

24-1054
No. 25

ORIGINAL

IN THE
Supreme Court of the United States

Supreme Court, U.S.
FILED

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DEREK BLOCKHUS,

Petitioner

v.

UNITED AIRLINES, INC.

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Appellate Court properly construe all facts in the light most favorable to the nonmoving party, as required by Federal Rule of Civil Procedure 56, or did it improperly weigh in favor of the Appellee by overlooking and disregarding critical facts, evidence, as well as the contradicting testimony by Ms. Lense that directly disputes and discredits all the Appellee's claims—evidence that would have supported the Petitioner's position.¹

¹ Lead "investigator" John McCormick admitted under testimony that he conducted no actual investigation beyond taking a statement from Ms. Lense. He never contacted or spoke with Mr. Blockhus, nor did he attempt to verify any of Ms. Lense's claims before reaching his so-called "conclusions." Lense's own testimony directly contradicted her claims of harassment, as she admitted under oath that she and Mr. Blockhus were on "*friendly terms*" during the time frame in which she alleged the harassment occurred. Given these deficiencies, the evidence lacked the reliability necessary to support a ruling in favor of the Appellee. Furthermore, this case involved multiple disputed facts, all of which were material to its outcome—including Ms. Lense's own testimony that her primary concern was losing her job and that she had no reason to report Mr. Blockhus until she learned that she was being reported to the company for harassment. These disputes warranted a more thorough review, as they were central to assessing the merits of the case.

2. Did the Appellate Court dismiss the FMLA claims prematurely without thoroughly analyzing the Petitioner's claims of pretext, particularly given the suspicious timing as well as chain of events? Specifically, did the court overlook United's actions that included shortening the time allotted for the Petitioner to apply for FMLA leave—contrary to their own policies—and repeatedly contacting Mr. Blockhus while on his approved FMLA leave, which violated FMLA protections. Additionally, did the court fail to recognize United's agreement to postpone any investigation until after Mr. Blockhus's FMLA leave, only to terminate him as soon as he exercised his FMLA rights, suggesting possible unlawful interference with his statutory entitlements by Junior management?²

² The Petitioner was granted FMLA leave for the block period of February 8, 2021, to April 1, 2021, to undergo treatment for a serious disability that was exacerbated by the extreme stress caused by the false accusations made by Ms. Lense.

3. Did the Appellate Court err in admitting text messages submitted by the defense that lacked proper authentication, including missing phone numbers, year, and corroborating evidence, in violation of Federal Rule of Evidence 901(a)? The court further compounded this issue by improperly adding the year to the text evidence—despite its absence—and assuming facts that were neither proven nor supported, contravening established legal standards. Additionally, did the court engage in selective evidence analysis by disregarding harassing communications from Lense to Blockhus, which contained phone numbers, dates, and corroborating evidence, and were acknowledged by Lense as originating from her phone and email?³

³ Ms. Lense initial complaint to United was that she felt her job security was threatened but then later submitted what appeared to be text messages from months earlier of an unknown year.

STATEMENT OF RELATED PROCEEDINGS

1. The United States district court for the Northern District of Illinois
Eastern Division:

Derek Blockhus v. United Airlines Inc. No. 22-cv-03867 JUNE 6, 2023

2. The United States Court of Appeals for the Seventh Circuit Chicago,
Illinois

Derek Blockhus v. United Airlines Inc. No. 1:22-cv-03867 SEPT. 19, 2024.

3. Notice of Intent to Appeal Order Case

No. 24-1043/1:22-cv-03867 OCT 11, 2024

4. The United States Court of Appeals for the Seventh Circuit Chicago,
Illinois

Derek Blockhus v. United Airlines Inc. No. 1:22-cv-03867 (Deny Rehearing)
NOV. 4, 2024

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PETITION FOR WRIT OF CERTIORARI

I, Derek Blockhus respectfully petitions this Court for a *writ of certiorari* to review the judgment of the appellate court, which failed to properly fulfill its fundamental duty to construe all facts in the light most favorable to the non-moving party, as required when evaluating a motion for summary judgment. In this case, the appellate court erroneously accepted the moving party's assertions without giving due consideration to the arguments or critical evidence presented by the petitioner. This includes substantial material facts demonstrating genuine disputes, such as the unverified, un-authenticated evidence relied upon by the lower court, and corroborative evidence favoring the petitioner that was unjustly disregarded. The appellate court's decision undermines the principles established in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), which mandates that courts view all evidence in favor of the non-moving party during summary judgment proceedings. By failing to do so, the appellate court improperly tilted the scales of justice, depriving the petitioner of a fair opportunity to present his case in a court of law. This Court's intervention is necessary to ensure uniformity in applying these standards and to correct the manifest injustice caused by the appellate court's misapplication of summary judgment.

OPINIONS BELOW

The decision of the Illinois Appellate Court, Seventh District, in Blockhus v. United Airlines, Inc., affirming the trial court's grant of summary judgment in favor of United Airlines, is reported at 2024 IL App (7th) 214568.

JURISDICTION

The judgement of the United States Court of Appeals for the Seventh Circuit was entered on September 19, 2024. A petition for rehearing en banc was denied on November 4, 2024. This petition Writ of Certiorari is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

I. U.S. Constitution, Amendment XIV, Section 1 (Fourteenth Amendment)

"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."

II. Family and Medical Leave Act (FMLA), 29 U.S.C. § 2615(a)(1) "It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter."

(2) "It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter."

III. Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e-3(a)

"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."

IV. Federal Rules of Evidence, Rule 901(a) (Authentication and Identification)

"To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."

V. Collective Bargaining Agreement (CBA)

The relevant provisions of the Collective Bargaining Agreement between United Airlines Inc. and The Association of Flight Attendants (AFA) violations include Sections;

1. JCBA section 23 A.1
2. JCBA section 21.C
3. JCBA section 29.A
4. Family and Medical Leave Act 29USC ch.28

APPELLATE COURT DECISION (Seventh Circuit)

The Seventh Circuit Court of Appeals affirmed the District Court's decision, holding that the trial court had appropriately applied the summary judgment standard.

The Appellate Court's conclusion that United acted within its rights as an employer is deeply troubling, especially given the clear violations of Mr. Blockhus's employment contract and the substantial evidence that directly contradicts United's assertions.

Such a ruling appears to overlook several critical aspects. Given these factors, the Appellate Court's ruling seems to lack a fair and thorough assessment of the evidence and context. This decision has significant implications for the integrity of employment rights and the judicial process, warranting reconsideration at a higher level to ensure justice is served.

ISSUES FOR SUPREME COURT REVIEW

Mr. Blockhus, now seeks review of the Seventh Circuit's decision by the Supreme Court, raising the following issues:

1. Failure to View Evidence in Favor of the Non-Moving Party:

The Appellate Court failed to apply the proper legal standard in this summary judgment case, which mandates that all evidence be viewed in the light most favorable to the non-moving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (holding that courts must draw all justifiable inferences in favor of the non-moving party in summary judgment proceedings) and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (stating that summary judgment is appropriate only when there is no genuine dispute of material fact). By neglecting this fundamental standard, the court improperly disregarded key facts supporting Mr. Blockhus's claims, thereby rendering a decision that is inconsistent with precedent and necessitates further judicial review.

2. Improper Admission of Unauthenticated and Unverified text Evidence:

The Appellate Court improperly admitted text messages submitted by United that lacked necessary authentication, contained no phone number, year, or

corroborating evidence. The failure to authenticate such evidence violates fundamental principles of evidentiary admissibility. See *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 542–43 (D. Md. 2007) (emphasizing that electronically stored information must be properly authenticated before being admitted as evidence). The court further compounded this issue by improperly adding the year to the text evidence—despite its absence—and assuming facts that were neither proven nor supported, contravening established legal standards. See *United States v. Vayner*, 769 F.3d 125, 132 (2d Cir. 2014) (holding that unauthenticated electronic evidence cannot be admitted absent sufficient proof of authorship and reliability).

These errors had a direct impact on the fairness of the appeal. The court's reliance on unverified evidence to Mr. Blockhus's detriment, while disregarding crucial evidence that clearly demonstrated Ms. Lense was the harasser, highlights a profound miscarriage of justice. Such selective consideration of evidence raises concerns about judicial impartiality and due process. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) (stating that courts must consider the entire record and cannot selectively disregard evidence that may support the non-moving party).

Furthermore, McCormick, who was the lead investigator, stated in his testimony when asked how he determined the authentication of the text messages: “nothing was done to verify the authenticity of these text messages”. “*I had no reason to doubt that these were sent from anyone other than Derek based on my conversation with Katherine Lense*”, “*I did not believe I had to do anything to confirm*”

Here the Appellate court accepted a simple “*phone conversation*” as sufficient. This testimony, coupled with the lack of proper authentication and the court's failure to apply appropriate evidentiary standards, underscores the need for judicial review to rectify these procedural and substantive errors. 901(a),(b)(1), and (b)(4) of the Federal Rules of Evidence establishes the standard for authenticating evidence before it can be admitted in court.

3. Disregard for Evidence of Retaliatory Motive:

The Appellate Court failed to give proper consideration to critical evidence demonstrating that Ms. Lense filed her case against Mr. Blockhus immediately after learning that he intended to report her for harassment. The timing of this filing strongly suggests a retaliatory motive, which the court improperly disregarded. Moreover, Ms. Lense explicitly testified that she initiated her case not due to any genuine harassment but rather to

"protect her job." This admission directly undermines the credibility of her claims and aligns with established legal precedent recognizing retaliatory claims as a basis for wrongful action. See *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006) (holding that retaliation occurs when an adversdissuade a reasonable person from pursuing their rights)

4. Violation of FMLA Protections:

The Appellate Court improperly disregarded evidence that United Airlines unlawfully shortened the time Mr. Blockhus had to apply for FMLA leave, in direct violation of their own established policies. Additionally, the court failed to acknowledge United's repeated contact with Mr. Blockhus during his approved FMLA leave, which constitutes interference prohibited under the Family and Medical Leave Act (FMLA). See 29 U.S.C. § 2615(a)(1) (prohibiting employers from interfering with, restraining, or denying the exercise of FMLA rights) and *Sheridan v. E.I. DuPont de Nemours & Co.*, 100 F.3d 1061, 1066 (3d Cir. 1996) (holding that employer actions that discourage employees from taking FMLA leave constitute unlawful interference). Moreover, the court failed to recognize that United explicitly agreed to postpone any investigation into Mr. Blockhus until after his FMLA leave, yet proceeded to terminate him as soon as he exercised his FMLA rights. Such adverse action immediately following the invocation of FMLA leave strongly suggests retaliatory motive and unlawful interference. See *Hoge v. Honda of Am. Mfg., Inc.*, 384 F.3d 238, 244 (6th Cir. 2004) (finding that termination shortly after FMLA leave raises an inference of retaliation) and *Pagel v. TIN Inc.*, 695 F.3d 622, 629 (7th Cir. 2012) (holding that taking adverse action against an employee on FMLA leave constitutes unlawful interference if it deters the employee from exercising their rights).

By failing to properly consider these clear violations of Mr. Blockhus's statutory protections, the Appellate Court misapplied the law, overlooked crucial evidence, and rendered a decision that necessitates further review as Mr. Blockhus was immediately terminated without cause after he took FMLA even though there was a mandate to postpone any action until he returned, suggesting retaliation or pretext.

5. Acceptance of United's
 "Honest Belief" and "He would have
 been fired anyway" Defense
 Without Proper Scrutiny:

The Appellate Court improperly accepted United's defense without critically examining its foundation, despite the fact that Mr. Blockhus was absent from his own investigation. This oversight raises serious concerns about whether United's termination of Mr. Blockhus—coinciding with his decision to take FMLA leave—constituted a violation of the Family and Medical Leave Act (FMLA) protections against interference and retaliation. See **29 U.S.C. § 2615(a)(1)-(2)** (prohibiting employers from interfering with, restraining, or retaliating against employees for exercising their FMLA rights). Courts have consistently held that termination occurring in close temporal proximity to FMLA leave raises a strong inference of unlawful retaliation. See *Goelzer v. Sheboygan Cty.*, **604 F.3d 987, 995 (7th Cir. 2010)** (finding that an employer's adverse action soon after an employee's FMLA leave can establish retaliatory intent) and *Burnett v. LFW Inc.*, **472 F.3d 471, 479 (7th Cir. 2006)** (holding that an employer's timing of termination relative to FMLA leave can constitute evidence of pretext).

Furthermore, United's defense lacked any objective basis, with substantial evidence suggesting it was merely a pretext to justify their adverse actions against Mr. Blockhus. Courts have held that pretextual reasoning undermines an employer's justification for termination. See *McDonnell Douglas Corp. v. Green*, **411 U.S. 792, 804 (1973)** (establishing that an employer's justification must be legitimate and not a cover for unlawful discrimination or retaliation). The Appellate Court's failure to rigorously evaluate the legitimacy of United's claims—despite compelling evidence that Mr. Blockhus's FMLA leave was a key factor in his termination—constitutes a serious legal error that necessitates further judicial review.

6. Inconsistent Testimony by Ms. Lense:

Lense's own testimony directly contradicted her claims of harassment, as she admitted under oath that she and Mr. Blockhus were on "*friendly terms*" during the time frame in which she alleged the harassment occurred. She explicitly stated, "*Before January 25, no, I did not have a reason to report Blockhus to the company.*" Furthermore, Lense testified that their friendship persisted until January 2021, when Mr. Blockhus indicated he was planning to report her behavior to the company. These statements undermine the credibility of Lense's allegations and raise significant doubts about the

validity of United's position.

Courts have long held that self-contradictory testimony and inconsistencies in sworn statements warrant closer scrutiny and can serve as grounds for questioning the credibility of a witness. See *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999) (holding that contradictory statements by a party may justify disregarding their testimony as unreliable); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000) (finding that courts must assess whether contradictions in testimony create genuine issues of material fact).

Despite these clear contradictions in Lense's testimony, the Appellate Court improperly disregarded this critical evidence, resulting in an unfair assessment of the case. Courts have emphasized that evidence should be viewed in the light most favorable to the non-moving party in summary judgment cases, and dismissing material inconsistencies violates this fundamental principle. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (stating that courts must draw all justifiable inferences in favor of the non-moving party).

These contradictions warrant closer scrutiny, as they fundamentally challenge the credibility of both Lense's claims and United's defense. The Appellate Court's failure to properly consider these inconsistencies constitutes a serious legal error that undermines the fairness and integrity of the proceedings.

7. Failure to Consider witness testimony:

Mindy Richard was a willing witness in this case and provided written statements, as well as testimony under oath, that was highly relevant to the issues at hand. Her testimony would have shed light on critical aspects of the events in question and is essential to a full understanding of the circumstances surrounding this case. Despite the significance of her statements, United actively suppressed this witness from every facet of the case, effectively preventing testimony that would have significantly cast doubt on Ms. Lense's credibility regarding her claims against Mr. Blockhus. Courts have recognized that the suppression of key witnesses or evidence may constitute improper litigation tactics and can indicate a failure to afford due process. See *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) (holding that the suppression of relevant testimony violates fundamental fairness and due process principles). Furthermore, the exclusion of testimony that could challenge the credibility of a key accuser is particularly troubling in cases where the outcome hinges on witness credibility. See *United States v. Valenzuela-Bernal*, 458 U.S. 858, 873 (1982) (stating that the suppression

of testimony relevant to the defense violates due process if the evidence is material to the case).

By suppressing Ms. Richard's testimony, United deprived the court of critical evidence that could have directly impacted the assessment of Ms. Lense's credibility. Courts have consistently ruled that the suppression of key evidence or witness testimony can indicate pretext and a lack of procedural fairness. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (finding that the withholding of exculpatory evidence violates due process rights). Given these legal precedents, United's actions in suppressing this witness should have warranted closer scrutiny, as they may have significantly altered the outcome of the case. The Appellate Court's failure to address this issue constitutes a serious error that undermines the fairness and integrity of the proceedings.

8. Selective Consideration of Evidence:

The court engaged in selective consideration of the evidence by disregarding harassing communications submitted by Mr. Blockhus, which Ms. Lense herself admitted had originated from her phone and email. Meanwhile, the court gave undue weight to unsubstantiated and unauthenticated evidence presented by Lense. This disparate treatment of evidence demonstrates clear judicial bias and raises serious concerns about the fairness of the court's ruling.

Courts have long held that all relevant evidence must be considered impartially, and the failure to evaluate exculpatory evidence while relying on unverified claims constitutes a fundamental due process violation. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that suppressing evidence favorable to the accused violates due process) and *Miller-El v. Dretke*, 545 U.S. 231, 265 (2005) (emphasizing that courts must consider the totality of the evidence to ensure a fair adjudication). Additionally, the court's reliance on unauthenticated evidence while disregarding verified communications contradicts well-established evidentiary rules. See *United States v. Vayner*, 769 F.3d 125, 132 (2d Cir. 2014) (holding that electronic evidence must be properly authenticated before being admitted) and *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 542-43 (D. Md. 2007) (stating that electronically stored information must meet authentication standards before being used as evidence). This selective application of evidentiary standards raises serious concerns about judicial impartiality and suggests an improper weighing of evidence against Mr. Blockhus. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) (holding that courts cannot disregard relevant evidence when evaluating summary judgment motions). The court's failure to fairly assess all evidence, particularly ignoring authenticated and self-

admitted harassing communications from Lense while accepting her unverified claims, constitutes a significant legal error that undermines the integrity of the proceedings and necessitates further judicial review.

9. Statements Made Under Psychological Distress Should Not Be Construed as Admissions.

Courts consistently recognize that statements made under duress or psychological distress lack the reliability and credibility typically ascribed to deliberate, reasoned communications. See *Blackmon v. Scott*, 22 F.3d 560, 565 (5th Cir. 1994) (holding that statements made under severe psychological distress or coercion should not be given the same evidentiary weight as those made voluntarily and with full comprehension of the circumstances). Mr. Blockhus's immediate statements, made under conditions of severe emotional distress, must be interpreted within their proper context. At the time, Mr. Blockhus was confronting serious and false allegations that triggered his acute anxiety, resulting in reactive statements rather than rational or intentional admissions. Courts have long acknowledged that psychological distress and confusion can impair an individual's ability to provide accurate and deliberate responses. See *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991) (holding that statements made under psychological pressure should be carefully scrutinized for reliability) and *Townsend v. Sain*, 372 U.S. 293, 307 (1963) (recognizing that statements made under conditions of extreme mental distress or coercion are inherently unreliable).

These jumbled and rambling statements made by Mr. Blockhus occurred in a context where he lacked full understanding of the specific accusations, depriving him of an opportunity to respond knowledgeably and in alignment with procedural protections typically afforded in such matters. See *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (emphasizing the importance of procedural safeguards to ensure an accused individual fully understands the nature of allegations and their rights before making statements). Given these established legal principles, Mr. Blockhus's statements should have been evaluated within the broader context of his emotional and psychological state, rather than being improperly treated as deliberate admissions. Given the lack of proper notice, any statements made by the Petitioner before the complete disclosure of the charges should not be interpreted as informed responses to the allegations. United management also asserted that the Petitioner's statement was submitted outside the scope of their established process and before he received complete notification of the charges against him.

Statements made outside the formal investigative process, especially those expressed without the benefit of full awareness of the accusations, fail to meet

standards for due process and informed consent. As such, these statements should not be construed as an acknowledgment but rather as preliminary, uninformed reactions made under conditions of incomplete understanding and procedural irregularity. Moreover, Mr. Blockhus has never "admitted" to sending the text messages to Ms. Lense, contrary to United's repeated and unsupported assertions.

10. John McCormick's "investigation"

Although there was a directive that any investigation was to be on hold until Mr. Blockhus returned from his FMLA leave, United claimed to have conducted a "thorough" investigation, despite Mr. Blockhus's unavailability to defend himself or respond to questions. "Investigator" John McCormick confirmed this in his deposition stating;

"I have never communicated with him(Blockhus) from my end, no"

"I did not communicate with Blockhus"

"I didn't speak with him (Blockhus), no."

In Ms. Lense's complain, she claims Mr. Blockhus "threatened" her job, and United attempts to use this claim to support their case yet McCormick testifies,

"My recollection of the voicemail was that Derek was calling to talk about alleged harassment; however, he brought up that he didn't want all this situation to affect Katherine Lense's job."

Furthermore, McCormick testified that Ms. Lenses actual concern was losing her employment with United.

"To my best recollection she had stated she had been on furlough so she was unsure of what the allegations

could be. Her main concern was that she was worried she was returning back to work and Derek had threatened her on voicemail saying that her job could be in trouble based on the allegations that he would have brought forward."

McCormick also initially asserted that *"I need to interview Blockhus,"* but later, following United's adverse and unlawful actions against Mr. Blockhus, changed his position, stating,

"I didn't need to speak with him. You don't have to speak with a respondent."

This shift in stance further suggests that United's intentions may have been biased against Mr. Blockhus, potentially aiming to conceal their true motives. Based on the testimony provided by lead investigator John McCormick, it is clear that no genuine "investigation" was conducted. This lack of investigative effort should have precluded any awarding of summary judgment.

11. Ineffective Legal Representation

The representation provided to Mr. Blockhus in this matter was deficient due to critical omissions and a misdirected focus, which deprived him of a fair trial on the core issue of wrongful termination. Courts have consistently held that ineffective representation, particularly when it results in the failure to present key evidence or properly frame the legal issues, constitutes a violation of fundamental fairness. See *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (establishing that deficient performance by counsel that prejudices the outcome of a case violates the right to a fair proceeding). In employment law cases, courts recognize that counsel's failure to focus on the central issue of wrongful termination and adequately challenge the employer's justifications can significantly prejudice the employee's claims. See *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993) (holding that wrongful termination claims require careful legal framing to distinguish between legitimate and pretextual employer actions). Furthermore, inadequate advocacy that results in the exclusion of crucial evidence or failure to counter adverse claims effectively can constitute reversible error. See *Perkins v. City of Attleboro*, 969 F.3d 98, 104 (1st Cir. 2020) (finding that the failure to challenge an employer's pretextual defense in a wrongful termination case undermined the employee's right to a fair trial).

In this case, the representation's misdirected focus and failure to address critical aspects of the wrongful termination claim fundamentally impaired Mr. Blockhus's ability to present his case effectively. Such omissions necessitate closer judicial scrutiny, as they directly impacted the fairness of the proceedings and the just resolution of the claim. The attorney neglected to present essential evidence and testimony that directly supported the wrongful termination claim. This evidence was crucial to establishing the employer's conduct and substantiating the claim that the termination was not only unjust but also procedurally flawed. Without this evidence, the court was unable to fully consider the merits of the wrongful termination claim, resulting in an incomplete and prejudiced presentation of the client's case. Instead of advocating for the wrongful termination claim—the primary grievance—the attorney focused predominantly on ancillary issues such as alleged violations of the Family and Medical Leave Act (FMLA) and claims of age discrimination. While these claims are relevant, they do not encompass the central injustice suffered by Mr. Blockhus. The wrongful termination claim, which formed the core of his allegations, was effectively sidelined. This

strategic misdirection undermined his ability to obtain a comprehensive remedy and ultimately diluted the overall effectiveness of the legal representation.

The combined effect of omitting pivotal evidence and diverting attention away from the wrongful termination claim constitutes a significant breach of the attorney's duty to provide competent representation. This failure not only compromised the integrity of the proceedings but also resulted in a denial of Mr. Blockhus right to a full and fair adjudication of all claims. The court's inability to evaluate the wrongful termination claim on its merits is a direct consequence of the attorney's inadequate performance.

Mr. Blockhus attorney's failure to submit essential evidence and testimony, combined with the decision to underrepresent the primary wrongful termination claim, significantly impaired the his position. This ineffective legal representation has resulted in a substantial miscarriage of justice, for which remedial action is not only justified but necessary.

STATEMENT

1. Factual background

After months of harassment from Ms. Lense, Mr. Blockhus left two voice messages for her—one on January 24, 2021, and a second on January 25, 2021, at 10:58 a.m., informing her that if she did not cease harassing him and another co-worker, Mindy Richard, they would report her behavior to the company. United later admitted that this call was not against company policy and deemed it "acceptable." Despite this acknowledgment, United then turned around and used it as a basis to terminate him.

Courts have held that an employer's inconsistent treatment of policy violations or selective enforcement can serve as evidence of pretext in wrongful termination cases. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000) (stating that inconsistencies in an employer's justification for termination can indicate pretext)

Just moments later, in what appeared to be a "race to open a case first," Ms. Lense contacted United and filed a complaint against Mr. Blockhus, alleging that he had threatened her employment with the company. Notably, in her initial complaint, she mentioned only that her job was threatened, making no reference to the alleged text messages dated October 11 and November 16 (no year), which she later submitted.

Courts recognize that sudden, retaliatory complaints made immediately after

an employee engages in protected activity—such as reporting workplace misconduct—raise strong inferences of pretext and unlawful retaliation. See *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (holding that adverse actions taken soon after protected activity can establish an inference of retaliation) and *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001) (noting that temporal proximity between an adverse action and protected activity supports an inference of retaliation).

Given these legal precedents, United's acceptance of Mr. Blockhus's call as policy-compliant, followed by their use of the same call to justify his termination, coupled with Ms. Lense's immediate retaliatory complaint, strongly suggests pretext and unlawful motive. The Appellate Court's failure to recognize these inconsistencies and scrutinize the sequence of events constitutes a serious legal error requiring further judicial review.

In later testimony Ms. Lense states;

"Before January 25, no I did not have a reason to report Blockhus to the company"

and again she appeared to focus her claim solely on her concern for her job security. Also notably, in both Ms. Lense deposition and her interviews she admitted to have harassing Mr. Blockhus about her "concerns" about his relationship with Mrs. Richard and "telling her friends" further supporting Mr. Blockhus claims of harassment.

"I had conversations with him(Blockhus) and in the "heat of the moment" I could have said "you spend a lot of time with her, just be careful because she is a married woman"

"I suspected, yes, that's why I told him that he needed to be careful"

"our phone conversations, but I did – not sleeping, but I said hanging out often", "I said I think you've been hanging out way too often with this person so just please watch out, you need to be careful", "I might have talked to my friends"

By 11:45 am, not even an hour after Blockhus voice message, emails were already circulating within United concerning Lense's claim against him. This rapid sequence of events raises questions about the urgency and intent behind Lense's actions, suggesting a potential strategic motive rather than a genuine concern. In her testimony, Lense expressed a strong desire to protect her job amid allegations of creating a hostile work environment for Blockhus, stating:

"I felt like I wanted to protect myself, went to the company, and told them I was being accused of a hostile work environment:, "I didn't want anybody to get in trouble", "I was simply trying to protect my job."

"My biggest issue was the threat to my job"

"I didn't think anything of it until he brought the company into it, I don't

want him to lose his job”

“I didn’t want anyone in trouble, I was simply trying to protect my job”

This illustrates her intention to clarify her position and safeguard her employment. Then in an effort to bolster her case, Lense’s later introduction of text messages dated from months earlier that lacked necessary authentication, contained no phone number, year, or corroborating evidence serves to further contextualize her statements and provide evidence of her state of mind during that period.

In response, Mr. Blockhus provided not only his phone history but also his actual SIM card at the defense’s request giving them access to all phone history and metadata. A thorough review of this evidence established that no connection to Ms. Lense’s submitted text messages existed, further calling into question the validity of her claims. Additionally, it was discovered that between October 2020 and February 2021, Lense contacted Blockhus over 500 times, raising further concerns about the credibility of her allegations.

Unaware of Ms. Lense’s retaliatory case against him, Blockhus received a letter of investigation on February 4, 2021, notifying him of harassment accusations made by Ms. Lense. Recognizing that Ms. Lense appeared to be attempting to block or counter his own claim with a fabricated complaint, he promptly requested that she withdraw her false allegations. United did not advise Blockhus to avoid contact with Ms. Lense until days later and after he had begun receiving care under FMLA leave. Nonetheless, United later asserted that his contact with Ms. Lense constituted additional grounds for termination, attempting to bolster their case. Mr. Blockhus, who suffers from clinical anxiety, experienced a severe emotional response to this unexpected accusation. Blockhus then called his supervisor, Ms. Howell and recited the charges to her adding that Lense’s claims were “ridiculous” In a biased effort to strengthen their case, United falsely argued that Mr. Blockhus was “*admitting guilt*,” despite his clear denial of the allegations. Ms. Howell informed Blockhus that his only recourse to keep his job at United was to issue a statement of apology to management—a fact later admitted by United. In his confused state, Blockhus submitted three different drafts of a statement in response to false allegations of harassment, each reflecting the impact of shock, confusion, and anxiety. None of these drafts contained an “*admission of guilt*,” despite United’s improper claims to the contrary. This misinterpretation underscores the challenges Mr. Blockhus faced in navigating a stressful and unjust situation.

In fact, Mr. Blockhus explicitly stated:

“her claims are “ridiculous”, “I am in no way the person capable of this charge,” “absolutely, not an attempt to sexually harass,” “In no

way do I condone any form of sexual harassment", "I categorically would never sexually harass anyone," and, "it's so very disturbing, I could not even finish reading it as it made my stomach nauseous."

On the contrary, United has been unable to cite a single exact quote to substantiate their allegation that Mr. Blockhus "*admitted guilt*". Mr. Blockhus subsequently retracted these drafts immediately, clarifying to United that they were not his official statement.

Mr. Blockhus was improperly encouraged by his supervisor, Ms. Howell, who informed him that "*United has already come to their conclusion*" and recommended he submit a statement to management if he wished to remain employed. Blockhus testified;

"My discussion with my supervisor was she told me because corporate security is involved, I have no recourse but to – that United already made up their mind. And at this point, I have no recourse but to apologize and write a statement to management, and that's exactly what I did."

United subsequently ignored his correction and misrepresented Mr. Blockhus words, exploiting his statements in a biased and distorted manner that disregarded the truth and took advantage of his vulnerable state. When Mr. Blockhus was confronted with false allegations of harassment, especially unexpectedly, it triggered a state of intense shock and confusion. Mr. Blockhus' initial responses were nothing more than the incoherent and rambling reaction of an individual in a state of severe anxiety. For someone already suffering from diagnosed anxiety as Mr. Blockhus, the psychological impact of such an accusation can be profoundly destabilizing. Anxiety, when heightened by sudden stress, often impairs a person's ability to process information rationally and respond coherently. In his moments of acute anxiety and emotional distress, Mr. Blockhus experience overwhelming fear, racing thoughts, and an inability to focus or reason logically. This emotional state lead Blockhus to a heightened sense of urgency to resolve the situation, even at the cost of making impulsive or uncharacteristic statements or decisions. In his urgency to protect his reputation and livelihood, Blockhus made apologies, offered explanations, and even retracted statements that did not genuinely reflect his true understanding or perspective on the situation. The complexity of these actions was heightened by the timing of the allegations, which surfaced off the heels of the "Women's March on Washington." Despite the accusations, Mr. Blockhus aimed to avoid portraying Ms. Lense negatively, believing that taking responsibility and supporting her as a woman was the appropriate approach. This was apparent in his initial statement and further illustrates his attempt to navigate the accusations with respect and restraint, even in a highly charged context. Under such pressure, anyone may

unintentionally say things they do not mean, agree to statements they would not otherwise accept simply out of sheer panic. This reaction is not an indication of guilt, but rather a reflection of their compromised mental and emotional state. Ultimately, it is crucial to understand that a person experiencing significant psychological distress, and severe anxiety, is more likely to respond impulsively and incoherently when faced with serious and false allegations. His actions and statements during such a time must be viewed through the lens of their mental and emotional condition. Mr. Blockhus health rapidly deteriorated, and on February 8, 2021, members of his Union placed him into the care of the Employee Assistance Program (EAP), where he received assistance in filing for his entitled FMLA. At this time, base manager Monique Williams, in an email, explicitly stated that Blockhus had less than two days to get his request approved, further discouraging him from exercising his rights. Blockhus managed to get his FMLA request approved in time and entered a rehabilitation clinic in Jacksonville, FL. Following this, Ms. Williams issued a directive to everyone involved that Blockhus is **"unavailable"** and the postponement of his investigation until his FMLA leave ended. In fact these individual were made aware of this as early as Feb. 10th 2021. This directive confirms that United acknowledged the Blockhus FMLA entitlement and contractual rights, agreeing to delay the investigation in accordance with his employment contract and due process requirements, which necessitated his availability for a full and fair investigation to proceed. Mr. Blockhus FMLA leave was approved from February 8 to April 5, 2021. Despite this, junior manager Frank Hester began contacting him by phone, email, and mail just four days later, starting February 12, and continued until terminating him in absentia around February 26, 2021. This action was taken despite lead investigator John McCormick's statement that ***"I need to interview Blockhus,"*** underscoring concerns about the procedural fairness of the termination process.

This termination took place as soon as Blockhus went on his approved eight-week FMLA leave, effectively aligning with the time needed to finalize termination paperwork. Mr. Blockhus was ultimately found *"guilty"* in an investigation he was not even part of, raising serious concerns about the procedural fairness and legality of this process. United effectively abandoned Mr. Blockhus when he began receiving critical treatment for his serious disability. No alternatives or assistance for continued care were offered, leaving him stranded in another state without any means to return home to Virginia. This neglect demonstrates a clear disregard for his well-being and the responsibilities of the employer during a time of critical need.

Following Blockhus' premature release from necessary treatment, he promptly

began gathering evidence to counter Ms. Lense's accusations. On September 9, 2021, he filed a complaint with the Equal Employment Opportunity Commission (EEOC), receiving a Notice of Right to Sue United Airlines on June 6, 2022. Subsequently, the Petitioner, through his counsel, timely initiated a lawsuit against United for their adverse actions, including attempts to discourage him from taking his entitled FMLA leave, and interference with his FMLA rights. This series of actions reflects Mr. Blockhus's diligent efforts to seek justice and hold both Ms. Lense and United Airlines accountable. During this time, Ms. Lense continued to stalk and harass Mr. Blockhus, including an incident where she was recorded slashing the tires of his vehicle.

Blockhus submitted this evidence to United, along with a two-year protection order granted against Lense, that she later violated, yet United took no action, demonstrating a clear failure to address the harassment or protect his rights. Additionally, Mr. Blockhus submitted harassing and threatening text messages and emails he received from Ms. Lense while he was an active employee, that she also admitted came from her phone and email address of which both United and the Appellate Court choose to ignore. This lack of response highlights the ongoing disregard for the severity of the situation.

On December 19, 2023, despite United's failure to provide evidence supporting their claim that Mr. Blockhus "*admitted guilt*," the court accepted unverified text messages as evidence. These messages lacked critical details, such as a phone number, date, circumstantial context, corroborating testimony, and relevant information, yet they were given undue weight. At the same time, the court disregarded substantial evidence presented against Ms. Lense, including her harassing messages and emails to Mr. Blockhus, security footage showing her slashing his vehicle's tires, and a two-year protection order issued in his favor. The court's decision to award Summary Judgment to United under these circumstances raises serious concerns about the fairness and impartiality of the proceedings, given its selective consideration of the evidence. Blockhus then timely filed his appeal.

Unfortunately, the Appellate Court made no substantial argument and simply accepted United's defense, including their "*honest belief*" and "*he would have been fired anyway*" defense, without objectively considering all the evidence presented in the case. This raises further questions about the thoroughness and impartiality of the court's review, particularly given the court's duty to construe all facts in the light most favorable to the nonmoving party.

United's assertion that "*he would have been fired anyway*" is legally insufficient and unsupported by the evidentiary record. The courts have

consistently held that an employer cannot justify an unlawful termination by retroactively asserting that the employee's firing was inevitable, particularly when substantial evidence indicates pretext or retaliation.

The "*Honest Belief*" doctrine does not shield employers from scrutiny. United's defense hinges on the "*honest belief*" rule, which allows an employer to escape liability if it genuinely believed it had a lawful reason to terminate an employee. However, this doctrine is not absolute and does not apply when the employer's belief is unsupported, irrational, or pretextual.

In *Smith v. Chrysler Corp.*, 155 F.3d 799, 807 (6th Cir. 1998), the court held that an employer's honest belief must be based on "particularized facts" known at the time of termination, rather than post hoc rationalizations. United's attempt to claim that Mr. Blockhus "*would have been fired anyway*" fails this standard, as their investigation was conducted in absentia while Mr. Blockhus was on protected FMLA leave and without affording him due process.

Similarly, in *Kariotis v. Navistar Int'l Transp. Corp.*, 131 F.3d 672, 677 (7th Cir. 1997), the court ruled that an employer's reliance on subjective conclusions or unverified evidence undermines the legitimacy of an "*honest belief*" defense. United's acceptance of unauthenticated text messages and disregard for exculpatory evidence, such as Ms. Lense's prior harassment of Mr. Blockhus, raises serious doubts about their stated justification for termination.

Temporal Proximity and Retaliatory Motive Undermine United's Defense. United's claim that Mr. Blockhus would have been fired regardless of his actions is further discredited by the suspicious timing of his termination. Courts have held that adverse employment actions taken shortly after an employee engages in protected activity strongly suggest pretext.

In *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006), the Supreme Court recognized that the timing of an employer's adverse action can support an inference of retaliation, particularly when the termination occurs immediately after protected activity. Here, Mr. Blockhus was terminated just after taking FMLA leave, despite United's prior agreement to postpone any investigation until his return.

In *Goelzer v. Sheboygan Cty.*, 604 F.3d 987, 996 (7th Cir. 2010), the court found that temporal proximity between FMLA leave and termination, absent a compelling alternative explanation, can establish unlawful motive. United has offered no legitimate, non-pretextual reason for terminating Mr. Blockhus while he was on leave especially considering a mandate that any investigation was on hold until he returned from his federally protected status.

Employers asserting that an employee "*would have been fired anyway*" must provide clear and convincing evidence that the termination was inevitable absent the alleged retaliatory or discriminatory conduct. However, United's own inconsistent justifications contradict their claim: In *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252 (1989), the Supreme Court held that an employer must show by clear and convincing evidence that it would have taken the same action in the absence of discriminatory or retaliatory motives. United's shifting rationales for termination, particularly its use of evidence it previously deemed "acceptable," suggest pretext rather than inevitability.

In *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000), the Court ruled that when an employer's proffered reason for termination is undermined by inconsistencies, the factfinder may infer that the stated reason was pretext for unlawful conduct. Here, United first acknowledged that Mr. Blockhus's voice messages did not violate company policy, yet later used them as justification for termination, demonstrating bad faith.

United's termination of Mr. Blockhus as soon as he took FMLA leave constitutes unlawful interference and retaliation, particularly given their earlier assurances that the investigation would be postponed. This fact that United had previously agreed to postpone the investigation until his return further exposes their pretextual reasoning.

REASONS FOR GRANTING THE WRIT

I. Legal Error by the Lower Courts

1. **Failure to Apply Relevant Laws Correctly:**

The appellate court misapplied legal standards, including improper reliance on unauthenticated evidence (e.g., text messages) and acceptance of unsupported claims, such as the "*admission of guilt*" without actual evidence. These errors undermine the integrity of the judicial process and require correction.

2. **Misapplication of Summary Judgment Standards:**

The appellate court failed to view evidence in the light most favorable to the nonmoving party.

II. Violation of Procedural Due Process

1. **Inadequate Consideration of Evidence:**

Critical evidence submitted by Mr. Blockhus, such as metadata from his phone disproving the text message claims and documented harassment by the

opposing party, was ignored suggesting a Bias in Judicial Review.

2. Wrongful Termination During FMLA Leave:

United Airlines' actions directly violated the Family and Medical Leave Act (FMLA). The courts failed to address this interference, setting a dangerous precedent for employee rights.

III. Significant Public Interest

1. Protection of Employee Rights Under FMLA:

The case highlights United Airlines' blatant disregard for FMLA protections, including harassment during medical leave and termination without a fair investigation. Granting the writ would reaffirm the importance of FMLA compliance.

2. Potential for Broader Implications:

If left unaddressed, this case could embolden employers to exploit loopholes in labor laws, jeopardizing the rights of employees nationwide.

IV. Conflict with Precedent

1. Inconsistent with Supreme Court Precedent:

The appellate court's decision conflicts with established Supreme Court rulings on procedural due process, the standard for summary judgment, and evidentiary requirements. For instance, the acceptance of unauthenticated evidence directly contravenes rulings that require evidence to meet established reliability standards.

2. Conflict Among Jurisdictions:

This case raises legal questions that have been inconsistently addressed by lower courts, such as the extent to which FMLA protections shield employees from adverse actions during leave.

V. Manifest Injustice

1. Retaliatory Motives Ignored:

Evidence demonstrating retaliatory intent by United Airlines and the complainant (Lense) was overlooked, leading to unjust conclusions and substantial harm to the appellant.

2. Harm to Appellant's Reputation and Career:

The court's errors caused irreparable harm to Mr. Blockhus, damaging his professional standing and financial stability, and allowing malicious prosecution by Lense to go unchecked.

VI. Inconsistent Testimony by Lense:

Lense's own testimony contradicted her claims of harassment, as she admitted that she and Mr. Blockhus were on "*friendly terms*" on the dates she alleged harassment. The court improperly disregarded these contradictions, which directly challenge the credibility of both Lense's claims and United's position.

VII. Failure to Consider witness testimony:

Mindy Richard, was a willing witness in this case and has provided written statements, as well as testimony under oath that is highly relevant to the issues at hand. Her testimony sheds light on critical aspects of the events in question and is essential to a full understanding of the circumstances surrounding this case. United has actively suppressed witness Mindy Richard from substantial facets of this case that would have significantly casted doubt on Ms. Lenses' credibility with regards to her claims against Blockhus. Mindy Richard's testimony is integral to the appellant's case. Her firsthand account provides crucial insights that cannot be obtained through other means. The details she has provided are consistent, credible, and directly relevant to the issues under consideration.

CONCLUSION

This case presents critical issues concerning employee protections, due process, and evidentiary standards that are fundamental to ensuring fairness and justice in legal proceedings. The rights of employees to be protected from unjust treatment, discrimination, or wrongful dismissal are cornerstone principles of labor law, and this case touches upon these essential protections. At the heart of the matter is whether the lower courts properly adhered to established legal standards, both in terms of ensuring due process for Mr. Blockhus and properly evaluating the evidence presented.

Furthermore, the case raises important concerns about the proper application of evidentiary standards, particularly with regard to the admissibility and weight given to certain types of evidence. The lower courts' failure to adhere to proper standards of evidence could result in the wrongful exclusion of crucial facts or the wrongful admission of unreliable or unauthenticated evidence, thereby skewing the judicial process. In light of these issues, the writ should be granted to correct the lower courts' legal errors, prevent a potential miscarriage of justice, and ensure that the rights of employees are upheld in accordance with both labor laws and procedural fairness. By granting the writ, the appellate court would have the opportunity to reaffirm critical protections under labor and procedural laws, reinforcing the principle that employees should not be subjected to unfair or arbitrary decisions.

Respectfully Submitted,

March 19, 2025

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