

No. 17-7533

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 REHEARING

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QUESTIONS PRESENTED

In this petition for rehearing, petitioner presents one intervening circumstance of a substantial effect and four substantial grounds that were not previously presented. The following five questions of law have national significance because the Supreme Court has never settled any of these issues and each issue independently constitutes substantial grounds to justify a rehearing. Only this Honorable Court has the jurisdiction and supervisory duty to decide these constitutional questions. Our constitutional democracy rests on the notion that people disdained and disfavored can still find justice before an independent Supreme Court. Allowing these injustices to continue would cause a serious erosion of public confidence in America's courts and send the wrong message that not all Americans have access to equal justice through due process.

1. Whether the U.S. Supreme Court should intervene and reverse the summary judgment decision because the Indiana Appellate Courts' opinion proves that the Court weighed the evidence and found genuine issues for trial because the opinion stated ten times, "Mills did not prove" various issues.
2. Whether the U.S. Supreme Court should intervene and overturn years of unlawful disparaging treatment toward *pro se* litigates perpetrated by all courts and attorneys nationwide which thereby deny *pro se* litigates of their constitutional rights.
3. Whether the Supreme Court and the lower courts have violated the Indiana Constitution Article 1, Section 20 and the U. S. Constitution 5th, 6th, 7th, 9th, and

14th amendments thereby denying Mills' access to equal justice through due process and a fair trial.

4. Whether summary judgment is unconstitutional.

5. Whether the Supreme Court and the lower courts can ignore verified, unchallenged, mathematical and statistical proof of the complaint and deny the Appellant's right to present this evidence to a jury simply because the Courts, clerks and attorneys do not understand or appreciate the significance of the mathematical facts and statistics.

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.

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PETITION FOR REHEARING

Pursuant to Rule 44.2, petitioner Robert C Mills, respectfully petitions for a rehearing to reverse the March 19, 2018 U.S. Supreme Court order denying certiorari in his case.

STATEMENT OF THE CASE

Robert C Mills retired early. Mills soon discovered that in the pursuit of life, liberty and happiness, he needed full time employment. Mills had an active application for employment on file with the Indiana Department of Child Services (DCS) continuously from April 2012 through April 2016. DCS hired more than eighty new employees during this time. Mills had thirty-two years experience working with children and families. An impartial jury would easily rule that Mills' qualifications overwhelmingly exceeded each and every applicant.

In October 2013 and January 2014, at the age 65½, Mills was interviewed by DCS. DCS did not hire Mills because "he would only work for two to three years." DCS used sex stereotypical assessments based on "body language," attire and appearance to make employment decisions, determine the truth of Mills' statements and to make judgments about Mills' abilities. DCS made no claims that the interview process is related to job performance or that their discriminatory actions are justified by business necessity.

DCS filed three nearly identical affidavits which are sole basis of the respondents' arguments. These DCS affidavits legally lack credibility. Mills filed a twenty-one page verified affidavit that totally refutes the DCS affidavits. The Appellate Court opinion admittedly weighed the affidavits and believed the respondents. The Supreme Court allowed the Indiana Courts to disproportionately weigh facts from the unreliable affidavits in favor of DCS. The disparity between Mills' affidavit and the DCS affidavits must be resolved by a jury.

The Courts' summary judgment decision denied Mills' lawful right to pursue happiness. The DCS's refusal to interview Mills, the statistical data, the disallowed hidden discovery, the

affidavits, the fact that the Court weighed evidence and Mills' exceptional qualifications provides proof that a jury must weigh evidence.

GROUNDS FOR REHEARING

This Petition presents five pure questions of law that only this Honorable Court has the jurisdiction and supervisory duty to decide.

1. Whether the U.S. Supreme Court should intervene and reverse the summary judgment decision because the Indiana Appellate Courts' opinion proves that the Court weighed the evidence and found genuine issues for trial when the opinion stated ten times, "Mills did not prove" numerous different issues.

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).

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." 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.

In Mills, the Courts weighed evidence in favor of the defendants and completely disregarded all of Mills' evidence. In disposing of a summary judgment motion the Courts

must assume that both parties have had ample opportunity for discovery, however, in Mills, the trial court aggressively blocked discovery.

In *Celotex*, Justice White clearly stated that it is not sufficient for the movant to move for summary judgment without supporting the motion by showing a clear absence of facts and the defendant must negate the claimed basis for the suit. *Wammock v. Celotex Corp*, 826 F.2d 33, 40 (D.C. Cir. 1987)

Mills identified a witness to support the plaintiff's claim. DCS was required to depose the witness before bringing motion for summary judgment but this never happened.

When a defendant moves for summary judgment, the defendant must demonstrate that there are insufficient facts from which a jury could reasonably conclude that the defendant discriminated against the plaintiff. The court must determine if Mills presented alternate questions of fact. The Indiana Appellate Court required Mills to meet the ultimate burden of proof at the summary judgment stage saying: Mills did not “prove that the defendant had a discriminatory intent”; Mills did not prove “something fishy about the facts”; Mills did not prove “DCS had a reason to discriminate”; Mills did not “prove age discrimination”; and, Mills did not prove “that DCS’s proffered reasons for not hiring him were pretext”. The Appellate Court opinion used the phrase “Mills did not prove” ten times. Each use of this phrase confirms that the Appellate Court weighed evidence and verifies that Mills presented evidence that must be weighed only by a jury. It is impossible to “prove” or “not prove” anything without weighing evidence. If Mills was believed, “Mills proved” everything.

Hull v. Cuyahoga Valley Ed, of Educ., 926 F.2d 505, 514 (6th Cir. 1991) (summary judgment reversed because district court made credibility determination and drew inferences in defendant's favor);

The Appellate Court should have denied the summary judgment motion because in order to grant the motion, the court would have to find the defendant's witnesses credible and

draw inferences in favor of the defendant. In Mills, the courts assumed that defendants always told the truth. By law, the Court was required to assume Mills told the truth. Instead, the Appellate Court repeatedly said "Mills did not prove" anything. Mills told the truth and a jury should be allowed to evaluate which party is truthful. It is obvious that defendants have an incentive to misrepresent the truth. The only check on the defendant's misrepresentations is the fact finder's viewing the competing evidence in context. Most of the defendants' statements were created after this action commenced.

The Supreme Court's 1986 summary judgment trilogy has had the effect, whether intended or not, of depriving many deserving Title VII and ADEA plaintiffs of the right to a trial. The Indiana Appellate Court interpreted the trilogy as a license to weigh evidence, draw inferences in favor of the defendant and require Mills to prove his case in summary judgment.

Because those who discriminate rarely admit to discrimination and almost never leave "smoking gun" evidence in their files, plaintiffs must show circumstantial evidence to prove their cases. Courts must avoid automatically crediting defendants' reasons, drawing inferences in defendants' favor, deciding witnesses' credibility on paper and requiring plaintiffs to prove their cases at the summary judgment stage.

Mills raised genuine issues of material fact as to whether a defendant's articulated reason was pretextual. Summary judgment should be denied to give Mills the opportunity to present his evidence and allows the jury to determine whose version should be believed.

2. Whether the U.S. Supreme Court should intervene and overturn years of unlawful disparaging treatment toward *pro se* litigates perpetrated by all courts and attorneys nationwide which thereby deny *pro se* litigates of their constitutional rights.

The Declaration of Independence was founded on the principle that all men are created equal. However, in all Courts of law only lawyers are created equal. The Constitution was

formed to ensure justice and liberty. The Supreme Court, the lower courts, clerks and attorneys routinely treat *pro se* issues with disregard and disrespect thereby denying *pro se* litigates' constitutional rights. This Honorable Court has a reputation as a beacon of justice above reproach and has a lawful duty to correct this injustice. The disdain by judges against *pro se* litigants is a serious problem in our country, which only the Supreme Court can rectify.

The Supreme Court routinely dismisses 99.99% of all *pro se*, in forma pauperis, cert petitions. Mills, *pro se*, presented numerous undisputed facts to support his discrimination claims and during the summary judgment phase these facts must be believed, yet all the court's law clerks and justices disregarded Mills' facts as though they didn't exist.

After Mills' first appearance with the Hon. Leslie C. Shively, judge, he immediately told Mills to obtain representation. Mills had three hearings before this Judge. In every hearing, Judge Shively repeatedly interrupted and permitted the opposing attorney to interrupt Mills as he was presented his case. The Judge assured Mills that the hearings were recorded by the clerk. When the appeal process began, Mills inquired about the costs of the transcripts of the hearings. Judge Shively said, "The transcripts are not available." The Indiana Appellate Court opinion repeatedly quoted DCS. Mills' facts were never quoted. Courts routinely disregard and disrespect *pro se* litigates.

Judge Richard Posner from the 7th U.S. Circuit Court of Appeals said he decided to retire because of conflicts with his colleagues over the treatment of *pro se* litigants. Posner elaborated on his concerns about the treatment of such litigants, "The basic thing is that most judges regard these people as kind of trash not worth the time of a federal judge." "In the 7th Circuit, staff lawyers review appeals from *pro se* litigants, and their recommendations are generally rubber-stamped by judges."

Posner wanted to give the *pro se* litigants a better shake by reviewing all of the staff attorney memos before they went to the panel of judges, "But the judges, my colleagues, all 11

of them, turned it down and refused to give me any significant role. I was very frustrated by that," Posner said. Posner has written about the *pro se* issue in an upcoming book that "implicitly or explicitly" criticizes the other judges.

"... the right to file a lawsuit *pro se* is one of the most important rights under the constitution and laws." *Elmore v. McCammon* (1986) 640 F. Supp. 905

Pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959)

"Where a plaintiff pleads *pro se* in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities." *Picking v. Pennsylvania Railway*, 151 F.2d. 240, Third Circuit Court of Appeals

It was held that a *pro se* complaint requires a less stringent reading than one drafted by a lawyer. *Puckett v. Cox*, 456 F. 2d 233 (1972) (6th Cir. USCA)

The due process guarantee expressed in the Fourteenth Amendment to the United States Constitution requires assurance of fundamental fairness during legal proceedings. U.S. Const. amend. XIV, § 1. This includes the opportunity to be heard and requires "procedural safeguards including the right to cross-examine adverse witnesses and the right to call witnesses" *Peterson v. Peterson*, 374 N.J. Super. 116, 124 (App. Div. 2005).

Courts are supposed to be halls of justice for ordinary people to have their day in court and receive justice, no matter their social standing or profession including litigants who choose to manage their own cases. "There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights." *Sherar v. Cullen*, 481 F. 2d 946 (1973)

The Judiciary Act of 1789 states that "in all courts of the United States, the parties may plead and manage their own causes personally." Numerous court decisions support fair treatment for *pro se* litigants. It follows that judges must respect the *pro se* litigants' right to represent themselves. The Supreme Court must remedy the problems with judges who

disrespect and overlook the rights of *pro se* litigants. The Supreme Court must lead the pack, make improvements from within and provide a respectful atmosphere that provides equal justice for every *pro se* litigant. The Supreme Court must not fail in this responsibility.

EQUAL JUSTICE UNDER LAW — These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as the guardian that protects the guaranteed rights of all citizens.

3. Whether the Supreme Court and the lower courts have violated the Indiana Constitution Article 1, Section 20 and the U. S. Constitution 5th, 6th, 7th, 9th, and 14th amendments thereby denying Mills' access to equal justice through due process and a fair trial.

The Supreme Court is the final judge in all cases involving the Constitution.

A Fair Trial is the best means of separating the guilty from the innocent and protecting against injustice. Without this right, the rule of law and public faith in the justice system collapse. The Right to a Fair Trial is one of the cornerstones of a just society.

The right to a trial by jury is protected by the Bill of Rights and Indiana's state constitution. The Constitution of the State of Indiana, Article 1, Section 20 states "In all civil cases, the right of trial by jury shall remain inviolate." (secure and sacred) The Indiana constitutional right to a jury trial can only be waived in civil cases by a written agreement. The Indiana courts denied Mills' civil right to trial by jury.

The 5th Amendment is important mainly because it protects us from having our rights abused by the government. The 5th Amendment says that we cannot have our life, liberty, or property taken except by due process of law. This means that the government and courts cannot simply punish us because they want to. DCS and the courts punished Mills because he is old, male, *pro se* and poor.

The 6th Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The 7th Amendment states:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Mills was denied the opportunity to obtain a jury's findings of fact.

The 9th Amendment says: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. The ninth amendment was added to the Bill of Rights to ensure that the maxim *expressio unius est exclusio alterius* would not be used at a later time to deny fundamental rights merely because they were not specifically enumerated in the Constitution. This means that there are other rights that may exist aside from the ones explicitly mentioned, and even though they are not listed, they cannot be violated. Mills' right to a fair trial cannot be violated.

The 14th Amendment Section 1 says:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

When all aspects of the Indiana Constitution Article 1, Section 20 and the U. S. Constitution 5th, 6th, 7th, 9th, and 14th amendments are taken as a whole, it is obvious and logical that citizens have more rights than those specified in the constitution. Based on the cumulative effect of these constitutional guarantees, justice requires that all citizens have

constitutional rights to equal protection and due process of law before an impartial jury. The Supreme Court has denied Mills of his constitutionally protected right to a jury trial.

4. Whether summary judgment is unconstitutional.

The Supreme Court has the ultimate jurisdiction and responsible for evaluating the constitutionality of all laws. This power of "judicial review" has given the Court a crucial responsibility in assuring individual rights. The bedrock doctrine that "genuine disputes are generally resolved by juries in our adversarial system" is a key factor to guide this Court's reversal of the award of summary judgment.

In 1938, the Federal Rules of Civil Procedure included a provision for summary judgment in Rule 56 that applied generally in all civil cases. This rule represented a significant alteration of American jurisprudence, which had previously guaranteed access to trial by jury as a right of constitutional magnitude.

From its inception, federal judges treated summary judgment warily, perceiving it as threatening a denial of such fundamental guarantees as the right to confront witnesses, the right of the jury to make inferences and determinations of credibility, and the right to have one's case presented to a jury. For example, in 1962 the Supreme Court discouraged the use of summary judgment in antitrust litigation, stating trial by affidavit is no substitute for trial by jury which so long has been the hallmark of "even handed justice." *Poller v. CBS, Inc.*, 368 U.S. at 473.

Until the 1986 summary judgment trilogy, the Second Circuit required denial of summary judgment whenever the "slightest doubt" existed as to whether the nonmovant might persuade a jury of the merits of her case. *Dolgow v. Anderson*, 438 F.2d 825, 830 (2d Cir. 1970). Before 1986, courts still protected the constitutional right to a trial.

In Justice Black's concurrence in *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 176 (1970): "[Plaintiff Adickes] may have had to prove her case by impeaching the [defendant's] witnesses

.... The right to confront, cross-examine and impeach adverse witnesses is one of the most fundamental rights sought to be preserved by the 7th Amendment.

...." Justice Black's reasoning was endorsed by the Supreme Court in Polter v. CBS, Inc., 368 U.S. 464 (1962), where the Court indicated that the preservation of the right to confront witnesses was of critical importance in cases where liability turns on motive or intent. The motive and intent of the Defendants in Mills are of critical importance. The courts systematical denied Mills the constitutional right to confront witnesses when the courts illegally denied access to discovery and denied Mills the right to cross-examine the witnesses before a jury. Under cross-examination, Mills would have revealed the lies told by the DCS witnesses and proved that their true intent was to deny Mills' employment based on his age and sex.

The Indiana Courts systematically denied Mills access to his right to a fair hearing by illegally weighing facts, denying access to legal discovery and indiscriminately disregarding true and accurate findings presented by Mills.

Summary judgment is not in the Constitution and it is merely a rule created in the Federal Rules of Civil Procedure which took effect in 1938. The constitutionality of summary judgment has never been resolved by the Supreme Court. Summary judgment shifts the balance of power from juries, where it should be, to judges, where it shouldn't. It is next to impossible for a judge to fairly rule on summary judgment when significant evidence cannot be obtained until facts are revealed under cross examination of the witnesses.

The Supreme Court has definitively stated that the "common law" in the 7th Amendment is the English common law in 1791, when the Amendment was adopted, and that a new procedure/rule will be constitutional under the 7th Amendment if the procedure satisfies the substance of the English common law jury trial in 1791. No procedure similar to summary judgment existed under the English common law. The "substance" and "core

principles" of the jury trial in 1791 included the exclusive right of juries to resolve cases. In 1791 when the 7th Amendment was ratified the jury or the parties determined the facts; the court itself would never decide a case without such a determination of the facts by the jury or the parties; a court would determine whether the evidence was sufficient to support the jury verdict only after the parties presented evidence at trial only after a jury rendered a verdict; and, a jury, not a court, decided if a case had any evidence to be weighed. Through summary judgment, judges today are resolving cases that only juries resolved in 1791. Summary judgment presents constitutional questions, not so much because judges now resolve factual disputes, but because the summary judgment device prevents juries from hearing cases that they would have heard in 1791, therefore, insulating judges from some influence juries might have wielded in 1791.

The Supreme Court must start with the premise that the 7th Amendment protects the right to trial by jury as it existed in England rather than the United States. Summary judgment is not necessary in our judicial system.

If the judge rules that the undisputed facts lead to only one legal conclusion, the case is over, without a jury trial. An example is an explicit contract. If I lend you money, you sign a promissory note, and you don't pay, the judge will say that I win the case "as a matter of law," since there is nothing a jury could say to change this. The complexities of Mills' civil rights case make summary judgment impossible because numerous facts are disputed and these disputes must be weighed by a jury.

The lower courts have granted summary judgment more aggressively in civil rights cases, even though these cases most often turn on questions of credibility and intent that only a fact finder faced with a live witness should decide. This increased use of summary judgment to dispose of civil rights actions has deprived plaintiffs of the fairer, more accurate, decision-making process assured by a fact finder's decision at trial.

The summary judgment device is unconstitutional because the 7th Amendment guarantees the "right of trial by jury." Summary judgment is unconstitutional because it permits judges to resolve cases that could only be resolved by juries at the time the 7th Amendment was ratified.

5. Whether the Supreme Court and the lower courts can ignore verified, unchallenged, mathematical and statistical proof of the complaint and deny the Appellant's right to present this evidence to a jury simply because the Courts, clerks and attorneys do not understand or appreciate the significance of the mathematical facts and statistics as presented.

The Supreme Court and the Indiana Appellate Court has denied Mills, *pro se*, the right to a trial because they are unwilling to appreciate the mathematical facts presented.

Disparate impact policies say that minority groups should be hired at a rate commensurate to the pool of applicants. EEOC says if a state's hiring rate for minority groups is 80% less than expected, it could be by accident. Maybe not, but legally this amount of discrimination might be overlooked. Anything less than an 80% hiring differential is considered proof of adverse impact, which means discriminations occurs. Employers seldom have an apparent discrimination policy.

Adverse impact analysis does not take an expert because it is a matter of simple division of accurate statistics. Example:

Applicant pool is 100 men and 100 women.

If 10 men and 10 women are hired, the adverse impact ratio is 100%, which indicates that there is no sex discrimination in hiring. Equality in hiring ratios is the goal for stopping discrimination in the workplace. This reflects the expected fair hiring practice.

If 8 men and 10 women are hired, the adverse impact ratio for men is 80%, which indicates that there may be no sex discrimination in hiring but discrimination could still occur.

If 6 men and 10 women are hired the adverse impact ratio for men is 60%. This extremely low percent verifies that there is sex discrimination in hiring. If 5 men and 10 women are hired the adverse impact ratio for men is 50%. The Supreme Court has previously ruled that this ratio definitely creates a prima facie case of sex discrimination in hiring.

Adverse Impact (AI) is a way to determine if a minority group is hired at a disproportion rate compared to what would happen in a perfect unbiased system. At DCS, male applicants are in the minority. However, if 10% of male applicants and 10% of female applicants are hired, the AI would be 100%, meaning no discrimination occurs. If 10% of female applicants and only 8% of male applicants are hired, the AI would be 80%. EEOC says that anything less than an 80% AI rate indicates that discrimination occurs. The AI on the hiring of males at DCS is 59%. The AI on the hiring of persons over forty years of age is 50%. This is proof that discrimination occurs at DCS. Furthermore, when Mills applied for employment, DCS had no male supervisors, which calculates to a zero percent AI ratio for male supervisors. Also, DCS had 66 female and 7 male employees which calculates to a 38% AI ratio on male employees. These statistics show that male discrimination has occurred for a long time at DCS. The DCS attorney provided fraudulent information and percentages that were unrelated to AI calculations which apparently confused the courts. Mills has been denied any opportunity to explain the meaning and importance of the adverse impact statistics to a fact finder. These factual numbers Mills presented are irrefutable proof that DCS discriminates yet the Appellate Court made no mention of the existence of these statistics. The Court's inability to understand statistics is proof that current summary judgment procedures denied Mills his constitution right to a trial. Above, Mills has attempted to clarify the statistics.

Sex and age discrimination is a violation of constitution rights. Statistical proof of discrimination was provided to the courts. Courts cannot deny constitution rights just because

they are unable to appreciate the statistics, definitions and mathematical facts presented. Courts must permit Mills the opportunity to present and explain these facts to a jury.

It is statistically impossible for DCS 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 hiring Mills is anything other than discrimination.

The Supreme Court justices, the most powerful jurists in the land, seem to have reluctance to taking math and statistics seriously. For decades, the court has struggled with quantitative evidence of all kinds in a wide variety of cases. Sometimes justices ignore this evidence. Sometimes they misinterpret it and sometimes they cast it aside. The world itself is becoming more computationally driven, and some of those computations will need to be adjudicated. By voicing an unwillingness to engage with data-driven empiricism, justices, and thus the courts, are at risk of making decisions without fully considering the evidence.

This problem was on full display in January 2018, when the Supreme Court heard arguments in *Gill v. Whitford* 16-1161, a case that will determine the future of partisan gerrymandering. The plaintiffs had proposed a simple math metric for determining whether the boundaries of a district were fairly drawn: Is there a way to measure a map's partisan bias and to create a standard for when a gerrymandered map infringes on voters' rights?

Four of the eight justices who regularly speak during oral arguments voiced anxiety about using calculations to answer questions about bias and partisanship. Some said the math was unwieldy, complicated, and newfangled. One justice called it "baloney." Justice John Roberts called the formula "sociological gobbledygook." Justice Breyer generalized the details of the plaintiffs' argument as all that "computer stuff." Justice Neil Gorsuch balked at mathematical approach by comparing the metric to a secret recipe.

Is it possible that these Ivy League-educated Supreme Court justices really don't understand the math of this case? Is the Supreme Court allergic to math, and what does that means for future cases? What does it mean for Mills?

Miscalculation by judges and lawyers of probabilities, from the odds of DNA matches to the chance of accidental death, have sent innocent people to jail, and, perhaps, let murderers walk free.

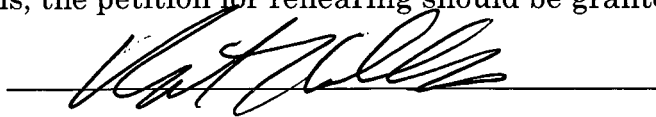
We are in an era where technological advancements affect more than just science and our lives with the growth of computer technology. We will be forced to dissect democracy, privacy, and economics as measures and technology gets more precise, intrusive, and complex. The Courts total avoidance of the statistics is proof that the justices don't understand the math issues. Mills should have the opportunity to explain the statistics to fact finders.

SUMMARY

The statistical data is not gobbledygook, it is substantial proof that DCS discriminates against men and older applicants. There are many more facts available and discoverable during cross-examination. The facts will prove to a jury that Mills would have been hired but/for the combined age and sex discrimination. These issues are of great public importance due to the new questions presented. The Courts have departed from the accepted and usual course of judicial proceedings. The Supreme Court must address these constitutional concerns.

CONCLUSION

For the foregoing reasons, the petition for rehearing should be granted.

Respectfully submitted, 

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