No. ___

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM KELLY,

Petitioner,

v.

GRAPHIC PACKAGING INTERNATIONAL, LLC,

Respondent.

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

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the Seventh Amendment and 42 U.S.C. § 1981a(c)(1) guarantee a jury trial when a plaintiff seeks compensatory or punitive damages for retaliation under Title I of the Americans with Disabilities Act, precluding a district court from striking a timely jury demand and conducting a bench trial.

2. Whether a district court's grant of summary judgment on ADA discrimination and accommodation claims—despite genuine disputes of material fact—and its later factual findings that the employer's "restriction-free" return-to-work rule violated the ADA, demonstrate the kind of credibility-laden disputes that Rule 56 and the Seventh Amendment reserve for a jury, requiring reversal.

3. Whether the Sixth Circuit violated Federal Rule 52(a)(6) and the Seventh Amendment by affirming a bench judgment that rested on credibility determinations a jury should have made after the district court erroneously denied Petitioner his jury right.

## PARTIES TO THE PROCEEDING

Petitioner William Kelly was the plaintiff in the district court and the appellant in the court of appeals.

Respondent Graphic Packaging, Inc., was the defendant and appellee below.

## PROCEEDINGS DIRECTLY RELATED TO THIS CASE

1. ***Kelly v. Graphic Packaging International, LLC***, United States District Court for the Western District of Michigan, No. 1:21-cv-00772-JMB-SJB.

2. ***Kelly v. Graphic Packaging International, LLC***, United States Court of Appeals for the Sixth Circuit, No. 24-1400.

3. ***Kelly v. Graphic Packaging International, LLC***, United States Court of Appeals for the Sixth Circuit, No. 24-1599.

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## OPINIONS BELOW

The opinion denying the petition for rehearing en banc (App. 1a-2a) was entered on April 16, 2025.

The opinion of the Sixth Circuit (App. 3a-16a) was entered on February 21, 2025, and is unpublished.

The district court's order denying Plaintiff's motion for new trial (App. 17a–34a) was entered on June 17, 2024.

The district court's findings of fact and conclusions of law (App. 35a-92a) was entered on April 3, 2024.

The district court's order granting Defendant's motion in limine and striking Plaintiff's jury demand (App.93a-101a)

The district court's order denying Plaintiff's and Defendant's motions for reconsideration (App. 102a–107a) was entered on August 3, 2023.

The district court's order granting in part, denying in part the motion for summary judgment (App. 108a–160a) was entered on June 6, 2023.

## JURISDICTION

The Sixth Circuit denied rehearing en banc on April 16, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. VII:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

42 U.S. Code § 12112, Americans with Disabilities Act of 1990

## STATEMENT OF THE CASE

Plaintiff-Appellant, an African-American male, was employed by Defendant-Appellee as a mill utility worker beginning on November 5, 2014. Throughout his tenure, Plaintiff-Appellant demonstrated exemplary performance, receiving no formal reprimands and earning multiple compensation and title promotions. *Id*. In 2016, Plaintiff-Appellant suffered a broken ankle outside of work, necessitating surgeries and extensive rehabilitation, which resulted in a temporary absence from his duties. Upon his return, Defendant-Appellee reassigned him to a new department that demanded constant standing and increased physical exertion compared to his previous role. Plaintiff-Appellant perceived this reassignment as intentional discrimination, supported by warnings from co-workers that

management targeted employees returning from injuries and prior conflicts with management.

Despite maintaining his seniority during his medical leave, Plaintiff-Appellant was repeatedly bypassed for overtime opportunities in favor of Caucasian employees hired after him, contravening company policy. Consequently, he was relegated to less desirable positions that required greater physical effort and offered reduced pay based on the bid system that was supposed to ensure equitable job assignments. Plaintiff-Appellant's grievances were reported to the union and Human Resources (HR), yet no corrective actions were taken, and Defendant-Appellee continued to assign him to lower-paying roles.

In October 2016, Plaintiff-Appellant experienced a severe workplace injury when a supervisor instructed him to sit on a pole and dig his feet into the floorboards for balance. The supervisor then abruptly activated machinery, resulting in Plaintiff-Appellant being thrown into a guardrail, with a shaft grinding against his legs and ankle. Although the guardrail prevented a potentially fatal fall, Plaintiff-Appellant was left unattended in severe pain for nearly three hours without medical attention, as the supervisor prioritized resuming machine operations over Plaintiff-Appellant's well-being. An incident report was negligently prepared by the supervisor, omitting his own misconduct, and Defendant-Appellee's safety protocols were blatantly disregarded without any disciplinary action taken against the responsible supervisor.

Plaintiff-Appellant endured two months off work due to re-injury but remained dedicated, earning four promotions to the position of 4th hand by February 2017. In the same month, Plaintiff-Appellant was struck by a GMC Envoy, resulting in substantial injuries that required multiple surgeries and prolonged rehabilitation. After six months, he attempted to return to work, disclosing that he was not yet fully recovered. Ignoring his medical restrictions, Defendant-Appellee reassigned him to a role that demanded excessive use of his impaired hand and grip strength, tasks outside his prior job responsibilities. This led to a reinjury of his hand, and when Plaintiff-Appellant sought assistance and accommodation, he was met with hostility and threats from an intern overseeing his work.

Efforts to obtain appropriate medical attention and accommodations were thwarted by Defendant-Appellee, who forced Plaintiff-Appellant to continue working under unsafe and unsuitable conditions. Plaintiff-Appellee's requests for modified duties or alternative positions were ignored, and despite passing a physical examination, Defendant-Appellee refused to reinstate him unless he provided an unspecified certification of complete recovery. Plaintiff-Appellant's attempts to communicate with HR were unsuccessful – even his counsel's email went ignored – and Defendant-Appellee ultimately terminated his employment in April 2024, weeks after the bench trial and after he provided a release indicating he was restriction-free.

Throughout this period, Plaintiff-Appellant was deprived of income, overtime opportunities, and

contractually negotiated bonuses and benefits. Defendant-Appellee's actions constituted retaliation and discrimination based on the Plaintiff-Appellant's race and disability, violating the Americans with Disabilities Act ("ADA") and other civil rights protections. Plaintiff-Appellant filed a complaint with the Equal Employment Opportunity Commission ("EEOC") in June 2020 and subsequently initiated a lawsuit in September 2021 seeking redress for the Defendant-Appellee's unlawful conduct. All of Plaintiff's claims with the exception of retaliation under the ADA were dismissed by the Trial Court. On October 30, 2023, the trial court granted Defendant's Motion in Limine, striking Plaintiff-Appellant's jury demand. Plaintiff-Appellant's claim of retaliation under the ADA was tried before the district court on January 30, January 31, February 1, February 2, and February 5, 2024. During the bench trial, Defendant-Appellee maintained that Plaintiff-Appellant was not returned to work because he had not presented a release stating he could return without restrictions.

On April 3, 2024, the district court entered an opinion and order granting judgment in Defendant's favor. On April 19, 2024, post-trial, Plaintiff-Appellant sent Defendant-Appellee a release indicating he was restriction-free, since he had just learned at trial that he was not being returned to work after seven years because he had not presented a restriction-free note. Five days later, on or about April 29, 2024, Defendant-Appellant officially terminated Plaintiff-Appellant. On May 1, 2024, Plaintiff filed a Motion for (1) Reconsideration of the Court's Order Granting Judgment in Defendant's Favor; (2) for New Trial; and (3) to Set Aside

Judgment. On June 17, 2024, the district court entered an order denying Plaintiff's Motion for (1) Reconsideration of the Court's Order Granting Judgment in Defendant's Favor; (2) for New Trial; and (3) to Set Aside Judgment. With that final order standing, Plaintiff timely filed the instant appeal, and without oral argument, this Court issued its Opinion on February 21, 2025, affirming the District Court in its entirety.

The Court of Appeals found that Plaintiff-Appellant forfeited his challenge to the district court's award of costs against him because he did not raise the issue in his opening brief. However, this finding is incorrect. Plaintiff-Appellant filed two briefs, and Defendant responded to both. Case No. 24-1400 addressed the district court's judgment in favor of Defendant and denial of Plaintiff-Appellant's post-litigation motions, while Case No. 24-1599 appealed the bill of costs. The cases were consolidated, and Plaintiff-Appellant did, in fact, raise the issue in his principal brief under Case No. 24-1599.

## REASONS FOR GRANTING THE PETITION

Mr. Kelly submits that his petition should be heard by this Court for all of the following reasons.

### I. A DEEP, ACKNOWLEDGED CIRCUIT SPLIT EXISTS AS TO WHETHER ADA RETALIATION CLAIMS SEEKING DAMAGES MUST BE TRIED TO A JURY.

The Supreme Court must weigh in on a dispute between the circuits regarding whether an ADA retaliation claim may be tried before a jury, which impacts plaintiffs' Seventh Amendment right to a jury trial.

While many circuits have shied away from explicitly addressing the matter, one district court within the Second Circuit and another district court within the Eleventh Circuit – in published opinions – have analyzed the issue and determined that ADA retaliation claims may be tried to a jury, as the damages provision of the ADA refers to the damages provision in Title VII. *Edwards v. Brookhaven Science Assoc., LLC,* 390 F.Supp.2d 225, 234-36 (E.D.N.Y. 2005); *Rumler v. Department of Corrections, Florida*, 546 F. Supp. 2d 1334 (M.D. Fla. 2008).

In particular, the Second, Eighth, and Tenth, Circuits have all upheld ADA retaliation claims brought before a jury. *Muller v. Costello*, 187 F.3d 298 (2d Cir. 1999) (jury verdict for plaintiff on ADA retaliation upheld); *Foster v. Time Warner*, 250 F.3d 1189 (8th Cir. 2001); *Salitros v. Chrysler Corp.,* 306 F.3d 562 (8th Cir.2002); *EEOC v. Wal-Mart*

*Stores, Inc.*, 187 F. 3d 1241 (10th Cir. 1999); *see also Lovejoy-Wilson v. NOCO Motor Fuel, Inc.*, 263 F.3d 208, 223 (2d Cir. 2001) (stating that a jury could find that plaintiff had made out a claim for ADA retaliation).

At the other end of the spectrum, the Seventh and Ninth Circuits hold the opposite, finding that ADA retaliation affords only equitable relief, so courts may strike jury demands. *Kramer v. Banc of Am. Sec., LLC*, 355 F.3d 961 (7th Cir. 2004); *Alvarado v. Cajun Operating Co.*, 588 F.3d 1261 (9th Cir. 2009). A growing line of district-court decisions within those circuits follows suit.

The split is widely recognized and outcome-determinative, and it takes away the constitutional right to a jury trial. Whether a plaintiff receives a jury often dictates success in employment cases, where credibility is key. This Court's intervention is urgently needed to remedy the lack of uniformity on this issue.

## II. THE TEXT, STRUCTURE, AND HISTORY OF § 1981a AND THE ADA GUARANTEE A JURY.

Section 12203 of the ADA (which covers ADA retaliation) is enforced "pursuant to the powers, remedies, and procedures set forth in" Title I, 42 U.S.C. § 12117, which in turn incorporates the "powers, remedies, and procedures" of Title VII—including § 1981a. Congress therefore placed ADA retaliation on the same remedial footing as discrimination and accommodation claims, all of which carry a jury right when damages are sought.

Section 1981a(c)(1) provides: "If a complaining party seeks compensatory or punitive damages under this section—any party may demand a trial by jury." Congress created no carve-out for retaliation. Reading the cross-reference in § 1981a(a)(2) narrowly, as the Seventh and Ninth Circuits do, nullifies Congress' explicit jury mandate and contradicts this Court's instruction that remedial civil-rights statutes must be broadly construed. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013).

In *Chauffeurs, Teamsters and Helpers Local No. 391 v. Terry*, 494 U.S. 558 (1990), this Court reaffirmed that where a statute creates legal rights and remedies, analogous to a common-law cause of action, the Seventh Amendment demands a jury. Retaliatory discharge is historically akin to the common-law tort of retaliatory interference, a quintessential legal claim.

## III. THE DECISION BELOW VIOLATED THE SEVENTH AMENDMENT.

Denying a jury where Congress and the Constitution guarantee one should not be done without due regard to the seriousness of such a deprivation. *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935) ("Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeing curtailment of the right to a jury trial should be scrutinized with the utmost care.")

In this case, the district court credited management testimony over Kelly's, something *Reeves v. Sanderson Plumbing Products, Inc.*, 530

U.S. 133, 150 (2000) reserves for juries. Mr. Kelly requested a jury trial, to which he had a constitutional right, to litigate his claims. The error was not harmless; the court itself acknowledged the vast factual disputes regarding motive in denying summary judgment on the ADA retaliation claim. While the evidence was clear that he was kept out of work for years because Graphic Packaging does not accommodate employees who get injured outside of work, even failing to report his work injury to OSHA and requiring him to return to work without restrictions, and then was fired promptly at the end of trial after being on unpaid leave for *seven* years, these acts all went without consequence in the lower courts. Mr. Kelly was entitled to a jury of his peers to decide whether these occurrences are illegal.

The jury-demand issue was cleanly raised and decided by the district court, adopting the Seventh Circuit's opinion in *Kramer*. Reversing the denial of a jury-trial ruling will necessarily vacate the judgment and restore the dismissed ADA counts, providing complete relief.

## IV. OVERAPPLICATION OF SUMMARY JUDGMENT IMPROPERLY UTILIZING THE *MCDONNELL DOUGLAS* FRAMEWORK VIOLATES THE SEVENTH AMENDMENT RIGHT TO A JURY TRIAL

This Court should take the opportunity to address the overapplication of summary judgment in employment discrimination claims. Summary judgment, as it is routinely applied today, cannot be squared with the Seventh Amendment's command

that "the right of trial by jury shall be preserved…" When the Amendment was adopted in 1791, a judge could terminate a civil action without a jury only if the non-movant's evidence was legally nonexistent—for example, where a party admitted all material facts or failed to enter any evidence at all. Modern Rule 56 practice bears no resemblance to that narrow historic exception. Lower courts regularly grant summary judgment after ignoring evidence provided by employees, giving deference to narratives provided by employers, weighing competing testimony, and drawing inferences that favor the movant – precisely the fact-finding functions the Constitution entrusts to juries. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge…").

The problem is much larger than the general public may realize, as potential plaintiffs routinely are surprised that they are not permitted to have their employer's version of events challenged in a court of law. Employment plaintiffs in particular have routinely risked future employment prospects (in the form of retaliation for filing a lawsuit) for pursuing a lawsuit against their employer, just to have it summarily dismissed without a jury of their peers weighing in on the dispute. Defendants often offer self-serving affidavits that "explain" discriminatory acts; district courts then label those affidavits "undisputed" and dismiss the worker's claim, before the employee has had an opportunity for cross-examination. This Court has already admonished the lower courts for exactly that error, reversing where a

panel "fail[ed] to credit evidence that contradicted some of its key factual conclusions." *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (per curiam).

Yet the abuse persists. As Professor Suja A. Thomas has shown, Rule 56 now functions as a "paper bench trial," a procedure unknown to the common law and therefore outside the narrow category of pre-trial terminations the Framers accepted. *See* Suja A. Thomas, *Why Summary Judgment Is Unconstitutional*, 93 Va. L. Rev. 139 (2007). Because contemporary summary judgment doctrine authorizes judges to decide disputed facts and credibility, it "re-examines" those facts otherwise than according to the rules of the common law, and thus violates the Seventh Amendment. The Court should grant certiorari to restore the jury's constitutional role and to curb an increasingly routine shortcut that extinguishes meritorious claims before a single juror is sworn.

Justice Clarence Thomas, joined by Justice Neil Gorsuch, recently underscored the point when he dissented from the denial of certiorari in *Hittle v. City of Stockton*, 145 S. Ct. 759 (2025) (Thomas, J., dissenting) criticizing the "judge-created" *McDonnell Douglas* [*Corp. v. Green*, 411 U.S. 792 (1973)] framework for "spawn[ing] enormous confusion," noting that "some of its applications at summary judgment strike me as difficult to square with Federal Rule [] 56." 145 S. Ct. at 760. He observed that the Court "has never applied *McDonnell Douglas* in a Title VII case in the summary-judgment context," yet lower courts now treat that device as "the presumptive means of resolving Title VII cases at

summary judgment," effectively letting judges weigh credibility and decide facts that belong to juries. *Id.* at 761. Justice Thomas concluded that "a Title VII claim should survive summary judgment so long as the plaintiff establishes a genuine dispute of material fact," and he urged the Court to "revisit *McDonnell Douglas* and decide whether its burden-shifting framework remains a workable and useful evidentiary tool."

That warning illustrates why Rule 56, as deployed today, is unconstitutional: it licenses courts to credit defendants' "legitimate" narratives and dismiss claims before any cross-examination, thereby re-examining disputed facts otherwise than according to the rules of the common law, which is forbidden by the Seventh Amendment. In employment cases, these paper trials allow employers to invent post-hoc justifications, precisely the abuse *Hittle* spotlights. The Court should grant certiorari to restore the jury's historic role and to align summary judgment practice with both Rule 56's text and the U.S. Constitution.

The district court's ruling on summary judgment noted that Graphic Packaging denied that it had a policy and that it ever told Mr. Kelly that he was required to return with no restrictions:

> According to Plaintiff, he did not report back sooner because he believed that he could not return to work until he received "a full release with no restrictions" from his doctor (*id.* at 251:12-16). Plaintiff claims an HR representative specifically informed him of this in August 2017.

> According to Defendant, GPI is unaware and has no record of such a requirement ever being communicated to Plaintiff and represents that GPI does not have any such policy (Belice Dep. at 67:13-17; Strey Dep. at 35:3-9, 70:19-23).

Thus, while the pre-trial ruling gave Graphic Packaging the benefit of the doubt, the trial result was *exactly* what Mr. Kelly said it was many years prior. Though the district court–and Graphic Packaging–seemed to understand that such a policy would be illegal under the ADA, the fact that Mr. Kelly's claims were dismissed at the summary judgment stage, when Graphic Packaging's defense at trial was that it did in fact have such a policy and used it to prevent Mr. Kelly from returning to work for nearly *seven years*, illustrates the problem with summary judgment analysis by lower courts. Graphic Packaging ignored Mr. Kelly's pleas to return to work and to understand what was going on with his job, and it received the benefit of the doubt that its motives were benign and that Mr. Kelly could not – as a matter of law–do his job with restrictions of any kind. Where motive and credibility are central to a lawsuit, summary judgment is inappropriate, yet Mr. Kelly's ADA claims never made it to a jury. As this Court's opinion in *Anderson* and again in *Tolan* proved, this Court is needed to prevent Rule 56 from devolving into a tool for weighing credibility.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Gwen-Marie Davis Hicks

Gwen-Marie Davis Hicks
*Counsel of Record for Petitioner*

Date: July 15, 2025