No. 18-1031

IN THE

# Supreme Court of the United States

SYBIL LITTLE,
*Petitioner,*
*v.*

CSRA INC., RICKEY NORRIS, AND
JASON PATRICK,
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the U.S. Court of Appeals for the Eleventh Circuit correctly held that review of Petitioner's amended complaint was limited by the scope of Petitioner's charge of discrimination filed with the Equal Employment Opportunity Commission.

2. Whether the U.S. Court of Appeals for the Eleventh Circuit correctly held that the individual defendants to Petitioner's lawsuit could not be held liable under Title VII of the Civil Rights Act of 1964.

3. Whether the U.S. Court of Appeals for the Eleventh Circuit correctly held that Petitioner failed to plead sufficient facts to establish a basis for holding CSRA Inc. liable under Title VII of the Civil Rights Act of 1964.

## PARTIES TO PROCEEDING BELOW AND CORPORATE DISCLOSURE STATEMENT

The caption of the case in this Court contains the names of all parties to the proceeding in the U.S. Court of Appeals for the Eleventh Circuit, whose judgment is under review.

CSRA Inc. is a wholly owned subsidiary of General Dynamics Information Technology, Inc., a corporation whose ultimate parent is General Dynamics Corporation. No publicly held entity owns 10% or more of General Dynamics Corporation's stock. No other publicly held corporation owns 10% or more of the stock of CSRA Inc.

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## OPINIONS AND ORDERS BELOW

For the Opinion by the U.S. Court of Appeals for the Eleventh Circuit affirming the district court's dismissal of Petitioner's amended complaint, *see* Little v. CRSA, 744 F. App'x 679 (11th Cir. 2018). This Opinion is also included in Appendix B of the Petition. The Order of the U.S. Court of Appeals for the Eleventh Circuit denying Petitioner's request for rehearing and rehearing en banc (Case No. 17-13887, filed September 28, 2018) is not reported but is set forth in Appendix A of the Petition. The Order of the U.S. District Court for the Middle District of Alabama dismissing Petitioner's amended complaint (Case No. 1:17CV126-CSC, filed August 9, 2017) is not reported but is set forth in Appendix C of the Petition.

## STATEMENT OF JURISDICTION

This Court has jurisdiction over the Petition pursuant to 28 U.S.C. § 1254(1). The U.S. Court of Appeals for the Eleventh Circuit issued its Order denying Petitioner's request for rehearing and rehearing en banc on September 28, 2018, and the Petition was filed on November 15, 2018. Thus, the Petition is timely pursuant to Supreme Court Rule 13.1.

## STATUTE AT ISSUE

The only statute at issue is 42 U.S.C. § 2000e-2(a)(1). This statute is set out verbatim in the Petition.

## STATEMENT OF THE CASE

This is an employment discrimination lawsuit filed by Petitioner, Sybil Little ("Little") against her employer, CSRA Inc. ("CSRA"), Rickey Norris ("Norris"), and Jason Patrick ("Patrick") (collectively "Respondents"). Before filing this suit, Little filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") in October 2016.[1] On her charge, Little checked only the box for sex discrimination.[2] For the date of discrimination, Little wrote May 1, 2016 to July 13, 2016; she did not check the box for "continuing action."[3] The entire text of Little's charge narrative is as follows:

> I am a female who has worked for [CRSA] since 2006 as Simulator Technician II/Safety Coordinator. I have been sexually harassed by Rick Norris (Lead Technician). I am being discriminated against because of my sex.

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[1] Appendix to Petition (hereinafter "App.") at 3B.

[2] Id.

[3] Id.

> Beginning in May 2016, Norris has stated that I have a cute ass; told me that I look good in my jeans; asked me to wear dresses and heels to work so he could stand at the bottom of the ladder and watch me climb the ladder.
>
> I am being discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended.[4]

After the EEOC issued a Dismissal and Notice of Rights letter, Little filed this action, through counsel, in March 2017.[5] Respondents filed motions to dismiss Little's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a plausible claim for relief.[6] The U.S. District Court for the Middle District of Alabama found that Little had not pled sufficient facts to state plausible claims for relief and granted her the opportunity to amend her complaint.[7]

On May 24, 2017, Little, through her attorney, filed an amended complaint alleging hostile work environment claims against all three Respondents pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII").[8] Respondents

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[4] Id.

[5] Id.

[6] App. at 3B-4B.

[7] App. at 4B.

[8] App. at 4B, 2C. Little also alleged various state law claims which

subsequently filed motions to dismiss Little's amended complaint.[9] The U.S. District Court for the Middle District of Alabama ruled that Little's amended complaint was limited by the scope of her EEOC charge, which alleged harassment only by Norris, and that those allegations were insufficient to state a plausible claim for relief on her Title VII claim against CSRA.[10] Thus, it dismissed Little's Title VII claims against CSRA with prejudice.[11] The district court also dismissed Little's Title VII claims against Norris and Patrick on the basis that such claims cannot be maintained against individuals who are not employers.[12]

Little then filed an appeal *pro se* to the U.S. Court of Appeals for the Eleventh Circuit ("the Eleventh Circuit"), and Respondents filed a brief in response. Little filed a reply brief in support of her appeal, which Respondents moved to strike because it contained new documents and arguments not raised before the district court.[13] The Eleventh Circuit granted Respondents' motion to strike on March 30, 2018.[14]

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were not raised in her appeal to the Eleventh Circuit and are not at issue here.

[9] App. at 4B.

[10] App. at 4B, 8C, 15C.

[11] App. at 16C.

[12] App. at 6B, 15C-16C.

[13] App. at 1D-6D.

[14] App. at 1F-2F.

On August 15, 2018, the Eleventh Circuit affirmed the district court's dismissal of Little's Title VII claims.[15] Little then petitioned the Eleventh Circuit for rehearing and rehearing en banc, which the Eleventh Circuit denied on September 28, 2018.[16] Little then filed the Petition with this Court on November 15, 2018.

## ARGUMENT

The Eleventh Circuit correctly ruled, as did the district court, that Little's amended complaint failed to state a plausible claim for relief against Respondents under Title VII.

### I. Review of Little's Complaint was Properly Limited to the Scope of her EEOC Charge.

Little's first argument in her Petition seems to be that the Eleventh Circuit improperly limited its review of her amended complaint to the scope of her underlying EEOC charge.[17] Little alleges that the Eleventh Circuit "directly contradicted itself" because it has held that the scope of an EEOC complaint should not be strictly interpreted, but nevertheless limited Little's allegations to the scope of her EEOC charge.[18] This argument is meritless.

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[15] App. at 1B-8B.

[16] App. at 1A-1B.

[17] Petition at 4-5.

[18] Petition at 4.

The Eleventh Circuit acknowledged in its opinion that it does not strictly interpret EEOC complaints but explained that Little's complaint could not clarify or amplify information that was not actually contained in her charge. Neither of the cases cited by Little in this section of her Petition demonstrate that the Eleventh Circuit's decision on this issue was contradictory or otherwise incorrect. In fact, the standard applied by the court in this instance came directly from one of the cases cited by Petitioner. *See* Gregory v. Ga. Dep't of Human Res., 355 F.3d 1277 (11th Cir. 2004).[19] Thus, Little has not demonstrated that the Eleventh Circuit misstated a rule of law or otherwise erred on this point.

Furthermore, contrary to Little's suggestion, there is not a conflict among United States courts of appeals on this matter. *See* Smith v. Cheyenne Ret. Inv'rs L.P., 904 F.3d 1159, 1164 (10th Cir. 2018); Ganheart v. Brown, 740 F. App'x 386, 390 (5th Cir. 2018); Thornton v. United Parcel Serv., Inc., 587 F.3d 27, 31 (1st Cir. 2009); Brown v. City of Cleveland, 294 F. App'x 226, 234 (6th Cir. 2008); Cottrill v. MFA, Inc., 443 F.3d 629, 634–35 (8th Cir. 2006); Clarke v. O'Neil, 81 F. App'x 775, 776 (4th Cir. 2003); Madigan v. Babbitt, 42 F. App'x 57, 58–59 (9th Cir. 2002); Antol v. Perry, 82 F.3d 1291, 1295–96 (3d Cir. 1996); Park v. Howard Univ., 71

[19] The other case cited by Little on this point, Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), has nothing to do with the interpretation of EEOC charges.

F.3d 904, 907 (D.C. Cir. 1995); Rush v. McDonald's Corp., 966 F.2d 1104, 1110–12 (7th Cir. 1992); Smith v. Am. President Lines, Ltd., 571 F.2d 102, 107–08; n.10 (2d Cir. 1978). Accordingly, Little has not presented a compelling reason why her Petition should be granted.

## II. The Eleventh Circuit did not err in Striking Little's Reply Brief, Denying Oral Argument, or Denying Rehearing en Banc.

Next, Little seems to argue that the Eleventh Circuit erred by not allowing her "to present evidence" on her claims because it struck her reply brief from the record, denied her request for oral argument, and denied her request for rehearing en banc.[20] This argument is without merit.

It is well-established among all the U.S. circuit courts of appeal that, in considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), courts may not consider evidence outside of the complaint. *See* Jackson v. Curry, 888 F.3d 259, 263 (7th Cir. 2018); Hurd v. D.C., Gov't, 864 F.3d 671, 678 (D.C. Cir. 2017); Raus v. Town of Southampton, 661 F. App'x 81, 83 (2d Cir. 2016); United States ex rel Gage v. Davis S.R. Aviation, L.L.C., 658 F. App'x 194, 198 (5th Cir. 2016); Bruni v. City of Pittsburgh, 824 F.3d 353, 360 (3d Cir. 2016); Anand v. Ocwen Loan

[20] Petition at 6-7.

Servicing, LLC, 754 F.3d 195, 198 (4th Cir. 2014); Solid 21, Inc. v. Breitling USA, Inc., 512 F. App'x 685, 687 (9th Cir. 2013); Dobson v. Anderson, 319 F. App'x 698, 701 (10th Cir. 2008); Hall v. Smith, 170 F. App'x 105, 107 (11th Cir. 2006); Kostrzewa v. City of Troy, 247 F.3d 633, 643 (6th Cir. 2001); Penn v. Iowa State Bd. of Regents, 999 F.2d 305, 307 (8th Cir. 1993). Therefore, the Eleventh Circuit did not err in disallowing Little to present evidence via a reply brief, oral argument, or on rehearing en banc.

Likewise, it is well-settled that appellate courts generally may not consider on appeal new evidence or arguments not raised at the district court level. *See* Robinson v. Alameda Cty., 680 F. App'x 568, 570 (9th Cir. 2017); United States v. Rodrigues, 850 F.3d 1, 13 n.6 (1st Cir. 2017); David-Trujillo v. U.S. Atty. Gen., 502 F. App'x 876, 878 n.1 (11th Cir. 2012); Glenn v. Kane, 494 F. App'x 916, 919 (10th Cir. 2012); Echenique v. Convergys, 473 F. App'x 323, 324 (4th Cir. 2012); Dahlin v. Fabian, 427 F. App'x 541, 542 n.2 (8th Cir. 2011); Hill v. Air Tran Airways, 416 F. App'x 494, 498 n.4 (6th Cir. 2011); Townsend v. BAC Home Loans Servicing, L.P., 461 F. App'x 367, 372 (5th Cir. 2011); Jones v. United States, 104 F. App'x 578, 579 (7th Cir. 2004); Hammer v. Malavet, 22 F. App'x 58, 59 (2d Cir. 2001); Gardiner v. Virgin Islands Water & Power Auth., 145 F.3d 635, 646–47 (3d Cir. 1998). As such, the Eleventh Circuit did not err in striking Little's

reply brief containing entirely new evidence and arguments not submitted to the district court.[21]

## III. There is no Dispute Among U.S. Courts of Appeal that Individual Employees or Supervisors Cannot be Held Liable Under Title VII.

Little also argues in her Petition that there is a "direct contradiction in how the circuit court of appeals have held…supervisors responsible for their actions."[22] However, it is well-established that individual co-workers or supervisors cannot be held individually liable under Title VII. *See* Mitchell v. Lietaer, 745 F. App'x 796, 797 (10th Cir. 2018); Hill v. Arkansas Dep't of Human Servs., 742 F. App'x 159 (8th Cir. 2018); Raspardo v. Carlone, 770 F.3d 97, 113 (2d Cir. 2014); Passananti v. Cook Cty., 689 F.3d 655, 677 (7th Cir. 2012); Muthukumar v. Kiel, 478 F. App'x 156, 158 (5th Cir. 2012); Heilman v. Memeo, 359 F. App'x 773, 775 (9th Cir. 2009); Fantini v. Salem State Coll., 557 F.3d 22, 30 (1st Cir. 2009); Discenza v. Hill, 221 F. App'x 109, 111 (3d Cir. 2007); Dearth v. Collins, 441 F.3d 931, 933 (11th Cir. 2006); Lissau v. S. Food Serv., Inc., 159 F.3d 177, 178 (4th Cir. 1998); Wathen v. Gen. Elec. Co., 115 F.3d 400, 405 (6th Cir. 1997). Thus, the Eleventh Circuit and

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[21] Little argues in her Petition that her reply brief "was dismissed for lack of footnotes." Petition at 7. However, the arguments in Respondents' motion to strike had nothing to do with footnotes (*see* App. at 1D-6D), and the Eleventh Circuit's order granting Respondents' motion to strike did not mention footnotes (*see* App. at 1F-2F).

[22] Petition at 9.

district court did not err in dismissing Little's Title VII claims against Norris and Patrick, as Little did not allege that they were her employer.[23]

## IV. The Eleventh Circuit did not err in Holding that Little Failed to State a Title VII Claim Against CSRA.

Lastly, Little argues that the Eleventh Circuit erred in holding that she failed to state a claim against CSRA under Title VII upon which relief could be granted. However, as both the Eleventh Circuit and the district court noted, Little's amended complaint contained no allegations that Norris or Patrick were her supervisors, that she reported the alleged harassment, or that CSRA knew or should have known about the alleged harassment.[24] Critically, Little does *not* assert in the Petition that her amended complaint actually did contain any such allegations.

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[23] None of the cases cited by Little on this point hold otherwise. *See* Graziadio v. Culinary Inst. of Am., 817 F.3d 415, 424 (2d Cir. 2016) (vacating dismissal of FMLA claims against individual defendant because there was sufficient evidence for a rational jury to find that the individual was plaintiff's employer); Crawford v. Carroll, 529 F.3d 961, 977 (11th Cir. 2008) (involving 42 U.S.C. § 1983 discrimination claim against former supervisor); Alexander v. Fulton Cty., Ga., 207 F.3d 1303, 1321 (11th Cir. 2000), overruled by Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003) (upholding denial of defendants' motion for judgment as a matter of law as to whether sheriff was entitled to qualified immunity on 42 U.S.C. § 1983 claims).

[24] App. at 6B-8B, 14C-15C.

Furthermore, the standard applied by the Eleventh Circuit in holding that Little failed to state a claim against CSRA is the standard followed uniformly by all of the U.S. circuit courts of appeals. *See* Gardner v. CLC of Pascagoula, L.L.C., No. 17-60072, 2019 WL 458376, at *1 (5th Cir. Feb. 6, 2019), as revised (Feb. 7, 2019); Reynaga v. Roseburg Forest Prod., 847 F.3d 678, 689 (9th Cir. 2017); Nischan v. Stratosphere Quality, LLC, 865 F.3d 922, 930 (7th Cir. 2017); Sarkis v. Ollie's Bargain Outlet, 560 F. App'x 27, 29 (2d Cir. 2014); Huston v. Procter & Gamble Paper Prod. Corp., 568 F.3d 100, 104–05 (3d Cir. 2009); Forrest v. Brinker Int'l Payroll Co., LP, 511 F.3d 225, 230–31 (1st Cir. 2007); Howard v. Winter, 446 F.3d 559, 565 (4th Cir. 2006); Cheshewalla v. Rand & Son Const. Co., 415 F.3d 847, 850 (8th Cir. 2005); Clark v. United Parcel Serv., Inc., 400 F.3d 341, 348 (6th Cir. 2005); Hollins v. Delta Airlines, 238 F.3d 1255, 1258–59 (10th Cir. 2001). At best, Little is asserting that the Eleventh Circuit misapplied a properly stated rule of law. As shown, this asserted error is patently incorrect, and in any event, does not constitute a compelling basis for review. *See* Supreme Court Rule 10.

## CONCLUSION

In sum, Little has not presented any compelling reason for this Court to grant her Petition. Specifically, she has not demonstrated that there is any conflict among courts of appeals on any important legal issue, that the lower courts

departed from this Court's precedent, or that there is an unanswered question of law that the Court needs to decide. For the reasons set forth herein, Little's Petition should be denied.

Respectfully submitted,

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