

23-5610

No. _____

FILED
SEP 11 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Justin Shackelford — PETITIONER
(Your Name)

vs.

University of Minnesota, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Minnesota Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Justin Shackelford

(Your Name)

6910 54th Ave. N. #302

(Address)

Crystal, MN 55428

(City, State, Zip Code)

763-531-0739

(Phone Number)

QUESTION(S) PRESENTED

1. Can a State agency make an unemployment determination that Contradicts the federal Americans with Disabilities Act?
2. Can a state agency and state court violate that state's own statutes with no higher oversight or accountability?
3. Can a state court make a decision that contradicts or overrules the federal Americans with Disabilities Act?
4. Can a state court make a ruling that violates a U.S. citizen's Constitutional rights?
5. Can a state court make a ruling that does not take any employer conduct into consideration in unemployment cases where the applicant is in a protected class under state and federal law, and the employer conduct was a violation of state and federal disability discrimination laws, whistleblower laws, and was discriminatory in its actions?
6. Is perjury allowable and have legal standing as credible in any court of the United States when evidence presented proves that perjury occurred?
7. Can a state court of appeals fail to address critical points and evidence in an Appellant's Brief that could change the outcome of the ruling, and that ruling still be valid?
8. Can a state court of appeals reject a court filing alerting the court of perjury committed by a respondent?
9. Can an employer consider an action by an employee to protect his health and safety under protected OSHA guidelines as "misconduct"?
10. Can an employer in violation of state and federal laws, and in violation of a bargaining unit contract be considered credible for testimony in court?
11. Can judges who are affiliated/alumni of one of the parties of a case make a fair and equitable ruling, or should they excuse themselves from a case?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Justin Shackelford, Petitioner/Appellant
University of Minnesota, Respondent

Minnesota Department of Employment and Economic Development,
Respondent

RELATED CASES

Justin Shackelford, Applicant v. University of Minnesota, Employer
Hearing before an Unemployment Law Judge. No. 48656828-3

Decision entered May 5, 2022.

Affirmation after Appeal of Decision entered July 19, 2022.

Justin Shackelford, Appellant v. University of Minnesota, Respondent
and Department of Employment and Economic Development, Respondent

No. A22-1080, Minnesota Court of Appeals.

Decision entered March 13, 2023.

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Valenty v. Med Concepts Dev., Inc, 503 N.W. 2d 131,134 (Minn. 1993)	
Staub v. Proctor Hospital, 562 U.S. 411 (2011)	
Faragher v. City of Boca Raton, 524 U.S. 775 (1998)	
Harris v. Forklift Systems, Inc., 516 U.S. 17 (1993)	

STATUTES AND RULES

Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq (1990)
Article VI of the Constitution of the United States (1791)
Amendment XIV to the Constitution of the United States (1868)
Minn. Stat. § 268.095 subd. (6)(a), (6)(b) (2021)
Minn. Stat. § 268.031 subd. 1, 2 (2021)
Minn. Stat. § 611A.036 subd. 1, 3 (2021)
Minn. Stat. § 182.653 subd. 2 (2021)
Minn. Stat. § 182.654 subd. 9 (2021), subd. 11
Article I, Sec. 2,8 of the Constitution of the State of Minnesota

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

For cases from **federal courts**:

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Minnesota Unemployment Law Judge court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

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

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was March 13, 2023. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: June 20, 2023, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Americans with Disabilities Act of 1990, 42 U.S.C.

§12101 (b)(3) To ensure that the Federal government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities;

§12112 (a) No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b)(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter

(b)(3) utilizing standards, criteria, or methods of administration –
(A) that have the effect of discrimination on the basis of disability

§12202 A state shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State Court of competent jurisdiction for a violation of this subchapter.

§12203 (a) No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, participated, or assisted in any manner in an investigation, proceeding, or hearing under this chapter.

(b) It shall be unlawful to coerce, intimidate, ~~or~~ threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

Article VI of the Constitution of the United States (1791)

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land; and the Judges in every state shall be bound thereby

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the Constitution of the United States (1868)

Section 1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Minn. Stat. § 268.095 Subd. 6(a) (2021) Any intentional, negligent, or indifferent conduct, on the job or off the job that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.

Subd. 6(b)(2) Conduct that was a consequence of the applicant's inefficiency or inadvertance

Subd. 6(b)(3) Simple unsatisfactory conduct

Subd. 6(b)(4) Conduct an average, reasonable employee would have engaged in

Subd. 6(b)(6) good faith errors in judgment

Subd. 6(b)(10) Conduct that was a consequence of the applicant or immediate family member of the applicant being a victim of domestic abuse, sexual assault, or harassment or stalking

Subd. 6(d) If the conduct for which the applicant was discharged involved only a single incident

Minn. Stat. § 268.031 Subd. 1 (2021) All issues under the Minnesota Unemployment Insurance Law are determined by a preponderance of the evidence.

Subd. 2 This chapter is remedial in nature and must be applied in favor of awarding unemployment benefits. Any legal conclusion that results in an applicant being ineligible for unemployment benefits must be fully supported by the facts. In determining eligibility or ineligibility for benefits, any statutory provision that would preclude an applicant from receiving benefits must be narrowly construed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Minn. Stat. §611A.036 (2021)

Subd. 1 An employer must allow a victim or witness, who is subpoenaed or requested by the prosecutor to attend court for the purpose of giving testimony, reasonable time off from work to attend criminal proceedings related to the victim's case.

Subd. 3 An employer shall not discharge, discipline, or threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to attend a criminal proceeding pursuant to this section.

Minn. Stat. §182.653 (2021)

Subd. 2 Each employer shall furnish to each of its employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm to its employees.

Minn. Stat. §182.654 (2021)

Subd. 9 No employee shall be discharged or in any way discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceeding or inspection under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee or others of any right afforded by this chapter.

Subd. 11 An employee acting in good faith has the right to refuse to work under conditions which the employee reasonably believes present an imminent danger of death or serious physical harm to the employee... An employer may not discriminate against an employee for a good faith refusal to perform tasks if the employee has requested that the employer correct the hazardous conditions but the conditions remain uncorrected.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I of the Constitution of the State of Minnesota

Sec. 2 No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.

Sec. 8 Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property, or character, and to obtain justice freely, and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

STATEMENT OF THE CASE

In October 2020, the University of Minnesota changed the working conditions for Mr. Shackelford. Because of the change to unsafe conditions, he suffered physical harm and disability. He was seen by two separate physicians who recommended accommodations. The University Disability Services also made an accommodation request on his behalf. These were refused by the employer without citing any undue hardship or justifiable cause. Shackelford continued to suffer in an unsafe workplace causing him harm. Correspondence with administration resulted in them declaring his health and safety an "inconvenience".

He reported this conduct, unsafe working conditions, and refusal to follow disability laws to state and federal agencies. There was immediate retaliation by the employer. Shackelford was sent home without pay for following the instructions of an OSHA agent. He began being harassed, stalked, and intimidated by his supervisor. He requested multiple times for a change of supervisor and his requests were refused.

The situation became so toxic and intolerable that Shackelford was forced to file for a harassment restraining order (HRO) against his supervisor as an extreme last resort to protect his safety and livelihood. A hearing was scheduled by the judge. Immediately, the supervisor increased her retaliation against him. She began falsifying documents to make it appear that Shackelford was off-task at work and issued unjustified discipline in violation of contract to set up getting rid of him.

Due to the employer's refusal to change his supervisor, even with an HRO pending, Shackelford was forced to submit a time off request to the respondent of the HRO. She never signed it, claiming illness. Shackelford attended the court hearing as requested by the judge.

The supervisor who attended the hearing herself on paid time, terminated Shackelford for his attendance of the hearing.

STATEMENT OF THE CASE

The Supervisor skipped multiple disciplinary steps outlined in contract to carry out the termination, as well as violating University policy and legal statutes guaranteeing leave for Court. A Human Resources Dept. representative later testified that no other employee had ever had steps skipped like this case.

Shackelford filed for unemployment benefits after termination, citing whistleblower retaliation. The University claimed employment misconduct in an incomplete and improperly filed response, yet the Minnesota Department of Employment and Economic Development (DEED) sided with the employer and denied benefits to Shackelford.

He requested a hearing before an unemployment Law Judge (ULJ), who deemed that attending the Court hearing without Supervisor approval from the abusing Supervisor and respondent, was employment misconduct. The ULJ repeatedly cut Shackelford off mid-sentence and did not consider his evidence submitted when issuing his decision. A request for reconsideration was filed, which went to the same judge and he affirmed his own decision.

A Certiorari appeal followed to the Minnesota Court of Appeals. Many of the facts, case law cited by Shackelford, and evidence provided in the addendum to the Appellant's Brief were not mentioned or considered by the Court of Appeals. They affirmed the decision of the ULJ in contradiction to Minnesota statutes and laws governing retaliation. Two of the judge's biographies state that they were alumni of the University of Minnesota, and the third judge has worked with the University's Law School. No statements about any conflict of interest were made when ruling on a case involving an institution that they were affiliated with.

STATEMENT OF THE CASE

An appeal to the Minnesota Supreme Court followed. Respondent DEED filed a reply to the petition. The reply contained numerous factual errors based on perjury committed by Shackelford's Supervisor in earlier testimony. He submitted a response letter to the court outlining the perjury and factual errors. The filing was rejected. Shackelford filed a Motion to accept the letter to warn the court of the errors. The Supreme Court denied the Motion. They declined to hear the case. Under Minnesota law, no one may file for a rehearing of a Court of Appeals case. The next step is this Certiorari appeal to the Supreme Court of the United States.

REASONS FOR GRANTING THE PETITION

There are a multitude of reasons for granting this petition which will be covered in detail in this section, notably that federal law is involved in the case, the federal government has already been involved in the petitioner's situation, and that there has been a complete breakdown in justice and protecting an individual's Constitutional rights at the state level. A Supreme Court decision is needed to clear up contradictory rulings and provide oversight where there is violation of statutes and discrimination occurring by state court and agencies.

The first point that the Petitioner wishes to make is that this case involves questions of federal law. Mr. Shackelford is a member of a protected class as laid out in the Americans with Disabilities Act of 1990. He was a victim of discriminatory acts by his supervisor and employer. His reporting of this conduct to the Federal Equal Employment Opportunity Commission (EEOC) and other government agencies led to retaliation that escalated to his being terminated for protecting his safety and rights.

The termination was a violation of the Americans with Disabilities Act, and the Act itself states that part of its purpose is:

"To ensure that the Federal government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities;" (42 U.S.C. § 12101 (b)(3))

So far the lower courts in this case have not upheld the ADA and their rulings are contradictory to it. While both respondents are part of the state government, the ADA is very clear in that:

"A state shall not be immune under the eleventh amendment to the Constitution of the United States from an action in federal or state court of competent jurisdiction for a violation of this subchapter." (42 U.S.C. § 12202)

If a state court is allowed discretion to contradict or overrule federal law such as the ADA, that amounts to a breach of the U.S. Constitution and Mr. Shackelford's Constitutional rights.

REASONS FOR GRANTING THE PETITION

Article VI of the Constitution of the United States very clearly outlines that the Constitution and federal laws are the supreme law and that judges in every state are bound by them. With the state Court judges having so far departed from federal law, that is clear grounds for the Supreme Court to take up this case and make it clear to state judges everywhere.

The Supreme Court of the United States has historically taken cases similar to this one. Several of them have been to clarify for good what conduct employers can be held accountable for and how that applies to people of a protected class. One such case, *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993) dealt with establishing definitions for an abusive or hostile work environment and the relationship between employer conduct and employee injury or psychological well-being. This case established guidelines that the state judges have not followed. Similarly, the Supreme Court heard and ruled on *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) which was another labor law case involving an abusive supervisor. That case established what an employer is liable for when a supervisor abuses their powers and the employer fails to take preventative or corrective action, just as in Mr. Shackelford's situation.

A third relevant case that the Supreme Court has taken is *Staub v. Proctor Hospital*, 562 U.S. 411 (2011) relating to yet another abusive supervisor. This case established further employer liability in cases of discrimination and that supervisors are an agent of the employer in a case of an adverse employment action. These cases all have a common theme, yet represent different protected classes from Title VII of the Civil Rights Act covering gender discrimination to military discrimination.

However, a case has not yet been heard with these circumstances of a discrimination and retaliation based termination by an abusive supervisor and an employee trying to protect himself under the Americans with Disabilities Act.

REASONS FOR GRANTING THE PETITION

Therefore, a loophole exists for this protected class. It is necessary for the Supreme Court to rule on this case to bring it in line with the cases mentioned and the other protected classes that enjoy the benefits of those decisions. Otherwise employers, state unemployment insurance offices, and lower courts may continue to exploit disabled Americans and subject them to discriminatory practices. This would affect many Americans, as quite a few people in this country have disabilities, and many of those need workplace protection under the ADA. Many of those people depend on the federal government already to supplement income through Social Security, so a decision by the U.S. Supreme Court makes sense and will impact a large number of citizens.

So far the judges in the state courts of this case have departed from established case law, both federal and state. They have not upheld the language of the federal cases mentioned previously in what an employer is liable for, or the psychological harm factor of a hostile work environment. In addition, the state courts have not upheld existing state case law. Minn. Stat. 268.031 very clearly states that the chapter on unemployment benefits is remedial in nature, must be used in favor of awarding benefits, and any disqualifications must be narrowly construed. Many Minnesota cases uphold this, namely Valenty v. Medical Concepts Dev., 503 N.W. 2d 131 (1993), which in addition to affirming the statute, has internal citations to numerous other cases holding the courts and the Dept. of Employment and Economic Development to that standard. The state courts chose to ignore this statute and supporting case law in its decisions to deny Mr. Shackelford benefits.

REASONS FOR GRANTING THE PETITION

Similarly, Mr. Shackelford submitted a thorough and well-reasoned brief to the Minnesota Court of Appeals containing many citations to relevant case law supporting his position from the Court of Appeals and Minnesota Supreme Court. The judges chose to ignore the precedent of close to ten cases in order to deny Mr. Shackelford benefits. Instead, in their opinion, they chose to focus on a single case presented by the respondent and based their decision on the erroneous and misguided notion that no employer conduct may be considered. This horrible case law directly contradicts the federal cases mentioned, negates the protections of the ADA, and opens the door for unlimited abuse and mistreatment of disabled employees. Under this logic, employers can do anything they want to employees regardless of how illegal, and if that employee quits or is discharged trying to protect themselves, they can be denied benefits and the employer does not have to be held accountable for their contributions to the abuse or discrimination. That is a very dangerous attitude and precedent, and must be stopped. The Supreme Court has the authority to make sure this cannot hurt anyone else.

Continuing on the topic of the Courts departing from established law, both the Unemployment Law Judge and Court of Appeals failed to follow another section of Minn. Stat. § 268.031 regarding preponderance of evidence. Mr. Shackelford submitted evidence that directly refuted that of the employer and caught them in the act of perjury. The judge rushed Mr. Shackelford through his exhibits and did not even mention them in his opinion. The Court of Appeals did likewise, not considering the photographs and documents and not even mentioning them.

Mr. Shackelford attempted to warn the Court of perjury, and he was not listened to. The Minnesota Appellate Courts even rejected a filing he submitted detailing inaccuracies and perjury. Minnesota Courts are operating under conditions where perjury is allowed and not discouraged.

REASONS FOR GRANTING THE PETITION

With the number of instances where state Courts have departed from established law and caused an injustice in that action, that should be cause for the Supreme Court to step in on this case. They did not hold the employer accountable for the abuse and discrimination, for improper and falsified documents and perjury, nor upheld Minnesota Statutes §§ 268.031, 268.095, Covering unemployment, §§ 611A.036 guaranteeing employee leave for Court, §§ 182.653 and 182.654 Covering workplace safety and Mr. Shackelford's rights to take action against an unsafe and toxic workplace. The Courts have even failed to uphold the Minnesota Constitution, sections 2 and 8 of Article I guaranteeing Mr. Shackelford's civil rights and remedies in the Court. An intervention here is strongly indicated.

This begs the question, how can so many failures occur and straightforward law not upheld? The answer may come from examining conflicts of interest. The employer is a part of the state of Minnesota. The agency tasked with unemployment insurance and unemployment law is also a part of the state of Minnesota. There may be bias not to rule against the other. Mr. Shackelford researched the biographies of the three judges that decided the case in the Court of Appeals. Two of the three were alumni of the employer/respondent, University of Minnesota. The third worked with the University's Law School, though not clear if it was a paid position or volunteer. In any case, all three judges were affiliated with one of the parties of the case, the respondent. This sets up a clear chance for bias. The University is a powerful political entity and they may not have wanted to rule against it nor an agency that is another part of the state. The U.S. Supreme Court could remove any opportunity or doubt of bias favoring the respondents.

REASONS FOR GRANTING THE PETITION

In Summary, there are multiple reasons given in Rule 10 that allow for the U.S. Supreme Court to review and decide on a case that has come through state courts. This case meets many of those criteria. There are federal questions, as the Americans with Disabilities Act is involved, and rulings so far contradict that Act and federal case law. The federal agency EEOC has been involved and their charges were entered as evidence by Mr. Shackleford.

The actions of the employer, state unemployment agency, and state courts have violated Mr. Shackleford's rights under the U.S. Constitution. His civil rights as a protected class member are spelled out in cases already reviewed by the U.S. Supreme Court, however there is a loophole as no cases specifically have addressed the ADA and employer abuse. If state courts and agencies are allowed to overrule or circumvent the ADA, that opens a pandora's box that puts other protected classes in jeopardy for similar abuse, including U.S. Service men and women and veterans. This case needs a Supreme Court ruling to prevent this.

The judges in State Court have so far departed from established law. They have been unable to follow their own statutes. There is a lack of oversight or accountability from the state level. Part of this may be from bias favoring the respondents, and the judges did not excuse themselves from the case despite history and affiliation with one of the parties. The decisions are suspect and need review from a higher authority that can decide fairly.

The U.S. Supreme Court takes cases that have wide-reaching ramifications. This case goes far beyond Mr. Shackleford and his unemployment benefits. This case extends to all citizens nationwide experiencing abuse and discrimination from an employer. A decision here by the Supreme Court could set a clear standard for all states.

REASONS FOR GRANTING THE PETITION

A Standard that defines employment misconduct, and if an employee seeking protection from the Court from his abuser is misconduct. A Standard that clarifies the rights of whistleblower retaliation victims. A Standard that holds employers accountable for their actions, as the Case law that Minnesota currently tries to operate under Completely lets abusive employers out of any responsibility and penalizes victims for their reporting and using the legal system to obtain justice.

The University of Minnesota alone has 20,000 employees, and what has happened to Mr. Shackelford Cannot be an isolated incident Considering the number of lawsuits filed against the University every year by employees. That is also just one employer, reading through previous Case law Shows that abuse and discrimination is rampant in the whole labor industry. This affects a large multitude of people, and a clarification here will help prevent further victims and allow them the protections of federal law and Constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justice Stephen". The signature is written in a cursive style with a horizontal line underneath it.

Date: 09/08/2023