

22-7380

Case No.

IN THE
SUPREME COURT OF THE UNITED STATES

TOIVANIA GILL - PETITIONER

Vs.

TBG FOOD ACQUISITION CORP - RESPONDENT

ON PETITION OF WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

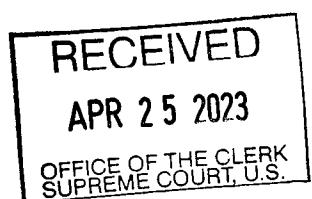
PETITION FOR WRIT OF CERTIORARI

Toivania Gill

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QUESTION(S) PRESENTED

- 1) Did the United States Western District of Virginia Court dismiss Plaintiff's claim of constructive discharge prematurely when the burden of proof on the Plaintiff only requires that the Plaintiff "merely" raise a question of fact regarding the claim, not establish standing as a matter of law in order for the claim to survive dismissal and proceed to discovery?
- 2) Is the proceeding of a hostile work environment claim enough to sustain a constructive discharge claim and allow that claim to proceed to discovery?
- 3) Does presenting misleading information to a court (such as the date of which a retaliatory adverse action was drafted) all through litigation make statements in relevance to the misleading information, made under oath, null and void?
- 4) Is it unconstitutional and against a citizen's 14th Amendment rights of equal protection of the laws when a citizen has no knowledge of how to apply the laws or the procedures of which they need to take to seek justice under those laws?
- 5) Does a citizen having less knowledge of the laws and less experience of how to apply the laws discriminate against them, leaving them with unequal protection of the law than other citizens privileged with more knowledge?

LIST OF PARTIES

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

RELATED CASES

Gill v. TBG Food Acquisition Corp., No. 7:19-cv-00479 United States District Court for the Western District of Virginia. Judgment entered July 9, 2020; March 25, 2022.

Gill v. TBG Food Acquisition Corp.; No. 22-1446, United States Court of Appeals, Fourth Circuit. Judgment entered November 22, 2022.

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TABLES OF AUTHORITIES CITED

CASES	PAGE NUMBER
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STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B&C to the petition and is reported at Gill v. TBG Food Acquisition Corp., District. Court, WD Virginia 2022.

JURISDICTION

The date on which the United States Court of appeals decided my case was November 22, 2022. No petition for rehearing was timely filed in my case.

The jurisdiction of this court is invoked under 28 U. S. C. 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment of the US Constitution: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law that shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of the law; nor to deny within its jurisdiction the equal protection of the laws.

42 U.S Code 2000e-2 Unlawful Employment Practices: (a) It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. (b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or

national origin. (d) It shall be an unlawful employment practice for any employer, Labor organization, or joint labor management committee controlling apprenticeship or other training or retraining, including on the job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Title VII of the Civil Rights Act of 1964: Title VII of the Civil Rights Act, as amended, protects employees and job applicants from employment discrimination based on race, color, religion, sex and national origin. Title VII protection covers the full spectrum of employment decisions. Including recruitment, selections, terminations, and other decisions concerning terms and conditions of employment. Title VII of the Civil Rights Act also prohibits an employer from retaliating against an employee who has “made a charge , testified, assisted, or participated in” any charge of unlawful discrimination under the Act.

American with Disabilities Act Title 1: Requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. It prohibits discrimination in recruitment, hiring, promotion, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made and it requires that employers make reasonable accommodations to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.

STATEMENT OF THE CASE

This case was brought by Toivania Gill in the Western District of Virginia on July 1, 2019. Ms. Gill (Plaintiff) filed a suit for unlawful discrimination, harassment, retaliation, and constructive discharge under the Title VII Civil Rights Act of 1964, The Pregnancy Discrimination Act (PDA), and the Americans with Disabilities Act (ADA). On July 9, 2020 a decision was entered by the district court for the Defendant's Motion to Dismiss the Plaintiff's Amended Complaint be granted in part and denied in part with the Plaintiff's constructive discharge and Title VII Retaliation claim being dismissed and her hostile work environment under Title VII, PDA, ADA, and ADA retaliation claims remained. The first issue that the Plaintiff would like to have to Supreme Court review is the decision to dismiss her constructive discharge claim. The claim was dismissed early in the case without allowing the Plaintiff to obtain documents in discovery to defend her claim. In the case *Golden Jubilee Realty LLC v. Castro*, 196 A.D. 3d 680 (2nd Dep't 2021), the Supreme Court held that with a Motion to Dismiss the "burden is on the Defendant to establish, *prima facie*, the Plaintiff lacks standing to commence a lawsuit and when the burden shifts to the Plaintiff, the Plaintiff's only burden is merely to raise a question of fact to establish standing as a matter of law". The Plaintiff's claim for constructive discharge was dismissed based on the evidence of a text message. The Plaintiff raised a question of fact by stating in her Opposition to the Defendant's Motion to Dismiss that "Defendant's failed to prove the authenticity of the text message stating the reason for

her resignation. Plaintiff's lack of response, characteristic to her prior text conversations also raises authentication issues". During discovery the Plaintiff obtained documents as evidence proving that she did not request maternity leave as that text message said and that she was terminated by the employer after having the reasonable accommodations granted to her revoked by the employer in retaliation for reporting discrimination and harassment.. Upon appeal, the Court of Appeals affirmed the dismissal of the constructive discharge claim.

In the a Motion for Summary Judgement on the Plaintiff's claims for a hostile work environment under Title VII, PDA, ADA, and ADA retaliation, the Defendant's state that the Plaintiff could not have been retaliated against by the negative adverse action that she received after making complaints of discrimination and harassment on a coworkers behalf because that negative adverse action was already being drafted before her complaints were made. The Defendant has never stated or made that defense prior to the Summary Judgment hearing. The Plaintiff and the lower courts were misled into believing the adverse action occurred on a date that it did not occur leading the court to make the decision of dismissing the Plaintiff's Title VII Retaliation claim. The Plaintiff was misled by false information about the date the retaliatory action occurred which caused her to make statements, under oath, based on the false information that she and the courts believed to be true. Had the Plaintiff or the courts known the correct date of the retaliatory adverse action her claim for Title VII Retaliation would not have been dismissed because it was being drafted in retaliation for the claims that the Plaintiff reported to HR which included racial, pregnancy, and disability discrimination and

harassment claims. Upon appeal, the Court of Appeals affirmed the dismissal of the Title VII retaliation claim.

REASON FOR GRANTING THE PETITION

The reason for granting this petition is that this case raises issues of national importance. This case is littered with misleading, altered, fabricated, forged information and documents. The deceit and dishonesty is outright disrespectful and disregards the judicial system completely. Yet, the case has been dismissed because the pro se Plaintiff didn't know how to apply the laws or the procedures to follow to get justice. Can we really say that all citizens have 14th Amendment rights to equal protection under the law if all citizens don't have an equal opportunity to seek justice under those laws? Is it not discrimination that if a person is poor, a minority, or not intellectually inclined to learn the law and how to apply it, he is therefore unequally protected by being unequally able to defend his rights by law? This is an issue of national importance because there are so many barriers that prevent people from defending their rights. So many people suffer from injustice and feel that they can do nothing about it because they are a certain race, or they are poor, or they have intellectual challenges. Those things should not mean that a person has to give up their rights or their right to seek and get justice.. To be equally protected by the law we have to be equally aware of the law and equally aware of how to apply it to get the justice we deserve. Without that, simply knowing the law and knowing that something is against the law is of no use to us. What's the point of having a protection that can't be used or if we tried and some legal technicality prevents getting

the justice deserved? Denial of the Supreme Court's review of this case will prove that the 14th Amendment is flawed because it is very clear that the Plaintiff was subjected to discrimination, harassment, and retaliation for reporting that discrimination and harassment. It is clear that her employer intentionally subjected her to a hostile work environment where she was later constructively discharged. Despite knowing the law, she was inexperienced in knowing how to apply that law to get justice. Should this forfeit her protection under those laws? It should not, but it did. The people of this country need to know that they have rights and the right to defend those rights despite their race, despite their financial status, despite their inexperience. It rests upon this Supreme Court to review this case and enforce the law of equality. Not only equality in employment but also equality in the judicial system.

CONCLUSION

The petition for the writ of certiorari should be granted.

Respectfully submitted

Toivania Gill

April 21, 2023