

No. 26-123

IN THE
Supreme Court of the United States

DEBRA NEVINS,

Petitioner,

v.

DCH HEALTH SYSTEMS, THE DCH HEALTHCARE
AUTHORITY, REBECCA BOUTWELL,
COURTHNEY WINGO, FELICIA ELLISON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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ARGUMENT

Respondents brief in Opposition seeks to persuade this Court that the Petitioner writ of cert., should be denied, because Respondents argues that Petitioner failed to present evidence sufficient to support her claims of discrimination, retaliation and a hostile work environment.

Respondents suggest that the lower court decisions “did not announce a new rule, create or deepen a circuit conflict, or depart from this Courts precedent,”. (Res. Brief in Opp., pg. 1). In fact, the lower court decision all but guarantees that a proper petitioner, who has alleged and proffered evidence of discrimination, retaliation and a hostile work environment, will never receive their day in court. This is highlighted by the very position of the District Court who while acknowledging that

“Finding a blackface doll hanging by a noose at one’s desk is both offensive and distressing, and it is an understatement to say that such an object has no place in a civilized society, much less a workplace. But as the Rule 56 record makes clear, here it was an isolated incident, and therefore it was not pervasive. Although a single but horrific incident can in certain cases create a hostile work environment, that incident must be sufficiently and objectively severe. See *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1276 (11th Cir. 2002) (conduct must be severe or pervasive). Case 7:23-cv-01037-RDP Doc.# 77 page 26 of 38.¹

1. Memorandum Opinion, *Debra Nevins v. DCH Health Systems, et al.*, 7:23-cv-01037-RDP Doc., # 77 Filed on 05/21/25 pages 26 of 28

If in fact, the court believes that the hanging of a black face doll with a noose around its neck, has no place in a civilized society then there can be no room for the whitewashing of the pervasiveness of the act. A blackface doll with a noose around its neck is both sufficiently and objectively severe. To hold that a black face doll with a noose around its neck aimed or directed at an African American employee is not pervasive enough in its single occurrence would create unfettered single discriminatory acts which are not actionable in law by a proper plaintiff.

In addition, the Respondents, misrepresents the Petitioners full compliance with “DCH 2020” flu vaccine policy, which required employees to provide proof of vaccination or a medical or religious exemption. The very suggestion by Respondents that Petitioner failed to comply, is in direct contravention of the facts, evidence and the record below. Case 7:23-cv-01037-RDP Doc# 70-8 pg. 1-4.²

It is undisputed that the Petitioner provided her *first* medical exemption request on or about November 04, 2020. Id. The Petitioner provided her *second* medical exemption on November 11, 2020. Id. On or about November 13, 2020, Tina Skelton, of the Employee Health department, rejected Petitioner’s *second* medical exemption. Tina Skelton knew or should have known that Petitioner was not at work at the time notice was sent rejecting Petitioner’s

2. Exhibit H – Debra Nevins 2020 Exemption request. Case 7:23-cv-01037-RDP Doc. # 70-8 pg. 1-4.

second medical exemption request.³ Case 7:23-cv-01037-RDP Doc. # 70-6 pg. 2 of 2.

Furthermore, Petitioner's affidavit, submitted to the District Court outlined that Petitioner's work schedule was Monday through Friday from 6:30 am until 2:30 pm. Case 7:23-cv-01037-RDP Doc. # 70-2 pg. 7-8 of Nevins Affidavit. This affidavit further supports Petitioner's attempt at complying with Respondents modified flu vaccine policy in 2020. Id.

Last, the Petitioner, after arriving to work on November 16, 2020, discovered after reading her intraoffice email, that Tina Skelton had rejected her *second* medical exemption request. Subsequently, Rachel Posey, the supervisor of the Petitioner, asked Petitioner to leave Respondent's premises for non-compliance. Distraught, The Petitioner, then sought guidance from Dr. Lowther, who advised Petitioner, that if she sought a religious exemption, DCH could not reject the request. In so relying on the advice and counsel of her physician, Petitioner, requested a religious exemption which was faxed to Respondents on or about November 19, 2020. Case 7:23-cv-01037-RDP Doc# 70-8 pg. 1-4.⁴

3. Tina S. Skelton Flu vaccine exemption email – Tina Skelton dispatched knew that by sending the rejection of Petitioners *second* exemption request that the Petitioner would not receive notice as the method of delivering notice was via the DCH intraoffice intranet system and employees like Petitioner could only receive notice once log in and on site of DCH premises. Case 7:23-cv-01037-RDP Doc. # 70-6 pg. 2 of 2.

4. Exhibit H – Debra Nevins 2020 Exemption request. Case 7:23-cv-01037-RDP Doc. # 70-8 pg. 1-4.

With respect to Petitioners hostile work environment and retaliation claims, Respondents misrepresents the Petitioner's claim and reduces hostile work incidents as either isolated or remote. Respondents claim and the lower courts have accepted, the perception of a lack of temporal proximity between alleged acts of harassment, discrimination and retaliation from December 2019; January 2020; April 2020, to Petitioner's December 05, 2020, discharge.

Respondents resumed its retaliation against the Petitioner on April 04, 2023, when it appealed Petitioner's unemployment benefits, after learning of an imminent cause finding for discrimination with the Equal Employment Opportunity Commission *hereinafter* "EEOC" on April 26, 2023. Case 7:23-cv-01037-RDP Doc.# 70-9, Ex. I. pg. 2-3. The filing of an EEOC charge by Petitioner's was protected activity. Respondents' appeal of Petitioner's unemployment benefits during the pendency of the EEOC lawful investigation was an attempt to retaliate against the Plaintiff, to downplay its appeal by suggesting to this Honorable Court that because it withdrew its appeal which it did not, somehow removed the stench of the retaliation.

A. The Questions Presented Raises Weighty Employment Law Jurisprudence That Presents Important Recurring Questions of National Significance and Warrants This Courts Review.

Respondent's Brief in Opposition confirms rather than defeats the need for review.

Respondents repeatedly characterize this case as nothing more than a request to "reexamine a fact-bound

summary judgment record.” Resp. Br. 1. However, that characterization assumes the answer to the very questions Petitioner seeks review of by this Court. Respondents ask this Court to accept their characterization of the evidence, their explanation for Petitioner’s termination, their interpretation of Petitioner’s religious sincerity, their description of the hanging blackface doll incident as isolated or remote and their characterization of the “withdrawal” of Petitioner’s unemployment appeal. That is not a response to the legal questions presented. It is an argument on the merits. The question is whether the lower courts applied the appropriate legal standards in evaluating evidence at summary judgment. This Petition warrants review.

B. This Court Should Grant Certiorari Where the Decisions Below Usurps the Role of the Factfinder, Usually Reserved for a Jury.

This Court has repeatedly granted review in employment-discrimination cases to clarify the proper application of federal statutory protections. Further this Petition seeks review of the application of the legal principles governing the presentment of circumstantial evidence of discrimination and retaliation by a plaintiff.

The Eleventh Circuit and the District Court application of governing standards as it relates to the Petitioner’s proffered comparator is far removed from the legal framework under Title VII and 42 U.S.C. § 1981 core principles which seek to hold employers accountable for actionable discrimination, retaliation and hostile work environments. More importantly, the lower courts decisions usurp the traditional role vested with a jury of

the Petitioners' peers. This extraordinary usurpation of the factfinding role traditionally vested with a jury would create an impossible legal framework for any Plaintiff seeking redress for claims of discrimination, retaliation or hostile work environments when judges, as opposed to juries, are substituted as the gatekeepers of facts.

Respondents cannot simultaneously argue that the governing principles are important enough to invoke, then argue that this Court should dismiss this Petition as presenting nothing more than factual errors. The question is whether the lower courts applied the appropriate legal standards in evaluating evidence at summary judgment. This Petition warrants review.

C. This Court Should Grant Certiorari to Review Whether the Lower Court Erred in Determining That Petitioner Did Not Have or Express a Sincerely Held Religious Belief.

Respondents and the lower courts argue that Petitioners *third* exemption request (religious), differed materially from that of Petitioner's comparator. The Petitioner received assistance from her physician Dr. Lowther. Petitioner's comparator Tonia Williams, testified in her deposition that she received help from her husband in writing her religious exemption request from the COVID-19 vaccine. Excerpts of the Deposition of Tonia Williams, Case 7:23-cv-01037-RDP Doc# 70-13 pg., 25 of 129, at para., 16-19., pg., 26 of 129 at para., 7-10.⁵ In

5. Exhibit M – Tonia Williams Deposition Excerpts. “Q. Okay. And did you your husband look up these scriptures and – for this exemption request? A. He helped me look them up, yes. 7:23-cv-01037-RDP Doc# 70-13 pg., 26 of 129, at para., 7-10

determining whether the Petitioner and her comparator had sincerely held religious beliefs is a function of the jury and not of the court. Indeed, the Fifth Circuit Court of Appeals opined in *Davis v. Fort Bend County*, No. 13-20610, and as was articulated by this Court in *United States v. Seeger* 380 U.S. 163 (1965), that “a courts inquiry is limited to focusing upon the individuals motivation . . . In this regard, a belief is “religious” if it is a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by GOD. . . .” *Id.*, The Court further opined that “The sincerity of a person’s religious belief is a question of fact unique to each case.” *Tagore v. United States*, 735 F. 3d 324, 329 (5th Cir. 2013). The only question at law is whether the comparator in question Tonia Williams, was similarly situated in all material respects to the Petitioner. To that end, Tonia Williams, worked as a registrar, like Petitioner; answered to the same supervisor as Petitioner, had the same or similar disciplinary record as Petitioner, and requested an exemption from taking a vaccine, like the Petitioner. Both Tonia Williams and Petitioner received help in drafting their exemption request.⁶ Tonia Williams is a white woman, and the Petitioner is an African American woman. The only difference is Tonia Williams religious exemption was approved and the Petitioners religious exemption was not approved. To hold that the character of the sincerity of Petitioner’s religious belief differed from her comparator’s is again a question of fact for a jury to resolve.

6. Exhibit M – Tonia Williams Deposition Excerpts. “Q.16-18. Now, who –have on the second page, it has a listing of some information. Who helped you complete that? A. 19. My husband helped me. Q. 20. And is your husband a pastor? A. 21. No, he is not. 7:23-cv-01037-RDP Doc# 70-13 pg., 25 of 129, at para., 16-21

The critical question therefore is not merely whether Petitioner and her comparator Tonia Williams completed identical forms. The question instead is whether evidence, considered in whole, could permit a reasonable jury to infer that race contributed to DCH's treatment of Petitioner. Respondents' attempt to transform the comparator inquiry into a dispositive form-comparison exercise underscores the importance of clarifying the proper role of comparator evidence within the overall circumstantial-evidence analysis.

The question again, for this Court is whether the lower courts applied the appropriate legal standards in evaluating evidence at summary judgment. This Petition warrants review.

D. This Court Should Grant Certiorari to Clarify the Severity and Pervasiveness of an Alleged Discriminatory Act Sufficient to Alter the Terms of an Employment Contract.

Respondents repeatedly characterize the workplace incident as merely an “isolated” object that was promptly discarded. Resp. Br. 11–13. That characterization minimizes the evidence. A noose is not an ordinary workplace decoration. It is a symbol historically associated with racial terror and violence against Black Americans. The relevant legal inquiry is not whether the employer ultimately removed the object. It is whether the conduct, considered in context, was sufficiently severe or pervasive in its single occurrence to alter the conditions of employment.

Petitioner did not rely exclusively upon the single occurrence of the blackface doll incident. Her allegations included other workplace conduct and her subsequent complaints concerning harassment, discrimination, and retaliation. Respondents acknowledge that Petitioner sent an April 3, 2020, email concerning harassment and that the complaint was reported to Human Resources. Resp. App. 11a.

This Court should not allow the label of “isolated incident” to replace the required totality-of-the-circumstances analysis. As the Chief District Judge, opined, “Finding a blackface doll hanging by a noose at one’s desk is both offensive and distressing, and it is an understatement to say that such an object has no place in a civilized society, much less a workplace.” Case 7:23-cv-01037-RDP DOC.# 77 – Memorandum Opinion, pg. 26 of 38.

The question is whether the lower courts applied the appropriate legal standards in evaluating whether the single but horrific blackface doll incident created a hostile work environment and whether that act coupled with other allegations of harassment and retaliation incident were sufficiently and objectively severe to alter the terms of the Petitioners employment contract from the evidence presented at summary judgment. This Petition warrants review.

E. This Court Should Grant Certiorari Where Respondent's Appeal of Petitioner's Unemployment Benefits was Tethered to the EEOC Cause Finding Against Respondents.

Respondents argue that DCH's unemployment appeal cannot support retaliation because it was a right afforded to it and that the appeal was withdrawn before Petitioner lost benefits. Resp. Br. 13–15. Respondents incorrectly classify the dismissal as a “withdraw” as if Respondents voluntarily withdrew from its appeal of Petitioner's unemployment benefits. Both Petitioner and Respondent counsels of record have an ethical duty to zealously represent their clients. However, that same duty requires candor to the tribunal. To that end, the Respondents are lying to this Court, by stating that it withdrew from a process it started on April 04, 2023, when in fact, Respondents simply failed to appear at the May 2023, hearing it requested. Furthermore, Respondents failure to be present at the very hearing it requested required the appeal to be DISMISSED as a matter of law. Because the Petitioner, had a pending EEOC charge of discrimination at the time of Respondents appeal coupled with the fact that Respondents, were aware of the EEOC imminent cause finding on April 26, 2023, should be viewed as a resumption of the retaliatory conduct of Respondents, to further seek to intimidate the Petitioner.

This case presents an opportunity for this Honorable Court to clarify the application of this Court's precedents governing: circumstantial evidence of discriminatory intent; comparator evidence; the “convincing mosaic” approach; hostile-work-environment claims involving racially threatening conduct; material adversity under

the anti-retaliation provision; temporal proximity and summary judgment where competing inferences arise from the record. These important legal issues recur throughout federal employment litigation.

At the summary-judgment stage, courts must draw reasonable inferences in favor of the nonmoving party and refrain from weighing competing evidence. Nor is it a basis for denying review where the Petition challenges the legal framework used to evaluate that evidence. The question again, for this Court is whether the lower courts applied the appropriate legal standards in evaluating evidence at summary judgment. This Petition warrants review.

CONCLUSION

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

Respectfully submitted,

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