No. 19-5896

In the Supreme Court of the United States

MITCHELL DINNERSTEIN,

PETITIONER,

v.

BURLINGTON COUNTY COLLEGE[1],

RESPONDENT.

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

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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[1] RESPONDENT NOW CONDUCTS BUSINESS AS "ROWAN COLLEGE AT BURLINGTON COUNTY COLLEGE."

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OPINIONS BELOW

The Third Circuit Court of Appeals' unpublished opinion affirming the opinion of the District of New Jersey, granting Respondent's motion for summary judgment, can be found at 764 F. App'x 214 (3d Cir. 2019). Also unpublished is the Third Circuit Court of Appeals' finding on Petitioner's Sur Petition for Rehearing.

JURISDICTIONAL STATEMENT

Respondent does not dispute this Court's jurisdiction over this case pursuant to 28 U.S.C. § 1254(1), but denies that the case satisfies the standard set forth in Supreme Court Rule 10. Petitioner filed his Petition for Writ of Certiorari accompanied by a Motion for Leave to Proceed in Forma Pauperis on August 1, 2019.

STATEMENT OF THE CASE

A. FACTUAL HISTORY

Petitioner, Mitchell Dinnerstein ("Petitioner"), files a Writ of Certiorari accompanied by a Motion for Leave to Proceed in Forma Pauperis predicated on his perception that he has been wronged throughout the instant proceeding. In fact, the record clearly reflects that Petitioner's termination was the result of his continuous egregious conduct. Respondent's actions in terminating Petitioner were not motivated by any bias against Petitioner or his religion. Regardless, the facts of this matter are largely undisputed, and Petitioner fails to demonstrate any meaningful reasons as to why the Court should review the instant matter on Certiorari.

Petitioner was hired by Respondent Burlington County College ("Respondent") or ("College") on July 15, 2007, as a Maintenance Mechanic-Electrician. Pursuant to the job description, which Petitioner signed on July

15, 2007, "[t]he primary and most important overall responsibility is to provide service in a pleasant, helpful, and effective manner to our students and other members of the College Community." See Appendix to Appellee [Respondent]'s Response Brief filed with the Third Circuit ("RA"), RA-32.

The College's Civility on Campus Policy ("Civility Policy"), which governs all employees, makes perfectly clear that the "use of foul, abusive or demeaning language (written or verbal) or obscene gestures directed towards another (either as a group or an individual)," is a violation of the Civility Policy. RA-41-42.

The College conducts training sessions to train and educate their employees on the Civility Policy. Petitioner attended Civility Policy and Anti-Harassment training sessions in October, 2008 (RA-43), April, 2009 (RA-44), and June, 2010. Petitioner even completed a quiz after the June, 2010 training. RA-45. These training sessions specifically covered the College's prohibition of the use of foul and abusive language and the requirement to treat all employees with dignity and respect. RA-37, ¶7.

Petitioner violated the Civility Policy once in April, 2008 RA-46 and twice in August, 2008. RA-49. Petitioner was thereafter suspended in January, 2010 for refusing to perform an assignment. At the time of his suspension, Petitioner stated that he was disciplined because a supervisor "was extorting [him]"… "to use [his] electrical license." RA-61, at 41:7-11. At the time of his suspension, Petitioner was reminded that Respondent's

"records indicate[d] that [Petitioner had] been disciplined and/or reprimanded on several occasions for other issues since being hired to work for the College in 2007" and that "this [had] become a concern towards [Petitioner's] continued employment." RA-68-69.

As a result of Petitioner's ongoing issues with communicating regularly with his supervisors, in June, 2011, Petitioner was issued a directive requiring him to communicate via two-way radio with the Physical Plant office every thirty minutes. RA-95. In this directive, he was further advised that "failure to comply may result in disciplinary action." Petitioner signed a memorandum acknowledging the foregoing. *Id.*

On August 10, 2011, as a result of Petitioner's inappropriate conduct compounded with his extensive history of counseling, warnings, and suspensions, Petitioner received yet another suspension and a final warning after yelling at a co-worker over the college-issued radio. RA-94. Petitioner admitted to "scolding" a co-worker in front of an Assistant Director. RA-63, at 73:16-21. Petitioner's August 10, 2011 suspension and final warning were also predicated on his failure to comply with the directive from June 2, 2011 requiring him to contact the Physical Plant office every thirty minutes. RA-94.

On August 10, 2011, Petitioner was advised, by way of this final warning that "any future misconduct on [his] part will result in termination of your employment." *Id.* Petitioner never challenged this discipline.

Petitioner testified under oath that he understood that any future misconduct on his part would result in termination of his employment, but thought that this was "ridiculous." RA-64, at 74:22-25 and RA-65 at 75:1-4.

On December 1, 2011, Petitioner again violated the College's Civility Policy by making grossly profane remarks regarding members of the supervisory staff in his department. RA-98. After a coworker reported that Petitioner made these remarks, the College's Assistant Director of Human Resources determined that the reported incident appeared to be a violation of the College's Civility Policy. The College's Assistant Director of Human Resources scheduled a fact finding meeting on December 2, 2011 with members of Respondent College, Petitioner, and Petitioner's union representative. RA-39 at ¶15.

During this fact finding meeting, Petitioner admitted to making the derogatory and grossly profane statements about the three supervisory members of his department. *Id.* at ¶16. Petitioner never apologized for his statements, expressed remorse, or admitted that he was wrong. *Id.* at ¶17. Based on these interviews and Petitioner's own admission, Petitioner's employment with the College was terminated. *Id.* at ¶19.

At the March 22, 2013 arbitration hearing challenging his termination, Petitioner not only admitted to using this grossly profane language on December 1, 2011, but also admitted that he knew and understood that he

had been issued a final warning and that any future misconduct on his part would result in termination. RA-103 at 39:10-40:7 and RA-104 at 46:2-9.

Thereafter, Petitioner filed a complaint alleging unlawful discrimination on the basis of his religion. Despite filing a complaint alleging that he was discriminated against and terminated because of his religion, Petitioner testified during his deposition that he believed he was terminated for turning people in for stealing copper. RA-84 at 154:3-8. Petitioner added that he believed he was also terminated as a result of a "social engendered eugenic shift" which he described as, "you have a group of people in power that want to get money. So, to get money, they have to keep everything in an uproar, keep on destroying things and then going to the state and federal government and asking for funding." RA-86-87 at 164:24-165:1-8.

Petitioner further asserted that he was terminated due to the College's management style, which he described as the College's discriminating "against anyone who – who is not their friend, who they believe is part of their, um, clique, their group." RA-75 at 59:9-13. Petitioner further testified that his termination was actually motivated to take care of political friends and to "rip off" the people of New Jersey and the United States and that it was "going on in a lot of places." RA-87 at 165:19-167:8.

B. PROCEDURAL HISTORY

On or about April 9, 2012, Petitioner filed a Charge of Discrimination against Respondent College with the EEOC. On or about August 15, 2013, Petitioner received his Notice of Right to Sue from the EEOC.

Petitioner initially filed his Complaint on September 18, 2013. After contentious and protracted litigation, including the Court's reinstatement of Petitioner's complaint after it was administratively dismissed for failure to prosecute, on November 21, 2017, Judge Hillman issued an Order and Opinion granting the College's Motion for Summary Judgment and denying the Motion for Sanctions against the Petitioner. RA-1-23. *See also Dinnerstein v. Burlington Cty. Coll.*, No. 1:13-cv-5598 (NLH/KMW), 2017 U.S. Dist. LEXIS 192381 (D.N.J. Nov. 21, 2017). The Court carefully articulated how Petitioner failed to meet the third-prong of the *McDonnell Douglas* test. RA-9-10. The Court also noted that Petitioner had acted in bad faith throughout the discovery process, failing to comply with requisite deadlines.

The Court further noted that even if Petitioner were able to satisfy his *prima facie* burden, the College provided a legitimate, non-discriminatory reason for Petitioner's termination: Petitioner's repeated violations of the Civility Policy. RA-13. The Court noted that Petitioner admitted to using "the F word" and calling someone a "panty waist faggot." RA-13 fn. 4. Petitioner thereafter filed an appeal to the Third Circuit Court of Appeals.

On August 3, 2018, the Third Circuit informed Petitioner and Respondent that the case would be submitted on the briefs pursuant to 3rd Cir. LAR 34.1(a), and would not require the parties to appear for oral argument on August 17, 2018. The Third Circuit issued an unpublished opinion on March 8, 2019, unequivocally affirming the District of New Jersey's findings in the matter. *Dinnerstein v. Burlington Cty. Coll.*, 764 F. App'x 214 (3d Cir. 2019).

REASONS FOR DENYING THE PETITION

I. CERTIORARI IS UNWARRANTED TO REVIEW THE THIRD CIRCUIT'S APPLICATION OF SETTLED EMPLOYMENT DISCRIMINATION PRINCIPLES TO THIS CASE.

In his Writ for Certiorari, Petitioner failed to state with particularity what relief he requests from this Court. A review of the Third Circuit's thoughtful and thorough decision demonstrates that the Third Circuit unequivocally affirmed the District Court's award of summary judgment in favor of Respondent. A review of the record demonstrates that, not only did Petitioner act in bad faith in failing to comply with Court Orders and discovery deadlines, but, more importantly, Petitioner failed to demonstrate a *prima facie* case such that his Complaint should be subject to further review. In materials presented to the District Court, Petitioner failed to demonstrate a *prima facie* case for unlawful discrimination based on his religion or a

prima facie case to support his claim that he was subjected to a hostile work environment.

Petitioner does not articulate or demonstrate a split between Circuit Courts on an important matter, he does not present an opinion from a State Court of last resort that conflicts with an opinion of a different State Court of last resort regarding an important federal question, and he does not present a State Court or Circuit Court opinion regarding a question of federal law that has not, but should be, settled by this Court. Instead, Petitioner, clearly disgruntled, presents a series of inquiries both not apropos and wildly peripheral to his original claims of unlawful discrimination on the basis of his religion. Consistent with his behavior as described by the District Court throughout proceedings there, Petitioner has accused members of the federal judiciary, Respondent, and counsel of perpetrating fraud throughout his Writ of Certiorari, with little evidence thereof.

In addition to failing to demonstrate what he requests this Court to review in the Third Circuit's thoughtful opinion, Petitioner fails to articulate where the District Court or the Third Circuit erred in their application and evaluation of utilization of Fed. Rule Civ. Proc. 56.

Lastly, Petitioner's claims in this Court are premised on a serious mischaracterization of the summary judgment record. His "Informal Brief" and "Questions Presented" outline a series of inquiries and thoughts about his past interactions with and opinions of the federal government and with

Respondent, the majority of which are, at best, peripheral to the alleged focus of Petitioner's Writ of Certiorari. This Court should deny Petitioner's extraordinary and unwarranted request for review.

A. The Third Circuit Unequivocally Affirmed The District Court's Award Of Summary Judgment And Reiterated That Petitioner Failed To Meet His Burden To Demonstrate Unlawful Discrimination Based On His Religion or a Hostile Work Environment.

Petitioner has failed to demonstrate why this Court's review of the Third Circuit's unambiguous opinion affirming the comprehensive ruling by the District Court is appropriate in this matter. The District Court clearly found that Petitioner failed to demonstrate a *prima facie* case of discrimination such that any further evaluation by the Court was necessary. However, in thoughtfully evaluating all of the potential implications of the case, both the District Court and the Third Circuit reasoned that, even if Petitioner had established a *prima facie* case of unlawful discrimination or a hostile work environment, his own actions and admissions in his testimony offered sufficient proof to demonstrate that the College's reasons for its termination decision were not a pretext for discrimination. Moreover, Petitioner's assertions that he has been deprived due process afforded to him under Fed. Rule Civ. Proc. 56(d) are unfounded. Petitioner has thus failed to demonstrate why a review by this Court is appropriate at this time.

i. Petitioner Has Not Demonstrated That It Is Appropriate For This Court To Review The Third Circuit's Decision And The Third Circuit's Opinion Demonstrates That It Underwent a Careful And Thorough Evaluation Of The District Court's Opinion In Affirming The District Court's Award Of Summary Judgment.

The Third Circuit decidedly affirmed the District Court, holding that Petitioner failed to establish *prima facie* claims of religious discrimination, hostile work environment based on religious harassment, or retaliation.

The Third Circuit exercised plenary review over the District Court's decision. *See McGreevy v. Stroup*, 413 F.3d 359, 363 (3d Cir. 2005). In accordance with Federal Rule of Civil Procedure Rule 56(a), summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See* Fed. Rule Civ. Proc. 56(a).

Under § 703(a)(1) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), "it shall be an unlawful employment practice for an employer. . . to fail or refuse to hire or to discharge any individual, or otherwise to 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." "The emphasis of both the language and the legislative history of the statute is on eliminating discrimination in employment" *TWA v. Hardison*, 432 U.S. 63, 71 (1977). Employees are not to

be treated differently regardless of whether the discrimination is directed against majorities or minorities. *TWA*, 432 U.S. at 71-72 (*citing McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273, 280 (1976)).

In an employment discrimination case, if a Plaintiff fails to offer direct evidence of harassment, a court will evaluate the Plaintiff's claims under the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973). Under *McDonnell Douglas* and its progeny, a Plaintiff maintains the "initial burden" of establishing a *prima facie* case of discrimination. 411 U.S. 792 at 802-04 ; *See also Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252 (1981). To prove a *prima facie* case, Plaintiff must demonstrate: (i) that he belongs to a minority; (ii) he was qualified for the position he sought to attain or retain; (iii) he suffered an adverse employment action; and (iv) the action occurred under circumstances that could give rise to an inference of intentional discrimination. *Makky v. Chertoff*, 541 F.3d 205, 214 (3d Cir. 2008); *See also Reeves v. Sanderson Plumbing Prods.,* 530 U.S. 133, 143 (2000).

Only after a Plaintiff has demonstrated a *prima facie* case of discrimination by a preponderance of the evidence does the burden shift to the Defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell Douglas Corp.,* 411 U.S. 792 at 802. Thereafter, the Plaintiff "must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the

Defendant were not its true reasons, but were a pretext for discrimination." *Tex. Dep't of Cmty. Affairs,* 450 U.S. 248 at 253.

Despite the implementation and usage of the burden shifting framework, this Court asserts that, "[t]he ultimate burden of persuading the trier of fact that the defendant ***intentionally*** discriminated against the plaintiff remains ***at all times with the plaintiff***." *Tex. Dep't of Cmty. Affairs,* 450 U.S. 248 at 253 (*citing Board of Trustees of Keene State College v. Sweeney*, 439 U.S. 24, 25, n. 2 (1978); *Id.* at 29) (emphasis added).

In this case, Petitioner alleges discrimination under 42 U.S.C. § 2000e-2(a)(1), or § 703(a)(1) of Title VII of the Civil Rights Act of 1964, on the basis of his religion – Judaism. Discrimination on the basis of religion is prohibited. However, Petitioner fails to demonstrate even a *prima facie* case that any adverse employment action taken against him was the result of discrimination on the basis of his religion.

As Petitioner failed to provide direct evidence of discrimination, the Court carefully evaluated his claims under the burden-shifting framework set forth in *McDonnell Douglas Corp*. However, the Third Circuit affirmed the District Court's finding that Petitioner failed to establish a *prima facie* case of discrimination; it is only after Plaintiff establishes a *prima facie* case of discrimination based on a protected class that the burden of production shifts to the Defendant.

As articulated by both the District Court and the Third Circuit, Petitioner failed to demonstrate that the adverse employment action, his termination, occurred under circumstances that could give rise to an inference of intentional discrimination. Petitioner's generalized, subjective belief that Respondent would discriminate against or fail to listen to Jewish employees is not sufficient to support a claim of unlawful discrimination on the basis of religion.

In his deposition, Petitioner was only able to recall two instances that fellow employees or administrators of Respondent organization referred to his Jewish faith throughout the period of his employment. Consistent with the analysis of the District Court and the Third Circuit, these stray remarks failed to demonstrate any type of a nexus between discrimination on the basis of religion and Petitioner's termination. Petitioner's claims of a hostile work environment fail for the same reasons.

Even if this Court were to find that Petitioner had satisfied his *prima facie* case, as articulated by the Third Circuit, Petitioner fails to demonstrate that Respondent's well documented reason for terminating Petitioner's employment – repeated violations of the College Civility Policy – were pretext for discrimination. Respondent has demonstrated through employment records that Petitioner's repeated violations of the Civility Code, each addressed in turn, ultimately led to his termination. Prior to his termination, Petitioner acknowledged that future violations of the Civility Policy may

result in his termination, yet continued to violate the policy by making offensive comments clearly in violation of the code.

Even more telling are Petitioner's assertions in his deposition. As alluded to by the Third Circuit, Petitioner stated in a deposition that he was terminated for yelling profanities at a supervisor. He testified that he had been issued prior warnings, understood the severity and content of the warnings, and nonetheless yet again violated the Civility Policy.

Therefore, as the Third Circuit underwent a careful and thorough evaluation of the District Court's opinion and record at hand in affirming the District Court's award of summary judgment, it is not appropriate for this Court to grant Certiorari. Petitioner fails to demonstrate with specificity the relief that he seeks from this Court. However, in inferring Petitioner's request that this Court reevaluate the facts as carefully reviewed by the District Court and the Third Circuit, the Petitioner seeks a remedy beyond the scope of this Court's review.

ii. The Third Circuit Conclusively Addressed Petitioner's Claims That He Was Denied Due Process Under Rule 56(d) As He Did Not Properly Address The Requirements of Rule 56(d) In The District Court Or On Appeal.

As Petitioner failed to demonstrate how any additional time for discovery would have enabled him to defeat Respondent in what the Third Circuit refers to as a "well-supported motion for summary judgment," the

Third Circuit's assertions that the District Court "did not grant summary judgment prematurely or otherwise abuse its discretion in managing discovery" should not be subject to review on Certiorari.

Federal Rule of Civil Procedure 56(d) states that, "if a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." *See* Fed. Rule Civ. Proc. 56(d).

A party seeking relief under Fed. Rule Civ. Proc. 56(d) must show that it has exercised due diligence in the pursuit of discovery. *McKay v. Novartis Pharm. Corp.*, 751 F.3d 694, 700 (5th Cir. 2014) (citation omitted); *See* Fed. Rule Civ. Proc. 56(d). The party cannot rely on vague assertions but must show why he needs additional discovery and how that discovery will create a genuine issue of material fact. *Smith v. Reg'l Transit Auth.*, 827 F.3d 412, 422-23 (5th Cir. 2016). A request for a stay under Fed. Rule Civ. Proc. 56(d) must also "set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist and indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion." *Am. Family Life Assur. Co. v. Biles*, 714 F.3d 887, 894 (5th Cir. 2013) (*quoting* Fed. Rule Civ. Proc. 56(d)).

In this case, as outlined in Footnote 2 of its opinion, the Third Circuit established that Petitioner "failed to demonstrate how any additional discovery will allow him to defeat [Respondent's] well-supported motion for summary judgment, the District Court did not grant summary judgment prematurely or otherwise abuse its discretion in managing discovery." *Dinnerstein v. Burlington Cty. Coll.*, 764 F. App'x 214. In its opinion, the District Court found that Petitioner sought "delay simply for the purpose of delay rather than time to develop additional material facts." *Dinnerstein v. Burlington Cty. Coll.,* 2017 U.S. Dist. LEXIS 192381, at *18.

It is not appropriate for this Court to review Petitioner's claims that he was unlawfully prejudiced by the District Court's granting of summary judgment in light of Petitioner's bad faith throughout the discovery process and this protracted litigation. Petitioner includes a request for a review of his rights under Fed. Rule Civ. Proc. 56(d) but does not address this request further in his "Informal Brief." He fails to address the procedural deficiencies highlighted by both the District Court and the Third Circuit.

Therefore, as the Third Circuit conclusively addressed petitioner's claims that he was denied due process under Fed. Rule Civ. Proc. 56(d), and Petitioner acted in bad faith throughout the discovery process, it is not appropriate for this Court to review any potential violations of Fed. Rule Civ. Proc. 56(d) on Certiorari.

B. Petitioner's Employment Discrimination Claims In This Court Are Premised On A Mischaracterization Of The Summary Judgment Record.

Petitioner's barely comprehensible claims are a mischaracterization of the summary judgment record, and it is not appropriate or necessary for this Court to review the claims.

In his Questions Presented, Petitioner, in stream-of-consciousness fashion, addresses everything from the impropriety of members of the federal judiciary to references to working for the "GSA" in the 1900s, which Respondent believes refers to the General Services Administration. While Respondent declines to address each of Petitioner's concerns, Respondent will address those warranting particular review by the Court in deciding whether to grant Certiorari.

First, Petitioner addresses the District Court's ruling pursuant to Fed. Rule Civ. Proc. 56(d). The District Court found that Petitioner acted in bad faith throughout the discovery process and his attempts to extend discovery pursuant to Fed. Rule Civ. Proc. 56(d) were procedurally and substantively deficient. The Third Circuit appropriately reviewed and affirmed the same. Respondent asserts that, contrary to Petitioner's belief, the District Court did not "unreasonably [use]" Fed. Rule Civ. Proc. 56(d) "to quickly end a proceedings [sic] and [deny] a petitioner his rights to a trial." Instead, the District Court issued a thoughtful opinion regarding Petitioner's conduct

throughout discovery, and properly declined to extend discovery pursuant to Fed. Rule Civ. Proc. 56(d).

Petitioner additionally addresses potential impropriety or conflicts of interest that would otherwise disqualify the District Court Judge, Judge Hillman, based on prior employment with the GSA. Despite not offering any evidence to prove same, even if this Court were to accept that as true, prior employment within another branch of the federal government should not disqualify Judge Hillman or nullify his comprehensive trial court decision in this matter.

Petitioner states that the District Court eliminated a vital piece of evidence and was unreasonable in applying Fed. Rule Civ. Proc. 56; however, the record from the District Court clearly reflects that Plaintiff had "a full opportunity to seek discovery" and made "no meaningful effort to do so." *See Dinnerstein v. Burlington Cty. Coll.*, 2017 U.S. Dist. LEXIS 192381, at *17-18. Again, the Third Circuit affirmed the District Court's careful analysis of the District Court's utilization of Fed. Rule Civ. Proc. 56(d) in the trial.

Petitioner alludes to being denied the opportunity to introduce a "tape." However, he fails to demonstrate when he sought to introduce this "tape," or, alternatively, specifically why he should have been granted leave to admit the "tape" outside the relevant period of discovery. The record before this Court simply demonstrates a largely non-compliant Petitioner

attempting to remedy his non-compliance by filing a Writ of Certiorari with the Supreme Court.

Petitioner asserts that the Third Circuit violated rights under the Civil Rights Act of 1968 by making a statement that "reinforce[d] a negative stereotype without evidence to prove it." To begin, any analysis of the Civil Rights Act of 1968 is peripheral to the instant appeal, as no issues of the Civil Rights Act of 1968 were addressed in either the District Court or the Third Circuit. Second, as Petitioner does not state with particularity any specific statement in the Third Circuit's opinion that he found offensive and in violation of his rights, the Respondent declines to respond to such allegations.

Petitioner cites *Maz Partners LP v. PHC, Inc., (In re. PHC Shareholder Litig.)*, 762 F.3d 138 (1st Cir. 2014) in requesting this Court review the Third Circuit's evaluation of his alleged deprivation of rights under Fed. Rule Civ. Proc. 56(d). On a Page 11 of his "Informal Brief," Petitioner states:

> "I believe this is the president that the appellate court should have taken into account. And my question is, why didn't they?
>
> "PHC, Inc. S'holder Litig., 762 F.3d 138, 144 (1st Cir. 2014) (" 'Typically, when the parties have no opportunity for discovery, denying the **Rule 56(d) motion** and ruling on a summary judgment motion is likely to be an abuse of discretion.'"

However, in reviewing *Maz Partners LP*, the First Circuit cites the Sixth Circuit's ruling in *CenTra, Inc. v. Estrin*, 538 F.3d 402, 420 (6th Cir. 2008), stating, "[t]ypically, when the parties have no opportunity for discovery, denying the **[Fed. Rule Civ. Proc.] 56(f)** motion and ruling on a

summary judgment motion is likely to be an abuse of discretion." *Maz Partners LP*, 762 F.3d at 144 (emphasis added).

Petitioner is misleading this Court in mis-stating the Fifth Circuit's language in *Maz Partners*. Despite his status as a self-represented litigant, this type of behavior cannot be tolerated by this Court. Misquoting a case is demonstrative of the bad faith which he has exhibited throughout the course of this litigation.

With regards to Petitioner's contentions that the "Judge was acting as a litigant in a trial he [was] presiding over" or "how two attorneys [can] appear Pro [Se]," it appears Petitioner's confusion stems from a missed space in portions of the caption of the District Court matter. This is a clerical error that appears on Petitioner's copy of the case, but is not an error worthy of review.

Petitioner additionally addresses or questions the following topics which were not reviewed by the District Court in the course of the proceedings, are not germane to Petitioner's original claim of unlawful employment discrimination, and are thus not eligible for review by this Court: the constitutionality of Respondent College's civility code (as addressed in Petitioner's "STATEMENT OF THEIR CASE"); New Jersey "pay to play" policies; alleged assaults; an alleged sexual assault of Petitioner during his period of employment at GSA; and the Civil Rights Act of 1968.

Thus, the majority of Petitioner's Writ of Certiorari stems from requests for review of irrelevant or unripe issues, or a mischaracterization of the record from the District Court and Third Circuit. The Respondent respectfully requests this Court deny Petitioner's Writ for Certiorari.

CONCLUSION

For all of the above reasons, the Petition for a Writ of Certiorari should be denied.

Dated: October 8, 2019

Respectfully submitted,

/s Ralph R. Smith, 3rd

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