23-7400

No. 20-

IN THE
SUPREME COURT OF THE UNITED STATES

LESLIE J. REYNARD
Petitioner,
v.

WASHBURN UNIVERSITY OF TOPEKA
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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Petitioner, Pro Se

QUESTIONS PRESENTED

I. ADA Title I mandates employers to reasonably accommodate qualified, disabled employees who request help. Dr. Reynard's lifelong seizure disorder is triggered by certain types of light. Washburn accommodated this limitation for ten years, until 2017 when she was assigned a dangerously lit basement classroom. Washburn forced Dr. Reynard to continue teaching in the assigned room for nearly two months while it delayed her requested room change. Did Washburn's delay in providing her reasonable accommodation violates its obligation to provide it?

II. The Supreme Court found that timing requirements for EEOC filings are non-jurisdictional (Fort Bend County v. Davis. 2019). Dr. Reynard told Washburn of her EEOC Inquiry in April 2018 (opened as a Charge August 2018 due to EEOC backlog). Washburn did not claim a time-bar defense until about April 2022. Dr. Reynard gave evidence Washburn's time calculations were wrong and also argued for consideration of equitable tolling, continuing violations, and hostile environment evidence. Was the lower court's reliance upon an 11th-hour affirmative defense of "exhaustion" in granting it summary judgment proper?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, Plaintiff below, is Leslie J. Reynard.

Respondent, Defendant below, is Washburn University of Topeka.

RELATED PROCEEDINGS

United States District Court (D. Kan.):
Reynard v. Washburn University of Topeka
No. 19-4012-HLT-TJJ (Feb. 18,.2019)

United States Court of Appeals (10th Cir.):
Reynard v. Washburn University of Topeka
No. 22-3248 (Oct. 2, 2023)

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APPENDIX L: Plaintiff's Statement of Additional Facts (Affidavit of Leslie j Reynard, PhD.) Document 148-1. Filed 07/22/22

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Leslie J. Reynard respectfully petitions for writ of certiorari be issued to review the judgments of the Tenth Circuit Court of Appeals and the U. S. District Court for the District of Kansas in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit , appears at Appendix A to the petition and is unpublished. The opinion of the United States District Court for the District of Kansas appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided Petitioner's case was October 2, 2023. Petitioner's request to the 10th Circuit Court of Appeals for an extension of time until October 31, 2023 to file petition for rehearing was filed on October 6, 2023 and was granted. Petitioner's petition for rehearing was timely filed on October 31, 2023. Petitioner's timely petition for rehearing or for rehearing *en banc* was denied by the 10th Circuit Court of Appeals on November 15, 2023. 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 April 12, 2024 on February 12, 2024 in Application No. 23A744.. A copy of the letter granting this extension appears at Appendix D.

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

RELEVANT STATUTORY PROVISIONS

Title VII of the Civil Rights Act of 1964. Public Law 88–352; 78 Stat. 241 provides in relevant part:

> § 2000e-2. [Section 703]. (a) Employer practices. It shall be an unlawful employment practice for an employer -(1) to fail or refuse to hire or 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."

29 C.F.R. Appendix to Part 1630. Interpretive Guidance on Title I of the Americans With Disabilities Act. [§1630.2, §1630.4 §1630.7, [§1630.9, §1630.12 appear at Appendix G]

29 U.S.C. § 791 provides in relevant part:

> (g) *Standards used in determining violation of section.* The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination

> under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 *et seq.)* and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

29 U.S.C. §12101 *et seq* (Americans with Disabilities Act of 1990). [Appears at Appendix F]

42 U.S.C.A. § 2000e-2(a) provides in relevant part:

> Employer practices. It shall be an unlawful employment practice for an employer -(1) to fail or refuse to hire or 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 .

42 U.S.C.A. § 2000e-3 provides in relevant part:

> Other unlawful employment practices (a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings "It shall be an unlawful employment practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter [Equal Employment Opportunities, codified at 42 U.S.C. § 2000e - §2000e-17].

42 U.S.C. § 12182(b)(2)(A)(ii) provides in relevant part:

> [D]iscrimination includes ... a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

INTRODUCTION

The Tenth Circuit erred by affirming the lower court's award of summary judgment and finding that Petitioner Leslie Reynard had failed to prove her ADA failure-to-accommodate claim. The lower court ruled that she had failed to provide evidence of an adverse employment action sufficient to meet the third prong of the burden-shifting analysis it had used. Summary judgment also was granted on the grounds that Dr. Reynard's claims should be time-barred because the EEOC opened her "official" Charge approximately 315 days after the situation giving rise to this suit occurred. Finally, the lower court found that Title VII discrimination had not been proven, even though Dr. Reynard's claims were and are solely for ADA discrimination, retaliation, and failure to accommodate. Here, the lower court shifted between discussing Title VII discrimination and ADA discrimination, as if the elements of these are identical, when they are not.

The failure-to-accommodate issue is the central issue in many ADA Title I suits and is still being contended. The Tenth Circuit is among those which have held that adverse employment action is not a requirement to prevail on a failure to accommodate claim. The lower court reliance on adverse employment action as a required element of Dr. Reynard's failure-to-accommodate claims is an erroneous ruling that defies the clear authority that the Tenth Circuit, sitting *en banc* on rehearing of *Exby-Stolley v. Board of County Commissioners,* which had held that

an adverse employment action is a required element in a failure-to-accommodate claim under the ADA.[1]

In the plain language of the ADA, actual elements of a viable failure-to-accommodate claim are 1. A plaintiff show she is a qualified individual with a disability; 2. The covered employer must be aware of the plaintiff's disability; and 3. The employer failed to provide the requested reasonable accommodation. These elements can be demonstrated through direct evidence; there is no need to use a burden-shifting analytical framework such as *McDonnell-Douglas*[2].

Not only have the circuits been split on the issue of failure to accommodate claims for at least a decade, they also are not in agreement as to whether there actually is a split. Confusion arises primarily because 1. There are few cases where a clearcut consequence other than termination is a feature; the "cause" for termination is often generally a bone of contention relying upon circumstantial evidence. When courts must resolve this type of dispute, the McDonnell-Douglas burden-shifting framework for analysis and its modifications comes into play. But not only does this framework fail to provide justice to plaintiffs, it also further complicates, confuses, and confounds opposing parties and the courts.

The majority of EEOC / ADA plaintiffs who press forward with their claims and Charges against the employers are not represented by counsel and must proceed *pro se*. Being disabled from the outset, this sad reality logically posits that

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[1] *Exby-Stolley v. Board of County Commissioners*, 906 F.3d (10th Cir.2019), *reh'g en banc granted*, 910 F.3d 1129 (10th Cir. 2018)

[2] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

they are at a higher risk of economic, emotional, and physical harm in the post-ADA work environment than they were prior to it. Employers then were more likely to see their disabled workers through a "human relations" lens and treat them with compassion. With the advent of the "human resources" model and well-meaning socio-political rearrangement of the workplace under Title VII and other civil rights legislation, administrators now are more likely to see disabled workers as a "problem" that must be managed in such a way as to avoid liability and, as in this case, they do so grudgingly and with animus.

STATEMENT OF THE CASE

A. Statutory Background

The purpose of the Americans with Disabilities Act is to end discrimination against people with disabilities in all walks of life, including in employment. See 42 U.S.C. § 12101. It prohibits discrimination "against a qualified individual on the basis of disability in regard to" hiring, compensation, discharge, and "other terms, conditions, and privileges of employment." Id. § 12112(a). [3]A disability is "a physical or mental impairment that substantially limits one or more of [an individual's] major life activities." Id. § 12102(1)(A). An individual is "qualified" if she can perform the "essential functions" of the job with or without "reasonable accommodation[s]," id. § 12111(8), including making workspaces more accessible,

restructuring schedules, or providing different equipment, id. § 12111(9)(A)-(B); 29 C.F.R. § 1630.2(o)(2)(i)-(ii).

When an employee seeks a workplace accommodation, the employee and the employer are expected to work together in an "interactive process" to find a suitable accommodation. 29 C.F.R.§ 1630.2(o)(3). An employer's failure to make "reasonable accommodations" for a person with a disability violates the ADA unless the accommodation "would impose an undue hardship" on the employer. 42 U.S.C. § 12112(b)(5)(A).

The phrase "terms, conditions, and privileges of employment" in the ADA mirrors nearly identical language in the ban on employment discrimination in Title VII of the Civil Rights Act of 1964. Pet. 5; see 42 U.S.C. § 2000e-2(a)(1). The important difference is that Title VII was not designed to protect disabled people, and the sole reason for the existence of the ADA is to protect disabled people.

In "disparate treatment" suits under Title VII, the lower federal courts have often held that, to state a claim for relief, an employee must suffer what they call an "adverse employment action." The adverse-employment-action doctrine is only appropriate when direct evidence is not available and the "intent" (subjective and nebulous) must be addressed. Circumstantial evidence is the lens for that.

The three elements of an ADA failure to accommodate claim (which does not exist under Title VII) are that 1. a qualified disabled employee requests reasonable accommodations, 2. that the employer is aware of the employee's disability and need to accommodations to manager her limitations on the job, and 3. the employer failed

to provide the requested reasonable accommodation. The only defense an employer can raise to the third element is that it would present undue hardship to the employer.

Title VII simply prohibits "discriminat[ing] against an individual with respect to his ... terms, conditions, or privileges of employment." 42 U.S.C. § 2000e-2(a)(1) (Title VII); see 42 U.S.C. § 12112(a) (ADA). Regardless of the validity of the adverse-employment-action doctrine in a disparate-treatment claim (a Title VII concept that may or may not be relevant under the Congressional intent and plain language of the ADA), no circuit has squarely held that an ADA failure-to-accommodate plaintiff must prove an adverse employment action.

B. Procedural Background

Dr. Reynard's' consolidated suit raised three claims under the ADA: (1) failure to provide reasonable accommodations, (2) disability discrimination, and (3) disability retaliation. The filing history is complex due to EEOC Charge-filing time requirements and Washburn's persistent violations of affirmative action and ADA laws. Within the consolidated suit, mediation and settlement had failed by November, 2019. First Amended Complaint was filed December 4, 2019 (Doc. 31). (District Court Docket report for the consolidated cases).

Washburn filed its Motion to Dismiss (Doc. 39) on January 8, 2020. The District Court denied the Motion to Dismiss (Doc. 51) on March 5, 2020. Dr. Reynard's attorneys moved to withdraw (Doc. 59) on June 19, 2020; Dr. Reynard opposed this (Doc. 68). The Court permitted the withdrawal after Dr. Reynard's

deposition had been taken (Doc. 69 and Doc. 72). From August 6, 2020, Dr. Reynard has proceeded *pro se.*

On or about January 8, 2020, Washburn terminated Dr. Reynard's tenured professorship and, pursuant to contractual conditions of the *Washburn University Faculty Handbook,* she appealed that decision and requested the formal internal hearing to which she was entitled. Washburn fully controlled that proceeding, which lasted from January, 2020 to June, 2021 when it was concluded. In September, 2020, Dr. Reynard moved for a stay pending the outcome of Washburn's internal administrative process. (Doc. 78) which the Court granted (Doc. 81) on October 13, 2020. Also in September, 2020, the Court consolidated all three suits for discovery and pretrial purposes. (Doc. 75) Dr. Reynard and Washburn's counsel filed status reports each month, November 2020 through July 2021. (Doc. 83, 85, 88, 89, 90, 91, and 97).

On July 8, 2021, Dr. Reynard filed a Notice of Voluntary Dismissal Without Prejudice[i] under Rule 41(a)(1)(A)(i), in the belief that Washburn had not filed a responsive pleading to her Complaint in 2:20-cv-02219-HLT. (Doc. 96) Being advised that her Motion was improper, she then filed for leave to amend (Doc. 104), and the Court allowed it (Doc. 105). "The Court advised Dr. Reynard either to withdraw the motion or have it granted and face potential financial consequences (attorney's fees) should any state suit be deemed duplicative, Dr. Reynard withdrew her Amended Motion to Dismiss Without Prejudice (Doc. 106, Doc. 109, Doc. 111, Doc. 112) on November 19, 2021.[ii]

Protective Order requiring remote pretrial conference was granted (Doc. 129) on March 18, 2022, and Pretrial Order (Doc. 131) was entered on April 5, 2022. On April 8, 2022, Dr. Reynard moved to proceed *in forma pauperis* (Doc. 132) and moved for appointment of *pro bono* counsel (Doc. 133) since Judge James had said in status conference she planned to do that. The motion to proceed IFP was granted and the motion for *pro bono* counsel was denied (Doc. 140) on April 27, 2022.

On April 20, 2022, Washburn filed Motion for Summary Judgment (Doc. 136) and Memorandum in Support (Doc. 137). Dr. Reynard filed Motion to Dismiss Motion for Summary Judgment or, in the alternative, defer consideration and ruling pending completion of limited discovery (Doc. 146). This was denied (Doc. 147). Dr. Reynard filed Response to summary judgment motion (Doc. 148) on July 22, 2022, along with conventionally filed exhibits (Doc. 149)

Dr. Reynard moved to file a Second Amended Complaint (to correct a material error that entered the record when counsel represented her early in the litigation) (Doc. 153). This was denied (Doc. 155) on August 29, 2022). Dr. Reynard moved to file a Surreply (Doc. 156) on September 6, 2022, submitted on September 9, 2022 (Doc. 158), in another attempt to correct the serious error in the date of the room assignment made by her former counsel in her Complaint. On October 5, 2022, the Court denied leave to file the surreply and granted summary judgment to Washburn (Doc. 160 and Doc. 161).

Dr. Reynard filed Notice of Appeal (Doc. 162) and Motion for Leave to Appeal *in forma pauperis* (Doc. 163), which was granted (Doc. 164). Preliminary record on

appeal was transmitted to the 10th Circuit Court of Appeals (Doc. 165) and the Appeal docketed that date (Doc. 166). On October 2, 2023, The Appeals Court panel affirmed the lower court decision. Dr. Reynard filed a petition for rehearing or rehearing en banc on October 31, 2023. She moved to file a supplement to her opening brief on November 13, 2023. On November 15, 2023, Judges Holmes, Hartz and Phillips filed an Order denying filing of the supplement to the brief and issued is Order disposing of the petition for rehearing or rehearing *en banc.*

Petitioner appeals from the lower court and appeals court decisions.

REASONS FOR GRANTING THE PETITION

I. .Because Washburn's delay in providing Dr. Reynard's reasonable accommodation violated its obligation to provide it, summary judgment dismissing her ADA claims was improper.

A. It was made clear in the First Amended Complaint and other pleadings filed subsequently that Dr. Reynard was only claiming the three ADA violation – not ADEA or Title VII violations. However, the lower court repeatedly confused the two sets of standards

The ADA clearly states that employers have a duty of accommodation.[4]The employer has an affirmative duty to reasonably accommodate a qualified disabled person who asks for accommodation unless it poses an undue hardship for the employer. In its Memorandum and Order awarding summary judgment to Washburn developed its analysis as if it were deciding a wrongful termination suit, not an ADA suit. See, for One example is in the section entitled "ANALYSIS. ... Then, the Court turns to the merits of Plaintiff's Title VII retaliation claim, followed by her ADA discrimination claim and ADA failure-to-accommodate claim... [5]

Nowhere in the Memorandum and Order is there any substantive analysis of Washburn's failure to meet the third element of an ADA failure to accommodate claim – denial of reasonable accommodation to Dr. Reynard. There was no proffer by Washburn of undue hardship because there would have been no hardship.

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[4] Section 12112 (b)(5).
[5] (App-B-13)

In pages 9 through 12 of the Court's analysis, the discussion focuses on the merits of Washburn's proffered defense against "pretext" – a burden-shifting doctrine requirement. It is as if the Court is deciding a summary judgment motion for a wrongful employment termination suit. But this suit rests on three separate ADA claims, and the failure to accommodate claim is strongly supported by direct evidence which was not refuted by Washburn nor denied as valid by the court. '

If a reasonable accommodation could be made and an employer does not provide it, then the burden shifts to the employer to establish that providing said accommodation would result in an undue hardship for it." [6]

To be an undue hardship for the employer, the accommodation must require significant difficulty and or expense.[7] This third element – failure to provide reasonable accommodation – is clearly proven through direct evidence that Dr. Reynard provided: She is a person with a disability known to Washburn. Washburn was notified on a number of occasions that she had a neurological disability related to light, and that she needed accommodation for this.

Specific to the 2017 classroom assignment, where Dr. Reynard was required to work for nearly two months after she requested accommodation, the following facts indicate that Washburn would have had zero hardship meeting the request immediately: Dr. Reynard would have taken any space that had natural light and did not request a specific classroom or even a specific buidling. The debate team

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[6] US airways, Inc. V. Barnett, U. S. 391, 402 (2002)
[7] 42 section 12111 (10)A.

(fewer than a dozen students, were using one of her usual classrooms as a practice space several days a week; the team also had at least two other spaces permanently assigned to them. Finally, and most relevant, all of the Communication Studies classes Washburn offers are "hybrid."

This means that they are all constructed and available on the online learning system, Desire to Learn ("D2L"). In the case of Dr. Reynard's classes Fall semester 2018, she was already teaching two as fully online and the other two were "hybrid," with all course materials posted to D2L and all students already enrolled in each of the online venues. Finally, Dr. Reynard had taught this class fully online previously and all of the course materials specific to that course, including lecture notes, PowerPoint slides, quizzes, and discussion boards were already in place before the semester even began.

Washburn alleges that Dr. Reynard's FMLA paperwork did not specify that the "neurological condition" being accommodated related to lighting S(although it already had received ample notice that it did), and thus Washburn was not required to provide a safely lit workspace. Even if this were true and Washburn needed additional details as to the exact nature of the accommodation requested, it was Washburn – not Dr. Reynard – that failed to engage in the required "interactive process" by not determining what additional information was needed and then asking Dr. Reynard to provide it.

Dr. Reynard met all the elements required to meet her prima facie case She made her chronic neurological condition known and numerous requests for accommodation (asking for no more than a safely lit workspace.)

II. Dr. Reynard evidence shows that Washburn's time calculations were wrong and also argued for consideration of equitable tolling, continuing violations, and hostile environment evidence. This case should have been allowed to go to trial and not dismissed on summary judgment.

A. Dr. Reynard's ADA claims should have been allowed to go forward to trial rather than being dismissed at summary judgment because Dr. Reynard's April 2018 EEOC Inquiry / Charge provided Washburn with notice of her action, which is the purpose of the filing requirement.

Attorneys for both parties erred in realizing that the date of the classroom assignment complained of took place in 2017 and not in 2018. Plaintiff's the mistake was not discovered until in or about April, when the case was moving to the end of discovery and dispositive motions. Because it did not raise it sooner, Washburn waived that affirmative defense.

B. Plaintiff attempted to amend her complaint to frame the events within the correct temporal context but leave to amend was denied; motion for summary judgment capitalizing on the error was filed the same day

Please refer to the documents attached to this Petition as Appendix L, Appendix K, Appendix J, and Appendix H. Once the error was discovered during a telephone status conference just before the deadline for discovery, Dr. Reynard attempted to correct the attorneys' error by amending her Complaint to raise theories of equitable tolling and continuing violations in order to establish that a

time-bar should not cause dismissal of her suit. All of these efforts were denied by the lower court.

Petitioner believes that this is a procedural error that violates her Fourteenth Amendment rights to substantive and procedural due process. Please note that in the three-page Appendix J email exchange between Judge Teeter's chambers and Washburn's attorney, Dr. Reynard is not even a party to the discussion. The email indicates that the lower court judge likely did not even read the pleading.

Further evidence that Dr. Reynard's documents – which provide (probably too much) evidence of the violations of her rights under the ADA that she endured – were not given attention by the lower court is this exceptionally long footnote and passage from the Memorandum and Order (App-B at 15-16). It is important to note that the EEOC Inquiry the lower court refers to <u>was</u> provided to the lower court on a number of occasion. Please see App-I at page 16, which is a copy of the EEOC Inquiry taken from the agency's site on the day of filing it and shown to Department Chair Mary Pilgram the following week. This was Exhibit 1 to the denied Surreply. This identical exhibit was also part of Dr. Reynard's exhibits to her Opposition to Summary Judgement as part of Plaintiff's Statement of Additional Facts (Affidavit of Leslie J. Reynard, PhD), part of the conventionally filed exhibits docketed as Document 148-149, This copy of the Inquiry was numbered 000465 in that filing.

> Before bringing a claim in federal court, a plaintiff asserting employment discrimination claims must exhaust her administrative remedies. *Al-Ali v. Sal Lake Cmty. Coll.*, 269 F. App'x 842, 846 (10th Cir. 2008) (Title VII). A plaintiff exhausts her claims by filing a

charge with the EEOC, and a plaintiff has 300 days from the date of an incident to file this charge. *Id.* Plaintiff filed her charge on August 14, 2018, so only discrete acts occurring after October 18, 2017 are actionable. Plaintiff has also limited her own contentions to events before December 2019. She did not administratively exhaust her termination before or during this case. The Court therefore limits the actionable discrete acts to those that occurred between October 18, 2017 and December 2019.

Plaintiff repeatedly reiterates in her response that she filed her EEOC charge on April 13, 2018, when she allegedly submitted an online EEOC inquiry. An inquiry is distinct from an actual charge. There may be times when an inquiry can serve as a charge. *See, e.g., Martinez v. Prairie Fire Dev. Group, LLC*, 2019 WL 3412264, at *3 (D. Kan. 2019) (citing *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 402 (2008)). *But to determine whether an inquiry can serve as a charge, the Court must review the content and characteristics of the inquiry. See 29 C.F.R. § 1601.12. Plaintiff failed to include her inquiry for the Court to review with her response or offer any argument on why her inquiry makes up a charge.* The Court will not supplement the record for her or make arguments on her behalf.9
[*emphasis added*]

[fn] 9 Defendant's original brief clearly identified timeliness as an issue. Doc. 137 at 34-35. *But Plaintiff never explained in her response why the Court should use her "EEOC charge initiation" date (April 13, 2018) instead of Defendant's date (August 14, 2018). The EEOC inquiry should have been attached to the response brief as an exhibit. After Defendant identified this omission; Plaintiff attached a copy of her inquiry to her proposed surreply brief. Doc. 158-3. But the Court finds no surreply is warranted. The Court therefore will not consider the content of Plaintiff's inquiry (which is dated April 18, 2018—not April 13, 2018 as Plaintiff recites). ... See generally Martinez*, 2019 WL 3412264, at *4-*5. Plaintiff fails to explain why the inquiry should constitute a charge under *Holowecki*. Instead she reiterates that the "numbers" on the inquiry and charge are the same and blames the EEOC's backlog of cases. The Court will not be Plaintiff's advocate and create arguments for her. ...
[App-B at pp. 15-16]

Plaintiff's filings throughout this litigation have clearly focused on her belief that her EEOC Inquiry initiated the "Charge" and this contention is congruent with both the Act and the EEOC enforcement guidelines.

In *Boechler v. Commissioner of Internal Revenue,* No. 20-1472 (U.S. Apr. 21, 2022).), the Court ruled that a federal time deadline is jurisdictional only if Congress clearly states that it is. Issues that Boechler raised on the issue of equitable tolling were not decided, although it did not rule out the possibility that deadlines could and would be extended:

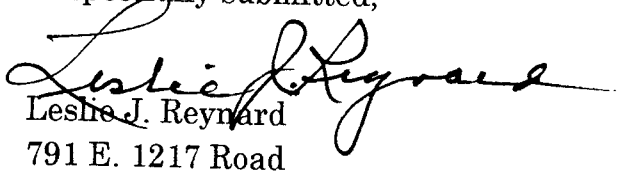
> We are not convinced that the possibility of equitable tolling for the relatively small number of petitions at issue in this case will appreciably add to the uncertainty already present in the process... petitions for review are considered filed when mailed. 26 U. S. C. §7502(a)(1). The 30-day deadline thus may come and go before a petition "filed" within that time comes to the IRS's attention...None of this is to say that Boechler is entitled to equitable tolling on the facts of this case. That should be determined on remand. We simply hold that §6330(d)(1)'s filing deadline, like most others, can be equitably tolled in appropriate cases.

The toxic CN/CAS working environment, incorporated into the Pretrial Order, was set forth in several additional areas of the record of this suit and the FAC hearing. These Dr. Reynard's. evidence and witnesses who would appear facts could lead a reasonable person to believe that genuine issues of material fact exist. A jury would be the appropriate entity to determine which is true and/or credible.

CONCLUSION

Circuit splits exist on issues central to this case. The Court should grant certiorari to allow the issues brought forward in this Petition, all dealing with issues of broad and fundamental importance to the American republic and especially to its disabled citizens. How can a disabled worker safeguard her Constitutional right to life and health and employment in safe circumstances – is central to a constellation of contributing questions that have resulted in confusion both for those protected by the ADA and for those who are mandated to accommodate their qualified disabled employees. These include the proper analytical frameworks by which to determine ADA failure-to-accommodate claims, how to incorporate evidence of employers' continuing violations of the ADA and hostile workplace situations into that analysis, what role the EEOC's guidelines and advocacy may play, and how strictly must a pro se disabled plaintiff be required to enact the professional standards of attorneys? The Court is asked to reverse the appellate court's decision and remand this case to the lower court so that it may be tried in front of a jury.

Respectfully submitted,



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Date: April 12, 2024