No. 24-457

IN THE

Supreme Court of the United States

BINDYA H.S.B. SINGH,

Petitioner,

v.

COUNTY OF SANTA CLARA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTION PRESENTED

Does a Citizen Whistleblower lose the Constitutional right to a fair trial under Whistleblower claim, that reports multiple concerns of illegal activities including violations of Laws of HIPAA and Securities Exchange and White Race Discrimination, if there is simultaneous FEHA claim exposing White Race discrimination?

II. RELATED CASES

Bindya H.S.B. Singh v. Santa Clara Valley Medical Center, No. 113-CV-244607, Superior Court of California, County of Santa Clara. Judgment entered December 13, 2021.

Bindya H.S.B. Singh v. County of Santa Clara, No. H049688, Court of Appeal of California, Sixth Appellate District. Judgment entered February 27, 2024.

Bindya H.S.B. Singh v. County of Santa Clara, No. S284492, Supreme Court of California. Judgment entered May 29, 2024.

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VI. PETITION FOR WRIT OF CERTIORARI

Dr. Bindya Singh, Petitioner, respectfully petitions the U.S. Supreme Court for a Writ of Certiorari under 28 U.S.C. § 1257 for the Protection and Safety of Employees in the U.S.A. She requests review of the case after duly appealing against the nonsuit of her Whistleblower claim, that exposes Federal Laws violations at Workplace, to the California sixth Appellate Court and The Supreme Court of California. Petitioner pleads the application of highest standards in maintaining workforce safety by strict implementation of State equivalent of Non-Federal Employee Whistleblower Protection Act of 2012 (S.241) as well as immaculate application of Judicial procedures of nonsuit under Code Civ. Proc., § 581c.

VII. OPINIONS BELOW

On February 27, 2024 the Court of Appeal, Sixth Appellate District affirmed the trial court's granting of nonsuit, Code Civ. Proc., § 581c to Singh's Whistleblower claim that included her reporting of multiple (eight) illegal activities in violation of Federal Laws committed by her Supervisor. The Trial Court in granting nonsuit allegedly argued that one of the claims under the Whistleblower claim was similar to the Fair Employment and Housing Act ("FEHA") claim, which showed how Petitioner opposed white race discrimination at workplace, to assert basis that the causes of action were identical. The Trial Court disregarded plethora of evidence in close proximity to her termination related to the seven other complaints under Whistleblower claim. Jury agreed that under FEHA claim Singh opposed Race Discrimination but Employer had other reasons to terminate her, a decision which would

not have been an option if the Whistleblower claim had been fairly tried at the Trial. Petitioner filed a petition for rehearing on March 13, 2024, which was summarily denied on March 24, 2024. Petitioner filed Petion for Review with The Supreme Court of California on April 8th 2024 that was denied on May 29th 2024. A copy of decision for Non-Suit by the Trial Court is attached as Appendix A. A copy of the Court of Appeal's denial for review per their 'Opinion' is attached as Appendix B (a subsequent petition objecting to the details and highlighting errors in 'Opinion' and request for Rehearing was also denied without further clarifications). State Supreme Court denial for review are attached as Appendix C.

VIII. JURISDICTION

Dr. Singh's petition for review to the California Supreme Court was denied on May 29, 2024. Dr. Singh invokes U.S. Supreme Court's review under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the California Supreme Court's judgment. The refilling in booklets format is per the sixty days sanctions given by SCOTUS.

IX. CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment XIV:

> 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.

X. STATEMENT OF THE CASE

A. The Whistleblowing Incidents

Petitioner was hired by Santa Clara County's Valley Medical Center as a Neonatologist in May 2007. In that position she reported to Dr. Balaji Govindaswami as division chief of neonatology. Petitioner raised multiple issues where she had objected to her supervisor(s) regarding what she believed to be illegal activities.

The Court of Appeal listed eight "incidents," but these may be consolidated into four categories of whistleblowing.

(1) Petitioner testified that in 2007 / 2008, Govindaswami asked her to invest in Masimo, an oximeter manufacturer, together with his friends and family while trying to sell the same to VMC, which she believed were against Securities Exchange Laws (Title 18 U.S.C. § 1348). Petitioner declined and was told she would "not have a position" at VMC. In 2009, petitioner raised claims to Dr. Stephen Harris about participation of an ineligible junior neonatologist in a research study on her belief that Govindaswami was promoting the junior neonatologist to participate "to support Govindaswami's publications and lobbying activities to promote Masimo pulse oximeters." Petitioner further reviewed her concerns on the issue with Colleagues and Administration in 2012.

(2) Petitioner testified to "anti-white racial discrimination by Govindaswami." Govindaswami objected to her using a white nurse educator in a video and told petitioner that he intended to replace a white nurse educator's staff position with a "colored person." Petitioner objected and Govindaswami became angry. When an incoming chair of obstetrics and gynecology was announced, Govindaswami told petitioner he "did not want a white man in power." Petitioner objected and Govindaswami told her, "I'm not happy with you. . . . It's going to be difficult to work with you if you oppose my plans. I did not want a white man in power." Two white doctors corroborated petitioner's testimony that Govindaswami favored non-white doctors over white doctors and that Singh stood up for them. One testified that that she was excluded from professional activities by Govindaswami in favor of non-white doctors, despite her qualifications. The other testified that he observed Govindaswami treat white doctors and nurses differently than non-whites and heard Govindaswami use the terms "Stanford Ivory Tower" and "White Stanford Club," referring to white doctors at VMC. Petitioner testified regarding a later incident that Govindaswami told her he selected the two white doctors to lose their positions in a layoff "because they belong[ed] to the white club of Stanford."

(3) Petitioner testified that she objected to policies from Harris and Govindaswami allowing VMC's neonatal intensive care unit (NICU) to operate at night without a trained physician at night to save costs in violation of the requirements set forth in the California Children's Services Manual (CCSM). Petitioner's testimony was corroborated by two other doctors.

(4) Petitioner objected to imposition of Govindaswami as a co-author without Petitioner's approval since she was the Primary author as a Copyright infringement and the inclusion of a baby's photograph in a medical paper by him, despite there not being an appropriate consent by the parents to internet publication, in violation of the Health Insurance Portability and Accountability Act (HIPAA).

B. The Termination

For budgetary reasons, the County sent letters to four doctors in June of 2012 to meet Board's deadline of June 30th, that did not include the Petitioner as she was not assigned to the Hospital that cancelled contract.

Petitioner fought against Govindaswami to find alternative ways to avoid the layoffs of her colleagues even though she was not one of the doctors chosen to be laid off, threatening to further report his illegal activities. Thereafter Govindaswami urged Harris and involved VMC's chief medical officer, Dr. Wang, to rescind one letter of termination and terminate Petitioner instead under the pretense of "last-in and first-out" and thus included petitioner and served her letter of termination in early July 2012. although their intervention was against the Physicians Groups MOU and after the County Budget date. Additionally, contrary to their own assertions, they immediately rehired two last out doctors (hired after Petitioner) and refused to rehire Petitioner.

Petitioner raised all of her concerns with the chief medical officer and the County executive Dr. Smith. The County suspended her layoff pending a month-long investigation, results of which were never revealed, and

she was ultimately laid off on August 17, 2012. Petitioner testified that her ultimate termination occurred following her continued complaints of illegal activities that violated Federal Laws.

C. The Litigation

Petitioner exhausted her administrative remedies and filed an initial complaint against the County on April 12, 2013. Following litigation and initial appeal, petitioner was left with two causes of action: (1) retaliation in violation of FEHA and (2) retaliation in violation of section 1102.5. As the Court of Appeal put it: The first cause of action alleged that Govindaswami retaliated against her for opposing and threatening to report his FEHA violations, including targeting white employees for mistreatment, and that the retaliation was a motivating factor in the termination of her employment by the County. The second cause of action alleged that she refused to participate in certain activities involving violations of state or federal statutes or which were not in compliance with state or federal rules and regulations and presented improper risks to employee health and safety, and that she complained about these issues to Smith, Harris and Govindaswami. Her actions, she alleged, were contributing factors in the County's decision to terminate her employment.

Following petitioner's close of evidence, the County moved for nonsuit. The court granted nonsuit to the Whistleblower claim that encompassed multiple reports of illegal activities by her Supervisor. But the court only allowed trial of limited FEHA claim based solely on complaints about discrimination against white employees.

First, the trial court argued that petitioner's section 1102.5 race discrimination claim were identical to her FEHA claims, so that allowing her simultaneously to pursue remedies under section 1102.5 would: (1) negate the requirement of exhausting administrative remedies prior to filing a claim for retaliation under FEHA, and (2) allow her to circumvent the higher burden of proof requirements for proving a claim under FEHA. Second, the trial court presumed the presented evidence to not support a jury verdict as to petitioner's non-race-based section 1102.5 claims "as insufficient to create a casual link between these specific activities and the selection of [petitioner] for lay-off."

Based on these erroneous assumptions, the trial court instructed the jury that such claims were "no longer part of this case, and they will not be part of the evidence that you will be asked to consider."

The trial proceeded on petitioner's FEHA cause of action. The case was submitted to the jury on October 27, 2021 and it reached a verdict the next day, finding that petitioner's opposition to discrimination against white doctors "was not a substantial motivating reason" for her termination.

XI. REASONS FOR GRANTING THE WRIT

1. GRANT OF WRIT IS NECESSARY TO

i. UPHOLD CONSTITUTIONAL RIGHTS OF CITIZEN WHISTLEBLOWERS TO RECEIVE LEGAL PROTECTION FOR EXPOSING WORKPLACE ILLEGAL ACTIVITIES RECOGNIZED BY FEDERAL LAW

ii. PROTECT WHISTLEBLOWERS LAWS AND JUDICIAL PROCEDURES RECOGNIZING THEM AS SEPARATE FROM RACE DISCRIMINATION UNDER FEHA

U.S. Supreme Court has supported important cases that protect the citizen's rights on crucial matters thereby upholding the XIV Constitutional Amendments. (Regents of Univ. of California v Bakke (1978) 436 U.S. 235).

The protection of Whistleblowers is a crucial and extremely significant matter supported by U.S. Supreme Court to ensure safe Workplace environment for its citizens, providing Whistleblower Laws that permit claims without retaliatory intent or mandatory burden shifting. (Murray v. UBS Securities, LLC, (2024) 601 U.S. 23)

In this case The Supreme Court of California has failed to recognize the need to protect a Whistleblower's rights by erroneously allowing nonsuit to important Whistleblowers claims. The error by the State's highest Court is as a result of agreeing to the Appeal Courts decision to uphold Trial Court's decision of considering FEHA and Whistleblower claims as similar and unworthy

of respectable separate judicial trials. Hence, all the State Courts dismissed multiple important claims (HIPAA, Securities Exchange, White Race Discrimination etc) under Whistleblowers Laws by asserting that there was one common claim under the FEHA (White Race Discrimination). This is against previously established legal precedence.

The Supreme Court of California has already recognized that FEHA did "not displace any causes of action and remedies that are otherwise available to plaintiffs." (Rojo v. Kliger (1990) 52 Cal.3d 65, 82.).

Similarly, Supreme Court of California has recognized that compared to FEHA, Labor Code section 1102.5 whistleblower claims have a lower initial threshold for the plaintiff to show improper motive was a "contributing factor" and a higher secondary burden for the defendant to show it was not. (Lawson v. PPG Architectural Finishes, Inc., supra, 12 Cal.5th at p. 714; § 1102.6.)

This petition presents the U.S. Supreme Court an opportunity to strictly enforce high Judicial standards of fair, meticulous and committed implementation of Whistleblower claims to protect Whistleblowers and promote safe workplace in U.S.A.. From the actions of the courts below, it is obvious that guidance is needed from this Court.

A. FEHA Whistleblower Claims Inter alia, FEHA prohibits discrimination against an employee because of the employee's race. (Gov. Code, § 12940, subd. (a).) FEHA also prohibits discrimination against a person "because the person has opposed any practices forbidden under

[FEHA]." (§ 12940, subd. (h).) That is, FEHA "forbids employers from retaliating against employees who have acted to protect the rights afforded by [FEHA]." (Yanowitz v. L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1035.) This Court adopted Title VII's McDonnell Douglas framework for establishing a prima facie case of FEHA. That is, "a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action. (Yanowitz v. L'Oreal USA, Inc., supra, 36 Cal.4th at p. 1042, citing McDonnell Douglas Corp. v. Green (1973) 411 U.S. 792, 802-805.) Once an employee establishes a prima facie case, the employer is required to offer a [ ] nonretaliatory reason for the adverse employment action. If the employer produces a legitimate reason for the adverse employment action, . . . the burden shifts back to the employee to prove intentional retaliation. (Yanowitz, at p. 1042.) In Rojo, this Court recognized that FEHA expressly disclaimed intent to supplant other state "antidiscrimination remedies" and instead was only intended to supplement such remedies "to give employees the maximum opportunity to vindicate their civil rights against discrimination." (Rojo v.Kliger, supra, 52 Cal.3d at pp. 74-75.)

B. Labor Code Section 1102.5 Whistleblower Claims

Labor Code section 1102.5 protects whistleblowers from employer retaliation. Subdivision (b) specifically prohibits an employer from retaliating against an employee for sharing information the employee "has reasonable cause to believe . . . discloses a violation of state or federal statute" or of "a local, state, or federal rule or regulation" with a person with authority over the employee or with another employee who has authority to investigate or correct the violation.

Section 1102.6 supplies the framework for establishing a cause of action under section 1102.5: "First, it must be 'demonstrated by a preponderance of the evidence' that the employee's protected whistleblowing was a 'contributing factor' to an adverse employment action. (Lawson v. PPG Architectural Finishes, Inc., supra, 12 Cal.5th at p. 712.) "[O]nce the employee has made that necessary threshold showing, the employer bears 'the burden of proof to demonstrate by clear and convincing evidence' that the adverse employment action would have occurred 'for legitimate, independent reasons' even if the employee had not engaged in protected whistleblowing activities."

Thus, causes of action brought under section 1102.5 have a lower threshold for establishing a prima facie case because even just a "contributing factor" is sufficient to shift the burden to the defendant, even if there were other legitimate factors. (Lawson v. PPG Architectural Finishes, Inc., supra, 12 Cal.5th at p. 713-714.)

C. Under Rojo, a Plaintiff May Sue Simultaneously for Whistleblower Retaliation under Both FEHA and Labor Code Section 1102.5 Here, in opposition to this Court's holding in Rojo, the trial court decided that petitioner was not permitted to continue to trial under both FEHA and Labor Code section 1102.5. It then took the radical steps of (1) Shutting down the section 1102.5 claim, with a lower threshold for petitioner to meet, and keeping the FEHA claim only as to anti-white discrimination; and (2) Denying petitioner the right to use any of the evidence presented for whistleblower activities outside of the anti-white discrimination. In contrast, Rojo explicitly held "by expressly disclaiming a purpose to repeal other applicable state laws . . . the Legislature [ ] manifested an intent to

amplify, not abrogate, an employee's common law remedies for injuries relating to employment discrimination. Had the Legislature intended otherwise, it plainly knew how to do so." (Rojo v. Kliger, supra, 52 Cal.3d at p. 75.) "In sum, . . . FEHA does not displace any causes of action and remedies that are otherwise available to plaintiffs." Indeed, it is common for plaintiff 's attorneys to file suit alleging whistleblower retaliation under both FEHA and section 1102.5. (See, e.g., Kaur v. Foster Poultry Farms LLC (2022) 83 Cal.App.5th 320, 354; see also Gavriiloglou v. Prime Healthcare Mgmt., Inc. (2022) 83 Cal.App.5th 595, 599; Gallo v. Wood Ranch USA, Inc. (2022) 81 Cal. App.5th 621, 630, fn. 2; Baxter v. Genworth N. Am. Corp. (2017) 16 Cal.App.5th 713, 720; Akers v. County of San Diego (2002) 95 Cal.App.4th 1441, 1452 [both causes of action based on same facts].) Accordingly, this is the opportunity for this Court to explicitly expand the rule set forth in Rojo to cover section 1102.5.

However, as explained above, when a plaintiff goes forward on both causes of action, the section 1102.5 has a lower threshold to shift the burden to the defendant. As such, it would be impossible to grant nonsuit on a section 1102.5 claim while allowing a FEHA suit to go forward, as happened here. In order to avoid ruling on this important question, the Court of Appeal here found that petitioner was required to show prejudice and did not. However, this was in error for two reasons.

First, as the Court of Appeal stated, other courts have found that such an error results in prejudice per se, an issue this Court should settle as well. To the extent Alamo . . . held that the mere existence of a different standard of causation than the one considered by the jury compels reversal without consideration of the evidence, we do not

agree"], citing Alamo v. Practice Mgmt. Info. Corp. (2013) 219 Cal.App.4th 466.)

Second, as noted in the rehearing petition, it was the dual decision by the trial court to allow the higher threshold FEHA claim to go to trial while holding back the section 1102.5 claim and, at the same time, denying plaintiff the benefit of the evidence that she had put forth as to the other whistleblower activities. (See Rhrg. 1-3.)

Petitioner was entitled to have the jury rule on the section 1102.5 cause of action and by granting nonsuit on the lower threshold, she suffered prejudice per se. (See Rhrg. at 6-9.) Further, any prejudice analysis would have to take into account the evidence regarding "other unlawful conduct" which the trial court had dismissed prior to such analysis. (See Rhrg. at 3-4, 17-19.) Accordingly, if this Court does not find prejudice per se under these facts, petitioner would be entitled to a new prejudice analysis taking into account all of the dismissed evidence. (See,e.g., Rhrg. at 12-17

This Court should grant review to explicitly permit simultaneous suit on FEHA and Whistleblower claims such as section 1102.5, as previously established by State Courts, Rojo v. Kliger (1990) 52 Cal.3d 65, and thereby prevent such a nonsuit motion, i.e. Code Civ. Proc., § 581c, from ever again being granted.

Thus, for the above reasons, and especially to resolve issues which will arise with frequency in the trial and appellate courts, "to settle an important question of law," in ensuring safe Workplace in the U.S.A, this Court should grant review (28 U.S.C. § 1257).

XII. CONCLUSION

For the foregoing reasons of protecting Whistleblowers Rights and claim to fair trial, thereby protecting the rights and safety of employees in the U.S.A., Petitioner, Dr. Bindya Singh, respectfully requests that this Court issue a writ of certiorari to review the judgment of the sixth Court of Appeals and California Supreme Court.

Respectfully submitted,

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APPENDIX

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