NO. 18-9593

In the

SUPREME COURT of the UNITED STATES

Faye Beatrice Hayes,

Petitioner,

v.

Terri Gorman, et al.,

Respondents,

On Petition for Writ of Certiorari

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Petitioner respectfully petitions this Court for rehearing of its October 7, 2019, order dismissing the writ of certiorari in this case. During the course of the Petitioner preparing for her court appearance before the Federal District Court of Maryland, both of her parents died within a week of each other Father Thursday April 26 and Mother Thursday May 3, 2018. On May 17, 2018 the petitioner requested a motion for an extension of time to oppose to the Respondent's Motion to Dismiss for Failure to State a Claim. On May 21, 2018, she attended her father's ceremony at Garrison Forest Cemetery. On that same day the District Court Judge granted her a four (4) week extension, however, the four(4)week extension did not afford her the opportunity to adequately grieve and prepare a brief to oppose the defendant's motion to dismiss to effectively argue the various Federal violations that were perpetrated by the Respondents. Due to an unfortunate series of circumstances, she suffered from Major Depressive Disorder severe without psychotic features. Consequently, her efforts to try to articulate citied cases and the Respondent's brief she did not have the capacity to argue her Federal case.

Petitioner had no intention of abandoning her case; to the contrary, her claims relied upon chronology of relevant events, dates, voluminous of exhibits which were attached to each of her filed complaints, and topic to topic with frame of reference to guide the district court in its analysis of the support of all claim. She also included a timeline, calendars, and medical records that supported the Respondent continues retaliatory acts that resulted in her seeking Medical attention. Under the circumstances, the Court should exercise its discretion to reinstate the case and restore the exceedingly rare opportunity petitioner secured when she successfully persuaded this Court to grant her *pro se* petition for certiorari.

FACTUAL & PROCEDURAL BACKGROUND

A. Proceedings Below

On March 8, 2018, Petitioner filed a *pro se* complaint in the U.S. District Court for the District of Maryland alleging that Maryland Transit Administration (MTA) and the State of Maryland MDOT), two Acting Operation Managers, Executive Managers: Deputy Chief Operating Officer, Chief Equal Opportunity Compliance Program, Employee Relations, violated her Federal rights under the American Disability Act (ADA) (1) discrimination, (2) interference and (3) retaliation, Family Medical Leave Act (FMLA) interference and retaliation, Title VII of the Civil Rights Act of 1964 ("Title VII"), and protected "opposition" under the antiretaliation provisions of Title VII

While engaged in protected "opposition" under the antiretaliation provisions of Title VII and out under the care of her psychotherapist and primary care physician being treated for Major Depressive Disorder and Post Traumatic Stress Disorder she was wrongful terminated by Respondents Sean Adgerson, Deputy Chief Operating Officer, received certified letter of a five (5) day suspension from Respondents Sean Adgerson, Deputy Chief Operating Officer, and certified letter Notification of Resignation without Notice which ultimately terminating her

employment by Deputy Director, Office of Labor and Employee Relation (terminated February 2018).

Petitioner submitted documentation of her two office visits with Respondents Sean Adgerson, Deputy Chief Operating Officer and Bart Plano, Chief Equal Opportunity Compliance Program, phone calls and several emails with MTA Administrator and CEO (terminated June 6, 2017) , and scheduled appointments with Director of Labor Relations (terminated February 2018), Assistance Administrator to the Administrator, and Director Office of Operation, COO (terminated February 2018), which she vocalized her concerns about the Respondents' unlawful employment practices before filing an EEOC charge. After the Petitioner receiving the five (5) day suspension and before the terminating of her employment she filed an EEOC.

The court adhered to the Fourth Circuit's holding in a lawsuit alleging discrimination or retaliation in violation of Title VII, the plaintiff "must first file an administrative charge with the EEOC within a certain time of the alleged unlawful act." *Chacko v. Pateuxent Inst.*, 429 F.3d 505, 508 (4th Cir. 2005) (*citing* 42 U.S.C. § 2000e-5(e)(1)). This requirement "ensures that the employer is put on notice of the alleged violations" and facilitates administrative resolution of claims.

Dydnor v. Fairfax County, 581 F.3d 591, 593 (4th Cir. 2012). The "failure by the plaintiff to exhaust administrative remedies concerning a Title VII claim deprives the federal court of subject matter jurisdiction over the claim." *Jones v. Calvert Group, Ltd.*, 551 F.3d 297, 300 (4th Cir. 2009).

Before the Petitioner filed her complaint in the U.S. District Court for the District of Maryland, she attempted to resolve her employment concerns through a less formal mediation process with a scheduled appointment on January 27, 2017, with The Maryland Department of Transportation, Office of Human Resources, Employer/Employee Relation Unit Case # S-032-MTA-17. Her second attempt was on March 20, 2017 at the EEOC Mediation with Respondent Bart P. Plano Chief Equal Opportunity Compliance Program, Brian Williams Director of Labor Relations (Terminated 2018), and MTA Attorney Sweeney.

The District Court, the Petitioner has failed to make out a prima facie case of retaliation with regard to her December 22, 2016 EEOC Charge because she cannot show that her employer retaliated against her for filing this Charge. To establish causation, she must at least show that her employer was aware of her protected activity. *Hooven-Lewis v. Caldera*, 249 F.3d 259, 278 (4th Cir. 2001); *Gibson v. Old Town Trolley Tours of*

Washington, D.C., Inc., 160 F.3d 177, 182 (4th Cir. 1998). Defendants argue that they were not aware of the Charge until after Hayes' employment with the MTA ended. (Def.'s Mem. Mot.to Dismiss 20.) They have produced the Affidavit of Bart P. Plano, Chief EEOC Compliance Officer, which claims that his office did not receive notice of the charge until February 3, 2017. (Aff. of Bart P. Plano at ¶ 7, ECF No. 17-2.) Email correspondence from the EEOC dated February 3, 2017 notifying Plano of Hayes' Charge corroborates the claim. (ECF No. 17-3.) Hayes has produced nothing to challenge this evidence. Accordingly, any claim of retaliation based upon her
EEOC Charge is unavailing.

The District Court, Petitioner has failed to establish that Respondents' proffered explanations for her suspension were pretextual. The evidence clearly supports Respondents' good faith belief to suspend her employment. She has not produced any evidence to challenge Defendant's proffered explanation. Accordingly, her retaliation claims arising from her suspension cannot survive summary judgment.

Petitioner has not met her burden to show that there is a genuine issue of fact with regard to her claims of retaliatory termination. Because she has failed to muster any evidence to

challenge her employer's proffered explanations for her suspension and employment termination, her retaliation claims under any theory—whether under the ADA, the FMLA, Title VII, or the MFEPA—must fail.

B. Proceedings Before the Fourth Circuit Court

Petitioner filed a timely notice of appeal. The Fourth Circuit summarily affirmed that adopted the District Court's reasoning in its entirety. Petitioner filed a timely petition for rehearing en banc, which the Fourth Circuit denied on January 1, 2019.

REASONS FOR GRANTING THE PETITION

The unusual circumstances that led to the summary judgment for the Respondent and the Fourth Circuit dismissal should not prevent the Court from reinstating this case and answering the question on which it previously granted certiorari. Petitioner had no intention of abandoning her case, when she failed to argue in the summary judgement stage in her employment discrimination case. Mentally she did not have the capability to do so. That is both understandable and excusable under the circumstances at hand.

As an unsophisticated *pro se* litigant who had never before been involved in proceedings in this Court, Petitioner was unaware that her supported attaches for her claims would not be enough to aid her in this civil case.

Particularly given the leniency typically afforded *pro se* litigants, that unfortunate series of events should not deprive petitioner of his day in this Court. As the Court has recognized on several occasions, "navigating the appellate process without a lawyer's assistance is a perilous endeavor for a layperson." *Halbert v. Michigan*, 545 U.S. 605, 621 (2005); *see also, e.g.*, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (emphasizing that "[a] document filed *pro se* is 'to be liberally construed'"); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (same); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (same). That is no less true of the process before this Court.

Accordingly, this Court can and should excuse the inadvertent failures to comply with the Court's rules when they result from the difficulties inherent in proceeding *pro se*. *Cf. Schacht v. United States*, 398 U.S. 58, 64 (1970) ("The procedural rules adopted by the Court for the orderly transaction of its business … can be relaxed by the Court in the exercise of its discretion

when the ends of justice so require."). And there is no reason not to do so here.

And the Court need not worry that excusing Petitioner's inadvertent failure to comply with its rules will set any kind of precedent for future cases, as the unusual events that led to that failure.

In short, there is no reason not to reinstate this case and every reason to do so. Convincing this Court to review a case is no mean feat for any Petitioner, let alone for a Petitioner proceeding *pro se*. It would be both unfortunate and inequitable to deny one of the few Petitioners who managed to do so the rare opportunity to have her case heard by the Supreme Court of the United States.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for rehearing, vacate the order dismissing the writ of certiorari, and restore this case to its merits docket.

Respectfully Submitted,

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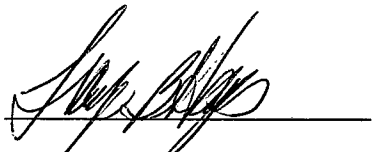
CERTIFICATE OF UNREPRESENTED BY COUNSEL

I hereby certify that this Petition for rehearing is presented in good faith and not for delay.



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