RECORD NO. 20-5308

IN THE
Supreme Court of the United States

TAMMY HORTON,

Petitioner,

v.

THE METHODIST UNIVERSITY, INC.,

Respondent.

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

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent The Methodist University, Inc. ("Methodist") discloses that it is not a publicly held corporation or other publicly held entity, that it does not have any parent corporations, and that there is no parent or publicly held company owning 10% or more of Methodist's stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming summary judgment for Respondent Methodist University where, based on the admissible evidence before the court, no reasonable jury could have concluded: (1) that Petitioner Tammy Horton was disabled under the Americans with Disabilities Act or the Rehabilitation Act; (2) that Horton was otherwise qualified to participate in the Methodist University Physician Assistant Program; (3) that Horton was excluded solely because of her disability; or (4) that Horton's disability was a motivating cause of the exclusion?

JURISDICTION

With respect to Petitioner Tammy Horton's ("Horton") Statement of Jurisdiction in her Petition for Writ of Certiorari ("Petition"), The Methodist University, Inc. ("Methodist") notes that Horton's timely petition for rehearing was denied on February 24, 2020, not on January 30, 2020. Subsequently, on March 19, 2020, and in light of the COVID-19 pandemic, this Court extended the deadline to file petitions for writs of certiorari to 150 days from the date of the order denying a timely petition for rehearing. Horton filed this Petition on July 23, 2020.

INTRODUCTION

The United States Court of Appeals for the Fourth Circuit ("Court of Appeals") correctly affirmed the district court's grant of summary judgment to Methodist. Simply, both the district court and the Court of Appeals correctly

applied Fourth Circuit precedent which finds its ultimate origin with this Court.[1] Moreover, the Court of Appeals' decision is not in conflict with precedent from any other circuit. Therefore, Horton's Petition should be denied.

STATEMENT OF THE CASE

Methodist incorporates herein and refers the Court to the facts as summarized and set forth in the district court's order granting Methodist's motion for summary judgment on January 23, 2019. *See Horton v. Methodist Univ., Inc.*, No. 5:16-CV-945-D, 2019 WL 320572, 2019 U.S. Dist. LEXIS 11209, at *1-10 (E.D.N.C. Jan. 23, 2019) (unpublished) (hereinafter "Dist. Ct. Op.").

This case's litigation history traces back to December 2016 when Horton filed suit against Methodist alleging violations of two federal statutes: Title III of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("Rehabilitation Act") (collectively, the "Acts"). To prevail under either of the Acts, Horton must establish that: (1) she has a disability; (2) she is otherwise qualified for the benefit in question; and (3) she was excluded from the benefit on the basis of her purported disability. *Halpern v. Wake Forest Univ. Health Scis.*, 669 F.3d 454, 461 (4th Cir. 2012) (citations omitted). The only divergence between the ADA and Rehabilitation Act occurs at the statutes' respective thresholds for causation—the Rehabilitation Act requires Horton to prove that her dismissal was "solely by reason of" her purported disability, while the ADA requires showing that the purported

[1] Even if Horton could identify an error with the Court of Appeals' application of law, certiorari would nonetheless be inappropriate. *See* Supreme Court Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

disability was merely "a motivating cause" of the exclusion. *See id.* at 461-62 (citation omitted).

Following the close of discovery, Methodist moved for summary judgment[2] arguing that Horton had failed to forecast evidence sufficient to establish the required elements of her two disability discrimination claims. The district court assumed without deciding that Horton had a disability before concluding that Horton was not "otherwise qualified" under either of the Acts. Dist. Ct. Op. *12-16. In determining that Horton was not "otherwise qualified," the district court noted that "[c]ourts generally afford a degree of deference to 'schools' professional judgments regarding students' qualifications when addressing disability discrimination claims.'" Dist. Ct. Op. *13 (quoting *Halpern*, 669 F.3d at 463; *Neal v. Univ. of N.C.*, No. 5:17-CV-00186-BR, 2018 WL 2027730, 2018 U.S. Dist. LEXIS 73063, at *12 (E.D.N.C. May 1, 2018) (unpublished)). The district court then highlighted several factual reasons why no rational jury could find that Horton was otherwise qualified to participate in the Methodist University Physician Assistant Program ("MUPAP"), including that: (1) after her first year, Horton's GPA would not have been high enough for her to graduate from the MUPAP unless she performed significantly better in her second year; (2) she failed three courses and acknowledged that she did not study enough for at least one of them; and (3) she

[2] Methodist also moved to strike certain affidavits filed by Horton in opposition to summary judgment, including two affidavits by Horton, an affidavit by Scott MacKenzie, and a letter from Tiffany Puckett. The district court granted these motions to strike, which Horton did not appeal.

was employed as her husband's primary caregiver throughout her time in the MUPAP in violation of program policy. Dist. Ct. Op. *13.

Moreover, the district court further determined that even if Horton were otherwise qualified, she separately could not meet either Act's threshold for causation. *Id.* *14, 16. The district court concluded that Horton was dismissed from the MUPAP because of poor academic performance and not because of a disability, noting that Horton struggled with her courses even when she received academic accommodations, and she failed three courses. Dist. Ct. Op. *14. Thus, Methodist's motion for summary judgment was granted.

Thereafter, in an unpublished *per curiam* opinion affirming the district court's order, the Court of Appeals agreed that no reasonable jury could conclude that Horton was otherwise qualified to participate in the MUPAP. *Horton v. Methodist Univ., Inc.*, 788 F. App'x 209, 210 (4th Cir. 2019) (*per curiam*) (unpublished). In reaching this conclusion, the Court of Appeals acknowledged that in assessing whether an individual meets the qualification requirement, "we accord a measure of deference to the school's professional judgment." *Id.* Just as the district court did, the Court of Appeals outlined several factual reasons in support of its decision, including that qualification for admission into a school's academic program does not equate to qualification for *continued* participation, *i.e.,* retention. *Id.*

The Court of Appeals also found that no reasonable jury would agree with Horton's contention that she would have performed better academically if Methodist

had provided her preferred accommodations for testing. *Id*. Specifically, the Court of Appeals noted that "Horton admittedly failed one exam because she did not study enough," that she also "failed a second exam despite receiving additional time and her preferred accommodation of testing in an empty room," and that Horton did receive "extra time to complete her exams, and she never used all of the extra time provided to her." *Id*. Thus, the Court of Appeals affirmed the district court's order holding that Horton could not meet the "otherwise qualified," or second prong, of the Acts. Because the Court of Appeals affirmed that Horton was not qualified to participate in the MUPAP, it did not reach the question of causation. *Id*. n.2.

Now, Horton has filed this Petition for discretionary review. For the reasons set forth below, this Court should deny Horton's Petition.

ARGUMENT

I. DISCRETIONARY REVIEW IS UNWARRANTED BECAUSE THE DECISIONS OF THE DISTRICT COURT AND COURT OF APPEALS WERE CORRECT AND DO NOT CONFLICT WITH THIS COURT'S PRECEDENT.

Horton's Petition does not assert that the decisions of the lower courts in this matter conflict with this Court's precedent. In fact, the lower courts' decisions are entirely consistent with this Court's precedent; therefore, discretionary review should be denied.

This Court has held on at least two occasions that courts should afford deference to schools' professional judgment regarding whether students are academically qualified. *See Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507, 88 L. Ed. 2d 523 (1985) (stating that a court may not override a

school's decision "unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment"); *Bd. of Curators of the Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978) ("Courts are particularly ill-equipped to evaluate academic performance."). Both of these cases were discussed in *Halpern*, which the parties, the district court, and the Court of Appeals relied upon throughout the dispositive motion and appellate phases of the case. As such, these two cases are not unfamiliar to Horton nor is the academic deference doctrine.

However, Horton does not engage with or even address these two controlling cases in her Petition. Horton also does not point to any other cases from this Court suggesting that the district court's or the Court of Appeals' application of the academic deference doctrine contravenes this Court's precedent.[3] And, Horton ignores all of the unrefuted factual reasons given by the lower courts in support of their decision holding that Horton was not "otherwise qualified" to continue as a student in the MUPAP.

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[3] Horton did cite to *Kisor v. Wilkie*, 588 U.S. ___, 139 S. Ct. 2400, 204 L. Ed. 2d 841 (2019), for the proposition that "[a]ll too often the Courts' abdication of their responsibility when deferring their legal judgment to another agency's interpretation results in violation of the Constitutional and Civil Rights of those it is meant to protect[.]" (Pet. 12.) As the Court is well aware, *Kisor* has no bearing on the question of whether the courts below properly accorded deference to Methodist's determination that Horton was not qualified for continued enrollment in the Program. Instead, *Kisor* dealt with a wholly separate area of the law with its own jurisprudence—administrative law—and the question before the Court was the degree to which courts should defer "to agencies' reasonable readings of genuinely ambiguous regulations." *See id.*, 139 S. Ct. at 2408.

Horton does not and cannot offer any basis for this Court to conclude that this case exemplifies erroneous application of the academic deference doctrine warranting discretionary review. Further, the academic deference doctrine was not the sole basis for the lower courts' decisions granting and affirming summary judgment in favor of Methodist, and thus Horton's attack on this doctrine is misplaced. For these reasons, Horton's Petition should be denied.

II. DISCRETIONARY REVIEW IS UNWARRANTED BECAUSE THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH OTHER CIRCUITS.

Just as Horton has failed to show that the decisions of the lower courts conflict with established Supreme Court precedent, Horton also cannot demonstrate that the decisions of the lower courts conflict with the decisions of other circuit courts necessitating intervention by this Court. This is yet another reason to deny Horton's Petition.

In *Halpern*, similar to the instant case, the parties "dispute[d] whether [the court] should accord deference to the [school's] professional judgment regarding Halpern's ability to satisfy the [s]chool's essential eligibility requirements." 669 F.3d at 462. After referring to *Ewing*, 474 U.S. at 225, and *Horowitz*, 435 U.S. at 92, the *Halpern* court observed that, in the wake of those cases, "our sister circuits have overwhelmingly extended some level of deference to schools' professional judgments regarding students' qualifications **when addressing disability discrimination claims**." *Id.* at 463 (citing to cases from the First, Second, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits) (emphasis added); *see also Class v. Towson Univ.*, 806 F.3d 236, 246 (4th Cir. 2015); s*ee also Davis v. Univ. of N.C.*,

263 F.3d 95, 102 (4th Cir. 2001) (explaining in dicta that in the context of academic eligibility requirements and disability challenges, the court "generally accord[s] great deference to a school's determination of the qualifications of a hopeful student[.]") (citations omitted).

Tellingly, Horton's Petition does not point to any case from any circuit court or district court questioning the propriety of according academic deference in situations similar to this case involving disability discrimination claims. As recognized in the circuit courts, academic deference is a valid doctrine applied to educational institutions assessing a student's qualifications stemming from claims of disability discrimination. Indeed, the Sixth Circuit has stated that such deference is owed especially to professional programs in the medical field. *See Kaltenberger v. Ohio Coll. of Podiatric Med.*, 162 F.3d 432, 437 (6th Cir. 1998) ("We should only reluctantly intervene in academic decisions especially regarding degree requirements in the health care field when the conferral of a degree places the school's imprimatur upon the student as qualified to pursue his chosen profession.") (internal quotation marks and citation omitted) (cited in *Halpern*, 669 F .3d at 463). Horton even acknowledges as much in her Petition, confessing that "there are several precedential cases based upon this premise, to include *Halpern*…." (Pet. 10.) Thus, just as the court in *Kaltenberger* noted, deference was appropriately given to Methodist's professional judgment by the lower courts in this instance as the MUPAP is a professional program in the medical field. *See* 162 F.3d at 437.

Indisputably, this is a case brought by a former student against an institution of higher learning alleging claims of disability discrimination premised upon the denial of reasonable accommodations. As such, application of the academic deference doctrine by the lower courts was in conformity with the law as held in other jurisdictions. Consequently, this case does not present an unsettled question or improper application of federal constitutional law necessitating intervention by this Court. Accordingly, Horton's Petition should also be denied.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

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