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21-8113
No. 18-20511

SUPREME COURT OF THE UNITED STATES

Toya M. Gibson

Petitioner

Vs.

Wayfair LLC,

Respondent.

On Petition for a Writ of Certiorari to

The United States Court of Appeals

For the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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i.

I. Question Presented

The treatment in the adverse action of a wrongful termination in response to my dental disability, using the genetic information pertaining to my Parents to deny me FMLA in the future of my employment which is considered an “Anticipatory Breach” and threatening to discipline me due to my belief in Christianity to treat others (customers) as I would want to be treated as written in scripture:

Matthew 7:12

12 Therefore, whatever you want men to do to you, do also to them, for this is the Law and the Prophets.

And further, the continuance of harassment while both still employed as noted in my 89 page EEOC charge that includes forms, graphs, exhibits, and where I clearly noted harassment on the EEOC Intake questionnaire form, contrary to the footnotes on page 14 of Judge Nancy Atlas's judgment (also in appendix), on page 9 line 5 while I also expounded in detail of each charge in the EEOC brief, recorded in the appendix and attached; and after the termination in the form of libel, proven published with fault, where the 36 days being absent in 6 months was conveyed by Magistrate Judge Dena Palermo which she initiated after the settlement conference was over when the defendants left, to me, considered defamation, where the defamation evolved into libel in Judge Nancy Atlas's judgment are reasons this Petition for Writ of Certiorari is requested. With the

evidence presented that supports my stance on each charge, should the Fifth Circuit Court of Appeals be allowed to create a rule where employees of six months and greater can't use short-term leave, considered protective activity, where the interactive process was also initiated, to remedy an unforeseen medical emergency that prevents them from performing their duties, where employers can use the rule to deny any employee both present and former their Civil rights?

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III. Table of Authorities

Cases

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Harris County Appraisal District, Petitioner

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Texas Workforce Commission, Respondent.....

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Statutes

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IV. Petition for Writ of Certiorari

I, Pro Se Toya M. Gibson, a former employee of Wayfair LLC, in faith to God, through his Son Jesus Christ respectfully petitions this court for a writ of certiorari to review the judgement of the Fifth Circuit Court of Appeals.

V. Opinions Below

The decision by the U.S. District Court, Southern District/Houston denying me, the plaintiff's motion is reported as Gibson v. Wayfair LLC, (June 27, 2018). The Fifth Circuit Court of Appeals denied my appeal on November 19, 2021. That order and Circuit Judges Smith, Stewart and Graves unpublished opinion is recorded in the Appendix ("App.") on page 16 and attached.

VI. Jurisdiction

I, Pro Se Toya M. Gibson's appeal to the Fifth Circuit Court of Appeals was denied on November 19, 2021. I invoke this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for writ of certiorari within ninety days of the Fifth Circuit Court of Appeals judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment IX:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

VIII. Statement of the Case

In March 10 2016, I was hired on with Wayfair LLC as a Customer Service Consultant. I read, agreed and signed the Wayfair Employee Guide. In the guide under "Dress Code" it clearly noted that we should not come to work out of compliance with no offensive odors or we would be subjected to be sent home. Additionally, the guide notes that protective absences would not be counted against us. After an unforeseen dental emergency where I needed oral surgery, due to a cracked tooth with a bleeding abscess, I adhered to the employee guide by staying home. On record in exhibits filed, I called, emailed and text each day that I was out under protective activity, to remedy the emergency. I also offered medical and dental records however Wayfair refused them suggesting via email that I come in to discuss my options once I got back. I filed an addendum on record, recorded in the appendix and attached, before the settlement conference took place. I was told after the settlement conference by Judge Palermo that I missed 36 days in 6 months, however recorded in the appendix and attached, the Texas Workforce Commission's investigation proves evidence that I was only 13 days absent, however she used the defamation as for a reason why the defendant was favored

which again is defamation of character yet was subsequently published on record which is considered libel that continues to harm me. The addendum submitted and filed on record June 19, 2018 confirmed that my scheduled dental appointment was rescheduled for a later date, due to a compressor issues in their office. As a result, before I was assessed by the attending dentist, a decision to terminate me was made on October 7, 2016 unbeknownst to me. Still, I came in on October 10, 2016 to surrender medical and dental documentation under the suggestion from HR William Quick, to discuss my options however I was instead briefed on a termination that had already been decided on by Justin Brown, my former manager. After being informed of the termination, my badge was requested and surrendered. I was additionally humiliated and told to clear out my desk, while other employees watched. Once I got to my car, also on record are text messages from an employee that witnessed my termination.

I filed for unemployment where an investigation to determine eligibility was completed with the Texas Unemployment Insurance where the investigation rationale notes that "Parties Agree: DET Clmt's final absence due to medical reasons; DET final incident doesn't rise to level of misconduct. Conclusion notes that no work misconduct was found, while my Former Manager noted that I in fact followed policy while the investigation further noted that I was Fired-Medically

verifiable illness-not disqualified. The decision is recorded in the Appendix (“App”) on page 16 and attached.

This case presents the question of the factual reasoning behind my termination that the investigation for unemployment benefits clearly vindicate me of misconduct. Moreover, a cause of action was acknowledged where the settlement conference was granted however the libel on record that was published and uttered as defamation was used to deny me favor. It is my prayer to God, through his Son Jesus Christ that My charge of harassment that was written in a part of my EEOC charge on record, along with my complaint of wrongful termination, genetic discrimination and religious discrimination is reviewed and this Petition for Writ of Certiorari is granted.

1. The “Initial Conference” and “Settlement Conference”

In our first experience of homelessness due to my termination and subsequent state of unemployment, On September 25, 2017 United States District Judge Nancy Atlas held the conference where it was discovered that counsel for Wayfair stated on record that I was the termination for violation of the attendance policy of Wayfair and for no other reason. The Court asked was the attendance violation related to my teeth—tooth problem, or something else and counsel went on to state on record that it was related.

Counsel for Wayfair went on record and stated that “the additional days off that she took compounded and led to her termination”, unquote.

Counsel for Wayfair confirmed in record on September 25, 2017 the very question that I presented in my “reasons for granting the writ of certiorari”, the need to clarify and differentiate excessive absences from those protected. Also noting that she was aware that we were homeless living at a shelter however she scolded me over 20 times to get a job as if I was not there due to being terminated.

As for the Settlement Conference where Judge Atlas stated on record that “Magistrate Judge Palermo would be a good person to review this case, do a little settlement conference, and see what’s what”, unquote, I had prayed that there would be no miscarriage of justice.

The settlement conference was in fact little, just as Judge Atlas stated it would be.

Little: ADJECTIVE

small in size, amount, or degree (often used to convey an appealing diminutiveness or express an affectionate or condescending attitude).

What happened in the Settlement conference, that in which I relive, where after only 2 times of her coming back to me and stating that the defendants were gone and where Judge Palermo subsequently made the statement that I missed 36 days in 6 months, which was nearly 3 times more than the factual

days I was granted off was used in the decision to deny me, leaving me with no other choice than to continue on to appeal the decision while also enduring the harm in the libel that has continued.

2. Direct appeal

On direct appeal, I renewed my argument that my rights had been violated when I was denied the short term leave I requested that the employment guide noted that would not be counted against me, also providing me 15 days after I came back to submit medical records to support the time needed. Additionally, the fact that I was warned that I would be disciplined and eventually fired for waiving the return fees for customers that received their orders late, damaged, and missing items was unconstitutional equating to an adverse action considering I was granted the discretion to make such decisions. Where 80-90% of the times as a fairly new hire I contacted more tenured employees to help me decide before waiving the fees and considering I was also being obedient to God's word by adhering to Matthew 7:12 as a Christian, all while setting the stage for customer retention, provided me with a plethora of evidence that I have filed on appeal. Also while on appeal I

have suffered an verbal illegal eviction causing yet another bout of homelessness, this time hidden however without having all my file handy, organized and in order, I have continued to plead my case. Lastly, due to a medical family emergency and not receiving mail from the Fifth Circuit court of appeals, I could only use a copy that I printed from the internet while also being the sole care provider which caused me to be late with my filing. I was denied extensions and the ability to include supplemental evidence of only 7 photographs, a mediation statement and Case 4:17-cv-02059 Document 21 Page 16 of 39 which was evidence of the Collaboration of Religious Discrimination was denied. It is my prayer that all evidence, filed and unfiled sent to the Fifth Circuit that I provided to plead my case is reviewed and considered.

IX. REASONS FOR GRANTING THE WRIT

- A. TO AVOID ERONEOUS DEPRIVATIONS OF A DEEMED REGULAR EMPLOYEE TO USE SHORT TERM LEAVE IN THE CASE OF AN VERIFIABLE UNFORSEEN MEDICAL AND/OR DENTAL EMERGENCY THAT PREVENTS THE EMPLOYEE FROM PERFORMING THEIR DUTIES, THIS COURT SHOULD CLARIFY THE DIFFERENCE BETWEEN EXCESSIVE ABSENCES AND THOSE PROTECTED.

In Anita Y. Hart vs. Texas Workforce Commission And Texas Workers' Compensation Insurance Fund the Court of Appeals of Texas, Houston (14th Dist.) is recorded on record noting that they do not review the TWC's findings of fact; rather, they look to see whether the agency's decision is supported by substantial evidence. In my own investigation to determine benefits after being terminated by Wayfair, it was in fact found that there was no work misconduct found and that both I confirmed during the investigation that I did in fact follow policy and my former manager, Justin Brown also confirmed that I did in fact follow policy.

In cause no. 16-0346 Harris County Appraisal District vs. Texas Workforce Commission is yet another instance where the agency's decision was reviewed in substantial evidence to collectively determine whether benefits should have been granted or not. To not consider the agency's investigation would allow the appellee to have a one-sided argument that the decision to terminate me, and not be held accountable for the employee guide was legal.

In faith, I am moving to request that the United States Supreme Court also consider my argument that my absences from 10-04-2016 to 10-10-2016 were dates that I was out under an unforeseen medical and dental emergency that should have been held as protective activity, preventing Wayfair from terminating me.

X. 'CONCLUSION

I Pro Se Toya M. Gibson respectfully request that this court issue a writ of certiorari to review the judgment of the Fifth Circuit Court of Appeals.

DATED this 3rd day of June, 2022. Respectfully submitted,

Toya M. Gibson

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A handwritten signature in black ink, appearing to read "Toya M. Gibson", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'T' at the beginning.