

JUL 3 1 2023

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No. **23-5382**

IN THE
SUPREME COURT OF THE UNITED STATES

JULIE A. GRAHAM – PETITIONER

VS

SECRETARY, UNITED STATES DEPT. OF VETERANS AFFAIRS –
RESPONDENT

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

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ORIGINAL



QUESTION(S) PRESENTED

Where employer suspends employee indefinitely for waiver of preliminary hearing on a variety of criminal charges, but affords employee no kind of hearing before the suspension to present her side of the story, should the Court grant shis Petition and return the case to the District Court for a full and complete hearing on the erits, including the defense of denial of due process?

LIST OF PARTIES

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

RELATED CASES

None

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**IN THE
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PETITION FOR WRIT OF CERTIORARI**

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

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

Is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

Is unpublished.

JURISDICTION

For cases from federal courts

The date on which the United States Court of Appeals decided my case was March 7, 2023.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 2, 2023, and a copy of the order denying rehearing appears at Appendix C.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution: "...nor be deprived of life, liberty, or property without due process of law...."

STATEMENT OF THE CASE

At the beginning of this case, Petitioner (Graham) was employed as a licensed practical nurse by the Veterans Administration (VA) at its facility in Lebanon, Pennsylvania. Graham developed a romantic involvement with a male fellow employee. After the first---or second---occasion of sexual intercourse between them, Graham told her partner that she was a person living with HIV (PLHIV). Graham's partner became enraged and went to the Pennsylvania State Police (PSP) accusing her of various types of criminal conduct.

The result of her partner's accusations to the PSP was that the PSP charged Graham with two felonies, aggravated assault and sexual assault (this last offense being both then and now a non-existent crime in the Commonwealth of Pennsylvania), and two misdemeanors, assault and reckless endangerment. The

local newspaper, in both its print edition and on-line edition, reported this story, intimating how terrible it was for a PLHIV to have unprotected sex with someone, without having informed that person of her medical condition. The press coverage angered Graham's managers at the VA. They suspended her with pay for a short period of time, until Graham waived her preliminary hearing on the criminal charges. Following the waiver, the VA suspended Graham without pay, indefinitely, because it concluded that the waiver of preliminary hearing gave the VA cause to believe that she may have committed a criminal offense for which she could be imprisoned.

It took about a year, but in March of 2015 both of the felonies filed against her, and the misdemeanor assault charge, were withdrawn, and Graham entered an accelerated rehabilitative disposition program (ARD) on the remaining misdemeanor charge, reckless endangerment. Upon completion of the ARD program, all criminal charges were dismissed, and an Order was entered requiring their expunction from the criminal justice system.

The VA ended Graham's indefinite suspension April 2, 2015, and she returned to work April 20, 2015. Thereafter, she filed suit against the VA, seeking back pay, leave benefits, retirement contributions, updated accuracy of her personnel file and removal of reprimands from that file. All of her claims and demands were denied and refused by the VA.

During both her paid suspension and her indefinite suspension without pay, the VA did not give Graham any kind of hearing on the issue of whether or not the

waiver of preliminary hearing sufficed as a reason to order her indefinite suspension without pay. No hearing was held, either, on Graham's health status as a PLHIV, on whether she was contagious at the time she had sexual intercourse with the "victim".

REASONS FOR GRANTING THE PETITION

The gist of this Petition is the denial of due process to Petitioner (Graham), being placed on indefinite suspension without pay simply because she had waived her right to a preliminary hearing on four criminal charges that had earlier been filed against her. Due process is enshrined in the Fifth Amendment to the United States Constitution, talking about any person being afforded the right "...nor be deprived of life, liberty or property without due process of law...." Graham's employment was taken from her; this was the loss of property the Fifth Amendment is talking about.

The essential requirements of due process are notice and an opportunity to respond. The opportunity to present reasons why proposed action should not be taken is a fundamental due process requirement. See Friendly, "Some Kind of

Hearing" 123 U.Pa.L. Rev.1267, 1281 (1975). The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of employer's evidence, and an opportunity to present his side of the story. See *Arnett v. Kennedy*, 416 U.S. at 170-171 (opinion of POWELL, J.); *id.* at 195-196 (opinion of WHITE, J.). Precisely what Graham in this case did not get was an opportunity to present her side of the story.

Mr. Justice White said it very succinctly in *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974): "The Court has consistently held that some kind of hearing is required at some time before a person is formally deprived of his property interest."

Contrary to these words, Graham was afforded no kind of hearing, at no time, before the VA stripped her of her livelihood. What could have been revealed at a rudimentary pre-suspension hearing was that the criminal charges were wrong, even that one of the felonies charged did not exist as a crime in the Commonwealth of Pennsylvania. What else could have been learned was Graham's actual medical condition *vis a vis* HIV, her taking medicine at the time of the sexual intercourse which resulted in an undetectable viral load; with this viral load no one has ever been recorded as transmitting HIV by sexual activity.

Due process would likely have changed the result in this case. The Third Circuit brushed off due process completely, denying it applied in a footnote citing a case which had nothing to do with due process. Graham had argued throughout the case that due process applied. Graham had every right to raise the due process

defense, and the Court should grant her Petition to allow her to press the due process issue before the District Court in a relevant hearing or trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Julie A. Graham

July 31, 2023