

No. 18-754

In The
Supreme Court of the United States

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DAVID A. RAMIREZ,

Petitioner,

v.

WALMART, INC.,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari To
The Supreme Court State Of North Dakota**

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**OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

—◆—
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QUESTIONS PRESENTED

1. Whether the Supreme Court of North Dakota correctly affirmed the dismissal of Petitioner-Plaintiff Ramirez's retaliatory discharge action against Respondent-Defendant Walmart, Inc. for failure to state a claim upon which relief could be granted?
2. Whether this Court should deny certiorari review of Petitioner-Plaintiff Ramirez's retaliatory discharge claim?

RULE 29.6 CORPORATE STATEMENT

The caption contains the names of all of the parties to the proceeding. Walmart, Inc. is a publicly traded company. Walmart, Inc. has no parent corporation, and no publicly-held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

Respondent, Walmart, Inc. (“Walmart”) offers this statement of the case to better explain and clarify the proceedings below.

Petitioner, David Ramirez (“Ramirez”) filed a Complaint in the North Dakota District Court, Stutsman County, on October 13, 2017, alleging a violation of N.D. Cent. Code Ann. § 34-01-20 (“§ 34-01-20,” North Dakota’s employer anti-retaliation statute). [App. 2]. Ramirez claimed he was discharged from employment in retaliation for complaining to supervisors about other employees’ “unfair” terminations. *Id.*

Walmart moved to dismiss the action for failure to state a claim upon which relief can be granted under N.D. R. Civ. P. 12(b)(vi), arguing Ramirez failed to plead any facts establishing that his complaints about “serial dismissals” constituted protected activity as defined in the statute. [App. 2]. Ramirez filed an “Answer Brief to Motion for [sic] Dismiss” on November 22, 2017, which included a number of facts and documents not provided in his Complaint. Those additional facts are repeated in this Petition. Petitioner’s Brief, pgs. 2-8, 12-13. The district court granted the motion on December 1, 2017, and dismissed the action without prejudice. [App. 7].

Ramirez thereafter appealed the district court dismissal to the Supreme Court of the State of North Dakota. The North Dakota Supreme Court affirmed the district court’s dismissal, noting that although Ramirez claimed that Walmart was terminating

individuals in an “unfair manner,” Ramirez failed to identify any law or regulation allegedly violated by Walmart (a requirement for a claim under § 34-01-20). [App. 4, 6].

Ramirez then filed a petition for rehearing on July 31, 2018. [App. 9]. The North Dakota Supreme Court denied Ramirez’s petition on August 28, 2018. [App. 8]. Ramirez thereafter filed this Petition for a Writ of Certiorari.

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ARGUMENT

Ramirez’s Petition for a Writ of Certiorari should be denied because Ramirez has failed to demonstrate any compelling grounds for this Court to hear a claim of wrongful termination based on North Dakota state law. Moreover, the North Dakota Supreme Court properly found that Ramirez’s Complaint failed to state a claim of retaliatory termination under state law even under the liberal pleading standard of N.D. R. Civ. P. 12(b)(vi).

A. This Case is Not Worthy of Certiorari Review

This Court need not grant certiorari in this matter because the issues litigated below do not warrant plenary consideration. Ramirez’s argument is simply that both the District Court and the North Dakota Supreme Court reached the wrong result when they found that

he had failed to state a claim of retaliatory termination under North Dakota state law.

As explained in U.S. Sup. Ct. R. 10, review on a writ of certiorari is a matter of judicial discretion, and will be granted “only for compelling reasons.” This Court has outlined several such compelling reasons, including: (a) conflicting decisions between jurisdictions; (b) a state court of last resort issuing a decision on a federal question conflicting with other state or federal decisions; or (c) important questions of federal law that have not been, but should be, settled by this Court. *Id.* Notably, the Court will “rarely” grant a petition for a writ of certiorari where a petitioner’s grounds are claimed erroneous factual findings or the misapplication of a properly stated rule of law. *Id.* In other words, the primary function of a writ of certiorari is not to decide whether the court below correctly decided the case, but to determine whether the case raises legal issues of sufficient importance to the public to warrant this Court’s review. *See Rice v. Sioux City Mem’l Park Cemetery*, 349 U.S. 70, 79, 75 S. Ct. 614, 619–20 (1955) (“[I]t is very important that we . . . [deny] the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.”) (internal citation omitted).

In the present case, Ramirez makes no claim that the North Dakota Supreme Court’s decision is in

conflict with the decision of another court of appeals or a state court of last resort. Nor does Ramirez claim that there exists an important or novel interpretation of federal law to be decided. Finally, Ramirez does not argue that the lower court's decision is in direct conflict with the decisions of this Court. Ramirez simply argues that the North Dakota Supreme Court was wrong and that he pleaded sufficient facts to bring a claim of retaliatory termination under North Dakota law. Because Ramirez fails to assert or prove any compelling reason for this Court to review the well-reasoned decisions of the lower courts, his Petition should be denied.

B. The North Dakota State Courts Properly Dismissed Ramirez's Complaint

In addition to Ramirez's failure to raise compelling reasons for this Court's review, the record is clear that the district court correctly dismissed, and the North Dakota Supreme Court correctly affirmed dismissal of Ramirez's complaint.

Patterned after the Federal Rules of Civil Procedure, courts analyzing a claim under N.D. R. Civ. P. 12(b)(vi) "construe the complaint in the light most favorable to the plaintiff, taking as true the well-pleaded allegations in the complaint." *Limberg v. Sanford Med. Ctr. Fargo*, 881 N.W.2d 658, 660 (N.D. 2016). Under North Dakota law, Ramirez is not relieved of his pleading requirements simply because he has chosen to proceed pro se. *Brodell v. Brodell*, 293 N.W.2d 137, 138 (N.D. 1980) ("[W]e are not about to grant special exemptions to pro se litigants.").

Ramirez’s factual allegations are insufficient to support a claim of retaliatory discharge. In relevant part, N.D. Cent. Code Ann. § 34-01-20 forbids employer retaliation against an employee for reporting a violation: “An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee’s compensation, conditions, location, or privileges of employment because: a. The employee . . . in good faith, reports a violation or suspected violation of [law] to an employer. . . .” § 34-01-20; *see also Vandall v. Trinity Hosps.*, 676 N.W.2d 88, 90 (N.D. 2004). An employee claiming retaliation under § 34-01-20 must show (1) he engaged in protected activity; (2) the employer took adverse action against him; and (3) the existence of a causal connection between his protected activity and the employer’s adverse action. *Dahlberg v. Lutheran Social Services*, 625 N.W.2d 241, 253 (N.D. 2001).

Ramirez has not pleaded any facts to establish the first element—that his complaints to management regarding Walmart’s terminations—constituted protected activity. Ramirez does not allege that Walmart’s actions were discriminatory or in violation of a particular law or statute; rather, Ramirez alleges only that he felt the terminations were “unfair” and that Walmart did not have just cause to terminate him or other associates. Petitioner’s Brief, pgs. i, 2, 4, 7, 12-13 (alleging “false causal [sic]” for terminations and complaining that associates who were not terminated had increase workloads).

As the North Dakota Supreme Court made clear in *Dahlberg*, 625 N.W.2d at 254–55, § 34-01-20 was not intended to protect an employee who acts for a purpose other than exposing an illegality. As the lower court correctly noted, “‘unfair’ conduct is not synonymous with ‘illegal’ conduct.” [App. 4] (citing *Trade ‘N Post, LLC v. World Duty Free Americas, Inc.*, 628 N.W.2d 707 (N.D. 2001)). Moreover, an allegation of high turnover over an eight-year period is insufficient to constitute a mass layoff that would trigger any protections under federal Worker Adjustment and Retraining Notification (“WARN”) Act. *See* 29 U.S.C.A. § 2101(3) (defining “mass layoff” as a 33% reduction in force, or at least 50 employees, in a 30-day period). [App. 2].

Ramirez provided no grounds for the North Dakota Supreme Court to find, or even reasonably infer, that Walmart’s actions violated any law, regulation, ordinance or rule, or that Ramirez’s complaints were a good faith attempt to protest any such violation. Consequently, even under the liberal pleading standard of N.D. R. Civ. P. 12(b)(vi), Ramirez failed to state a claim upon which relief can be granted and the lower courts correctly dismissed his Complaint.

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CONCLUSION

Ramirez’s claims are wholly without merit and fail to state a claim upon which relief can be granted and the lower courts properly found that his Complaint should be dismissed under N.D. R. Civ. P. 12(b)(vi). For

the reasons set forth herein, this Honorable Court should deny Ramirez's Petition for Writ of Certiorari.

Respectfully submitted this 14th day of January, 2019,

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