No. ___

IN THE SUPREME COURT OF THE UNITED STATES

PETER GUMM,

Petitioner,

v.

AK STEEL CORPORATION,

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 a federal district court errs in granting summary judgment based upon the improper application of *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), which runs contrary to the pronouncements in *McDonnell-Douglas* itself, Title VII, *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000), and further runs afoul of the Seventh Amendment right to a jury trial with the misapplication of Federal Rule of Civil Procedure 56.

2. Whether a federal district court may ignore state law to enforce a purported contractual six-month limitations period, despite a three-year statute of limitations for state discrimination claims, where there are genuine factual disputes as to whether the plaintiff knowingly agreed to such a waiver and which is contrary to state law, as in the recent Michigan Supreme Court precedent in *McMillon v. City of Kalamazoo*, 983 N.W.2d 79 (Mich. 2023).

## PARTIES TO THE PROCEEDING

Petitioner Peter Gumm was the plaintiff in the district court and the appellant in the court of appeals.

Respondent AK Steel Corp. was the defendant and appellee below.

## PROCEEDINGS DIRECTLY RELATED TO THIS CASE

1. ***Gumm v. AK Steel Corporation***, United States District Court for the Eastern District of Michigan, No. 4:21-cv-12441-SDK-EAS.

2. ***Gumm v. AK Steel Corporation***, United States Court of Appeals for the Sixth Circuit, No. 24-1767.

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## OPINIONS BELOW

The opinion of the Sixth Circuit (App. 1a–12a) was entered on March 18, 2025, and is unpublished.

The district court's order denying Plaintiff's motion for reconsideration (App. 13a–21a) was entered on September 11, 2024.

The district court's order granting the motion for summary judgment (App. 22a–53a) was entered on September 26, 2023.

The order of the Sixth Circuit's denial of rehearing en banc (App. 54a) was entered on April 17, 2025.

## JURISDICTION

The Sixth Circuit denied rehearing en banc on April 17, 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..."

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

## STATEMENT OF THE CASE

Peter Gumm, a white male, was hired by AK Steel Corp as a supervisor on April 27, 2015, with a starting monthly salary of $4,833.33. He quickly excelled in his role and was promoted to Manager of the Hot Mill in 2017, which included an increase in compensation. In 2018, Mr. Gumm received another raise, bringing his monthly salary to $7,163.18, and was awarded a bonus of $14,067.78. Over three years, his monthly salary increased by more than $2,300. AK Steel continued to recognize his strong performance through raises and bonuses, even after alleged concerns were raised at company town hall meetings and in his annual assessment. AK Steel acknowledged Mr. Gumm's work ethic in its Position Statement to the EEOC.

Mr. Gumm's direct supervisor, Jason Dearth, gave him a favorable 2018 Annual Assessment, completed in March 2019 and covering the calendar year. Dearth rated Mr. Gumm "successful" in categories such as accountability, leadership, and quality of work, and rated him "above expectations" for working with others, citing his honesty, integrity, and active listening. Despite this assessment, Dearth later testified that he first learned of any complaints about Mr. Gumm only after the release of an employee survey in 2018. However, Dearth had already completed the positive review after that survey and failed to disclose this assessment when asked about performance evaluations during his deposition.

Mr. Gumm is married to an African-American woman, and their son worked for AK Steel at the time

of the events in question. AK Steel has a documented history of racial inequities, including disparities in the promotion of African-American employees and inconsistent disciplinary standards. Dearth admitted that he could not recall a single African-American employee being promoted from an hourly position to a salaried supervisory role during his tenure. In one reported incident, a supervisor named David Klein used racial slurs against an African-American employee before terminating him. Klein was also accused of throwing scissors at another Black employee. While AK Steel denies that Klein was terminated due to his conduct, Mr. Gumm submitted a declaration in Williams' case that acknowledged Klein's racist tendencies, that Klein was fired, and attested to a culture of racial discrimination.

In the summer of 2019, Mr. Gumm raised concerns when AK Steel hired an inexperienced white candidate, Evan Nowitzke, while Mr. Gumm was out on vacation for an Operations Shift Manager position instead of promoting qualified African-American candidates Mr. Gumm had recommended. He voiced his concerns to both Dearth and General Manager LaDale Combs. Rather than investigating or addressing the issue, AK Steel began to accuse Mr. Gumm of discriminatory conduct based on vague, unsubstantiated claims from unnamed employees. In August 2019, he again reported discriminatory practices, observing that AK Steel chose to reinstate a white employee following misconduct related to intoxication at work, while Black employees he recommended for termination under similar circumstances were not reinstated.

Shortly after these complaints, AK Steel took actions indicating it was building a case to remove Mr. Gumm. Although he had received positive evaluations, raises, and bonuses for years, the company claimed that Nowitzke had resigned because of Mr. Gumm's conduct, even though the two had never even met. Internal notes regarding a supposed incident involving personal protective equipment failed to substantiate any misconduct or disciplinary action against Mr. Gumm. Dearth later testified that there was only one brief encounter between the two in the slab yard during Nowitzke's training. No formal documentation of a suspension or altercation was ever produced, and AK Steel's corporate representative did not even know what dates it purported to suspend Mr. Gumm.

This case presents a fundamental problem with the manner in which federal district courts are handling summary judgment motions, which are being overused to dismiss legitimate claims before they can proceed to a jury trial. Especially where there are clear questions of fact. an employer should not be permitted to shield itself from liability for retaliatory termination with vague, unverified allegations against an employee who engaged in protected activity by opposing racially discriminatory hiring practices, particularly when the employee has a longstanding, documented record of strong performance.

## REASONS FOR GRANTING THE PETITION

### I. Overapplication of Summary Judgment Improperly Utilizing the *McDonnell Douglas* Framework Violates The Seventh Amendment Right To A Jury Trial

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 not theoretical. In employment cases, for example, 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, U.S. Const. amend. VII, 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), 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." 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. 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." *Id.* at 753-64.

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.

## II. Rule 56 Requires Clear Reaffirmation to Prevent Improper Judicial Factfinding on Summary Judgment

The problem is not isolated to this case. Other circuits have identified and pushed back against similar encroachments. The Second Circuit has repeatedly emphasized that district courts may not

"consider the record in piecemeal fashion" or "trust innocent explanations for individual strands of evidence," and instead must assess all evidence holistically. *See Davis-Garett v. Urban Outfitters, Inc.*, 921 F.3d 30, 45 (2d Cir. 2019). Similarly, in *Abrams v. Dept. of Public Safety*, 764 F.3d 244 (2d Cir. 2014), the court reversed summary judgment where the meaning of an employer's comment was "too close to call," underscoring that such close factual disputes are for juries, not judges to resolve. The Third Circuit, too, in *Burton v. Teleflex, Inc.*, 707 F.3d 417 (3d Cir. 2013), and other decisions, has emphasized that courts may not exclude contradictory testimony, discredit witnesses, or demand direct proof of animus to defeat summary judgment.

Mr. Gumm's case, sadly, illustrates this point perfectly. Viewing the facts in a light most favorable to the plaintiff, Mr. Gumm complained about: 1) AK Steel's discriminatory practices in rehiring white vs. African American employees who came into work drunk; and 2) AK Steel not promoting African American hourly workers – something it had already not done in more than thirty years – whom he believed to be qualified and had recommended for promotion to salaried roles. After AK Steel hired Evan Nowitzke – whom Mr. Gumm never met, even after Nowitzke was hired and had quit – Mr. Gumm spoke up about passing over qualified African American candidates. The company turned on Mr. Gumm and tried to accuse *him* of vile racist and sexist behavior, despite the fact that his own son is African American

and worked for AK Steel[1], and despite the fact that none of these comments surfaced until AK Steel provided affidavits in response to his EEOC charge, eight months after his termination.

This was the first of many troubling fabrications that came to light during litigation, as even just before it filed its summary judgment motion, and well after discovery closed, AK Steel produced alleged complaints about Mr. Gumm not wearing proper PPE equipment on a work-site. Though the complaints mention Nowitzke was with Mr. Gumm and was also disciplined for not wearing PPE, Nowitzke is not in any of the photographs AK Steel provided of the incident, and Mr. Gumm verified that he knew everyone in the small group who drove to the site and Nowitzke was not with them and was not pictured. Further, someone associated with AK Steel even fabricated Nowitzke's exit interview, because he and Mr. Gumm never met. Further, AK Steel has no documentation of the suspension it claimed Mr. Gumm received; the same document it claims represents a suspension states that the matter was resolved, and AK Steel does not even know the dates of his purported suspension. AK Steel Mr. Gumm then "compounded" his troubles because AK Steel knew that he was aware of the situation with its white manager who yelled "I'm going to get you fired,

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[1] Certainly, an individual could still make racist comments toward African Americans and have relatives who are African American, but the jury should decide if they believe that the same person who risked his job by speaking up on behalf of qualified African American candidates and had an African American son who worked at his job would speak in such a vulgar manner, knowing that the company already had

n*****!" at an African American employee. AK Steel denies that happened, too, even though Mr. Gumm and the employee both corroborated that it occurred.

Despite overwhelming evidence that AK Steel concocted a narrative, the district court and appellate court credited AK Steel's version of events as if what was alleged actually happened, without question, rather than that its story was fabricated to cover up its desire to get rid of Mr. Gumm, who presented a liability given that AK Steel was facing multiple racial discrimination lawsuits at the time, including by the African American employee who was called the n-word. The lower courts then proceeded from the basis that the allegations were true and then required Mr. Gumm to have to refute what AK Steel made up, concluding that AK Steel was justified in terminating him because of what it presented.

Mr. Gumm disputes that anything that AK Steel alleged was in fact true. The fact that AK Steel had evidence to support its made-up version of events should be irrelevant to any court's analysis of a Rule 56 motion. The role of the court is to determine if the aggrieved employee has evidence to support *their* version of events. Mr. Gumm's denial that he ever said or did anything that AK Steel alleged is sufficient evidence to overcome summary judgment. He need only dispute their facts with facts, which he has done. A jury must be able to decide which party they believe. Blanket statements by the appellate court, such as that there were "numerous" complaints about Mr. Gumm over the time he worked at AK Steel are simply not supported by the record, but even if they were, Mr. Gumm was never told about any comments

the entire time he worked at AK Steel. The alleged racist and sexist comments themselves did not even come to light until after he was terminated and had gone to the EEOC. The lower courts overlooked record inconsistencies and dismissed evidence of pretext that should have been evaluated by a jury. This improper application of Rule 56 not only denied Mr. Gumm his constitutional right to a jury trial but also signals an increasing erosion of the Court's clear precedent in *Reeves*. Review is necessary to clarify the evidentiary threshold required to survive summary judgment and to ensure that fact-intensive discrimination and retaliation cases are not prematurely dismissed based on judicial weighing of the evidence.

## III. A Critical Conflict Exists Between Contractual Limitations Periods and Statutory Civil Rights Protections

This case presents an important opportunity for the Court to address the growing tension between private contractual agreements and public statutory rights, particularly in light of state civil rights legislation. The Sixth Circuit's decision to uphold a shortened contractual limitations period, despite a factual dispute over whether Mr. Gumm knowingly and voluntarily agreed to such a term stands in direct conflict with the Michigan Supreme Court's reasoning in *McMillon v. City of Kalamazoo*, 983 N.W.2d 79 (Mich. 2023). The decision below effectively enables employers to circumvent Michigan's legislatively enacted protections under the Elliott-Larsen Civil Rights Act ("ELCRA") by embedding contractual limitation clauses into employment applications or

onboarding paperwork, without clear or informed consent from employees.

Against that backdrop, the district court in this case barred Mr. Gumm's ELCRA claims under a 180-day paragraph in his job application, rejecting his reliance on *McMillon* and declaring the clause valid. On appeal the Sixth Circuit affirmed in an unpublished opinion that expressly refused to analyze the ELCRA apart from Title VII, announcing that "the ELCRA analysis is identical to the Title VII analysis" and therefore upholding dismissal "for the same reasons" without addressing Michigan limitations law at all.

That approach squarely conflicts with the Erie doctrine. Under *Erie R.R. Co. v. Tompkins,* 304 U.S. 64, 78 (1938) and *Guaranty Trust Co. v. York*, 326 U.S. 99, 109 (1945), a federal court deciding a state-law cause of action must apply the substantive law announced by the state's highest tribunal. Statutes of limitation, and state rules forbidding private parties from abbreviating them, are substantive because they determine whether a claim lives or dies. By treating the ELCRA claims as interchangeable with Title VII and allowing a private 180-day deadline to override the Michigan Legislature's three-year period, the Sixth Circuit displaced controlling state law with federal common-law gloss, which is exactly what *Erie* forbids.

The result undermines Michigan's civil-rights scheme, strips workers of two-and-a-half years the Legislature intended them to have, and encourages defendants to remove state discrimination suits to federal court in hopes of enforcing clauses that

Michigan courts would reject. No vertical federalism conflict is more acute than a federal court of appeals permitting the very practice that the state's highest court has condemned on public-policy grounds. Certiorari is warranted to restore adherence to *Erie*, vindicate Michigan's anti-waiver policy, and resolve the growing tension between state-court authority and Sixth Circuit precedent on contractual limitation periods in employment discrimination cases.

The Michigan Supreme Court has expressed concern about the enforceability of such agreements absent evidence of meaningful assent, and the pending case of *Rayford v. American House Roseville I, LLC*, Michigan Supreme Court Case No. 163989, raises the further question of whether such clauses are enforceable at all as a matter of Michigan public policy. Until that question is resolved, this Court's guidance is urgently needed to clarify whether private agreements may lawfully restrict public civil rights statutes, especially where the right at issue is designed to combat discrimination and retaliation. Absent review, the Sixth Circuit's ruling could embolden employers across the country to curtail the remedial purposes of civil rights laws through pre-printed forms and unread fine print. This case offers a critical opportunity for the Court to safeguard the balance between contract law and statutory protections and ensure that workers retain meaningful access to legal redress under state and federal civil rights frameworks.

## IV. Clarification Is Needed on the Scope of EEOC Exhaustion Requirements in Retaliation and Hostile Work Environment Claims

This case presents an ideal vehicle for the Court to clarify the appropriate standards for administrative exhaustion under Title VII, particularly when retaliation and hostile work environment claims arise from a single, interrelated course of conduct. The lower courts dismissed Mr. Gumm's retaliatory hostile work environment claim on the basis that his EEOC charge failed to explicitly mark a "continuing action" box or use the precise legal label "hostile work environment." However, as the Sixth Circuit and other courts have long held, EEOC charges, particularly those filed by laypersons, must be interpreted with leniency and viewed in light of the allegations' substance rather than technical form.

The Sixth Circuit has consistently recognized in cases like *Randolph v. Ohio Dep't of Youth Servs.*, 453 F.3d 725 (6th Cir. 2006), and *Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359 (6th Cir. 2010), that factual allegations in a charge that would prompt an EEOC investigation into additional claims are sufficient to exhaust administrative remedies. Mr. Gumm's charge included clear assertions of retaliatory conduct following his complaints of racial discrimination – precisely the kind of allegation that should have alerted the EEOC to the existence of a potentially hostile work environment. The refusal to allow Mr. Gumm to proceed on this claim imposes a de facto heightened pleading standard that directly contradicts the purpose of the administrative process.

This issue is of exceptional importance to civil rights enforcement, as it affects thousands of pro se or non-lawyer complainants who rely on the EEOC process to vindicate their rights. If upheld, the Sixth Circuit's ruling would unjustifiably narrow the scope of actionable claims and frustrate the remedial intent of Title VII by denying claimants the ability to litigate workplace harms not perfectly labeled in their EEOC paperwork. This Court's intervention is needed to reaffirm a consistent and fair standard for administrative exhaustion that protects workers from being penalized for the EEOC's form limitations or their own lack of legal precision.

## CONCLUSION

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

Respectfully submitted,

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

Date: July 16, 2025