

No. _____

ORIGINAL

In the
Supreme Court of the United States

ROBERT C. MILLS,
Petitioner

v.

INDIANA DEPARTMENT OF CHILD SERVICES, et al.
Respondents

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Indiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the U.S. Supreme Court should intervene and reverse the summary judgment decision because the Indiana Courts' actions conflict with relevant decisions of this Court, mirror the errors found in the per curiam opinion *Tolan v. Cotton* 572 U. S. ____ (2014), and has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.
2. Whether the U.S. Supreme Court should intervene and allow continued discovery because the Indiana Courts' blockage of legitimate discovery requests are an obvious abuse of discretion, a blatant disregard of all discovery rules and has so far departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.
3. Whether the U.S. Supreme Court should make a final decision defining when an individual qualifies as an "employer" under Title VII because this is of great public importance and has not been, but should be, decided by the Supreme Court.
4. Whether, because Mills' discrimination complaint is significantly unique from all authorities used in the Indiana State Appellate Court opinion, this case creates an issue of great public importance that has not been, but should be, decided by the Supreme Court.

PARTIES TO THE PROCEEDING

The Petitioner, Appellant, Plaintiff is Robert C. Mills, *pro se*. The Respondents, Appellees, Defendants are the Indiana Department of Child Services, Shirley Starks, Kristen L. Sparks, Melanie Reising, and Elizabeth Herrman.

TABLE OF CONTENTS

	Page #
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION.....	1
RELEVANT STATUTORY PROVISIONS	1
SUMMARY JUDGMENT RULES	3
DISCOVERY RULES	3
STATEMENT OF THE CASE	6
INTRODUCTION	6
FACTUAL BACKGROUND	7
PROCEDURAL BACKGROUND	8
SPECIFICATION OF PROCEEDINGS WHEN FEDERAL QUESTIONS WERE RAISED	9
REASONS FOR GRANTING THE WRIT	10
SUMMARY JUDGMENT	11
SEX AND AGE DISCRIMINATION	18
RETALIATION	24
DISCOVERY	29
TITLE VII	32
§ 1983	38

SUMMARY	39
CONCLUSION	40

APPENDIX

	Page #
APPENDIX A— Indiana Supreme Court denial of petition to transfer from the Indiana Appellate Court (October 24, 2017) .	1a
APPENDIX B— Indiana Appellate Opinion (April 28, 2017) ...	2a
APPENDIX C— Indiana Appellate Court denial of Petition for Rehearing (June 22, 2017)	23a
APPENDIX D— Vanderburgh Superior Court case summary ...	24a
APPENDIX E— Amended Complaint of Employment Discrimination (June 2, 2015)	40a
APPENDIX F— Affidavit of Robert C Mills	59a
APPENDIX G— Women hired with less experience than Mills	81a
APPENDIX H- Persons hired from 4-23-12 to 4-23-15	82a
APPENDIX I- Adverse Impact statistics	84a
APPENDIX J- DCS response to EEOC	86a
APPENDIX K- Uniform Guidelines on Employee Selection Procedures	98a

TABLE OF AUTHORITIES

Cases	Page #
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U. S. 242, 255 (1986)	11
<i>Athridge v. Aetna Cas. & Sur. Co.</i> , 184 F.R.D. 181, 191 (D.D.C. 1998)	30
<i>Barger v. Kansas</i> , 630 F. Supp. 88, 90 (D. Kan. 1985)	37
<i>Bingxu Jin v. Holder</i> , 748 F.3d 959, 966 (9th Cir. 2014)	13

<i>Boston v. U.S. Steel Corp.</i> , 816 F.3d 455, 464 (7th Cir. 2016)	27
<i>Caminetti v. United States</i> , 242 U.S. 470, 485 (1917)	34
<i>Cunningham v. Smithkline Beecham</i> , 255 F.R.D. 474, 478 (N.D. Ind. 2009)	30
<i>Desta v. Ashcroft</i> , 365 F.3d 741, 745 (9th Cir. 2004)	13
<i>Dey v. Colt Constr. & Dev. Co.</i> , 28 F.3d 1457-58 (7th Cir.1994)	25
<i>Fischer v. Forrest</i> , No. 14 Civ. 1304 (PAE) (AJP), 2017 WL 128705 (S.D.N.Y. Feb. 28, 2017)	31
<i>Freemon v. Foley</i> 911 F. Supp. 326 (N.D. Ill. 1995)	34
<i>Gore v. Ind. Univ.</i> , 416 F.3d 590, 592 (7th Cir. 2005)	20,21,39
<i>Griggs v. Duke Power Co.</i> , 401 U.S. 424, 430 (1971)	22,39
<i>Hawkins v. United States</i> , 358 U. S. 74, 81 (1958)	31
<i>Herbert v. Lando</i> , 441 U.S. 153, 177 (1979)	31
<i>Hobbs v. City of Chicago</i> , 573 F.3d 454 (7th Cir. 2009)	17,28
<i>House v. Cannon Mills, Co.</i> , 713 F. Supp. 159, 159 (M.D.N.C. 1988)	37
<i>Jaburek v. Foxx</i> , 813 F.3d 626, 631 (7th Cir. 2016)	21,28
<i>Janssen v. Howse</i> , 09-CV-3340, 2011 WL 2533809 (C.D. Ill. June 27, 2011)	30
<i>Johnson v. Nordstrom, Inc.</i> , 260 F.3d 727, 732 (7th Cir.2001)	21,39
<i>Kelly v. Richland Sch. Dist.</i> , 463 F. Supp. 216, 218 (D. S.C. 1978)	37
<i>Kimbrough v. Anderson</i> , 55 N.E.3d 325, 336 (Ind. Ct. App. 2016)	39
<i>Levin v. Madigan</i> , 692 F.3d 621-22 (7th Cir. 2012)	38
<i>McGrath v. Everest Nat. Ins. Co.</i> , 625 F. Supp. 2d 660, 671 (N.D. Ind. 2008) .	30
<i>Mengelkamp v. Lake Metro. Housing Auth.</i> , No. 12-4468 (6th Cir. 2013) ...	37
<i>Millbrook v. IBP, Inc.</i> , 280 F.3d 1169, 1180 (7th Cir. 2002)	17,28

<i>Newport News Shipbuilding & Dry Dock Co. v. EEOC</i> , 462 U.S. 669, 682 (1983)	21
<i>Novelty, Inc. v. Mountain View Mktg., Inc.</i> , 265 F.R.D. 370, 375 (S.D. Ind. 2009)	30
<i>Poer v. Astrue</i> , 606 F.3d 433, 439 (7th Cir. 2010)	25,39
<i>Ptasznik v. St. Joseph Hosp.</i> , 464 F.3d 691, 695 (7th Cir. 2006)	19,39
<i>Ricci v. DeStefano</i> , 557 U.S. 557 (2009)	18
<i>Roberts v. Columbia Coll. Chi.</i> , 821 F.3d 855, 865 (7th Cir. 2016)	23,39
<i>Sierra Rutile Ltd. v. Katz</i> , 1994 WL 185751, * 3 (S.D.N.Y. 1994)	31
<i>Smith v. City of Jackson, Miss.</i> , 544 U.S. 238, 241 (2005)	22,39
<i>State v. Calhoun</i> (1999), 86 Ohio St.3d 279, 284, 285	13
<i>State v. Green</i> , 2003-Ohio-5142	13
<i>Tolan v. Cotton</i> 572 U. S. ____ (2014)	i,11-13
<i>Tomka v. Seiler Corp.</i> , 66 F.3d 1295, 1319 (2nd Cir. 1995)	34
<i>Trigg v. Fort Wayne Cmty. Schs.</i> , 766 F.2d 299, 302 (7th Cir. 1985)	38
<i>United States v. American Telephone & Telegraph</i> , 461 F. Supp. 1314, 1341, n.81 (D.D.C. 1978)	31
<i>Watson v. Fort Worth Bank & Trust</i> , 487 U.S. 994 (1988)	22,39
<i>Yeager v. Corinthian Colleges, Inc.</i> , 2002 WL 1976773 [**4] (E.D. La.)	31

STATUTES

Statute	Page #
42 U.S.C. §1983	2,8,9,38
Age Discrimination in Employment Act of 1967	2,8,23,24,34,38
Americans with Disabilities Act (ADA)	34

<i>Fair Labor Standards Act (FLSA)</i>	33
Family and Medical Leave Act (FMLA) 29 U.S.C. § 2611(4)(A)(ii)(I)(1994)	33,34,37,38
Title VII of the Civil Rights Act of 1964 42 U.S. Code § 2000e-3(a) ...	1,8-11,18,19, 21-25,32-39

RULES

Trial Rules	Page #
Ind. Trial Rule 26(B)(1)	4
Ind. Trial Rule 26(B)(5)	5,29
Ind. Trial Rule 26(C)	5
Ind. Trial Rule 26(F)	5
Ind. Trial Rule 34(B)	29
Ind. Trial Rule 37(A)(3)	5,29
Ind. Trial Rule 56(C)	3
Ind. Appellate Rule 66(A)	39
Fed. Rule Civ. Proc. 26	3,4
Fed. Rule Civ. Proc. 34(b)(2)(B)	31
Fed. Rule Civ. Proc. 56(a)	3

OTHER AUTHORITIES

Other authority	Page #
Black's Law Dictionary	33
Equal Employment Opportunity Commission ("EEOC"). 29 C.F.R. § 1607.4(D)	8,9,11,25,26
Title VII Uniform Guidelines on Employee Selection Procedures See 29 C.F.R. Part 1607	11,18,22
Wex legal dictionary	35

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert C Mills, respectfully petitions for a writ of certiorari to review the decision of the State of Indiana Supreme Court and the opinion of the Indiana Court of Appeals for Summary Judgment in favor of the respondent.

OPINION BELOW

The order of the Indiana Supreme Court (Pet. App. 1a) affirming the Indiana Court of Appeals' opinion unpublished but found at <http://www.in.gov/judiciary/opinions/pdf/04281701nhv.pdf> case # 82A01-1606-PL-1482 (Ind. Ct. App. 2017) (Pet. App. 2a-22a) that the Trial Court did not err when it determined that the Indiana Department of Child Services (DCS) was entitled to summary judgment (Pet. App. 23a, 37a).

JURISDICTION

The Indiana Supreme Court issued its order (Pet. App. 1a) affirming the Court of Appeals' opinion (Pet. App. 2a-22a) that the summary judgment order by the lower court was affirmed on October 24, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

AND REGULATIONS

Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-2, as amended by the Civil Rights Act of 1991 which provides, in relevant part: (a) It shall be an unlawful employment practice for an employer— (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any

individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin and 3(a) provides in relevant part that "[i]t shall be an unlawful employment practice for an employer . . . to discriminate against any individual . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

The Age Discrimination in Employment Act, 29 U.S.C. § 623(a)(1), provides, in relevant part: (a) Employer practices It shall be unlawful for an employer—(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age

42 U.S.C. § 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

There is no significant difference between the Federal Rules and the Indiana Rules of Civil Procedure.

SUMMARY JUDGMENT RULES

The Federal Rules of Civil Procedure, Rule 56. Summary Judgment, section a, provides in relevant part as follows: “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

Indiana Rules of Trial Procedure Rule 56. Summary judgment section (C), provides in relevant part as follows: “The judgment sought shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

DISCOVERY RULES

The Federal Rules of Civil Procedure, Rule 26. Discovery section (b)(1), provides in relevant part as follows: “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case”. “Information within this scope of discovery need not be admissible in evidence to be discoverable.” Claiming Privilege section (b)(5) provides in relevant part as follows: (A) “When a party withholds information otherwise discoverable by claiming that the information is privileged ... “the party must: (i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a

manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”

The Federal Rules of Civil Procedure, Rule 26. Discovery section (f)(1) “the parties must confer as soon as practicable” (f)(2) “In conferring, the parties must consider the nature and basis of their claims” “and develop a proposed discovery plan.” “The ... parties ... are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court ... a written report outlining the plan.” (f)(3) A discovery plan must state the parties’ views ... on: (D) any issues about claims of privilege or of protection”

The Federal Rules of Civil Procedure, Rule 26. (b)(2)(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. (C) Objections. An objection must state whether any responsive materials are being withheld on the basis of that objection.

Indiana Rules of Trial Procedure Rule 26. Discovery section (B)(1), provides in relevant part as follows: “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject-matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery” “It is not ground for objection that the information sought will be inadmissible at the trial if

the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

Indiana Rules of Trial Procedure Rule 26. Discovery section (B)(5)(a) provides in relevant part as follows: “When a party withholds information otherwise discoverable under these rules by claiming that it is privileged ... the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”

Indiana Rules of Trial Procedure Rule 26. Discovery section (F) provides in relevant part as follows: “Before any party files any motion or request to compel discovery pursuant to Rule 37, or any motion for protection from discovery pursuant to Rule 26(C), or any other discovery motion which seeks to enforce, modify, or limit discovery, that party shall: (1) Make a reasonable effort to reach agreement with the opposing party concerning the matter which is the subject of the motion or request; and (2) Include in the motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with the opposing attorney(s) concerning the matter(s) set forth in the motion or request. This statement shall recite, in addition, the date, time and place of this effort to reach agreement, whether in person or by phone, and the names of all parties and attorneys participating therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and

discussing the issues covered in this subsection (F), the court may take such action as is appropriate. The court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.”

STATEMENT OF THE CASE

INTRODUCTION

DCS supervisors filed two word-for-word nearly identical affidavits which are sole basis of the Respondents’ arguments. Mills filed an affidavit that totally refutes the copycat DCS affidavits. The Appellate Court opinion weighed the affidavits and totally believed DCS.

The Indiana Department of Child Services (DCS) works with the Indiana courts hundreds of times daily to help protect children and families. All court decisions were favorable to DCS. Mills was repeatedly denied opportunity to amend his complaint. DCS routinely made boilerplate objections which means they failed to answer ninety percent of discovery requests. DCS refused to meet and discuss discovery, refused to describe missing “privileged” documents, submitted fraudulent facts, and failed to follow Appellate Court timelines. The Indiana courts ignored all DCS transgressions. Did the Indiana courts’ intimate relationship with DCS influence the Courts’ decisions?

Mills’ discrimination case is distinctive and it necessitates a unique decision from the US Supreme Court. All authorities used in the Indiana State Appellate Court opinion were single issue discrimination cases based only on age, sex, or race with no mention of specific adverse impact statistics. Nationwide, the Federal and

State court systems have mimicked the Indiana courts because single issue discrimination cases are the norm.

Traditionally, discrimination actions involve one attribute (age, race, color, religion, sex, or national origin) and very few supporting statistics. Mills was discriminated against because of his age and sex. There are numerous facts and statistics outlined below that show this a nationally unique situation that defies all prior discrimination authorities. The Indiana State Courts failed to consider the distinctive combination of multiple facts that prove discrimination occurred. The specifics are detailed below.

FACTUAL BACKGROUND

Mills was employed by Indiana Department of Child Services (DCS) in Child Protective Services (CPS) from 1975 to 1980 and from 1984 to 1988. In 1988, he changed positions and worked for DCS as a Child Care Center Licensing Consultant. He resigned in 2007. Mills then worked as a Manager of Child Development Services for Evansville Head Start. In 2010, he retired. The Family Case Manager and CPS positions have identical written job descriptions. Mills' entire career has been devoted to helping children and families. (Pet. App. 59a)

In October 2013 and January 2014, at the age 65½, Mills was interviewed by Melanie Reising and Elizabeth Herrmann, supervisors at DCS to return to his former position. DCS claims that Mills was not hired because "the money and time expended for DCS training does not justify hiring someone who" will only "work for

two to three years” and “his body language suggested that he was uncomfortable with non-traditional families.” These claims are pretextual. (Pet. App. 62a)

DCS hired three young women, one sixty-three year old woman, and one young man instead of Mills. Three of the five people hired instead of Mills were gone in less than 17 months and the 63 year old woman was dismissed after six weeks. Thirty-one percent of new hires stay less than eight months yet Mills committed to staying two to three years. Mills had an active application for employment on file with DCS continuously from April 23, 2012 through April 2016. DCS has openings year round and hired more than 80 new employees during this time. Mills’ experience and qualifications are vastly superior to all known persons interviewed or hired. (Pet. App. 76a, 77a, 81a-85a)

In April 2014, Mills filed charges against DCS with the EEOC, alleging sex and age discrimination. The EEOC issued Mills a Notice of Right to Sue on August 15, 2014. After April 2014, more than twenty-three, young, less experienced, women were hired instead of Mills. Mills was never interviewed after April 2014. (Pet. App. 5a, 21a, 44a, 81a-83a)

PROCEDURAL BACKGROUND

On November 11, 2014, Robert Mills, pro se, brought suit against DCS and several of its employees for sex and age discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), and the Equal Protection Clause of the Fourteenth Amendment (via 42 U.S.C. § 1983). DCS violated Title VII’s anti-retaliation provision by refusing to interview Mills for open

positions after he filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC). (Pet. App. 25a)

On October 23, 2015, DCS won a judgment on the pleadings on all of Mills' claims against the employees. (Pet. App. 33a) On March 23, 2016, DCS was granted summary judgment on remaining claims. (Pet. App. 37a) On June 3, 2016, the Court Denied Mills' Motion to Correct Error. (Pet. App. 39a) The Trial Court issued no opinions.

On April 28, 2017, the Indiana Appellate Court opinion affirmed the Trial Court's decisions. (Pet. App. 2a-22a) On October 24, 2017, the Indiana Supreme Court affirmed the Court of Appeals' opinion. (Pet. App. 1a)

SPECIFICATION OF PROCEEDINGS WHEN FEDERAL QUESTIONS WERE RAISED

In all proceedings from the Amended Complaint (Pet. App. 40a-58a) to the Indiana Supreme Court the federal issues of Sex Discrimination, Age Discrimination, Title VII, 42 U.S.C. § 1983 and Retaliation were addressed. In all State Court proceedings the federal issues of Summary Judgment and Discovery were addressed. In the Trial Court proceedings (Pet. App. 24a-39a) every Motion and every decision was ruled in favor of the respondents without any opinions or explanation. The Indiana Appellate Court rendered an opinion (Pet. App. 2a) on April 28, 2017. The Appellate Court ruled "that § 1983 permits Equal Protection Clause claims against individual government employees." (Pet. App. 10a-12a) Mills provided a twenty-one page verified affidavit (Pet. App. 59a-80a) with more than

fifty relevant facts that directly contradicted all facts presented by the respondents. The entire Appellate Court opinion quoted “facts” from the respondents and disregarded all of Mills’ facts. The Court unmistakably believed and drew all reasonable inferences in favor of the respondents. The Court ignored the DCS discovery and deadline transgressions.

REASONS FOR GRANTING THE WRIT

The Indiana Courts have made decisions that are so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court’s supervisory power. All decisions in this case confirm that the Indiana Courts neglected to adhere to the fundamental principles of law, believed the Defendants, and routinely weighed evidence in favor of DCS. In the following sections, Mills will compare the court decisions weighed in favor of the respondents with versions of the same decisions weighed in favor of the petitioner. These comparisons will establish that the lower courts have been particularly prone to error. There is a conflict among the circuits regarding a supervisor’s accountability in Title VII cases.

It is of national importance that the Supreme Court addresses these questions to prevent State Courts from making decisions in direct conflict with established Supreme Court decisions and to finally address Title VII issues. The Indiana lower courts have blatantly disregarded past Supreme Court decisions, thus this Court should hear the case to correct the lower court or simply overrule the case without comment.

In 1978, the EEOC adopted the Uniform Guidelines on Employee Selection Procedures under Title VII. (Pet. App. 97a-119a) The Guidelines provided uniform guidance for employers about how to determine if their selection procedures were lawful for purposes of Title VII disparate impact theory. DCS ignored these Guidelines, the Indiana Courts ignored these Guidelines, and very few Courts have considered these Guidelines. It is of national importance that the Supreme Court addresses the use of these Guidelines.

SUMMARY JUDGMENT

In the per curiam opinion *Tolan v. Cotton* 572 U. S. ____ (2014), the Supreme Court reversed summary judgment because two lower courts “neglected to adhere to the fundamental principle” when considering such a motion. This reversal emphasized that a judge’s function in summary judgment is not to determine the truth of the matter, but to determine whether there is a genuine issue for trial.” The Court also noted that judges “should not weigh the evidence—that is the jury’s function.” The federal courts failed to adhere to the axiom that in ruling on a motion for summary judgment, “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986).

Mills emphasized *Tolan* to the Indiana Courts but they ignored this case completely. The state courts, particularly in Indiana, must follow the same rule as the federal courts. The Indiana Appellate Court opinion parallels the mistakes made in *Tolan*. In *Tolan*, an officer-involved shooting resulted from the police

mistakenly identifying a stolen car. Tolan's mother had left her house to tell the police officers that no crime had occurred. Officer Cotton shot Tolan three times while he attempted to protect his mother. On a motion for summary judgment, the U.S. District Court resolved disputed facts against Tolan, such as the lighting at the scene, his mother's demeanor, and the reasonable interpretations of the actions of those involved. The Fifth Circuit affirmed.

The Supreme Court criticized the Fifth Circuit for failing to "credit evidence that contradicted" some of the key factual conclusions and "for a clear misapprehension of summary judgment standards in light of our precedents." In response to Tolan's petition for certiorari, the Court immediately vacated the judgment and remanded without oral argument.

The bedrock doctrine that "genuine disputes are generally resolved by juries in our adversarial system" acted as a key factor in the Court's reversal of the award of summary judgment. The lower courts allowed "summary judgment based on a finding of fact—that the police officer reasonably believed that the suspect presented an immediate threat to his safety, which justified his use of deadly force—despite evidence in the record from which a trier of fact could infer the opposite." For example, Tolan testified that "two floodlights shone on the driveway" while the lower court found the "front porch was 'dimly-lit.'" Among other disputed facts, "there is a dispute as to how calmly" Tolan's mother spoke to the police, whether she was "very agitated," as Cotton stated, or "neither 'aggravated' nor 'agitated,'" as she testified at the criminal trial.

In *Tolan*, there were two different versions of the police interview. In *Mills*, there are two different versions of the supervisors' interview. In *Tolan*, the lower courts weighed the facts in favor of the police. In *Mills*, the lower courts weighed the facts in favor of the Indiana Division of Family and Children. Both courts were wrong. The Indiana courts should have believed *Mills*.

The Indiana Appellate Court opinion on summary judgment is found in Pet. App. 13a to 14a.

DCS filed three affidavits to support their motion for summary judgment that were almost word-for-word identical. *Mills* opposed the motion and filed a verified personal affidavit in support of his argument. (Pet. App. 59a-80a)

“In determining the credibility of the submitted affidavits, the trial court should consider” “whether multiple affidavits contain nearly identical language, or otherwise appear to have been drafted by the same person” “Any one of these factors may be sufficient to justify the conclusion that an affidavit lacks credibility.” *State v. Calhoun* (1999), 86 Ohio St.3d 279, 284, 285. See also *State v. Green*, 2003-Ohio-5142

“The BIA reasonably concluded that the affidavits were fraudulent because they contained nearly identical language.” See *Bingxu Jin v. Holder*, 748 F.3d 959, 966 (9th Cir. 2014); *Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004)

Should the Supreme Court allow the Indiana Courts to disproportionately weigh facts from the affidavits in favor of the DCS? Do the DCS copycat affidavits lack credibility?

The Appellate Court Opinion is totally based on these statements from the DCS affidavits:

Mills was asked why he wanted to come out of retirement, and he stated that he wanted “to work for the State for 2-3 years to solidify my retirement income.” Herrmann and Reising stated that they asked the retirement question to understand why Mills wanted to return to a job and agency that he had previously left. The interviewers stated that Mills wants the job for the money and the retirement and that these motives don’t fit our agency goals. DCS defends its reliance on Mills’ interview answer because it requires all new hires to go through an extensive three-month training program—a program whose costs are covered by the agency. DCS did not think it was a fiscally responsible decision to hire a candidate (age 65 ½) who openly disclosed that he would only work for the agency for two to three years before retiring again. (Pet. App. 4a, 15a, 16a, 18a, 19a, 22a)

The interviewers said that Mills “was hard to engage in conversation, was unable to answer questions with specific examples of using essential skills for the job, was rigid on his views of traditional and non-traditional families—his body language suggested that he was uncomfortable with non-traditional families—and provided generalized answers to questions about child abuse or neglect.” DCS said they “hired another male applicant” and “a sixty-three-year-old female to fill the positions.” DCS lied and hid facts when they said this. (Pet.App.4a,15a,22a,90a,93a)

These DCS statements are pretextual since they are so far detached from what actually occurred in the interview.

Had the Indiana Appellate Court believed Mills and made all reasonable inferences in his favor the summary judgment opinion would reflect these changes to the opinion:

Mills' affidavit provides a comprehensive outline of his work history and abilities relevant to the Family Case Manager position. Mills has extensively learned about brain development, interpersonal skills, and developmentally appropriate learning techniques. Mills provides verified statistical data that supports the allegations of age and sex discrimination. Mills directly contradicts the affidavits from DCS. The Appellate Court opinion disregarded Mills' affidavit and stated, "no genuine issue of material fact was raised." (Pet. App. 59a-80a)

Mills details a completely different version of his interview for the position. Mills explained that he has an "open-minded feeling toward all family compositions." He is "understanding and respectful of the many different family combination." Mills stated, "All families are unique and they each may have to deal with different issues but all families can thrive. I have a tremendous amount of trust and belief in the ability of people to change." Mills explained in detail how he had solved many family issues and helped families solve problems during his previous employment with DCS. During the interview, Mills was "very talkative and discussed a wide variety of topics." Mills described how "sex stereotyping played an important part" in the DCS employment decision. (Pet. App. 62a, 63a, 71a-74a)

John Schroder hired Mills to work for DCS in 1984 and Mr. Schroder asked Mills to make sure the interviewers contacted him for a reference. Mills was

interviewed by males in 1977 and 1984 and immediately hired both times. In 2013, Mills had 30 years of experience verses very little experience in 1977 and 1984. The only difference between the 1977/1984 and 2013 interviews is that this eminently qualified, older, male, was interviewed by young females in 2013. They did not contact Mr. Schroder. (Pet. App. 69a)

The Appellate Court opinion quoted DCS and said, “After the interviews, DCS hired a male and a sixty-three year old female instead of Mills.” A true and accurate statement would be, “After the interviews, DCS hired three young women, a young male and a sixty-three year old female. Mills had superior qualifications compared to these five people. DCS did not disclose that during the time Mr. Mills has been applying, DCS hired thirty-four young women each with less than one-third Mills’ experience and thirty-one percent of them stayed less than eight months.” (Pet. App. 76a, 77a, 81a-83a)

The Appellate Court should have believed Mills’ affidavit and the opinion should have said: “DCS asked an age discriminatory question, ‘Why do you want to come out of retirement?’ A reasonable jury could determine it is discriminatory to deny employment to a 65½ year old applicant that guaranteed he would be there for two to three years. This is even more discriminatory since Mills had eight years experience in the job. During the interview, Mills was conversational and provided many specific examples about how he has helped families during his thirty years of social work. Mills wanted to share his child care knowledge and expertise to help coworkers and families learn about effective discipline strategies. Mills is fully

aware of the variety of family compositions that occur in our diverse society. He is respectful of all diversity and comfortable working in all situations. He has dealt with every conceivable form of abusive family situation. He calmly works to help each family improve their situation. Mills described a variety of techniques he uses to avoided court room trials. Families seem to realize that Mills wants good things for their family and their children. Mills answered all questions and often asked, 'Do you want me to talk more, because I can talk extensively on this subject, if you want?' Mills was told they have enough." (Pet. App. 59a-67a, 70a-74a)

Mills made a cogent argument that he is eminently qualified for the position. Mills' qualifications serve as evidence of pretext because the differences between Mills and the other interviewees/hires was so favorable toward Mills that there can be no dispute among reasonable persons of impartial judgment that Mills was overwhelmingly better qualified for the position. See *Hobbs v. City of Chicago*, 573 F.3d 454, 462 (7th Cir. 2009) (quoting *Millbrook v. IBP, Inc.*, 280 F.3d 1169, 1180 (7th Cir. 2002)) Mills has studied and learned everything he could to help children and families. In his fifties, Mills completed 12 hours of Masters level classes to further his knowledge of Early Childhood Education. If DCS did not discriminate against men and people over 40 years of age, Mills would have been hired and this case would not exist. This evidence must be weighed by a jury and not be ignored by the Indiana Courts. (Pet. App. 59a-62a)

On numerous occasions throughout the Indiana Court proceedings, Mills specifically identified numerous genuine issues of material fact and why these facts are in dispute.

SEX AND AGE DISCRIMINATION

DCS statements show they are unaware of the adverse impact statistics and didn't comply with Title VII Uniform Guidelines on Employee Selection Procedures. DCS must know these statistics and then complete an approved validation study of the entire hiring procedure with long term follow-up to correct the effects of their consistent discrimination. Title VII Uniform Guidelines on Employee Selection Procedures require the standard interview form and the entire interview procedure to be verified. The only valid defense against the long term adverse impact against men and older adults would have been an admission of the statistics and a description of the plans DCS has in place to reverse the age and sex discrimination. (Pet. App. 101a-112a) **The adverse impact on the hiring of males is fifty-nine percent. The adverse impact on the hiring of persons over forty years of age is fifty percent.** (Pet. App. 84a, 85a) In *Ricci v. DeStefano*, 557 U.S. 557 (2009), the Supreme Court decided that an adverse impact rate of fifty (50) percent establishes a prima facie case of discrimination. Does a rate of fifty-nine percent establish a prima facie case?

The Indiana Appellate Court opinion on sex and age discrimination is found in Pet. App. 13a to 20a.

Had the Indiana Appellate Court believed Mills and made all reasonable inferences in his favor the sex and age discrimination opinions would look like this:

Title VII makes it unlawful for an employer to discriminate against any individual because of such individual's sex. 42 U.S.C. § 2000e-2(a)(1). The direct method requires the plaintiff to produce sufficient circumstantial evidence that points directly to a sex discriminatory reason for the decision. *Ptasznik v. St. Joseph Hosp.*, 464 F.3d 691, 695 (7th Cir. 2006). The statistics confirm that DCS has made a long-term conscious effort to hire young females in defiance of age and sex discrimination laws. DCS failed to mention that they interviewed and hired more than forty young women instead of Mills. (Pet. App. 81a-85a) The evidence shows that the discriminatory interview process is a source of the age and sex discrimination at DCS. DCS depended on sex stereotypical impressions to make judgments about Mills' abilities. They wrongly interpreted Mills' statements based on his body language instead of what he factually stated. The interviewers made these statements "He was hard to engage in conversation" "He was rigid" "His body language suggested he was uncomfortable" "He was quiet nervous." This is evidence that sex stereotyping played a key part in their employment decision. The interviewers stated, "He seemed much more relaxed. His attire was much more relaxed." The women used stereotypical appearance to determine Mills' attitude. They said Mills was rigid and nervous when he wore a shirt and tie and Mills was relaxed when he wore a polo shirt. Mills' affidavit shows he was relaxed for both

interviews, he was very talkative, and discussed a wide variety of topics. Stereotypical views influenced the interviewers. Mills repeatedly asked if the interviewers wanted him to expand on the topic. They said, “No.” The Defendants’ ability to use “body language” to determine the truth of Mills’ actual statements is part of the Defendants’ reasons other than sex to deny employment and part of the Defendants’ Motion for Summary Judgment. Sex discrimination occurs when a female employer uses “body language” to deny a male a job. The supervisors each had interview technique training that expressly forbids the use of “body language. The use of “body language” is connected to common sex stereotyping. DCS made no claims that the interview process is related to job performance or that their discriminatory actions are justified by business necessity. The genuine disputes in these issues show that there is direct evidence of discrimination. The differences between Mills’ affidavit and the DCS affidavits must be resolved by a jury in our adversarial system. DCS is not entitled to summary judgment as a matter of law. (Pet. App. 63a,67a,69a,70a,73a,75a,76a,90a,91a,93a)

The adverse impact statistics, the false and hidden statistics, and repeated use of stereotypical indicators shows that using the direct method of proof Mills provides sufficient circumstantial evidence to confirm a discriminatory reason for the hiring decision and a prima facie case of discrimination.

Under the indirect method, a male plaintiff must prove that an employer has inclination to discriminate invidiously against men because there is something “fishy” about the facts at hand. *Gore v. Ind. Univ.*, 416 F.3d 590, 592 (7th Cir. 2005)

In an Addendum to Mills' Amended Brief, Mills identified fifteen "fishy" facts that DCS intentionally hid from the Court, including the fact that DCS knowingly provided false statistics in an attempt to influence the court. However, this is not a reverse discrimination case, therefore *Gore* was misapplied.

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex. Mills is male and a member of a protected class because Title VII's prohibition of discrimination because of sex protects men as well as women. *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669,682 (1983). Title VII protects the gender in the minority. At DCS women are in the majority in all positions. The Appellate Court should have used *Johnson v. Nordstrom, Inc.*, 260 F.3d 727,732 (7th Cir.2001) instead of *Gore*. In order to establish a prima facie case in a failure-to-promote context, the plaintiff must show that 1) he belongs to a protected class, [Mills did.] 2) he applied for and was qualified for the position sought, [Mills was eminently qualified for the position.] 3) he was rejected for that position. [Three young women were hired] and 4) the employer granted the promotion to someone outside of the protected group who was not better qualified than the plaintiff. [DCS hired thirty-nine females with an average age of twenty-nine and average experience of less than six years verses Mills' thirty-two years of experience. Mills is indisputably higher qualified than all persons DCS hired. (Pet. App. 81a-83a) In *Jaburek v. Foxx*, 813 F.3d 626, 631 (7th Cir. 2016), the 7th Circuit has set the highest evidentiary bar in the nation for determining pretext in discrimination cases. To demonstrate a prima facie case the

employer must have hired or interviewed someone outside of the protected class who was not better qualified for the position. (Pet. App. 81a-83a)

DCS's hiring practices have an adverse impact on older male applicants. DCS violated Title VII because a "facially neutral practice" of DCS is discriminatory in its operation. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). To prevail on this claim, the plaintiff is responsible for "isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities." *Smith v. City of Jackson, Miss.*, 544 U.S. 238, 241 (2005) (emphasis in original) (quoting *Watson v. Fort Worth Bank & Trust*, 487 U.S. 994 (1988)). Mills isolated and identified the two stage interview practice that is responsible for the adverse impact on older male applicants. The entire DCS interview process that uses sex stereotypical judgments and asks age discriminatory questions is the cause of the extremely low adverse impact scores. This specifically narrows the source of disparate-impact discrimination. The Indiana courts blocked all discovery about the interview process. It is highly likely that the interview selection process could be another cause of the extreme age and sex discrimination statistics.

Mills identified the following practice that would effectively reverse the age and sex discrimination issues. DCS must comply with the Title VII Uniform Guidelines on Employee Selection Procedures, acknowledge the adverse impact on the hiring of older males, provided excellent training to avoid the discriminatory actions in the interview process, assure that interviewers follow this training and

then complete an approved validation study of the entire hiring procedure with long term follow-up to correct the age and sex discrimination. (Pet. App. 97a-119a)

The ADEA makes it unlawful for an employer “to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s age[.]” 29 U.S.C. § 623(a)(1). An individual must be at least forty years old for the ADEA to protect him from discrimination. 29 U.S.C. § 631(a). Similar to a Title VII claim, a plaintiff alleging age discrimination must either present direct evidence of discrimination or prevail under the indirect method. *Roberts v. Columbia Coll. Chi.*, 821 F.3d 855, 865 (7th Cir. 2016).

To prevail under the direct method, the Plaintiff must show a “convincing mosaic of circumstantial evidence that points directly to a discriminatory reason for DCS’s action.” *Roberts*, 821 F.3d at 865. The question, “Why do you want to come out of retirement?” combined with the fact that the 65½ year old applicant was not hired because he “would only work two to three years” automatically correlate to age discrimination. In word-for-word affidavits, Herrmann and Reising stated that they asked the question to understand why Mills wanted to return to a job and agency that he had previously left. They asked, “Why do you want to come out of retirement?” They did not ask, “Why would you want to return to the job you previously left?” These are two completely different questions. Mills answers question two in his sworn affidavit. “I never left the field of helping children. I got a pay raise and found I could help more, younger children by improving child care

facilities in the State. I would like to continue helping children without traveling all over southern Indiana. I have knowledge and expertise that would benefit DCS. I know this job and I'm good at it." DCS was critical of Mills for saying, "I know this job and I am good at it." They hired the young applicants that said, "I would like to be a part of the DCS family and make this my career." Mills' entire career was devoted to helping children and families at DCS. This is more direct evidence of age discrimination. The DCS retirement question was not innocuous. (Pet. App. 62a, 65a, 66a, 73a, 91a)

The Appellate Court said that under the indirect method of proof Mills established a prima facie case for age discrimination. (Pet. App. 19a)

The burden then shifts to DCS to provide a legitimate, nondiscriminatory reason for choosing not to hire Mills. DCS choose to ignore Mills' vast superior experience and said they did not think it was a fiscally responsible decision to hire a 65½ year old candidate who would probably only work for the agency for two to three years before retiring again. This reasoning is blatantly discriminatory. Almost half of all new employees stay less than two years and Mills guaranteed he would be there longer than that. Mills' qualifications serve as evidence of pretext. (Pet. App. 81a-83a) Accordingly, DCS was not entitled to summary judgment on Mills' ADEA claim.

RETALIATION

The trial court erred when it failed to separately consider Mills' retaliation claim against DCS. Title VII makes it illegal for an employer to discriminate

against an employee or applicant for employment because he has “opposed any practice” that Title VII forbids, or because he has “made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing[.]” 42 U.S.C. § 2000e-3(a). A plaintiff may employ either the direct or indirect method of proof to prove his claim of retaliation. *Poer v. Astrue*, 606 F.3d 433, 439 (7th Cir. 2010). The statistical proof available in this case was not available in *Poer*.

The Indiana Appellate Court opinion on retaliation is found in Pet. App. 20a to 22a.

Had the Indiana Appellate Court believed Mills and made all reasonable inferences in his favor the retaliation opinion would look like this:

Under the direct method, “a plaintiff must show through either direct or circumstantial evidence that (1) [he] engaged in statutorily protected activity; (2) [he] suffered an adverse action taken by the employer; and (3) there was a causal connection between the two.” *Dey v. Colt Constr. & Dev. Co.*, 28 F.3d 1446,1457 (7th Cir.1994) DCS concedes that Mills has established prongs one and two. (Pet. App. 21a)

DCS interviewed Mills in October 2013 and January 2014. In April 2014, Mills filed charges against DCS with the EEOC, alleging sex and age discrimination. The EEOC issued Mills a Notice of Right to Sue on August 15, 2014. Immediately after Mills’ interviews, DCS hired three young women, one sixty-three year old woman, and one young man instead of Mills. Three of the five people hired

instead of Mills were gone in less than 17 months. (Pet. App. 62a,65a,66a,73a) Mills had an active application for employment on file with DCS continuously from April 2012 through April 2016. Mills frequently checked on the application and made sure it was active. DCS has openings year round and hired more than eighty new employees during this time. Mills' experience and qualifications was overwhelmingly better than any of the twenty-two women hired after April 2014. (Pet. App. 59a-62a, 81a-83a) Mills was never interviewed after April 2014. DCS never revealed this relevant data to EEOC or the Court. The Courts allowed DCS to omit all discovery regarding applicants that were interviewed instead of Mills. The timing of DCS's refusal to interview, the statistical data, the hidden discovery, and Mills' exceptional qualifications provides proof that a jury should weigh evidence to determine if the causal link is fact.

DCS repeatedly stated, "Discovery has revealed facts (prior protected actions) that should preclude the State from being ordered to hire him." In other words, DCS asked the Court to sanction their retaliation against Mills. This request is evidence that DCS would illegally retaliate against Mills and more evidence of a causal link. There are more than enough conflicting facts to prevent summary judgment on this issue.

Under the indirect method, Mills proved that he: (1) engaged in statutorily protected activity; [DCS concedes this fact] (2) met DCS's legitimate expectations; [Mills' qualifications far exceeded all know applicants] (3) suffered a materially adverse action; [DCS refused to interview Mills after April 2014] and (4) was

treated less favorably than similarly situated employees or applicants who did not engage in statutorily protected activity. [Numerous young less experienced females were interviewed and hired] *Boston v. U.S. Steel Corp.*, 816 F.3d 455, 464 (7th Cir. 2016).

EEOC says the refusal to interview or hire a person because of prior protected actions is an illegal form of retaliation. In order to establish a prima facie case for retaliation, Mills must show the following: (1) that he engaged in a statutorily protected activity, [Mills filed this action which is a statutorily protected activity] (2) that he applied for and was qualified for the position sought, [Mills is overwhelmingly qualified for the position with thirty-two years experience working with children and families.] (Pet. App. 59a-62a) (3) that the Defendants were aware of the law against retaliation [All the Defendants have documentation that they have been trained about retaliation laws.], (4) he was rejected for that position [Mills was not interviewed after January 7, 2014] and (5) the employer granted the promotion to someone outside of the protected group who was not better qualified than Mills. [There can be no dispute among reasonable persons of impartial judgment that Mills was overwhelmingly better qualified for the position. DCS has provided no reason for hiring twenty-two women with inferior qualifications compared to Mills. Mills' experience shows he is a caring, exceptional Family Case Manager. The missing requested discovery would have shown that Mills is indisputably much higher qualified than the women DCS interviewed instead of him.] (Pet. App. 59a-62a)

“To demonstrate a prima facie case for failure to promote, a plaintiff must produce evidence showing that ... the employer promoted someone outside of the protected class who was not better qualified for the position.” *Jaburek v. Foxx*, 813 F.3d 626, 631 (7th Cir. 2016) [W]e have set a high evidentiary bar for pretext. Evidence of Riley’s qualifications “only would serve as evidence of pretext if the differences between her and [the candidates who were promoted] were ‘so favorable to the plaintiff that there can be no dispute among reasonable persons of impartial judgment that the plaintiff was clearly better qualified for the position at issue.’ ” *Hobbs v. City of Chicago*, 573 F.3d 454, 462 (7th Cir. 2009) (quoting *Millbrook v. IBP, Inc.*, 280 F.3d 1169, 1180 (7th Cir. 2002)) Mills’ qualifications serve as evidence of pretext because he meets this highest standard in the nation. Only a jury can weigh this evidence.

The number of young women interviewed instead of Mills is unknown because the Courts allowed DCS to refuse to comply with discovery. It is statistically impossible for the Indiana Department of Child Services to have interviewed and hired so many less qualified, younger, females during the time that Mills’ application has been available and the reason for not interviewing and hiring Mills is anything other than retaliation. (Pet. App. 81a-83a) Had DCS not refused to answer interviewing questions, discovery would have uncovered discriminatory flaws in the DCS process of picking potential employees to interview. At a minimum, the Trial Court erred by not allowing the retaliation claims to be heard by a jury.

DISCOVERY

**The Indiana Appellate Court opinion briefly addressed discovery.
(Pet. App. 8a)**

Had the Indiana Appellate Court believed Mills and made all reasonable inferences in his favor the discovery opinion would look like this:

The trial court abused its discretion when it denied his motions to compel discovery from DCS. Mills showed that DCS violated Ind. Trial Rule 37(A)(3), T.R. 34(B) and T.R. 26(B)(5) and repeatedly made boilerplate objections without explanation. Mills contacted DCS counsel by phone and e-mail on 5-29, 5-31, 6-19, 6-22, 8-11, 8-17, 8-18, 8-19, 8-24, 8-25, and 8-28-2015 in attempts to work out discovery disputes. Counsel responded that she would only comply “with a court order.” In DCS Appellees’ Brief, counsel falsely said they were not required to meet and that only Mills must meet this obligation. No meeting occurred. Mills presented the fact that counsel refused to meet and confer during two trial court hearings. Counsel didn’t deny their refusal to meet, didn’t deny their refusal in any motions, memos or briefs and didn’t deny this fact to the Appellate Court. The Trial Court denied Mills’ Motion to Compel allowing DCS to evade providing discovery about the numerous applicants interviewed instead of Mills.

DCS objected to all requests for information by making only boilerplate objections such as: “vague, confusing, overly broad, burdensome, seeks attorney-client, privileged information, attorney work product, not limited in scope, and not

likely to lead to the discovery of admissible evidence.” The Defendants did not explain any objections. The nondescript objections should have been waived and the Court should have affirmed Mills’ Motion to Compel.

When a party raises objections to discovery requests, the objecting party bears the burden of proving that a discovery request is improper. See, e.g., *Janssen v. Howse*, 09-CV-3340, 2011 WL 2533809 (C.D. Ill. June 27, 2011); *Cunningham v. Smithkline Beecham*, 255 F.R.D. 474, 478 (N.D. Ind. 2009). When the objecting party raises nonspecific, boilerplate objections without clearly explaining how the request is objectionable, courts should overrule the objections in favor of broad discovery, pursuant to the federal rules. *Novelty, Inc. v. Mountain View Mktg., Inc.*, 265 F.R.D. 370, 375 (S.D. Ind. 2009) (boilerplate objections without explanation are deemed waived); *McGrath v. Everest Nat. Ins. Co.*, 625 F. Supp. 2d 660, 671 (N.D. Ind. 2008) (the objecting party must specify why the discovery request is improper) The Defendants did not offer evidence or set forth how production of documents would be unduly burdensome. Objections as to burdensomeness “must show specifically how [a request] is overly broad, burdensome, or oppressive, by submitting affidavits or offering evidence which reveals the nature of the burden.” *Athridge v. Aetna Cas. & Sur. Co.*, 184 F.R.D. 181, 191 (D.D.C. 1998).

Boilerplate responses to discovery requests violate the specificity requirements of the December 2015 amendments to Rule 34 of the Federal Rules of Civil Procedure. The court warned lawyers that any discovery response in any future case before the court failing to state objections with specificity will be deemed

a waiver of all objections except those based on privilege. *Fischer v. Forrest*, No. 14 Civ. 1304 (PAE) (AJP), 2017 WL 128705 (S.D.N.Y. Feb. 28, 2017).

Federal Rule 34(b)(2)(B) requires a responding party to "state with specificity the grounds for objecting to the request, including the reasons." Any objection must also "state whether any responsive materials are being withheld on the basis of that objection,"

The Federal and State Rules of Civil Procedure require courts to support broad discovery provisions. "Any rule that impedes the discovery of truth in a court of law impedes as well the doing of justice." *Hawkins v. United States*, 358 U. S. 74, 81 (1958) The Indiana courts systematically narrowed Mills' discovery requests.

Discovery rules are to be accorded "a broad and liberal treatment to effect their purpose of adequately informing litigants." *Herbert v. Lando*, 441 U.S. 153, 177 (1979). In fact, discovery requests are considered relevant if there is any possibility that the information sought may lead to the discovery of admissible evidence. See e.g., *United States v. American Telephone & Telegraph*, 461 F. Supp. 1314, 1341, n.81 (D.D.C. 1978)("The clear policy of the rules is toward full disclosure . . . [I]t is rare that a particular item of requested information is not 'relevant'. . . .")(citations omitted); *Yeager v. Corinthian Colleges, Inc.*, 2002 WL 1976773 [^{**4}] (E.D. La.)(*"a request for discovery should be allowed unless it is clear that the information sought can have no possible bearing on the subject matter of the action"*); *Sierra Rutile Ltd. v. Katz*, 1994 WL 185751, * 3 (S.D.N.Y. 1994)(in context of discovery, relevancy is "construed broadly to encompass any matter that bears

on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.")(citation omitted).

Mills was denied discovery on many issues. The Supreme Court should intervene and allow continued discovery because the Indiana Courts' blockage of discovery are a blatant disregard of relevant decisions of this Court.

TITLE VII

The Indiana Appellate Court opinion briefly addressed Mills' Complaint that held the individual supervisors responsible under Title VII on Pet. App. 9a-10a.

The Appellate Court ignored these facts

The US Supreme Court has never ruled on individual defendants' responsibility under Title VII. The Indiana Appellate Court has decided an important question of law or a case of great public importance that has not been, but should be, decided by the Supreme Court.

The Supreme Court says the plain meaning of a statute must be followed unless there are "compelling circumstances" which would lead to absurd results that are devoid of any common sense. Not one circuit court has ruled that there exists a lack of compelling circumstances which would lead to absurd results to avoid following the plain meaning of the law.

Respondeat superior has had the same definition for more than 400 years. Respondeat Superior holds an employer legally responsible for the wrongful acts of an employee or agent. This legal definition does not absolve the employee of guilt or

legal responsibility. The Seventh Circuit and other circuit courts have never explained why or how they created a new definition for respondeat superior. (Black's Law Dictionary)

None of the circuit courts have explained why congress would make supervisors responsible for violating medical leave laws but hold supervisors blameless for sexual harassment, gender discrimination, age discrimination, and discrimination based on disability.

It is almost impossible to find such a weak argument anywhere in our legal system that has allowed our Courts to protect so many individuals, that are fully guilty of discriminatory acts, from individual liability.

Circuit Courts that support exclusion of individuals base their finding on the following:

Congress meant to say something different than the plain meaning of the law as written.

If Courts are correct on this interpretation, Courts should be able to find some congressional records or hearing minutes to justify this thought, none exist. Congress has made repeated amendments to our discrimination laws (Title VII, ADEA, FLSA, ADA, and FMLA) in repeated efforts to strengthen these laws. Congress has not once backed down from the plain meaning of the law and has never implied that the law means anything other than what it states. The Family and Medical Leave Act (FMLA) is the most recent Congressional bill to expand on

protections against discrimination in the workplace. A federal district court within the Seventh Circuit has imposed liability for supervisors under FMLA. *Freemon v. Foley* 911 F. Supp. 326 (N.D. Ill. 1995). Whereas Title VII, the ADEA, and the ADA define "employer" by using the "and any agent" language, the FMLA defines an "employer" as "any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer." The courts relied on the differences in the definition of "employer" between the statutes to impose liability upon the supervisor. Congress explicitly wants a supervisor to be held liable for violating the FMLA. Before FMLA, many courts determined that Congress didn't want that same supervisor ("any agent") to be held liable for sexual harassment, gender discrimination, age discrimination, or discrimination based on disability. Congress's true intentions all along were made clear in FMLA. Clearly all Defendants fall within the plain meaning of the law and should remain as Defendants. (Pet. App. 43a,48a,51a,53a,60a)

The Supreme Court has set legal guidelines that specify when the plain meaning of a statute be abandoned. A cardinal rule of statutory construction, as articulated by the Supreme Court, requires that "the meaning of a statute must, in the first instance, be sought in the language in which the act is framed. The plain meaning of the statute must be followed unless there are "compelling circumstances" which would lead to absurd results that are devoid of any common sense. See: *Caminetti v. United States*, 242 U.S. 470, 485 (1917) and *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1319 (2nd Cir. 1995) (Parker, J., dissenting). Not one Court

decision that supports eliminating employee liability and ignoring the plain meaning of Title VII has mentioned “compelling circumstances” nor has any Court described absurd results occurring because of the plain meaning of the law. Logically, Congress always wanted the plain meaning the law to be followed.

Congress used the term “any agent” only to imply “respondeat superior” and Congress didn’t intend to provide for a remedy against the actual individual transgressor.

Several courts have concluded that by including the "any agent of such a person" language in the statute, Congress intended to provide for the liability of supervisors who affect employment decisions. Most courts have held that the use of this language merely ensures that the acts of individuals are imputed to the employer entity through respondeat superior, and "any agent" is not intended to provide for a remedy against the actual individual transgressors. According to Wex legal dictionary Respondeat Superior is “a legal doctrine that holds an employer legally responsible for the wrongful acts of an employee or agent, if such acts occur within the scope of the employment or agency.” This legal definition of “respondeat superior” does not absolve the employee or agent of guilt or legal responsibility.

The Circuit Courts have inexplicably used the term “respondeat superior” to reduce the "any agent" language in Title VII to superfluous words without any apparent purpose. If Congress had not included the "any agent" language in § 2000e(b), respondeat superior liability against employers would still be imposed under common law principles. This means the congressional use of “any agent of

such person” was included specifically to make individuals a responsible party. Congress could have clearly shown respondeat superior and held agents not liable if they used different wording. A bus driver that injures passengers is just as liable as the bus company. A bar bouncer that injures customers is just as liable as the bar company/owner. Therefore, the “agent” must be just as liable as the “employer”. “Respondeat superior” is a means to provide adequate compensation for injured parties because the owner/company has deeper pockets than the responsible individual. However, “respondeat superior” is not a method for holding legally responsible individuals/agents blameless. Courts have failed to explain why individual “agents” found guilty of discrimination have no financial liability. Supervisors/agents should be liable under Title VII when they engage in discriminatory conduct.

Only supervising agents and managerial employees that exercise "employer-like authority" can be held individually liable.

The individually named Defendants, Shirley Starks, Kristen L. Sparks, Melanie Reising, and Elizabeth Herrmann:

Are “agents” that operated under color of law at the Indiana Department of Child Services,

All serve in supervisory positions and exercised significant control over Mills’ hiring, firing or conditions of employment,

All exercise the equivalent or near-equivalent duties in regard to hiring and firing as the Indiana Department of Child Services,

All “agents” regularly can affect the lives and hiring of more than fifteen prospective employees,

All exercise employer-like functions, and,

All played a part in the sex and age discrimination of Mills. (Pet. App. 43a,48a,51a,53a)

Most Circuit Courts have found ways to limit Title VII employee liability but these same opinions all agree that individuals would fall within the plain meaning the law. Some Courts have determined that individuals are financially responsible for their discriminatory acts. See: *House v. Cannon Mills, Co.*, 713 F. Supp. 159, 159 (M.D.N.C. 1988); *Barger v. Kansas*, 630 F. Supp. 88, 90 (D. Kan. 1985); *Kelly v. Richland Sch. Dist.*, 463 F. Supp. 216,218 (D. S.C. 1978); and recently in *Mengelkamp v. Lake Metro. Housing Auth.*, No. 12-4468 (6th Cir. 2013)

The individually named Defendants all exercise employer-like functions. There are no compelling circumstances to ignore the plain meaning of the statute. Respondeat superior principles do not eliminate individual responsibilities. Congressional intent in FMLA (passed after all court rulings) clearly holds individuals responsible.

The Supreme Court should hold the individual Defendants responsible under Title VII. Under an appropriate theory of supervisor liability, a supervisor and employer will be joined in a lawsuit, liable both jointly and severally. This legal issue is not yet settled. The Supreme Court must address the lack of compelling circumstances to ignore the plain meaning of the statute, the misuse of the term

“respondeat superior” and the obvious clarification of congressional intent made in FMLA.

The Appellate Court decided an important case of great public importance that has not been, but should be, decided by the U. S. Supreme Court.

§ 1983

The Appellate Court found that the Trial Court erred when it disposed of Mills’ claims against the individual defendants under § 1983, as follows:

“Defendants have historically challenged whether a plaintiff can raise sex and age discrimination claims under Title VII and the ADEA and simultaneously assert the same claims under § 1983. While the circuit courts are split on this issue, the Seventh Circuit has thoroughly analyzed these questions and concluded that these claims can be raised together. See *Levin v. Madigan*, 692 F.3d 621-22 (7th Cir. 2012) (“In light of our analysis of the ADEA and the relevant case law, and given these divergent rights and protections, we conclude that the ADEA is not the exclusive remedy for age discrimination in employment claims.”); *Trigg v. Fort Wayne Cmty. Schs.*, 766 F.2d 299, 302 (7th Cir. 1985) (“[A] discharged state employee’s right to sue under § 1983 for violations of the Equal Protection Clause was well established before the passage of Title VII, and the legislative history suggests that Congress intended that § 1983 would not be impliedly repealed in the employment discrimination context.”).

“Given that § 1983 permits Equal Protection Clause claims against individual government employees, that § 1983 claims can be brought simultaneously with Title

VII and ADEA claims, and that the trial court failed to explain its ruling, we agree with Mills that the court erred when it disposed of his claims against Starks, Sparks, Reising, and Herrmann for allegedly violating his rights under the Equal Protection Clause. (Pet. App. 10a-12a)”

“However, we find this error to be harmless. Harmless error occurs when, in light of all of the evidence in the case, the error is sufficiently minor so as not to affect the substantial rights of a party. Ind. Appellate Rule 66(A); see also *Kimbrough v. Anderson*, 55 N.E.3d 325, 336 (Ind. Ct. App. 2016), trans. denied. (Pet. App. 10a-12a)”

This error is not harmless because the Trial Court blocked all discovery from the individual defendants based on this wrong Trial Court decision. Mills should be allowed to present cases against the individual defendants.

SUMMARY

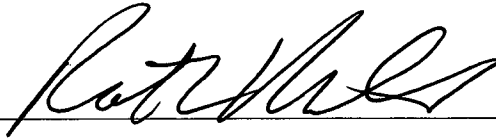
This case has statistical information that is absent in almost all precedent setting discrimination authorities. There are many more facts available and yet to be discovered. The facts will prove to a jury that Mills would have been hired but/for the combined age and sex discrimination. The country needs a distinct method of weighing a discrimination complaint like this, which has multiple complex elements that don't fit into the boxes created by single topic authorities such as *Gore*, *Griggs*, *Johnson*, *Poer*, *Ptasznik*, *Roberts*, *Smith*, *Watson*, and others. Mills' complaint has a rare combination of age discrimination, male sex discrimination, statements made by the Defendants that are highly questionable, and definitive statistical data that

supports all claims. These issues are of great public importance and the Indiana Courts have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

CONCLUSION

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

Respectfully submitted, _____

A handwritten signature in black ink, appearing to read "Robert C Mills", written over a horizontal line.

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