

FEB 13 2023

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22-6785
No.

In the Supreme Court of the United States

Ian Gage, Petitioner

v.

Midwestern University, Respondents

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

PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

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Question Presented for Review

- 1) Do litigants under the Americans with Disability Act lose federal protections to medical privacy through a new interpretation of the 1963 *Throop v. F.E. Young & Co*?

- 2) Are a pro-se litigant's constitutional rights to due process under the 5th and 14th amendments being limited or not allowed in the federal court system?

List of Parties to Proceeding

1. Respondent Midwestern University
2. *Pro-se Petitioner* Ian Gage

Corporate Disclosure Statement

Respondent has previously filed corporate disclosure of United Cerebral Palsy Association of Central Arizona as to a publicly held corporation that owns 10% or more of its stock.

List of Proceeding

Throop v. F.E. Young & Co, No. 6852, *Supreme Court of Arizona, decision on June 5, 1963*

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Cases

Throop v. F.E. Young & Co; *Supreme Court of Arizona*

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Citations of Opinions

1. U.S. District of Arizona; case: 2:19-cv-02745-DLR,
Gage v. Midwestern University
2. U.S. Court of Appeals for the Ninth Circuit; Case 22-
15227, Gage v. Midwestern University

Statement of the Basis for the Jurisdiction

The Judgment of the Court of Appeals was entered on 10/17/2022. A petition for rehearing was denied on 11/18/2022. This Court's jurisdiction rests on 28 U.S.C. § 1254 and rule 13.3 of the Supreme Court of the United States

Constitutional Provisions and Statutes

Constitutional Provisions

US Constitution, 5th AmendmentPage 13

US Constitution, 6th AmendmentPage 15

US Constitution, 14th AmendmentPage 13

Statutes

29 C.F.R. § 1910.1048Page 5, 9, 10, 14

42 U.S. Code § 1320d-6.....Page 7

42 U.S. Code § 12102.....Page 5, 10

42 U.S.C. § 12112(d)(4)Page 5, 11

45 C.F.R subpart A, C, D and EPage 8, 16

State Law

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STATEMENT OF THE CASE

Mr. Gage was a former employee of respondent, Midwestern University. During his employment, Gage's supervisor, Dr. Brower, displayed multiple actions and statements that established a clear pattern of beliefs of misandry that manifested as unfavorable and dangerous task assignments to Gage because of his sex. One such task involved reassigning Gage from his desk-based clerical job, filing papers and interacting with clients, to daily assignment with prolonged exposure to highly dangerous and federally regulated chemical – 37% formaldehyde. Dr. Brower, a nationally certified expert on formaldehyde and its dangers, removed the chemical task from her female employees who were federally trained and certified and had access to/worked in a histopathology lab with built in chemical safety engineering, and reassigned it to Mr. Gage to work in a different department, not safely suited for chemical manipulation. The University admitted that Gage had no federally required trainings to handle the chemical as well as admitted that Dr. Brower also assigned the only other male

under her authority to work with the same chemical and “supervise” Gage. This male also did not have the proper trainings or safety precautions.

Discovery provided material evidence that Dr. Brower approved and distributed a different handling protocol to male employees based on their sex that included changes to safety elements for the chemical task. Females were given the federally-required trainings as well as numerous safety precautions such as closed-system chemical cabinets to prevent chemical exposure. Males were only given gloves and unsafe handling directions.

Inevitably, Gage ended up in the hospital on multiple occasions due to crippling conditions from his exposure. Gage was subsequently diagnosed by a primary physician and secondary specialist physician as having serious formaldehyde overexposure with noted effects pertaining to potentially permanent impairments of various bodily systems including respiratory (breathing), dermal (skin rashes), hepatic (liver), ocular (vision issue) and neurological (frequent headaches) with

an emphasized notation to chemical sensitivity that could exacerbate the impairments and be lethal if re-exposed – well qualifying Gage to the qualifications of the 42 U.S.C § 12102 Americans with Disabilities Act. Due to these impairments, Gage made a reasonable accommodation request to the University centered on the 29 C.F.R. § 1910.1048 federal requirements of what an employer is to do after an exposure is diagnosed. He also presented a doctor's written demand for Gage to “under no circumstances” work with formaldehyde. The University did not like Gage's doctors' diagnosis made under the provisions of 29 C.F.R. § 1910.1048 (federal formaldehyde standard) and demanded that Gage either return to work with formaldehyde or complete the University's personal list of other diagnostic endeavors on his own time, directly against 42 U.S.C. § 12112(d)(4). In addition to this, the University would not pay for the demanded tests, dropped Gage's insurance and created further obstacles as no insurance would cover the demanded tests since they were dangerous and unnecessary as

to the current medical diagnosis. The University subsequently terminated Mr. Gage.

Gage was denied medical coverage for the disability by the state. A subsequent federally forced Freedom of Information Act to the Arizona State Occupational Safety and Health Administration (OSHA) state plan showed the University spoiled all of Gage's submitted injury/exposure reports and medical diagnosis, claimed to investigators that no reports ever existed, and that they don't have the chemical capable of causing such injuries on their campus. Gage retained his proofs of submission and submitted them as evidence of perjury in the hearing. The University then began slowly admitting they were aware of the reports, they had the chemical on campus in bulk, and they did assign Mr. Gage to work with it without trainings or precautions. However, even with the admittances of criminal perjury, the University's legal counsel, Attorney Manuel H. Cairo, refused to correct his previous false claims with OSHA that were, and still are, preventing Gage from his needed medical coverage.

During discovery, Attorney Manuel H. Cairo held a hearing to force Gage to remove the words “emergency department” off a HIPPA release form. The court ordered for the words to remain as Gage had concerns of it releasing his entire medical record which was not relevant. It was found that Cairo altered the federally protected form (both illegal to 42 U.S. Code § 1320d-6 and direct court order) after Gage signed the form, by removing the exact words “emergency department” and then secretly submitted the fraudulent form to the records company. This action resulted in all of Gage’s medical records being released (psych questions, sexual history, etc.) where Cairo then exploited and paraded the stolen medical records onto the court record, explicitly stating they were all irrelevant to Gage’s already shared ADA diagnosis records and the irrelevant stolen records should be allowed to be used as proof of no disability. The court precariously agreed that the records were irrelevant to the actual ADA disability, but determined that the irrelevant records would now be allowed in ADA cases as evidence of no disability. Mr. Gage filed a contempt hearing

with the District Court, provided a copy of the original HIPPA form he signed and gave to Cairo, a copy of the form Cairo edited and submitted, and reference to the court hearing and order that barred the editing action in addition to the crime of post-altering a signed and protected federal form. The District Court exonerated the criminal actions by retrospectively remanding federal HIPPA protections back to the state of Arizona under a new interpretation of 1963's *Throop v. F.E. Young & Co.* stating that ADA litigants' medical privacy is "privilege" and if there is any question as to disability circumstances by the defense, then that privilege is "waived", specifically in this case, even against court order (Appendix 1a-2a). When brought to the 9th Circuit, Cairo admitted to illegally breaking in to the record simply because Gage would not change the form even though the declining was in his constitutional right, a matter of law(45 C.F.R subpart A, C, D and E) and was protected by court order at the time. The 9th Circuit did not accept Cairos admittance and would not talk on the topic besides stating the action was not contempt by

overlooking the admittance, the evidence, court transcript and order demanding that Cairo could not remove the words (appendix pg. 15a).

A likewise contempt arose when the defense asked the court for permission to contact Gage's post-employers. The court directly refused the request due to irrelevance and potential for blacklisting which is illegal in the state of Arizona under A.R.S. § 23-1361. It was discovered that the defense secretly contacted Gage's post-employers about him and refused to disclose anything regarding these actions. Mr. Gage brought this issue up as contempt. The court acknowledged the fact that it occurred against the order, but stated that Gage's post-employer was a client of the University and, again, exonerated the illegal actions. The court did not disclose how they came to the knowledge of the University's clients as it was never disclosed in the case.

The District Court issued Summary Judgment for the defense on all claims(Appendix 3a-13a):

1) Overruling almost all of 29 C.F.R. § 1910.1048 and claiming Gage could work with formaldehyde without any of the federally required trainings or safety precautions.

2) Overruling 29 C.F.R. § 1910.1048 and all Government recognized health authority by stating formaldehyde is not capable of sensitivity.

3) Ruling that the defense's statements, alone, that Gage's job description had the formaldehyde task listed on it overrules the evidence of Gage's actual/material job description which did not list the task.

4) Invalidating both of Mr. Gage's 42 U.S.C § 12102 ADA medical record diagnosis (made exactly as 29 C.F.R. § 1910.1048 dictates) as evidence based on the defense's conclusory claims that Gage somehow tricked the medical staff into making the diagnosis. The defense never deposed the doctors, medical staff or provided any evidence to substantiate this conspiracy.

5) Ignoring the evidence that others outside of Gage's class had the formaldehyde-related tasks listed in their job descriptions, were given the federally-required trainings and appropriate access to safety equipment, as well as given safer protocols than Gage and the only other male under Brower's authority.

6) Ignoring all of Gage's submitted evidence that the defense spoiled including email submissions of injuries/exposures, medical diagnosis, doctors' notes, notification of disability and expected longevity, and reasonable accommodation requests. On the contrary, the court accepted the defenses claims that these items just don't exist (despite being on the record) or are only self-serving so should be ignored.

7) Overruling 42 U.S.C. § 12112(d)(4) stating that employers have the right to demand other diagnostic tests after being notified by an employee of ADA disability – a landmark action.

Gage filed an appeal in the 9th Circuit. Attorney Cairo admitted at this time that he actually had the reports he spoiled and Gage was assigned to the chemical the attorney claimed was not present on campus. Gage filed an Emergency Motion to order the attorney to correct his previous false statements to OSHA that he claimed the records never existed and the absence of the chemical that caused the disability. The 9th Circuit ignored the Emergency Motion.

Gage submitted a Judicial Misconduct charge to the 9th Circuit regarding the overlooked Emergency Motion that pertained to Gage's medical coverage as well as the safety of current students/staff on the University's campus given the admittance to the presence of the unmonitored potentially lethal chemical the University has and is using in bulk; however, the court refused to accept or file the complaint and would not disclose the names of the acting justices so that Gage could file the complaint per the rules.

While Gage addressed all of the issues specifically, the 9th Circuit overlooked them and did not comment on most of

the issues or evidence. The 9th Circuit softly remanded part of Gage's ADA claim back to the District Court for another Summary Judgment (despite that court already overruling the relevant laws) and threw out the sex-based and retaliation claims. The ruling stated Gage had no evidence of others outside of his protected class being treated more favorably, but, again, would not address Gage's evidence including others job descriptions, federally-required trainings, and safer protocols distributed based off sex (Appendix 14a-15a). Gage filed a motion for rehearing listing the overlooked issues and overruled legal authorities (Appendix 16a-22a) and the 9th Circuit denied the motion with little to almost no response (Appendix 23a).

REASONS FOR GRANTING THE WRIT

One of the most fundamental rights in America is the 5th and 14th Amendments of the Constitution giving citizens the right to fair and equal due-process. Without these rights, the Constitution and laws are meaningless. As seen in Gage's case, the current federal system gladly accepts payment, filed

motions and evidence from a pro-se litigant but refuses to hear or acknowledge the contents of these filed facts and will not uphold relevant laws or protect rights. Moreover, the courts grossly favored the opposing counsel as a licensed attorney and exonerated his habitual criminal actions, contempt, spoilage of evidence, perjury, and document fraud and proceeded to blindly accept his words and conspiracies as infallible – even against material evidence. For all intents and purposes, Gage's case was not heard.

The current actions and ruling in Gage's case not only perpetuate wrong doings to Gage, but present a folly of unprecedented dangers for all future ADA cases, sex-based discrimination cases, and any lawyer that wants to follow in the successful but corrupt footsteps of Attorney Cairo's actions before and during trial.

The court's actions in citing medical record privacy as a "privilege" was made under an outdated state case from 1963 – 33 years before the federal enactment of the HIPPA and Privacy Act.

Gage's case is centered around a sex-based improper assignment and subsequent disability from serious formaldehyde exposure which has not been heard in the federal system before. The court's overruling of the entire 29 C.F.R. § 1910.1048 formaldehyde standard regarding who can work with formaldehyde, its dangers, how employers are to retain exposure records as well as how they are to accommodate exposed and disabled employees sets a dangerous standard for all organizations to follow in the corrupt steps of Midwestern University. Additionally, these actions will severely impact others with the same disability that is common enough for the federal government to pass and sign into law regulations that are being overruled in this case.

The courts, in action, ignored Gage's 5th and 14th Amendment rights to due-process and deprived him of life, liberty and property when they treated his medical record as a privilege and allowed it to be stolen when an attorney feels like doing so. The courts additionally granted the defense the right to blacklist Mr. Gage causing significant damage to his ability

to work. In addition, a 6th Amendment trial was not granted nor allowed prior to the court stripping Gage of his constitutional rights in this case. To the contrary, hearings were held that agreed Gage had the rights to his medical privacy; however, after it was found that the attorney infringed on the rights, the court reneged on their previous rulings in order to protect the favored attorney. Most notably, the Attorney was aware of his illegal actions when he did them as he sought the court's permission to force Gage to sign the 45 C.F.R subpart A, C, D and E required authorization form that he fraudulently altered and submitted without notifying the court or Gage.

Mr. Gage, as a pro-se litigant in the federal circuit, has been overly victimized by his opposing counsel before and during trial where the lower court went above their power to exonerate criminal actions of the attorney which sets a dangerous precedence for future cases.

CONCLUSION

Mr. Gage, as a pro-se litigant, has worked diligently and struggled through his lack of educational privilege to comply with the complex semantically compounding procedural requirements of the multilevel federal judiciary system. To the point that the courts accepted his submission, they chose to overlook all presented evidence and references to law without discrediting them. Instead, these were replaced with the defense's attorney's conclusory speculations and conspiracies in order to issue Summary Judgment. Mr. Gage was not allowed his constitutional rights to due-process.

The Court should grant the petition for a Writ of Certiorari.

Respectfully Submitted,

Signed this 13th day of February, 2023



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