ORIGINAL

No. 21-744

In The
Supreme Court of the United States

William L. Maner,
Petitioner,
vs.
Dignity Health (f.k.a. Catholic Healthcare West),
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

William L. Maner
PO Box 781
Galveston, Texas 77553
Phone: 409-965-7657
E-Mail: WilliamManer@Hotmail.com

I. Questions Presented

1.) Where an employer allows workplace activities of ongoing, egregious, or multiple instances of favoritism to occur, such as job hiring, job retention, job-perks, career advancement, or other lucrative employment-related favoritism by a Boss (or Supervisor, or Manager, or similarly situated management-level employee) having a romantic penchant toward one "favored" sub-ordinate employee of a given gender, which is the same gender also preferred by the management-level employee with regard to sexual, relationship, or romantic considerations, and where the employer allows such ongoing, egregious, or multiple instances of activities to persist in the workplace at the expense of, or at the exclusion of, other sub-ordinate employees whose gender is opposite to that gender of the favored sub-ordinate employee, do such activities constitute a violation of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, with regard to discrimination against employees having gender (sex) opposite to that of the favored sub-ordinate employee?

2.) Did the District Court in this case err in its granting of Summary Judgement?

3.) Did the Appellate Court in this case err in its upholding of the District Court's granting of Summary Judgement?

4.) Should this case be remanded back to the District Court for trial?

Proceedings in other courts that are directly related to the case:

1. *Maner v. Dignity Health*, No. CV16-3651-PHX DGC, U. S. District Court for the District of Arizona. Judgment entered Oct. 10, 2018.

2. *Maner v. Dignity Health*, No. 18-17159, U.S. Court of Appeals for The Ninth Circuit. Opinion rendered Aug. 20, 2021.

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IV. Petition for Writ of Certiorari

William L. Maner, respectfully petitions this Court for a Writ of Certiorari to review the Opinion of the Ninth Circuit Court of Appeals.

V. Opinions Below

The decision by the Ninth Circuit Court of Appeals is reported as William Maner (Plaintiff-Appellant) v. Dignity Health, f.k.a. Catholic Healthcare West (Defendant-Appellee), case No. 18-17159, made on August 20th, 2021. The decision by the United States District Court of Arizona is reported with similar title, and in case numbers 2:16-cv-03651-DGC and 2:16-cv-04054-DGC, made on October 10th, 2018. The Ninth Circuit Court of Appeals ruled to uphold Summary Judgement against the Plaintiff-Appellant originally issued by the United States District Court of Arizona. The District Court's ruling for Summary Judgement, and The Ninth Circuit's Opinion, are both attached hereto at Appendix, beginning at page A2 and page A25, respectively.

VI. Jurisdiction

The Ninth Circuit Court of Appeals rendered its decision on August 20th, 2021. Petitioner, William L. Maner, invokes this Court's jurisdiction under 28 U.S.C. §2101, and Rules of the Court, Rule 13, having timely filed this Petition for a Writ of Certiorari within ninety days of the issuance of the Ninth Circuit Court of Appeal's Opinion.

VII. Constitutional Provisions Involved

None.

VIII. Statement of the Case

A. Background: Petitioner, William L. Maner, and at least one other male employee, were excluded from multiple job benefits, were then also terminated (and then Petitioner was retaliated against in an ongoing manner), by Petitioner's Boss, while (and after) working for Respondent, Dignity Health, while the Boss retained his favored female employee, who was also the Boss' romantic partner. The Boss bestowed upon his Paramour employee numerous ongoing and lucrative job benefits, perks, and career enhancement opportunities. Petitioner (in 2011) and at least one other male (in 2010) were thus terminated by the Boss, in spite of ample evidence that the Boss had indicated (in writing to Petitioner) many multiple times throughout 2011 that the Boss was happy with the work arrangement and job performance of Petitioner, and that Petitioner would not be required to report physically to any job post in Arizona, but that he would be allowed to continue working remotely in Texas on behalf of Respondent.

Evidence prepared and presented at the District Court level shows that it was the Boss (Director of Research) who controlled the purse-strings in the workplace (i.e., in his research laboratory). This was plainly laid out at the District Court level,

supported by evidence, including depositions, as well as letters to the Respondent's HR Department sent by the Petitioner, as well as emails from the Boss to the Petitioner throughout 2011 praising the Petitioner for the outstanding work that Petitioner was performing while employed by the Respondent. The sudden and unexplained termination of male employees, including the Petitioner in late 2011, occurred at the same time that the Boss preferentially retained the female Paramour, and when the Boss's laboratory became low on funds to support all of the employees. Hence, the Boss's contention that the Petitioner or other males had somehow and suddenly become "unfit" as employees was pure pretext.

The fact is that when budget money got tight in the laboratory in 2010 and 2011, the Boss had to make a decision about which employees to retain and which employees to terminate. Such decisions do often happen in workplaces when budgets get tight. But the Boss's biased decision naturally went in favor of retaining his female Paramour employee, and to terminate at least two similarly situated and well-qualified male employees (including the Petitioner), who had received praise for their excellent work during the time that they worked for the Respondent. The Boss (and hence the Respondent) continued to retaliate against Petitioner in an ongoing manner by excluding Petitioner from research publications and patent applications on which Petitioner had participated significantly via the research projects. The Petitioner also provided evidence at the District Court level that the Boss had "hit on" other women

employees in his laboratories during his so-called "long-term relationship" with the female Paramour employee.

B. The Fallacy of The Notion of "Isolated Incident" of Favoritism in the Context of a Paramour:

Respondent, when soliciting Summary Judgement at the District Court level, and for their arguments made at the Appellate level, relied heavily upon the "Equal Employment Opportunity Commission (EEOC) Guidelines" regarding sexual favoritism in the workplace: "Policy Guidance on Employer Liability under Title VII for Sexual Favoritism", N-915.048.1/12/90 (see Appendix, A111).

Those same EEOC Guidelines state: *"An ISOLATED INSTANCE of favoritism toward a "Paramour" (or a spouse, or a friend) may be unfair, but it does not discriminate against women or men in violation of Title VII..."*

The Appeals Court of the Ninth Circuit, in its opinion, also relied considerably on the EEOC examples about such "isolated instances" of favoritism toward the Paramour employee. But the fact that EEOC takes pains to even mention the notion of "isolated instance" in its Guidelines quite obviously implies that the EEOC acknowledges that there indeed exists some threshold of instances above which Paramour employee favoritism activities DO rise to the level of discrimination in violation of Title VII. But perhaps more importantly, the very concept of only an "isolated instance" of favoritism, especially in the context of a spouse, or romantic partner, or significant other being given preferential treatment

by the Boss, is largely fanciful anyway, at least in any practical sense. In what situation would a male Boss who favors his wife, female sexual partner, or other female Paramour employee with preferential treatment over similarly talented and employable males one day suddenly decides that it is not advantageous or desirable to continue to do so the next day? In the real world, a Boss who favors his or her Paramour employee will likely continue to do exhibit such favoritism workplace activities in an ongoing fashion for as long as they are able to get away with it, or until their relationship with the Paramour ends, or until someone stops them.

And the situation in this particular case now before the Court, which is the subject of this Petition, does in fact involve ongoing, multiple, unabashed favoritism in every regard by the male Boss for the female Paramour employee, and not just an "isolated instance". This was all laid out already in the Pleadings filed by the Petitioner and in Discovery and Evidence documents cited by the Petitioner, at the District Court level, but which case has not yet been heard or tried by a jury of peers. Specifically:

- Ongoing (annual – for at least 3 years) expense-paid work-related trips to posh overseas scientific research conferences for the female Paramour employee, to which the male employees were not invited (which translates to more career networking and advancement opportunities for the female Paramour employee over the male employees)
- Ongoing (annual – for at least 3 years) placement of the female Paramour employee's

name as co-author on scientific research publications with which the Paramour employee was not significantly involved (which translates to unfair career self-promotion, recognition, and career advancement opportunities for the female Paramour employee over the equivalently situated and qualified male employees)

- Ongoing (periodic – on at least 3 occasions) placement of the female Paramour employee's name on patents for which the male employees were excluded (which translates to more lucrative compensation for the female Paramour over the equivalently situated and qualified males who were excluded)
- Ongoing (periodic – on at least 2 instances) preferential retention of the female Paramour employee at her job position during times of economic strain for the organization (which translates to greater financial and career stability for the female Paramour employee over the equivalently situated and qualified male employees who were terminated)
- And other ongoing (i.e., NOT ISOLATED) lucrative job perks preferentially given to the female Paramour employee. All of this was laid out in detail in the pleadings at the District Court level with supporting evidence (e.g., depositions and work product documents) that the Appellate Court ignored.

C. The Incomplete EEOC "Guidelines" Established an Unsound Precedent: The original EEOC Guidelines questionably concluded:

"...since both [males and females] are disadvantaged for reasons other than their genders. A female charging party who is denied an employment benefit because of such sexual favoritism would not have been treated more favorably had she been a man nor, conversely, was she treated less favorably because she was a woman."

An Example (Example 1) was also given by the original EEOC Guidelines, and which the Respondent cited in Appeals at the Ninth Circuit:

*"Example 1 - Charging Party (CP) alleges that she lost a promotion for which she was qualified because the co-worker who obtained the promotion was engaged in a sexual relationship with their supervisor. EEOC's investigation discloses that the relationship at issue was consensual and that the supervisor had never subjected CP's co-worker or any other employees to unwelcome sexual advances. The Commission would find no violation of Title VII in these circumstances, because men and women were **equally disadvantaged** by the supervisor's conduct for reasons other than their genders. Even if CP is genuinely offended by the supervisor's conduct, she has no Title VII claim."*

The above dubious statements made by the EEOC (and parroted by some lower Courts) are fatally flawed in several unfortunate ways:

1.) A Paramour employee (of whichever gender) who receives perks due to their affiliation with the Boss, receives those perks specifically because (at some point) they were pursued, courted, and "selected", and continue to be selected, as the Paramour employee by the Boss, **at least in part due to the Paramour employee's gender.** It would be naïve to believe that gender plays no role when the Boss chooses (and continues to stay with) the Paramour employee, and vice-versa. Truly, it is no minor role that gender plays when anyone is selecting a spouse, a mate, or a sexual partner. The choice of romantic relationship between the Boss and the female Paramour employee, then, naturally depends upon gender to some degree, regardless of whether that decision was made recently or long in the past, or if the choice is still ongoing and being reinforced. It is also irrelevant that the relationship is consensual. **It is even immaterial as to whether or not the Boss and Paramour employee are actually engaged in "sexual activity", which is contrary to the statements put forth by the Appellate Court panel in their Opinion document, in which the panel mis-characterized (or at least mis-understood) the Petitioner's position:**

> *"Maner reads this regulation to impose liability whenever a qualified employee is denied opportunities extended to a supervisor's sexual or romantic partner*

because, in Maner's view, any such relationship entails "submission" by that partner to sexual advances."

Not correct – sexual advances do not need to occur for Paramour-employee gender-based discrimination to exist – because it is the very existence of the gender-based preferential Paramour employee's retention and protection afforded by the Boss that creates the discrimination against opposite-gender employees. However, one cannot help but note that the Paramour employee in this particular case was "chosen" by the Boss (based in part on gender) from among his employees to ascend with the Boss into a protected employment position, even while the Boss was married to another woman. And one cannot help but note that the Boss never married the Paramour employee. So one also cannot help but surmise that if that same Paramour employee (for whatever reason) suddenly decided to shun the romantic or sexual affections of the Boss, then that Paramour employee's continued preferential employment status, retention, and protection, may consequently come into jeopardy. Does this indicate that a scenario of "submission" exists in such a so-called consensual relationship? Maybe or maybe not... But regardless of all such considerations in this specific case before the Court, the inherent bias against others in the workforce having the opposite gender (i.e., compared to the gender of the Paramour) is ALWAYS more egregious than any potential bias to those of the same gender as that of

the Paramour, as will be demonstrated and proven mathematically in the tables below. The decision of the Boss to choose the Paramour, based at least in part on the Paramour employee's gender, will continue to be reaffirmed by the Boss (presumably just so long as the gender of the Paramour employee does not change, and/or the gender-based romantic preferences of the Boss do not change). So the ongoing decision to retain, or not retain, the Paramour as an employee, or even to preferentially hire the Paramour initially, or to preferentially bestow employment enhancement or career perks to the Paramour employee, is therefore de facto skewed by the gender issue, because if it were not for the fact that the Paramour is a certain gender that the Boss desires/prefers, then the Paramour would never have been selected by the Boss in the first place to occupy both a romantic position and a preferred employee position at the workplace. Sex/gender therefore plays a critical role in the preferential treatment by the Boss toward the Paramour employee and hence bias against employees of the opposite gender, as the tables below prove. **There is no getting around the fact that by the Boss preferentially protecting an employee of a given gender, in part because of that person's gender, necessarily means that the Boss is consequently excluding at least one other employee based, at least in part, on their gender.**

The gender-based bias that is manifested in such a workplace is toxic to males in a way that is different from its toxicity to females: Male employees, simply because of their gender, can never hope to attain the level of perks, preference,

and job protection extended by the Boss toward the female Paramour employee. Female employees (other than the Paramour employee) can at least, if they choose to do so, attempt to supplant the female Paramour employee by directing their own affections, kowtowing, or other romantic advances toward such a Boss, or could strategize to have an affair with a Boss who clearly treats the female Paramour employee with such overt, ongoing, and egregious career rewards, which the other female employees correctly ascertain is related, at least in part, to the gender of the female Paramour employee. Thus, in this type of toxic workplace, the inherent gender bias (caused to exist by the Boss, and ultimately permitted to exist by the Boss's employer) feeds on itself and reinforces itself.

The Appellate panel, in its opinion, admitted that that the practice of employing a Paramour employee is unfair and can adversely affect morale. But it's much more than that for the employees whose gender is opposite that of the Paramour employee. When an employee knows that he or she is in a gender group that has little chance than the favored-gender group (of the Paramour) to EVER be in any position (because of their gender) to receive the types of preferential perks, promotions, retention, and other lucrative job/career benefits that the Paramour employee receives, it can adversely affect their job performance, attendance, etc., thus lowering their chance for job promotion, and thus resulting in less earning power. So the "opposite-gender" employees walk around the workplace with a heightened sense of a target on

their back – they know (or at least they surmise) that they are less desirable and more expendable than the employees with gender the same as the Paramour employee. These opposite-gender employees, knowing that they are in an inferior employment situation, due to their gender, are also more likely to quit their job for such a Boss/employer, which leads to job inconsistency track records, and thus a lower chance of being hired elsewhere.

And all of these side-effects of the discrimination go directly against that for which Title VII is in place, and for which Title VII is designed to protect employees regarding gender bias: Title VII of the Civil Rights Act of 1964, as amended, protects employees and job applicants from employment discrimination based on sex. And "sex" has already been thoroughly defined by The Supreme Court in the Bostock case.

2.) The EEOC (and lower Courts) have missed two very critical facts: Firstly: The Paramour MUST INDIVIDUALLY be considered (i.e., "counted" mathematically) as part of the Boss's favored-gender group, and is therefore not counted as part of the un-favored-gender group, when calculating or assessing whether one gender group or the other is being biased-against. Secondly: Such bias adversely impacts the Petitioner at an INDIVIDUAL level. The Lower Court arguments that *"both genders are equally disadvantaged"* all erroneously rely upon ignoring which gender-group the Paramour and Petitioner are part of in a given workplace, and which gender-group the Paramour and Petitioner are not part of, from a logical, legal, and

mathematical perspective. In fact, the presence of EVEN JUST 1 INDIVIDUAL PARAMOUR mathematically biases the doling out of employment, perks, hiring, retention, etc. for a given company, department, or division within the workplace toward one gender, and against the other gender. Incontrovertible (yet simple to understand) mathematical tables were presented to the Appellate Court, but those were ignored by the Respondent and were casually dismissed by the Appellate panel by a wave of the hand, when asserting (incorrectly) that the INDIVIDUAL employee situations somehow could not be affected by, or themselves could not affect, the statistics, and in the case of the Respondent, they of course chose to ignore the same calculations, because the math undermines their case.

But the statistics plays a vital role for the INDIVIDUAL involved. For example, even in an environment where there is outright hostility toward a given gender statistically, there is no absolute guarantee that every single individual employee of that gender will be terminated or harassed or discriminated against, only that there is an increased likelihood. So even the Bostock test itself is not presumed as infallible: switching the gender of the alienated INDIVIDUAL does not guarantee absolutely that a different result would occur – only that it would be MORE LIKELY STATISTICALLY that switching the gender of the aggrieved INDIVIDUAL would have resulted in a different outcome. Hence, the statistical

ramifications of the workplace environment are always applicable at the INDIVIDUAL level.

And in reality, the mathematical tables are such that even those with a basic understanding of math can realize immediately that if there exists an INDIVIDUAL Paramour (of a given gender) employed preferentially by a Boss who is attracted preferentially to that Paramour employee (of a given gender) in a workplace, and because that attraction by the Boss to the Paramour employee stems, at least in part, due to the Paramour's gender, then the employment demographics in that workplace are incontrovertibly biased in favor of the gender of the Paramour, and against the gender opposite that of the Paramour, from a mathematical and statistical perspective, and this inherently biases against the Petitioner, as an INDIVIDUAL. Hence, the situation takes on the legal ramifications at the INDIVIDUAL level – the mathematical, statistical, and legal realities for the INDIVIDUAL are inextricably inter-connected.

The tables below bear this out clearly, with specific examples relevant to this case, and relevant to the real world - - not just theoretically, as the Appellate panel might have us believe:

Table 1: Workplace gender bias caused by the preferential retaining of 1 female Paramour employee by the Boss in a work environment in which 1 employee is needed [Note: The Paramour (P), denoted in the table below, is always retained preferentially as an employee by the Boss in every Scenario, as per the present case, and in other such similar discriminatory employment situations across the USA].

All Scenarios for Males and Females Employed	Number of Male Employees:	Number of Female Employees: ["1(P)" Indicates the Paramour]	Total Job Positions Needed in the Workplace:
Scenario 1:	0	1(P)	1

Because there is no Scenario in which the female Paramour employee is not preferentially employed in this workplace, the following are true:

- ***1 out of 1 Scenarios will employ MORE females than males at this workplace.***
- ***But no Scenarios will employ more males than females at this workplace.***
- ***Highest possible number of males employed = 0.***
- ***Highest possible number of females employed = 1.***
- ***Hence, men are generally treated less favorably than women in this workplace.***

Table 2: Workplace gender bias caused by the preferential retaining of 1 female Paramour employee by the Boss in a work environment in which 2 employees are needed [Note: The Paramour (P), denoted in the table below, is always retained preferentially as an employee by the Boss in every Scenario, as per the present case, and in other such similar gender-based discriminatory employment situations across the USA].

All Scenarios for Males and Females Employed	Number of Male Employees:	Number of Female Employees: ["1(P)" Indicates the Paramour]	Total Job Positions Needed in the Workplace:
Scenario 1:	0	2 [i.e. 1 + 1(P)]	2
Scenario 2:	1	1(P)	

Because there is no Scenario in which the female Paramour employee is not preferentially employed in this workplace, the following are true:

- ***1 out of the 2 Scenarios will employ MORE females than males at this workplace.***
- ***But no Scenarios will employ more males than females at the workplace.***
- ***Highest possible number of males employed = 1.***
- ***Highest possible number of females employed = 2.***
- ***Hence, men are generally treated less favorably than women in this workplace.***

In Table 2, above, if the gender of the INDIVIDUAL Paramour were "switched", then the Paramour would not be favored by the Boss, and hence they would be in the gender group biased against, rather than in the favored-gender group, and thus their hiring/retention/promotion outcome chances would be less, all because of gender (sex). Moreover, if the gender of the INDIVIDUAL Petitioner were switched, then the Petitioner would be included in the statistically more favored group, rather than in the group experiencing the adverse gender-based bias. Thus, the Petitioner's INDIVIDUAL hiring/retention/promotion outcome chances would then become higher. This means that the "Bostock test" and the "but for" tests are passed at the level of the INDIVIDUAL. The Supreme Court stated clearly in the Bostock case that this indicates that a statutory violation has occurred.

Table 3: Workplace gender bias caused by the preferential retaining of 1 female Paramour employee by the Boss in a work environment in which 3 employees are needed. [Note: The Paramour (P), denoted in the table below, is always retained preferentially as an employee by the Boss in every Scenario, as per the present case, and in other such similar gender-based discriminatory employment situations across the USA].

All Scenarios for Males and Females Employed	Number of Male Employees:	Number of Female Employees: ["1(P)" Indicates the Paramour]	Total Job Positions Needed in the Workplace:
Scenario 1:	0	3 [i.e. 2 + 1(P)]	3
Scenario 2:	1	2 [i.e. 1 + 1(P)]	
Scenario 3:	2	1(P)	

Because there is no Scenario in which the female Paramour employee is not preferentially employed in this workplace, the following are true:

- ***2 out of the 3 Scenarios will employ MORE females than males at this workplace.***
- ***But only 1 Scenario will employ more males than females at this workplace.***
- ***Highest possible number of males employed = 2.***
- ***Highest possible number of females employed = 3.***
- ***Hence, men are generally treated less favorably than women in this workplace.***

In Table 3, above, if the gender of the INDIVIDUAL Paramour were "switched", then the Paramour would not be favored by the Boss, and hence they would be in the gender group biased against, rather than in the favored gender group, and thus their hiring/retention/promotion outcome chances would be less, all because of gender (sex). Moreover, if the gender of the INDIVIDUAL Petitioner were switched, then the Petitioner would be included in the statistically more favored group, rather than in the group experiencing the adverse gender-based bias. Thus, the Petitioner's INDIVIDUAL hiring/retention/promotion outcome chances would then become higher. This means that the "Bostock test" and the "but for" tests are passed at the level of the INDIVIDUAL. The Supreme Court stated clearly in the Bostock case that this indicates that a statutory violation has occurred.

Table 4: Workplace gender bias caused by the preferential retaining of 1 female Paramour employee by the Boss in a work environment in which 4 employees are needed [Note: The Paramour (P), denoted in the table below, is always retained preferentially as an employee by the Boss in every Scenario, as per the present case, and in other such similar gender-based discriminatory employment situations across the USA].

All Scenarios for Males and Females Employed	Number of Male Employees:	Number of Female Employees: ["1(P)" Indicates the Paramour]	Total Job Positions Needed in the Workplace:
Scenario 1:	0	4 [i.e. 3 + 1(P)]	4
Scenario 2:	1	3 [i.e. 2 + 1(P)]	
Scenario 3:	2	2 [i.e. 1 + 1(P)]	
Scenario 4:	3	1(P)	

Because there is no Scenario in which the female Paramour employee is not preferentially employed in this workplace, the following are true:

- ***2 out of the 4 Scenarios will employ MORE females than males at this workplace.***
- ***But only 1 Scenario will employ more males than females at this workplace.***
- ***Highest possible number of males employed = 3.***
- ***Highest possible number of females employed = 4.***
- ***Hence, men are generally treated less favorably than women in this workplace.***

In Table 4, above, if the gender of the INDIVIDUAL Paramour were "switched", then the Paramour would not be favored by the Boss, and hence they would be in the gender group biased against, rather than in the favored-gender group, and thus their hiring/retention/promotion outcome chances would be less, all because of gender (sex). Moreover, if the gender of the INDIVIDUAL Petitioner were switched, then the Petitioner would be included in the statistically more favored group, rather than in the group experiencing the adverse gender-based bias. Thus, the Petitioner's INDIVIDUAL hiring/retention/promotion outcome chances would then become higher. This means that the "Bostock test" and the "but for" tests are passed at the level of the INDIVIDUAL. The Supreme Court stated clearly in the Bostock case that this indicates that a statutory violation has occurred.

Table 5: Workplace gender bias caused by the preferential retaining of 1 female Paramour employee by the Boss in a work environment in which 5 employees are needed. [Note: The Paramour (P), denoted in the table below, is always retained preferentially as an employee by the Boss in every Scenario, as per the present case, and in other such similar gender-based discriminatory employment situations across the USA].

All Scenarios for Males and Females Employed	Number of Male Employees:	Number of Female Employees: ["1(P)" Indicates the Paramour]	Total Job Positions Needed in the Workplace:
Scenario 1:	0	5 [i.e. 4 + 1(P)]	5
Scenario 2:	1	4 [i.e. 3 + 1(P)]	
Scenario 3:	2	3 [i.e. 2 + 1(P)]	
Scenario 4:	3	2 [i.e. 1 + 1(P)]	
Scenario 5:	4	1(P)	

Because there is no Scenario in which the female Paramour employee is not preferentially employed in this workplace, the following are true:

- ***3 out of the 5 Scenarios will employ MORE females than males at this workplace.***
- ***But only 2 Scenarios will employ more males than females at this workplace.***
- ***Highest possible number of males employed = 4.***
- ***Highest possible number of females employed = 5.***

- *Hence, men are generally treated less favorably than women in this workplace.*

In Table 5, above, if the gender of the INDIVIDUAL Paramour were "switched", then the Paramour would not be favored by the Boss, and hence they would be in the gender group biased against, rather than in the favored-gender group, and thus their hiring/retention/promotion outcome chances would be less, all because of gender (sex). Moreover, if the gender of the INDIVIDUAL Petitioner were switched, then the Petitioner would be included in the statistically more favored group, rather than in the group experiencing the adverse gender-based bias. Thus, the Petitioner's INDIVIDUAL hiring/retention/promotion outcome chances would then become higher. This means that the "Bostock test" and the "but for" tests are passed at the level of the INDIVIDUAL. The Supreme Court stated clearly in the Bostock case that this indicates that a statutory violation has occurred.

TABLES EXPLANATION 1: The exact same types of tables as presented above can easily be rendered, for which the Paramour employee is a male, and the workplace will thereby be mathematically proven as biased against the INDIVIDUAL females, just by the presence of the male Paramour employee. This, again, has serious employment ramifications at the INDIVIDUAL level.

TABLES EXPLANATION 2: The tables above are representative of between 1 and 5 job positions in the workplace, but the results are quite easily generalizable with just a little more straightforward math for ANY number of available employee positions, and at ANY workplace. The results are always the same: The presence of even 1 Paramour employee in the workplace ALWAYS skews the data to bias against the employees whose gender is opposite that of the Paramour. THE PARAMOUR EMPLOYEE MUST BE COUNTED AS AN INDIVIDUAL MATHEMATICALY IN THE FAVORED-GENDER GROUP. LOWER COURTS HAVE IGNORED THE FACT THAT SO DOING CREATES A CALCULABLE BIAS IN FAVOR OF ONE GENDER AND AGAINST THE OPPOSIRE GENDER IN THAT WORKPLACE WHERE THE PARAMOUR IS EMPLOYED, WHICH INHERENTLY IMPACTS OPPOSIE-GENDER EMPLOYEES AT THE INDIVIDUAL LEVEL. The resulting mathematical bias against one gender group, in favor of the other gender group, in such a workplace always violates Title VII, and certainly the same is true in this particular case presently before this Court under consideration for

Certiorari. As the Appellate panel itself aptly points out in their decision, The Supreme Court and lower courts have interpreted Title VII as giving rise to sex discrimination claims where there exists "...disparate treatment (adverse employment actions motivated by sex)". The present case, where the employment actions of hiring and firing demonstrably favor one gender over another, clearly falls squarely under such Title VII characterization, as the tables above prove.

TABLES EXPLANATION 3: The tables above are specifically pertaining to gender bias in hiring or retention, but similarly, the bias against employees of gender opposite to that of the Paramour is also manifested at the INDIVIDUAL level for things such as work bonuses, career advancement opportunities, promotions, raises, and lucrative other perks, such as those spelled out in this particular case (see the section above, entitled "The Fallacy of The Notion of "Isolated Incident" of Favoritism in the Context of a Paramour:").

TABLES EXPLANATION 4: With regard to number of employees, Table 5 above represents the particular scenario identical to that which existed in the Boss's laboratory at the time that the Petitioner of this case was employed there.

It is critical to emphasize that this type of statistical gender-based workplace bias, as shown in the tables above, manifests itself at the INDIVIDUAL level (per the Bostock test) whenever

there is a Paramour employee, regardless of whether the relationship between the Boss and the Paramour is heterosexual, homosexual, consensual, non-consensual, long-lasting, or short-term, and the workplace gender-based bias is even present if there is no "sexual activity" existing between the Boss and Paramour employee.

So, in its Opinion, the Appellate Court has, quite frankly, mischaracterized the Petitioner's position and arguments (and essentially the whole issue of Paramour gender-based bias) by stating:

> *"The "paramour preference" theory of Title VII liability on which Maner relies would have us read the term "sex" broadly enough to encompass sexual activity between persons. Discrimination "because of . . . sex" includes adverse employment actions motivated by romantic and sexual liaisons, the theory goes, because an employer who exhibits favoritism toward a supervisor's paramour over other employees has discriminated against other employees "because of" romantic relationships or sexual activity."*

But contrary to the Appellate Court's statements, it is not the romantic activity or sexual activity itself that causes or is the root of the bias. It is (at least in part, but often very strongly) the gender-based physical or emotional predispositions upon which the Boss relied to preferentially choose the Paramour employee of a given gender in the first place, and then for the same (at least in part) gender-based reasons, that the Boss blatantly hires, retains, and/or promotes the same Paramour

employee of the given gender (who may or may not be as qualified as other employees of the opposite gender), which is actually at the root of this type of gender-based discrimination.

Of critical importance to note in this particular case: It was the Boss himself who held the purse-strings for the employee payroll of his research laboratory via any research grant money that had been obtained under his name, and therefore the Boss made the hiring and firing recommendations directly to the employer (Respondent) about which of his employees the employer should retain or terminate. The Boss made gender-based discriminatory decisions, to which the employer was then complicit, by the employer's turning of a blind eye and allowing those discriminatory decisions (i.e. activities) to take place by the Boss "under their banner". The Boss is responsible for causing the discrimination, but it is the Respondent (i.e. the employer) who is ultimately accountable to Title VII for allowing such a pocket of discrimination to fester in an ongoing and egregious manner within their organization.

The EEOC and Lower Courts also seem to be under the mistaken impression that the Boss must be required to first have some sort of overt animus against males, for example, in order for it to even be possible to engage in workplace discrimination against males. But that is not the criteria that the law requires at all. There only needs to be workplace ACTIVTY that results in DISPARATE TREATMENT of one gender over another. The workplace described in this present case before the Court, and undoubtedly in the workplaces of many

other employers where the Boss favors the Paramour employee of one gender, embodies the very essence of disparate treatment, and at least in part is based on the factor of gender.

The Petitioner provided sworn testimony evidence at the District Court level that the Boss had previously been known to "hit on" other women employees in his laboratories, even during his so-called long-term relationship with the female Paramour employee (during most of which time, the Boss was also married to a completely different woman other than the Paramour employee, as sworn deposition testimonies taken at the District Court level, and marriage records, show). Thus, even if the Boss decided to separate from his present Paramour employee, there is some finite, but reasonable, likelihood that one of the Boss's other female (but definitively NOT any of the male) employees could be invited by the Boss to then assume their new role of preferred female Paramour employee. At the very least, the Boss could conceivably contemplate such a scenario with the other female employees, but not with any of the male employees, who the Boss did not prefer romantically, based on their gender, and which would, at a minimum, influence the Boss's decisions on what employees to hire and keep close around him in his lab.

The bottom line is that the Paramour employee was "chosen" romantically by the Boss from among all of his other employees, at least in part based upon the Paramour employee's gender (sex) and the Boss's penchant for that gender romantically. And

that skewed mind-set potentially influences any Boss's decisions to hire, retain, or grant perks to the Paramour employee that other employees do not receive, which, biases the Boss more heavily against the Petitioner as an INDIVIDUAL, due to Petitioner's gender, than those employees of the Paramour employee's gender.

There is simply no way to refute the numbers in the tables above, which is why the Respondent chose to ignore the math. The Appellate panel simply attempted to cast aspersions on the math as somehow applicable only in a general statistical sense, and not related to an individual's outcomes or determinations. But statistical biases do, in fact, greatly influence INDIVIDUAL outcomes. The Petitioner humbly suggests, therefore, supported by the arguments and examples rendered in the Bostock case by this Court, as well as the EEOC Guidelines themselves, that the employment activities by the Boss involving multiple (i.e., NOT isolated – see Item 3, below), ongoing, and egregious perks and favoritism toward the female Paramour employee, as well as preferential hiring and preferential long-term retention of the female Paramour employee, at the expense and exclusion of similarly situated and qualified males who were terminated by the Respondent in this case, including but not limited to termination of the Petitioner, do all together, de facto, constitute violation of Title VII.

In the Bostock opinion, writing for the majority, Justice Neil Gorsuch argued:

> *"Today, we must decide whether an employer can fire someone simply for being*

homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

Situation Example 1: Similarly, whenever a Boss is forced to choose between firing his or her Paramour employee of a given gender vs firing another employee of the OPPOSITE gender to the Paramour, then because that other employee does NOT fit the Boss's romantic requirements and preferences of gender for becoming an additional or perhaps replacement Paramour to the Boss, then the Boss has little hesitation to preferentially protect and retain the existing Paramour employee, whom the Boss chose (and still keeps) romantically, and therefore the Boss also protects professionally, based at least in part on the Paramour's gender. And hence the Boss's increased penchant to fire the opposite-gender employee is de facto based, at least in part, on the sex of the fired employee.

Situation Example 2: But whenever a Boss must choose between firing his or her Paramour employee of a given gender vs firing another employee of the SAME gender as the Paramour, then because that other employee does (conceivably at least) fit the Boss's romantic requirements and preferences of gender for potentially replacing or competing romantically with the Paramour for the Boss' attention, affection, and protection, or even becoming an additional Paramour to the Boss, then

the Boss is forced to make other considerations as to whether he prefers to retain the existing Paramour employee or the other employee, but in that situation, the Boss's decision to terminate the employment of the same-gender employee will NEVER, by definition, be based on the sex of the fired employee.

Situation Example 3: But perhaps the Boss may want to prove to the existing Paramour employee that the Boss is devoted and dedicated to the Paramour employee, and in that case, the Boss might choose to hire and retain ONLY employees that are opposite the gender of the Paramour, so that the Boss will not be tempted romantically or sensually by employees who are the same gender as the Paramour employee. But such a hiring policy would also be gender-based, and one could argue may also violate the Title VII tenet.

So invariably there is always an asymmetry (caused by a different totality of factors that the Boss is considering) in the hiring/retention/promotion decision-making process of the Boss, with such asymmetry influenced by, even determined by, whether or not the terminated non-Paramour employee is of the same gender as the preferentially retained Paramour employee. This biases the Boss, in one direction or another, with a non-trivial slant against employees with a given gender. This incongruity in the hiring/firing/retention/promotion decision-making process, caused by gender considerations, would not be present at all (given everything else is copacetic) if not for the very existence of the Paramour

employee. Thus, the workplace cannot allow for Paramour employees if Title VII is truly to be applied correctly and even-handedly. Because, again, as Justice Gorsuch stated in the Bostock Opinion: "Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

Note that the "track record" of the Boss in this particular case before the Court – namely the Boss being willing to select a Paramour from among his flock of employees, even while married to someone else, and then making advances on other female employees who worked in his laboratories, whilst retaining the separate favored Paramour employee, only exacerbates the problem in the Petitioner's specific workplace. But such antics would not be a required condition for gender-based discrimination to occur (in any workplace), as they are attributable to the very presence of the Paramour employee, as has been demonstrated exhaustively by the foregoing arguments, calculations, and examples.

Perhaps the only realistic exception to the generalization that the presence of any Paramour subordinate employee de facto creates gender bias in the workplace could be contemplated if an employer were to have a written policy in place, stating that whenever there is an established or identified subordinate Paramour employee of a given gender employed at the workplace, then there must also, at the same time, be employed in that same workplace at least one other sub-ordinate employee (of the gender opposite to that of the sub-ordinate Paramour employee), who holds a similar

job position as the Paramour employee in that same workplace. Such a hiring/retention/promotion policy would balance the playing field, and the mathematical tables presented above herein (which prove Paramour gender bias) would, when recalculated accordingly, become "evenly split", then favoring neither gender.

But the Defendant in this case, Dignity Health, had no such written policy in place when the Petitioner, and at least one other male employee, were wrongfully terminated, while at the same time the female Paramour employee was overtly protected from such termination by the Boss, ultimately using the very same research grant funds/money saved by terminating the male employees, in fact, to keep the Boss's romantic female Paramour employee gainfully working there for at least another two years after Petitioner was terminated. There were no such written guarantees in place at Dignity Health that could prevent the Boss from terminating every last male employee of that research laboratory workplace environment, if the Boss chose to do so, to leave in place just the one female Paramour employee preferentially protected and retained and happily employed, with all the lucrative and career perks included that the terminated males would never enjoy.

3.) Finally, but perhaps just as importantly, the Example 1 from the EEOC Guidelines, upon which so much weight has been placed by both the Respondent and the Appellate panel, describe only a single isolated instance of favoritism involved (namely the preferential promotion of the

Paramour). Again, the EEOC Guidelines (Specifically: *"An ISOLATED INSTANCE of favoritism toward a "Paramour" (or a spouse, or a friend) may be unfair, but it does not discriminate against women or men in violation of Title VII..."*) imply that MULTIPLE instances of, and/or ONGOING OR CONTINUAL, and/or EGREGIOUS favoritism toward a Paramour rises to a much different level – a level of systematic conscientious discrimination based, at least in part, on gender (again, per Bostock), and Petitioner humbly offers that such an egregious discriminatory level violates Title VII. This case now before the Court for consideration for Certiorari involves exactly such multiple instances and ongoing discriminatory employment activities on the part of the Boss, all while employed by the Respondent. Petitioner suspects that the many (if not a majority) of Paramour employee gender-based favoritism in general follows this same type of pattern: That is, once the Paramour employee is "in" with the Boss, they will continue to receive perks from the Boss in an ongoing and unabashed fashion, while other employees dare not to speak up, for fear of losing their job or retaliation.

There is no "Paramour Theory" – rather, it is the "Paramour Impact". And it is an unfortunate status quo for employees in many job sites in America. If this Court now allows the decision of the District Court and Appellate Court to stand, it will permanently become the oppressed reality in the workplace for thousands (if not more) employees,

across this country, where the Boss is preferentially employing a Paramour employee.

Causal Connection:
The Appellate Court panel erroneously concluded:

> *"...the panel did not need to decide whether it was unreasonable to believe that the supervisor's favoritism to his romantic partner violated the law, because the plaintiff failed to establish any causal connection between the claimed protected activity and the termination decision."*

Discrimination- The overwhelming written evidence and verbal testimony evidence, which was gathered and cited at the District Court level (which is laid out concisely in the Plaintff's Response to Defendant's Motion For Summary Judgement, in the enclosed Appendix – See page A62) prior to Summary Judgement being rendered there, was available to the Appellate panel, but was either overlooked or ignored, and should be presented at trial for a jury to determine if sufficient causation existed to prove that the Boss was simply using pretext to wrongfully terminate the male Petitioner in violation of Title VII to keep the female Paramour employee preferentially retained, or if the Petitioner was truly unqualified or otherwise unfit as an employee and therefore deserved to be terminated. If this Court now grants relief in the form of a Remand to District Court for trial, then the evidence and the facts will speak for

themselves there, and justice will be done. The Respondent desperately wants to duck those facts at trial, which is why this case is now before this Court under the Title VII gender Summary Judgement issue, still with no trial having yet been conducted on the merits and facts.

Retaliation - The District Court judge, and the Appellate Court panel, both failed to understand that the retaliation claim of the Petitioner is not just rooted in the termination event of the Petitioner. Rather, the retaliation claim is also rooted in the employer's subsequent deliberate and animosity-motivated exclusion of the Petitioner by the Boss from scientific research papers and patents upon which Petitioner worked for the employer, but which were either published, or applied for, by the employer and Boss subsequent to the Petitioner's termination. The retaliatory actions of the employer began after Petitioner had written (from August, 2011 through October, 2011) not just one, but several, complaints to the employer about being wrongfully terminated, and in violation of EEOC articles. As well as the retaliatory termination itself, a significant number of domestic and foreign patents and scientific research publications were presented as evidence at the District Court level, from which the Petitioner's name was excluded, and on which the Paramour employee's name appeared, even though Petitioner had contributed meaningfully and significantly to the development of the research and the technology while working on behalf of the employer, and wherein such work by Petitioner with, on behalf of,

and for the financial benefit of the employer continued by Petitioner well AFTER the Respondent's alleged October 1st, 2011 so-called "termination date", as email evidence documents presented at the District Court level prove (see Appendix, Pages A93 and A105, as examples from the Record).

So much about the timing of the Petitioner's termination; the last day Petitioner was actually employed; when discrimination claims were made; if or when the employer was put on notice about protected activity and then retaliated against Petitioner; and in what manner such retaliation was manifested, is all determined only by the facts and evidence of the case as was laid out at the District Court level. The Summary Judgement issued there, however, hinges uniquely on the issue now before this Court – namely whether the egregious, ongoing, multiple-events workplace favoritism and employment protection afforded to the female Paramour employee by the Boss, at the exclusion of male employees, constitutes a violation of Title VII. The Appellate panel, in its Opinion, stated ostensibly that where the facts were in dispute, the Appeals Court sides with the Petitioner. But curiously that same panel then proceeded to largely ignore the very same facts presented by the Petitioner for the timeline of the events that would have allowed that Court to properly assess causal issues like retaliation. All of this was laid out plainly in the District Court case pleadings, discovery, and evidence documents (for example , see again Plaintiff's Response to

Defendant's Motion for Summary Judgement; and Excerpt from the Catholic Healthcare West (i.e., Dignity Health) Administrative Policy, which defines actual date of separation for employees; and evidence documents proving that the Petitioner worked well beyond October 1, 2011 for, on behalf of, and for the financial benefit of his employer, who is the Respondent Dignity Health (f.k.a., "Catholic Healthcare West", or "CHW")- see again Appendix, beginning on Page A62, page A86 (specifically found on page A88: *"The date of separation will be considered the last day worked."*), and pages A93 + A105, respectively). All of these disputed issues need to be heard and decided by a Jury.

IX. REASONS FOR GRANTING THE WRIT

A. Impact on Employees Nationwide

According to US Census data:
[https://www.bls.gov/cps/cpsaat11.htm]
there are approximately 148 Million employees in the USA, any of which could easily have found, or could find, themselves in a similar gender-based discriminatory situation. The same Census data shows that there are approximately 18 Million managers / supervisors / directors / etc. in positions to hire or fire, to promote or terminate, to grant or deny perks, and to enhance or inhibit careers of their subordinate employees. Various research studies have revealed that anywhere from 24% to 71% of people have engaged in office romances **[Vicki Schultz, The Sanitized Workplace, 112 YALE**

L.J. 2061, 2124 n.254 (2003)]. This means that there are at least 24% X 18 Million, or about 4.32 Million potential romantic workplace relationships between a manager / supervisor / director / etc. and another co-worker, often a subordinate, who would potentially be considered a Paramour employee. It is therefore imperative that The Supreme Court step in at this time to clarify Bostock as it applies to this gender-bias Title VII issue in general, since the Appellate and District Courts seems to have missed the message.

B. Preserving the Integrity of the Judicial Branch

The American worker, and the American public in general, trust the Judicial Branch as their last line of defense against discriminatory actions in that one place (i.e., their jobs) where they spend such a huge percentage of their time and their lives laboring for the good of this country, and to reap blessings for their own families. But the Lower Courts have been misled and have gone astray on this particular issue of gender bias. This is not a congressional issue. There is nothing wrong with Title VII as written. The problem is that the Lower Courts have misinterpreted the ambiguous EEOC Guidelines, which, unfortunately, in its somewhat unrealistic "isolated instance" example, came close to, but stopped just short of, spelling out clearly enough for the Courts the fact that ongoing, multiple-instance, egregious, and unabashed favoritism (and which is actually the most likely scenario in real-world work-place situations) of a Boss for a Paramour employee, does rise to the level of being discriminatory according to Title VII.

But Respondents in District Court and Appellate cases took the obstruse (or at least incomplete) EEOC cogitations and "ran with it", so to speak. So then many of the Lower Courts have fallen into the same trap of Respondent counsels' bombardments with the imperfect guidance that "both genders" are somehow equally disadvantaged when a Boss preferentially retains a Paramour employee of a given gender. But one need only state this out-loud for oneself to actually hear it, as a litmus test, and see how well it rolls off the tongue:

> ***"My Boss prefers to employ a female employee, not because she is more qualified, but (at least in part) because he prefers to romance a female employee, and therefore his action biases equally against both females and males."***

That statement (which apparently represents the thinking of the Lower Courts) is clearly ludicrous and illogical, and the mathematical tables presented herein prove what the mind can, and does, already inherently discern.

In this case, the faulty "equally biases both genders" argument is now becoming pervasive, is festering in the Lower Courts, and is opening the door to massive discrimination and abuse potential, and (if the Lower Court rulings are allowed to stand) with no clear legal remedy for those who are infringed, exactly such as has occurred in this case now before the Court. Petitioner humbly suggests that this situation was never the intention of the EEOC at the time that their Guidance was proposed. Only this Court remains to correct the

problem and fallacy to which the Lower Courts have fallen prey. Rarely does the Judicial System have such a remarkable opportunity like the one now to take an historical "second swipe" at clarifying an omnipresent issue, in order to repair the damage done, and just as importantly, to prevent potentially massive future discriminatory damage on a wide scale.

C. A Golden Opportunity for U.S. Employers:

Sending this case back to the District Court for trial will send a strong message to employers in America that when the Supreme Court rendered its opinions in Bostock, it did so to clarify for employers and employees alike a means to PREVENT discriminatory workplace practices, and was not doing so to provide additional "blanket" or absolute legal loophole protections, which actually PROMOTE more workplace discrimination. Remanding this case should also encourage employers to weed out supervisors, managers, and directors that would exhibit favoritism toward employees of a given gender over equally- or more-qualified employees of the opposite gender who would otherwise be passed over, terminated, or prevented other opportunities for job/career enhancement, simply because they "aren't the Boss's type."

X. CONCLUSION

For the foregoing reasons, Petitioner William Maner, respectfully requests that this Court issue a Writ of Certiorari to review the judgment of the Ninth Circuit Court of Appeals, and whereupon Petitioner asks this Court to Remand this case back to the District Court for trial.

DATED this _____ day of November, 2021.

Respectfully Submitted

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William L. Maner

PO Box 781
Galveston, Texas 77553
Phone: 409-965-7657
E-Mail: WilliamManer@Hotmail.com