

22-5944 ORIGINAL

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

OCT 25 2022

OFFICE OF THE CLERK

Charles L. Burgett - Petitioner

vs.

Janet L. Yellen, Secretary, Department of the Treasury - Respondent

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

PETITION FOR WRIT OF CERTIORARI

Charles L. Burgett
P.O. Box 24826
Kansas City, MO 64131
Telephone: (816) 521-0339

PRO SE PETITIONER

QUESTIONS PRESENTED

1. Whether the Court of Appeals applied the correct summary judgment standard on *prima facie* and on pretext in assessing a case of employment discrimination under 42 U.S.C. § 2000e (Title VII).

LIST OF PARTIES

All parties **do** appear in the caption of the case on the cover page.

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IN THE SUPREME COURT OF THE UNITED STATES

Charles L. Burgett - Petitioner

vs.

Janet L. Yellen, Secretary, Department of the Treasury - Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Charles L. Burgett, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in Cause No. 21-2938, entered on May 17, 2022. Rehearing en banc and panel rehearing was denied August 3, 2022.

This case raises fundamental issues concerning whether *Pro Se* parties receive justice in the federal court.

OPINION BELOW

On May 17, 2022 a panel of the Court of Appeals entered its affirmance without opinion the judgment of the United States District Court for the Western District of Missouri. The affirmance without opinion of the Court of Appeals is unpublished.

JURISDICTION

The Court of Appeals entered its judgment on May 17, 2022. On August 3, 2022, the Court of Appeals denied the Petitioner's request for panel rehearing and rehearing en banc, and a copy of the order denying rehearing appears at Appendix 16a. Jurisdiction of This Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Seventh Amendment of the United States Constitution:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

42 U.S.C. Section 2000e et. seq. (Title VII of the Civil Rights Act of 1964):

Prohibits employment discrimination based on race, color, religion, sex and national origin.

STATEMENT OF THE CASE

A. Factual Background.

African/Black Male, Mr. Burgett was found suitable for employment and hired by the Department of the Treasury, Internal Revenue Service (IRS) as a Tax Examining Technician in January 2012 until May 20, 2012. During Mr. Burgett's employment with the IRS, he was subjected to [race/sex, race, sex] discrimination

and retaliatory; and, [race/sex, race] based hostile and offensive work environment. Appendix (App.) 3a, 5a.

On April 5, 2012, Mr. Burgett filed an informal EEO discrimination complaint. Mr. Burgett mediated this informal complaint and a Resolution Agreement was signed by operation manager Ronald Manville and Mr. Burgett on May 7, 2012. App. 4a. Performance deficiencies, *inter alia*, was the subject matter of the pre-complaint leading to the May 7, 2012 resolution agreement—The alleged performance deficiencies were rendered null and void by the terms of the agreement. App. 21a. On the very next day, May 8, 2012, Manville's subordinate managers [Fisher and Green] who were aware that Mr. Burgett was engaged in EEO settlement discussions recommended terminating Mr. Burgett. Manville approved terminating Mr. Burgett four days [May 11, 2012] after the signing of the settlement agreement for alleged unacceptable performance—Mr. Burgett allegedly failed to meet the IRS standards of efficiency and quality. App. 4a, 7a.

Manville contends that he used the quarter-to-date TEPS Quality and Efficiency data as of March 31, 2012 and as of May 19, 2012 in making his determination to terminate Mr. Burgett's employment. App. 22a. The IRS disparately reviewed and failed to give Mr. Burgett proper credit for his work. App. 19a. Additionally, three or more similarly situated employees outside of Mr. Burgett's protected

classes failed to meet the IRS standards of efficiency and quality but were not terminated. App. 22a.

Mr. Burgett filed a formal EEO discrimination complaint on May 25, 2012. Thereafter, Mr. Burgett applied for numerous positions over a period of about seven years. App. 4a. The IRS continued to discriminate and retaliate against Mr. Burgett by failing to select or hire him despite his superior qualifications—Numerous similarly situated employees outside of Mr. Burgett's protected classes were hired. App. 4a, 23a, 24a.

B. District Court Proceedings.

On December 26, 2019, Mr. Burgett filed his fourth amended discrimination in employment complaint under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et. seq. against Janet L. Yellen, Secretary Department of the Treasury. Mr. Burgett alleges that he was terminated and refused rehire by the IRS based on his race/sex, and/or race, and/or sex; and, retaliation for participation in EEO protected activity. Additionally, Mr. Burgett alleges that the IRS subjected him to race, sex and retaliatory based hostile and offensive work environment. App. 5a.

On March 26, 2021, the district court granted summary judgment in favor of the IRS and dismissed Mr. Burgett's complaint. App. 3a.

On April 20, 2021, Mr. Burgett filed a motion for reconsideration of the granting of summary judgment. App. 17a-27a. Mr. Burgett gave the district court the opportunity to correct its erroneous grant of summary judgment. Mr. Burgett argued that district judge Brian C. Wimes' order and the judgment therefrom were grounded in bias and prejudice against him; and were predicated under the influence of passion for the IRS and its counsel. App. 17a. Further, Mr. Burgett argued that the district court did not follow the law and blatantly ignored relevant factual evidence favorable to him; and, made an improper, conclusionary, speculative and prejudice after the fact justification for the IRS' employment decision against him. App. 19a, 22a, 25a. On July 19, 2021, the district court denied Mr. Burgett's motion for reconsideration. App. 2a. Thereby, Mr. Burgett was denied the right to have his complaint decided by a jury.

C. The Court of Appeals' Opinion.

The Court of Appeals entered its affirmance without opinion the judgment of the district court. App. 1a-2a.

D. The Court of Appeals' Denial of Panel Rehearing and Rehearing En Banc.

The Court of Appeals denied rehearing and rehearing en banc. App. 16a.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Infringes On The Right To A Jury In Deciding A Title VII Employment Discrimination Case Under The Seventh Amendment Of The United States Constitution To Receive Justice In The Federal Court, Which Calls For An Exercise Of This Court's Supervisory Power.

The district court was bias and improperly used summary judgment as a weapon against Mr. Burgett to unjustly clear its docket of Mr. Burgett's meritorious case. The Court of Appeals merely supported this injustice.

The Seventh Amendment of the United States Constitution directs, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." When the first version of the Constitution was distributed for ratification, the Anti-Federalists demanded the addition of civil juries, on the grounds that they would be an effective defense against overreach and corruption from the legislative, executive, and judicial branches of the federal government. By its very nature, the right of civil jury trials supplemented the Constitution in the Seventh Amendment. *Baltimore & Carolina Line, Inc. v. Redman*, 295 U.S. 654 (1935). Thus, This Court must grant certiorari to ensure that the right to a jury trial afforded by the Seventh Amendment is not involuntarily waived.

II. The Decision Below Violates The Summary Judgment Standard In Assessing A Case Of Employment Discrimination Under Title VII, Conflicts With This Court's Jurisprudence, The Standard Employed By Other Appeal Courts, And What It Has Applied In Its Own Circuit, Which Calls For An Exercise Of This Court's Supervisory Power.

The lower court severely misapplied the facts to the detriment of Mr. Burgett. This Court has granted review to correct a lower court's mishandling of factual issues in *Tolan v. Cotton*, 572 U.S. 650, 134 S. Ct. 1861 (2014).

This Court in applying the summary judgment standard under Rule 56 of the Federal Rules of Civil Procedure have stated that the district court must review the record "taken as a whole."—*Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250–251 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). This Court, other appeal courts, and the lower court has also asserted that a district court was compelled to draw all reasonable inferences in Petitioners' favor, and the district court is prohibited from making credibility determinations or weighing the evidence. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." In *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554–555 (1990); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254–255 (1986); *Meritor Sav. Bank, FSB v. Vinson*, 477

U.S. 57, 68 (1986); and, *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 696, n. 6 (1962). Additionally, in *Pullman-Standard v. Swint, et al.*, 456 U.S. 273, 288-90 (1982)(discriminatory intent is a factual matter for the trier of fact); *Poller v. Columbia Broad. Sys.*, 368 U.S. 464, 473(1962) ("summary judgment procedures should be used sparingly . . . where the issues of motive and intent play leading roles"); and, *Woodman v. Haemonetics Corp.*, 51 F.3d 1087, 1091(1st Cir. 1995) ("No credibility assessment may be resolved in favor of the party seeking summary judgment.").

A. The lower court's *Prima Facie* and Pretext standard under Title VII departs from that employed by This Court, other courts of appeals, and what it has applied in its own circuit.

It is noteworthy to mention that there is no controversy between the parties that Mr. Burgett established a *prima facie* case; and, the district court tacitly admitted that Mr. Burgett demonstrated a *Prima facie* case.

This Court found in *Davis v. Valley Distributing Co.*, 522 F.2d 827, 832 (9th Cir. 1975), cert. denied, 429 U.S. 1090 (1977), courts have long held that Title VII is a remedial statute to be liberally construed in favor of the victims of discrimination.

Whether the IRS' conduct was for nondiscriminatory or pretextual reasons and/or was causally linked, all require factual determinations. Factual

determinations are the function of the jury, not the court. The lower court made quite clear but did not follow its own precedent :

At the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter.... Rather, the court's function is to determine whether a dispute about a material fact is genuine, that is, whether a reasonable jury could return a verdict of the nonmoving party based on the evidence.... The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [the non-movant's] favor.... 'If reasonable minds could differ as to the import of the evidence, "summary judgment is inappropriate".'

Quick v. Donaldson, 90 F.3d 1372, 1376-77(8th Cir. 1996).

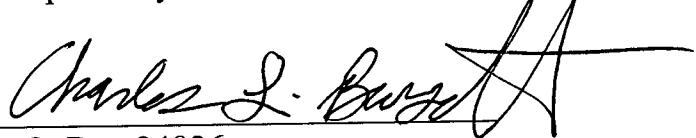
CONCLUSION

This Court is symbolic of our entire judicial system. This case presents the opportunity for the Court to exercise its Supervisory Power to guarantee the fundamental principles of fairness is untarnished; to uphold the right to a civil jury trial; and, to secure the public's perception of the right of a *Pro Se* party to receive justice in the Federal Court.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Dated: October 25, 2022

Respectfully Submitted,



P.O. Box 24826
Kansas City, Missouri 64131
Telephone: (816) 521-0339

Pro Se Petitioner