

APP No. _____

IN THE SUPREME COURT OF THE UNITED STATES

AMY DiCHIARA,

Petitioner,

v.

SUMMIT MEDICAL GROUP, INC., DBA ST. ELIZABETH PHYSICIANS, ST.
ELIZABETH MEDICAL CENTER, INC., DBA ST. ELIZABETH HEALTHCARE, DR.
ROBERT PRICHARD, AND GARREN COLVIN

Respondents.

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

**PETITIONERS' APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

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Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Petitioner Amy DiChiara states that she is an individual person.

To the Honorable Brett M. Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Amy DiChiara respectfully requests that the time to file their Petition for Writ of Certiorari in this matter be extended for 60 days up to and including September 8, 2026. The Court of Appeals issued its opinion on July 13, 2026. (Appendix A). Absent an extension of time, the Petition for Writ of Certiorari would be due on October 11, 2026. Petitioners are filing this Application more than ten days before that date. See S. Ct. R. 13.5. Sixty days after October 11, 2026, is December 10, 2026. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1).

Background

A law firm and its representative ("Firm") that had publicly threatened and was preparing to file Title VII and Americans with Disability Act ("ADA") claims, on a class action basis, against Respondents, Summit Medical Group, Inc., d/b/a St. Elizabeth Physicians ("SEP") and its parent organization, St. Elizabeth Medical Center, Inc., d/b/a St. Elizabeth Healthcare ("SEH"). The nature of the claims were known to all. With knowledge of the impending suit, Petitioner, Dr. Amy DiChiara, provided relevant and pertinent documents to the Firm. Those included communications between Petitioner and top executives at SEP and SEH that documented facts and information relevant to the claims, and established Respondents' knowledge of those facts. The Firm filed suit less than a week later, with the threatened Title VII and ADA claims included, in a matter styled *Beckerich v. St. Elizabeth Healthcare, et. al.*

A month after that, SEP fired Dr. DiChiara. A termination letter was provided by Dr. Robert Prichard, the CEO of SEP. It cited the basis of termination as the “unauthorized disclosure of the subject e-mails to a law office which had already sued SEP, and which was actively preparing to sue SEP again,” where the e-mails “***related to the subject matter of the lawsuits.***” (Depo., Prichard, at 294-295, Doc. 45, PageID#1861-62) (emphasis added).

Dr. Prichard admitted that he knew (and had a problem with) Dr. DiChiara’s participation in the *Beckerich* Title VII and ADA lawsuit:

Q. Okay. Would you agree or did you think Dr. DiChiara was assisting Mr. Deters in bringing the lawsuit?

A. I sure think she was assisting him, yes.

Q. Do you think she participated in any manner [in the lawsuit] by providing him the e-mails in the lawsuit?

A. Yes. And I’ll say either knowingly or unknowingly. But I think, you know, when you know somebody that brought a firm against your employer and you start sharing personal e-mails, that really calls in the loyalty aspect of the employment. (Depo. Prichard, Doc. 45, at 287, PageID#1854).

Dr. Prichard also admitted that the emails Dr. DiChiara provided were relevant to the claims in *Beckerich* (and in fact the termination letter Defendants wrote asserted as much):

Q. And you acknowledge that the e-mails related to the subject matter of the lawsuits, correct?

A. Yes, that’s what we wrote. (*Id.* at 294, PageID#1861).

Dr. DiChiara filed suit on August 29, 2022, and amended her complaint on October 11, 2023, alleging, among other things, Title VII/ADA retaliation by SEP and SHE, under both the participation and opposition clause theories of liability.

The district court dismissed all claims on summary judgment, and the Sixth Circuit affirmed. As for the Title VII/ADA retaliation, the Sixth Circuit, relying on older circuit authority, *Booker v. Brown & Williamson Tobacco Co.*, 879 F.2d 1304, 1312 (6th Cir. 1989), held that because Dr. DiChiara’s participation in the Title VII lawsuit predated the statutory proceedings, she was without protection. *DiChiara v. Summit Med. Grp., Inc.*, 181 F.4th 692 at *12-*13 (“Such broad protection necessitates a clear starting point. ... any activity by the employee prior to the instigation of statutory proceedings is to be considered pursuant to the opposition clause ... [t]o hold otherwise, we explained, would blur the distinction between opposition to unlawful practices and participation in proceedings. ... No lawsuit was ongoing at the time she forwarded the emails.”).

The Sixth Circuit’s temporal limitation regarding the participation clause conflicts with not only the plain text of the anti-retaliation provisions of both Title VII and the ADA, as well as pertinent EEOC guidance, and conflict with the reasoning of several of this Court’s decisions, as well as decisions in several other circuits and is part of a circuit split.¹

The plain language of the anti-retaliation provisions of Title VII and the ADA confirms that protection is given to any person “because [s]he has ... **assisted, or participated in any manner** in a ... proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a) (emphasis added). “This subchapter” is 42 U.S.C. Chapter 21,

¹ This Court previously undertook to review the Sixth Circuit’s temporal limitation but did not ultimately reach it in *Crawford v. Metro. Gov’t of Nashville & Davidson County*, 555 U.S. 271, 280 (2009), resolving that case under the opposition clause only.

subchapter VI, and it includes “lawsuits” in its listing of “proceedings” to enforce Title VII. This Court was unequivocal that Congress separately enacted 42 U. S. C. §2000e-5(f)(3) to confer jurisdiction and ensure that there would not be an impediment to a “complainant’s access to a federal forum.” *Fort Bend Cty. v. Davis*, 587 U.S. 541, 550, fn.7 (2019). *See also New York Gaslight Club v. Carey*, 447 U.S. 54, 61 (1980) (“throughout Title VII the word ‘proceeding,’ or its plural form, is used to refer to **all the different types of proceedings in which the statute is enforced**, state and **federal**, administrative **and judicial**.”). The same language is found in the ADA. 42 U.S.C. § 12203(a).

It cannot seriously be debated that permitting an employer to retaliate against an employee for providing documents to a law firm investigating Title VII and ADA lawsuits, which is then attached to, and used by, that Firm to prosecute Title VII and ADA lawsuits, both inhibits access to a federal forum, and contravenes the “in any manner” breadth of the anti-retaliation provisions of Title VII and ADA. And whatever hypothetical might apply if there were never such a lawsuit is not present in this matter, when the lawsuit was filed within a week of the provision of evidence, and it was through the lawsuit that the employer learned of the Petitioner’s activity. And this Court has repeatedly explained that these provisions are to be interpreted according to their plain language – not – as the Sixth Circuit has done – applying a judicially-created temporal limitation on the statute. *Univ. of Tex. Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338, 352-355 (2013).

For its part, EEOC Guidance explains that:

The anti-retaliation provisions make it unlawful to discriminate because an individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII, the ADEA, the EPA, the ADA, the Rehabilitation Act, or GINA. This language, known as the "participation clause," provides protection from retaliation for many actions, including filing or serving as a witness for any side in an administrative proceeding or lawsuit alleging discrimination in violation of an EEO law. The participation clause applies even if the underlying allegation is not meritorious or was not timely filed.

The Commission has long taken the position that the participation clause broadly protects EEO participation regardless of whether an individual has a reasonable, good faith belief that the underlying allegations are, or could become, unlawful conduct. Although the Supreme Court has not addressed this question, the participation clause by its terms contains no limiting language, and protects from retaliation employees' participation in a complaint, investigation, or adjudication process.²

Meanwhile, the Ninth Circuit has held that pre-filing activity that is part of bringing about a Title VII proceeding is protected by the participation clause, as it is included in the significant breath of the "any manner" language in the Title VII and ADA anti-retaliation provisions. *Hashimoto v. Dalton*, 118 F.3d 671, 680 (9th Cir. 1997). The Eleventh Circuit is in accord. *Eastland v. Tennessee Valley Auth.*, 704 F.2d 613, 627 (11th Cir. 1983) (contacting an EEO officer, prior to suit or charge, is protected activity). So is the District Court for the District of Columbia. *Gonzalez v. Bolger*, 486 F. Supp. 595, 601 (D.D.C. 1980); *Bowden v. Kirkland & Ellis LLP*, 2010 U.S. Dist. LEXIS 91730, 2010 WL 3526483, at *17 (N.D. Ill. Sept. 2, 2010) (pre-filing

² https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#_ftnref16 Footnote 16 provides: "In the Commission's view, playing *any* role in an ... investigation should be deemed to constitute protected participation. Otherwise, those providing information ... could be left unprotected from retaliation."

support sufficient); *EEOC v. Cal. Psych. Transitions, Inc.*, 725 F. Supp. 2d 1100 (E.D. Cal. 2010).

But the Sixth Circuit is not alone in its temporal restriction. *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 428 (5th Cir. 2000) (finding no participation clause issue because the charge was yet not pending). There is a circuit split.

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. It is always the case that care must be taken to properly prepare a Petition for *Certiorari*. This case is no exception.

2. In addition, Mr. Bruns, Counsel of Record, has numerous litigation deadlines in the weeks leading up to and immediately following the current deadline:

- Oral argument in the state court of appeals the first week of September, 2026;
- Six weeks of depositions scheduled in a consolidated mass action matter with impending deadlines, commencing on September 21, 2026 through October 30, 2026, which involve numerous witnesses and attorneys;
- A Second Brief due in the Sixth Circuit on September 30, 2026, in the matter of *Kern v. Wolf, et. al.*, Case Nos. 26-3347, 26-3369.

3. Further, Mr. Wiest, his co-counsel, has numerous deadlines in the next 60 days:

- A petition for certiorari that will be filed in this Court on September 5, 2026, in *Perry v. Marteney*, in a matter arising out of the Fourth Circuit, 25A1342.
- A petition for certiorari that will be filed in this Court in late September, 2026, in *Miller v. McDonald*, in a matter arising out of the Second Circuit after a grant-vacate-remand by this Court last September, *see case 25-133*.

- Mediation scheduled in the Sixth Circuit Court of Appeals on September 23, 2025;
- Brief due in the Sixth Circuit Court of Appeals on September 25, 2026, in *United v. Rini*, 26-3286.
- Second Brief due in the Sixth Circuit on September 30, 2026, in the matter of *Kern v. Wolf, et. al.*, Case Nos. 26-3347, 26-3369.

3. An extension will cause no prejudice to Respondents.

Conclusion

For the foregoing reasons, Petitioners respectfully request that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including December 10, 2026.

August 31, 2026.

Respectfully submitted.

/s/Thomas B. Bruns

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