought by the defendants. The plaintiff did however bring enough facts to the case in the initial complaint and amended complaint to survive summary judgement however did not. The facts of the case (1) Little belongs to a protected class; (2) was subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and created an abusive working environment; and (5) there is a basis for holding the employer liable[2]. In *Coleman v. Donahue*, 667 F. 3d 835, Court of Appeals, 7th Circuit (2012),

> *"The Supreme Court "never intended" the requirements "to be rigid, mechanized, or ritualistic . . . [but] merely a sensible, orderly way to*

[2] Little is a 47-year-old female who asked Patrick and Norris to leave her alone countless times over the course of working at Fort Rucker to the point of Little being diagnosed with hypertension and damage to her heart from a heart attack.

> *evaluate the evidence in light of common experience as it bears on the critical question of discrimination."*

The framework for this case exists to show the work environment was hostile, abusive and against the very context of Title VII of the Civil Rights Act of 1964. The EEOC Complaint is a small statement of what happened at the work place and during discovery with the use of evidence and depositions it grows to show the extent of what happened thus making a case of discrimination and to further show a hostile work environment brought on by males in the workplace against females. Under 45 Federal Register 74676(c) (1980) states,

> *"Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer" is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commissions will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual act in either a supervisory or agency capacity."*

The Eleventh Circuit Court of Appeals has erred in its decision based on the company CSRA is

responsible for the actions of its management and employees against Little, a female employee.

B. A DIRECT CONTRADICTION FOR HOW THE CIRCUIT COURT OF APPEALS HAVE HELD COMPANIES AND SUPERVISORS RESPONSIBLE FOR THEIR ACTIONS

The Eleventh Circuit Court of Appeals in App C has erred on the case by contradicting the other District Appeal Courts which starkly follow *Meritor Savings Bank, FSB v. Vinson*, 477 U. S. 57, Supreme Court (1986), *Faragher v. Boca Raton*, 524 U.S. 775, Supreme Court (1998), and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, Supreme Court (1998) for the definition of what and who is a supervisor. The case has enough evidence to stand on merit for discovery to be conducted in District Court. This case must be reversed to go back for the evidence to be brought forth of who the supervisor is in this case and how the men involved and the company have the full responsibility of the hostile work environment against Little. In *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, Supreme Court (1986) states,

> *"in defining "sexual harassment", the Guidelines first describe the kinds of workplace conduct that may be actionable under Title VII. These include "[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." 29 CFR § 1604.11(a) (1985)."*

The comments brought out by Rickey Norris and Jason Patrick broke the very guidelines set forth by the court. The Eleventh Circuit and United States District Court of Middle Alabama Southern Division contradicted the very guidelines set forth by not allowing this case to discovery or trial. The guidelines further state in *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, Supreme Court (1986),

> *"sexual misconduct constitutes prohibited "sexual harassment", whether or not it is directly linked to the grant or denial of an economic quid pro quo, where "such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." 29 CFR § 1604.11(a)(3)"*

In *Faragher v. Boca Raton*, 524 U.S. 775, Supreme Court (1998), the court ruled and subsequent Court of Appeals have followed, *"sexual harassment so "severe or pervasive" as to "alter the conditions of [the victim's] employment and create an abusive working environment" violates Title VII"*. The very language used by Norris and Patrick that the Eleventh Circuit Court of Appeals quotes in App C, page 2, first and second paragraph is offensive in the workplace. In *Crawford v. Carroll*, 529 F. 3d 961, Court of Appeals, 11th Circuit (2008), the Eleventh Circuit found when a supervisor actively participates in the abuse of an employee the supervisor is held responsible for liability.

C. PERSONAL AND FINANCIAL RESPONSIBILITY OF DEFENDANTS

The Eleventh Circuit Court of Appeals contradicts the Second Circuit Court of Appeals by saying Norris and Patrick[3] cannot be held personally responsible for their actions yet in *Graziadio v. Culinary of America*, 817 F. 3d 415, Court of Appeals, 2nd Circuit (2016), it was found a Director of Human Resources someone with the ability to hire and fire, change a person's work status and environment could be held individually responsible. In *Alexander v. Fulton County, GA*, 207 F. 3d 1303, Court of Appeals, 11th Circuit (2000), the Eleventh Circuit Court of Appeals found the Sheriff of Fulton County, Georgia could be personally held responsible under a Class Action Lawsuit under the Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, 42 U.S.C. § 1983, and 42 U.S.C. § 2000e et seq. The Eleventh Circuit Court of Appeals and United States District Court of Middle Alabama Southern Division have grossly contradicted the Rights of Little by dismissing this case without a trial and further stating CSRA, Norris, Patrick should not be held responsible for their actions.

The definition of "Supervisor"; "Company Liability"; "Vicarious Liability" are being contradicted in the Eleventh Circuit Court. The Eleventh Circuit Court has contradicted the other Districts in the Appeals

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[3] App B page 6 Footnote 2 "Little's Title VII claims against Norris and Patrick must be dismissed because Title VII claims may be brought against employer only".

Court Circuits. In *Vance v. Ball State University*, 133 S. Ct 2434, Supreme Court (2013)[4], a supervisor is defined along with who is to be held responsible. The Court stated Patrick and Norris cannot be held personally responsible for working environment created against Little however under *Graziadio v. Culinary Institute of America*, 817 F. 3d 415, Court of Appeals 2nd Circuit (2016) it was found supervisors can be held personally and financially responsible.

D. VIOLATION OF THE CIVIL RIGHTS OF LITTLE

A person has the right to go to work, perform their job tasks, get paid for the work performed and go home. The actions of Norris and Patrick have taken these rights away from Little. The actions of the District Court and Eleventh Circuit Court of Appeals have further violated the Plaintiff's rights and liabilities. Under 42 U.S. Code § 2000e-2(a) it is unlawful for employment discrimination based on a person's race, color, religion, sex or national origin. Under the Title VII of the Civil Rights Act of 1964 Section 703(a) it is unlawful for an employer to discriminate against an employee based on the employee's age, race, sex,

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[4] The Eleventh Circuit Court of Appeals has been misinformed as to the position held by the defendants *"an employee is a "supervisor" for purposes of vicarious liability under Title VII only if he or she is empowered by the employer to take tangible employment actions against the victim"*. Under this case Patrick and Norris are supervisor based on their leadership roles over Little.

religion, color, or national origin it is the duty of the Court to intervene and enforce these rights and when the court does not it is a clear violation of the rights of the plaintiff.

II. CONCLUSION

The Eleventh Circuit has contradicted itself many times in the case before this case *of Little v. CSRA et al., Norris and Patrick*, Case Number 17-13887-CC. The court brought about two standards of how to address the case to the court while starkly ignoring the case law set forth followed by the other appeal courts and the Supreme Court. Congress has set forth laws governing the Equal Employment of men and women in 45 Federal Register 74676, 29 CFR § 1604.11(a)(3), 42 U.S. Code § 2000e-2(a), Title VII of the Civil Rights Act of 1964 Section 703(a), 42 U.S.C. § 1981, 42 U.S.C. § 1983. The cases of *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, Supreme Court (1986), *Faragher v. Boca Raton*, 524 U. S. 775, Supreme Court (1998), *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, Supreme Court, 1998, and *Vance v. Ball State University*, 133 S. Ct. 2434, Supreme Court (2013) are the cases followed by the other Federal Courts of Appeals while the Eleventh Circuit contradicts itself and does not follow case law. The Petitioner humbly asks the court to remand this case back and vacate the decision with directives for the court to follow.

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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