

No. _____

IN THE
Supreme Court of the United States

CHERYL FRITZE,

Petitioner,

v.

NEXSTAR BROADCASTING, INC.,

Respondent.

**On Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Whether Title IX of the Education Amendments Act of 1972 affords a student intern the same legal protection against sexual harassment during an off campus internship as the student would have the right to expect while on campus?
- II. What constitutes sufficient reporting to a 'public body' for protection under whistle blower laws?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are listed in the caption. Petitioner, Cheryl Fritze, was an editor at Nexstar Broadcasting, Inc., who claims she as was fired because Nexstar was not properly investigating instances of the sexual harassment of subordinate female employees and interns by their Nexstar managers. Nexstar Broadcasting, Inc., was the defendant and would be the Respondent were this Court to grant certiorari.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Cheryl Fritze is not a corporation. Nexstar Broadcasting, Inc., is a corporation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Cheryl Fritze, respectfully petitions this Court for a *writ of certiorari* to review the decisions of the lower courts and address whether a student intern should be afforded the same legal protection against sexual harassment during an off campus internship as the student would have the right to expect while on campus.

OPINIONS BELOW

The Sixth Circuit Court of Appeal's opinion is unpublished but reproduced in the appendix hereto at A. The Sixth Circuit Court of Appeal's order denying rehearing is unpublished but reproduced in the appendix hereto at B. The opinion of the of the Western District of Michigan is unpublished but reproduced in the appendix hereto at C.

JURISDICTION

The Sixth Circuit Court of Appeals filed its Ordering Denying rehearing in this case on March 18, 2021. There were no motions for rehearing or any other motions altering the timing for filing this petition. The Supreme Court has jurisdiction under 28 U.S.C. § 1254 (1), to review the Sixth Circuit Court of Appeal's decision on a *Writ of Certiorari*.

CONSTITUTIONAL PROVISION INVOLVED

There is no specific Constitution provisions involved in this case.

**EXISTING SUPREME COURT PRECEDENT
SOUGHT TO BE REVIEWED**

If accepted, this case appears to present an issue previously unaddressed by the Court.

INTRODUCTION

In this case, the Sixth Circuit Court of Appeals described as *noble* the desire of “connecting the dots across the country of the other women who were victims of sexual harassment at Nexstar stations.” Despite acknowledging Petitioner had alleged in this case that “Nexstar was not properly investigating instances of the sexual harassment of subordinate female employees and interns by their Nexstar managers,” the Sixth Circuit concluded that Petitioner had not reported a ‘violation of law.’ Petitioner requests this Court utilize this case as an opportunity to address whether a student intern should be afforded the same legal protection against sexual harassment during an off campus internship as the student would have the right to expect while on campus.

STATEMENT OF THE CASE

As the Sixth Circuit Court of Appeals recognized, at the heart of Petitioner's case is Petitioner's allegation that she was fired in retaliation of her complaints that "Nexstar was not properly investigating instances of the sexual harassment of subordinate female employees and interns by their Nexstar Managers." Specifically, Petitioner testified that she and an intern from Northwestern University reported allegations of the sexual harassment of the intern (during the internship) by a direct supervisor of the intern at a Nexstar owned television affiliate in Lansing, Michigan. While Petitioner contends that the allegations constitute sufficient reason for Northwestern University to end its internship program with the Nexstar affiliate, Nexstar did not properly investigate the incident.

Specifically, Petitioner reached out in early 2017 to Nexstar Corporate offices in Dallas to communicate what she was observing at Nexstar's Lansing, Michigan affiliate. Indeed, the underlying record as to the Petitioner's actions is quite clear and direct regarding her complaint made directly to Nexstar corporate officials, summed up by the testimony of Petitioner as follows:

"I related to her the concerns over sexual harassment of the young women in our workplace, the intern (name redacted), of the retaliation and hostile work

*environment that was happening with
(name redacted) . . .”*

On August 19, 2017 Petitioner emailed the Nexstar CEO concerning the harassment issues.. The CEO did not respond. Having heard nothing back from the Nexstar CEO, on December 4, 2017 Petitioner engaged Attorney David Mittleman (an attorney who was at the time representing plaintiffs in the *Nassar* sexual misconduct cases) to seek Mittlmen’s assistance. Mittleman advised Petitioner to gather information regarding other complaints within Nexstar, and specifically told Petitioner to “reach out to other female Nexstar employees to see what their experiences have been relating to Nexstar’s conduct related to sexual harassment.”

Petitioner took Mittleman’s advice and began noticing what she believed to be a pattern existing with some female employees whom left Nexstar abruptly (many of whom Petitioner found had used social media as a platform to express concerns about the culture at Nexstar). Petitioner was working towards putting together an exposure of what she believed to be a genuine lack of recognition at Nexstar regarding how to appropriately respond to allegations of sexual harassment perpetrated against female employees and interns by their Nexstar supervisors. Described by her immediate Nexstar supervisor as “a reliable employee whom the younger women in the newsroom seemed to gravitate to as a confidant,” the Petitioner had grown suspicious of

the lack of response from within Nexstar to claims of sexual harassment as she became aware of other similar circumstances wherein Nexstar employees openly criticized corporate responses to sexual harassment complaints. Shortly after being directly informed of Mittleman's involvement and in the midst of Petitioner's efforts towards coalescing aggrieved Nexstar subordinates whom claimed harassment, Nexstar dispatched an executive from corporate offices whom delivered a report to the Lansing affiliate clearly stating that Petitioner should be fired.

Upon being fired by Nexstar, Petitioner brought suit on the basis of whistle-blower status, contending her conduct was a protected activity. Both of the lower courts rejected the Petitioner's claim - each focusing the analysis on the principle that a failure to perform adequate investigations into sexual harassment in the workplace are not considered 'violations of law'. The District Court opined: "In sum, as a matter of Michigan law, Plaintiff's reports of Defendant's alleged failure to perform adequate investigations into sexual harassment in the workplace do not concern 'violations of law.'" The Sixth Circuit Court of Appeals echoed this position, holding: "while it no doubt serves everyone's interests for a company to follow its workplace policies, a company's failures to do so does not by itself constitute 'a violation of the law.'" For slightly different reasons, the lower courts also opined that the reporting to Mittleman (a licensed attorney in Michigan and therefore satisfying a report to a public body under Michigan

law) was insufficient alone to warrant protection under Michigan's whistle-blower law.

In contrast, Petitioner presented a clear and very different factual and legal argument for the lower courts. Namely, the victims of improperly investigated instances of sexual harassment included instances of sexual harassment of college interns. Neither lower court addressed whether a distinction exists between a company's failure to properly investigate sexual harassment of employees from a company's failure to properly investigate sexual harassment of college interns. Indeed, while the Petitioner disagrees with the holdings of the two lower courts in this case that a company's failure to properly investigate the sexual harassment of employees is not a violation of the law (it should be), the Petitioner steadfastly asserts that a company's failure to properly investigate the sexual harassment of college interns absolutely is a violation of the law (and this Court should use this case to mandate).

REASONS FOR ALLOWANCE OF THE WRIT

To enable a student to obtain an education without harassment, Title IX of the Education Amendments Act of 1972 states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Title IX rights apply to students when participating in academic activities that are part of a degree plan. In fact, guidelines from the United States Department of Education's Office for Civil Rights (OCR), specify that education programs and activities covered by Title IX include "any academic, extracurricular, research, occupational training or other education program or activity operated by the recipient." In addition, colleges and universities are required by the Office for Civil Rights (OCR) to: "...develop and implement procedures regarding sexual harassment of students during educational programs that are not operated wholly by the school, as in the case of internships, and to refrain from cooperating with outside organizations known to discriminate...and that the University is obligated to provide a prompt, thorough and equitable investigation of any report of sex-based discrimination, sexual harassment or sexual violence. This obligation remains even in the absence of a formal complaint."

In this case, Petitioner alleges she was fired in retaliation of her complaints that "Nexstar was not properly investigating instances of the sexual harassment of subordinate female employees and interns by their Nexstar Managers." The lower courts both opined that Petitioner's reports of alleged failure to perform adequate investigations into sexual harassment in the workplace do not concern 'violations of law.' While such holdings may or may not be accurate with respect to the lawful requirement to investigate employee claims of sexual harassment, this simply cannot and

should not be the law with regards to college interns.

Since an internship is considered an off-campus academic activity, Title IX provided the same safeguard for a student's rights while at a Nexstar station (during the student's internship with a company) as when the student is on campus. The Supreme Court could send a clear mandate on this issue during a period in our nation when people are paying particular attention to these issues.

Whether or not there was an internal policy concerning sexual harassment at Nexstar (and even whether or not the policy was promulgated by some legal requirement), the operative and salient point is that Nexstar not properly responding to claims about interns being sexually harassed by Nexstar managers (as Petitioner alleged) should be considered unlawful under Title IX. Such clarity would result in swifter action when misconduct is alleged. Of equal significance, a clear statement on the issue by this Court would result in an adjustment of employment policy and practice and a reduction in sexual harassment of interns.

Finally, this Court should grant the writ to provide guidance concerning adequate reporting to a public body for protection as a whistle blower. The underlying record reflects that Attorney Mittleman was the person who told Petitioner to "reach out to other female Nexstar employees to see what their experiences have been relating to

Nexstar's conduct related to sexual harassment." This is a fact completely ignored in the lower court opinions, one of which lauds the impact of such pursuits as 'noble.' Pursuant to Michigan law, a licensed attorney and member in good standing with the State Bar of Michigan is a "public body" for purposes of whistle blower protection. Mittleman meets the criteria, and yet for inconsistent reasons the lower courts did not accept Petitioner's actions as rising to the level of legal protection. While the gravamen of the case certainly is the fact that by seeking to complain about the sexual harassment of interns not being properly addressed *is* a complaint about a 'violation of law', the manner she went about seeking to address what she saw as a 'violation of law' should also be reviewed.

Indeed, if a company's failure to investigate the sexual harassment of interns is not 'a violation of the law,' then there is something wrong with the law. Nevertheless, that is exactly how lower courts are interpreting the law and why clarity (and a mandate) is needed.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter and the important issues presented herein.

Respectfully Submitted,

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/s/

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