No. 18-1442

In the Supreme Court of the United States

REEMA CONSULTING SERVICES, INC.,

Petitioner,

v.

EVANGELINE J. PARKER,

Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals erred in reviewing the totality of a female employee's complaint and finding that, at the pleading stage, she plausibly alleged a hostile work environment was "because of . . . sex" under Title VII when she alleged a male subordinate employee, who was jealous of her earned promotions in a company where few women advanced, concocted a false rumor she had "slept her way to the top" with a higher-ranking male manager; the rumor invoked negative sex stereotypes that women use sex to advance in the workplace; the highest-ranking manager not only spread the rumor in her workplace but also disciplined her for it; and she alone faced disparate treatment and punitive sanctions, including termination, while similarly situated male employees (including the male employee implicated in the same rumor as well as the male employee who both created the rumor and filed a false harassment complaint against her) faced little to no repercussions.

DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Evangeline J. Parker who is Respondent, makes the following disclosure:

1) Is not a publicly held corporation or other publicly held entity.

2) Does not have any parent corporations.

3) There is no stock owned by a publicly held corporation or other publicly held entity.

4) There is no publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation.

5) Is not a trade association.

6) This case does not arise out of a bankruptcy proceeding.

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INTRODUCTION

Title VII of the Civil Rights Act of 1964 prohibits an employer from discriminating against any individual "because of . . . sex." 42 U.S.C. § 2000e-2(a). In so doing, Title VII "evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment," *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 78 (1998) (citation omitted), including "the entire spectrum of disparate treatment of men and women resulting from sex stereotypes," *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (citation omitted). Whether any individual plaintiff adequately alleges that the discrimination she suffered was "because of . . . sex" is a fact-intensive inquiry. *See Oncale*, 523 U.S. at 80-81.

In this case, a panel of the Court of Appeals for the Fourth Circuit reviewed a female employee's civil rights complaint and concluded that, when viewed as a whole, she plausibly alleged she had suffered a hostile work environment "because of . . . sex." Respondent Evangeline J. Parker's complaint outlined her earned progress in a company where few women advanced, which resulted in a jealous male subordinate employee concocting a false rumor that she owed her rapid promotions not to merit, but to a sexual affair with a married, higher-ranking male manager. Her complaint further described the impact this rumor had when certain male employees, including the highest-ranking manager, spread the rumor throughout her workplace: she endured open resentment and hostility from her co-workers and supervisors; she was told she could not advance further in the company or

receive high-level tasks; she was pushed out of a mandatory staff meeting; she was screamed at, reprimanded for not staying quiet, and accused of "huffing and puffing," insubordination, and poor management; and she was terminated contrary to written policy. Her internal complaints went largely ignored. Ms. Parker was harshly sanctioned and disciplined while her male counterparts, the male manager implicated in the same rumor as well as the jealous male subordinate who created the rumor and filed a false internal harassment complaint against her, faced no repercussions or suffered no more than a light slap on the wrist.

Collectively, the circumstances of the rumor and its invoked negative sex stereotypes, the employer's participation in and punitive response to the rumor's circulation, and the various ways in which Ms. Parker experienced disparate treatment when compared with similarly situated members of the opposite sex all together formed the foundation for the court of appeals' conclusion that Ms. Parker had met her burden at the pleading stage to sufficiently allege a claim under Title VII. Such a reasonable, fact-bound review of the complaint, which neither conflicts with this Court's precedent nor creates any intercircuit conflict, does not merit further review.

Throughout its Petition, Petitioner Reema Consulting Services, Inc. ("RCSI") conflates the Fourth Circuit's factual analysis that the particular allegations in this case may collectively give rise to Title VII liability at the pleading stage with a *per se* legal rule that any rumors about an employee's sexual conduct

are categorically actionable under Title VII. In so doing, Petitioner conflates both the relevant facts and the judicial findings below. Despite Petitioner's energetic claims to the contrary, the Fourth Circuit did not articulate a *per se* rule, nor did it depart from well-established precedent. A review of the published opinion and of Ms. Parker's complaint underscores the inadvisability of reviewing what is a veiled factual challenge to the panel's correct examination of Ms. Parker's well-pled allegations, a reading that—due to its compliance with this Court's precedents and its harmonious conformity with decisions by other courts of appeals—in no way disturbs the landscape of employer liability under Title VII. This Court should therefore deny certiorari.

STATEMENT OF THE CASE

The Petition before this Court concerns a fact-based inquiry into whether a female employee sufficiently pled that her hostile work environment was on the basis of sex. As detailed below, Ms. Parker's allegations detailed the circumstances and motivating animus of a false workplace rumor that she had "slept her way to the top," and they described the resulting series of hostilities, disparate treatment, and sanctions that only she (and no members of the opposite sex) was forced to endure at the hands of her employer. The Court of Appeals for the Fourth Circuit, upon reviewing the totality of circumstances in Ms. Parker's complaint, determined that the collective allegations of her particular complaint sufficed to overcome a motion to dismiss. Contrary to Petitioner's repeated assertions, the Court of Appeals made no ruling that "rumors about an employee's sexual conduct are *per se* actionable under Title VII." *See* Pet. 2. The various omissions, incorrect statements of fact, and misinterpretations of law made by Petitioner, as further outlined below, underscore the prudence of denying this petition for a writ of certiorari.

A. Factual Background[1]

Ms. Parker's employment with RCSI began in December 2014, when she was hired to work as an inventory control clerk at RCSI's warehouse facility in Sterling, Virginia. Pet. App. 57a ¶ 7. She earned six

[1] This section incorporates the factual allegations contained in Ms. Parker's complaint. *See* Pet. App. 55a-66a. It includes reference to many relevant allegations that Petitioner omitted from its brief.

promotions over the following fifteen months, and her last promotion was the first to elevate her to a managerial position. *Id.* 57a-58a ¶¶ 8-11.

Two weeks into her new role, Ms. Parker learned that various male employees were circulating a false rumor that she had engaged in a sexual relationship with Damarcus Pickett, a married, higher-ranking manager at RCSI, to obtain her promotion. *Id.* 58a ¶ 12. Multiple witnesses confirmed the rumor originated from Donte Jennings, an employee who began working at RCSI as a clerk around the time Ms. Parker had joined the company, but who quickly became her subordinate following her various promotions. *Id.* ¶¶ 13-14. His jealousy of Ms. Parker's earned success at RCSI, a company where few women reached a managerial level, motivated his fabrication of the rumor.[2] *Id.* 58a ¶¶ 11-14, 60a ¶ 25.

As the rumor spread, a number of Ms. Parker's supervisors and co-workers, including junior employees that she supervised, began treating her with open resentment and disrespect. *Id.* 59a ¶ 17. Among those who participated in spreading the rumor was Larry Moppins, the highest-ranking manager at the warehouse facility. *Id.* 58a ¶ 15. Ms. Parker spoke with other employees, including Mr. Jennings, in an effort to informally resolve the growing hostility in her workplace. *Id.* 59a ¶ 18.

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[2] Contrary to Petitioner's assertion, Ms. Parker did not "concede[] in her Complaint that the rumor was started and undertaken by a jealous coworker not premised on any animus toward women." Pet. 25.

On April 21, 2016, after the rumor's circulation had made Ms. Parker's work environment "increasingly hostile," Mr. Moppins called for a full staff meeting that was widely understood to be mandatory. *Id.* 59a ¶¶ 17, 19. Although Ms. Parker and Mr. Pickett arrived to the meeting together, Mr. Pickett was allowed into the conference room while Mr. Moppins slammed the door in Ms. Parker's face. *Id.* ¶ 20. He then locked her out of the meeting, humiliating her in front of all the warehouse employees. *Id.* ¶¶ 20-21.

The following day, Ms. Parker learned from a co-worker that staff had discussed the rumor during the meeting.[3] *Id.* 60a ¶ 22. She then arranged a meeting with Mr. Moppins, during which he blamed Ms. Parker for bringing the situation to the workplace. *Id.* ¶¶ 23-24. He stated that he had "great things" planned for her at RCSI, but that, due to this rumor, he could no longer recommend her for promotions or higher-level tasks and would not allow her to advance any further in the company. *Id.* ¶ 24. He refused to

[3] According to Ms. Parker's complaint, among the "multiple witnesses" who informed Ms. Parker that Mr. Jennings had spread the false rumor was Romaine Thompson, a former employee of RCSI, as well as Mr. Pickett. *See* Pet. App. 58a ¶ 13. Given the totality of Ms. Parker's allegations, Petitioner's claim that Ms. Parker "did not identify anyone else who told her of [the rumor], heard it from other employees or made inquiry about it" is inaccurate. Pet. 2. Also inaccurate is Petitioner's unfounded assertion that "[a]ccording to her Complaint, it was Parker who continued to bring up the rumor at work confronting coworkers 'in an effort to set the record straight.'" Pet. 2-3.

hear or accept her explanation that the rumor was untrue and had been falsified by a jealous male coworker.[4] *Id.* ¶ 25.

Soon thereafter, Ms. Parker was called to another meeting with Mr. Moppins where he once again blamed Ms. Parker for disrupting the workplace and remarked he "should have fired her the day before when she came in 'huffing and puffing about this BS rumor.'" *Id.* 60a-61a ¶ 27. He lost his temper, began screaming at Ms. Parker, and dismissed her after instructing, "[D]on't let this happen again." *Id.* Later that day, Ms. Parker approached Cathy Price, RCSI's Human Resources Manager, to file a sexual harassment complaint against Mr. Moppins and Mr. Jennings. *Id.* ¶ 28. In contrast to Ms. Parker's suffered experiences, Mr. Pickett—the other named party to the sexually explicit rumor—experienced only a teasing question from Mr. Moppins, who asked whether his wife would divorce him because of his sexual relationship with Ms. Parker.[5] *Id.* 59a ¶ 16.

Two days after Ms. Parker submitted her complaints, Ms. Price organized a meeting with Ms. Parker, Mr. Moppins, and Mr. Pickett. *Id.* 61a ¶ 29. Ms.

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[4] Given Ms. Parker's allegations of the widespread circulation of the rumor (most notably by Mr. Moppins) as well as the open resentment, disrespect, and spoken threats regarding her work and advancement potential that she suffered because of the rumor, Petitioner's claim that "[Ms.] Parker made no allegation that anyone placed any credence in the rumor" is inaccurate. Pet. 3.

[5] The allegations in the complaint contradict any assertion that Mr. Pickett suffered the same effects or offense as Ms. Parker or that he was "malign[ed]" by the rumor. *See* Pet. 9.

Price did nothing more than encourage the three managers to apologize to one another and instruct them to place the prior incidents behind them. *Id.* Mr. Jennings was not present at this meeting, nor did he face any discipline for his actions.[6] *Id.* After the meeting,[7] Ms. Price assured Ms. Parker that her job was not in jeopardy, and Ms. Parker left for a pre-approved vacation. *Id.*

During her absence, Mr. Jennings submitted a complaint alleging that Ms. Parker's conduct had created a hostile work environment against him. *Id.* ¶ 31. When Ms. Parker returned to work five days later, she was instructed to have no contact with him and was provided no opportunity to review or respond to this complaint. *Id.* Ms. Parker had never acted inappropriately towards Mr. Jennings, and when she learned of the contents of his complaint, denied the

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[6] Ms. Parker's allegations and the resulting reasonable inferences regarding the insufficiency of this purported resolution does not, contrary to Petitioner's unfounded claim, form an "admi[ssion]" by Ms. Parker that "the HR manager investigated the situation." Pet. 3.

[7] Petitioner claims in its statement of facts: "Parker also conceded that after this [HR] meeting and instruction on sexual harassment training, the RCSI manager, Larry Moppins, did not want to further discuss the rumor and dismissed its efficacy or impact in his management of her when he told her to stop 'huffing and puffing about this BS rumor.'" Pet. 3-4. As noted above, Mr. Moppins repeatedly threatened Ms. Parker's employment and advancement because of the rumor, and such allegations do not "concede[]" that "Moppins . . . dismissed its efficacy or impact in his management of her." *Id.* According to the complaint, the conversation in which he blamed her for "huffing and puffing" also preceded the meeting organized by Ms. Price (as well as any sexual harassment training purportedly provided). Pet. App. 60a-61a, ¶¶ 27-29.

allegations to Mr. Moppins. *Id*. 61a-62a ¶¶ 30-31. Although she complied with her given instructions to limit her interactions with Mr. Jennings, he was permitted by his supervisor to linger in Ms. Parker's work area, where he directed long stares, smirked, and laughed at her. *Id*. 62a ¶ 33. Ms. Parker's hostile work environment persisted, and although she raised her concerns anew with her immediate supervisor and RCSI's Human Resources Department, the situation was never addressed. *Id*. ¶ 34.

On May 18, 2016, Mr. Moppins terminated Ms. Parker's employment after issuing two written warnings (one stemmed from Mr. Jennings's false allegations against her, and the other accused her of poor management ability and insubordination to Mr. Moppins; both were unfounded). *Id*. ¶¶ 36-37. Under RCSI's "three strikes" rule, employees are subject to termination after receiving three written warnings. *Id*. 63a ¶ 39. Although male employees remained employed after receiving three or more warnings, Ms. Parker was fired upon receiving only two, contemporaneously-issued written warnings—the first two warnings she had received during her entire employment at RCSI. *Id*. 62a-63a ¶¶ 37-39.

B. Proceedings Below

1. Ms. Parker timely filed a charge with the Equal Employment Opportunity Commission ("EEOC") that included allegations of sex discrimination, retaliation, and sex-based termination.

2. Upon receiving a notice of right to sue, Ms. Parker timely filed a complaint in a federal court alleging claims for hostile work environment (Count I), retaliatory termination (Count II), and discriminatory termination (Count III).

3. At the conclusion of a hearing on Petitioner's motion to dismiss, the district court dismissed Ms. Parker's complaint and ordered the case closed. Pet. App. 25a, 54a. The district court did not issue a written memorandum opinion, but it explained its reasoning in its ruling from the bench.

The district court dismissed the hostile work environment claim for two reasons: it concluded that the alleged harassment was not based on Ms. Parker's gender, and that it did not sufficiently rise to a severe or pervasive level. *Id*. 51a-52a. In reaching the first conclusion, the district court stated:

> Here, the legal question is whether spreading a rumor or circulating a rumor that somebody's promotion was based upon the providing of sexual favors is not gender-based discrimination. It is conduct based rumor mongering, for the sake of a better word, and it could apply without regard to gender as has happened in other cases that I have had before me.

Id. 53a. In finding there were no sufficient allegations of sex-based discrimination, the district court also concluded that Ms. Parker failed to establish that her

beliefs concerning the unlawful practice were objectionably reasonable, and it dismissed the retaliatory termination claim on this ground alone.[8] *Id.* 53a-54a.

4. Ms. Parker timely moved for reconsideration or, in the alternative, to vacate the judgment and permit the filing of an amended complaint. *Parker v. RCSI*, Case No. 8:17-cv-01648-RWT (D. Md.), ECF Doc. 40. Prior to the deadline for Ms. Parker's reply brief, the district court denied the motion. *Id.*, ECF Doc. 42.

5. Ms. Parker timely appealed to the Fourth Circuit, which, in relevant part, unanimously reversed the district court's order dismissing Count I and Count II. Pet. App. 1a-22a. Judge Niemeyer, writing for the three-judge panel, observed that "the central question presented" in this appeal "is whether a false rumor that a female employee slept with her male boss to obtain a promotion can *ever* give rise to her employer's liability under Title VII for discrimination 'because of sex.'" *Id.* 4a. (emphasis added). The panel "conclude[d] that the allegations of the employee's complaint in this case, where the employer is charged with participating in the circulation of the rumor and acting on it by sanctioning the employee, do implicate such liability." *Id.*

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[8] The district court also dismissed Ms. Parker's discriminatory termination claim for failure to adequately exhaust, Pet. App. 50a-51a, which was affirmed by a majority of the Fourth Circuit panel, *id.* 16a-17a. Petitioner did not raise this question to this Court for review.

In the published opinion, the court of appeals stated RCSI's arguments that the sexually-explicit rumor in question was solely about Ms. Parker's conduct rather than sex "fail[ed] to take into account all of the allegations of the complaint, particularly those alleging the sex-based nature of the rumor and its effects, as well as the inferences reasonably taken in Parker's favor, as required at this stage in the proceedings." *Id.* 10a. The panel observed that the false rumor "impl[ied] that Parker used her womanhood, rather than her merit, to obtain from a man, so seduced, a promotion," thereby "plausibly invok[ing] a deeply rooted perception—one that unfortunately still persists—that generally women, not men, use sex to achieve success." *Id.* 11a (citing *McDonnell v. Cisneros*, 84 F.3d 256, 259-60 (7th Cir. 1996); *Spain v. Gallegos*, 26 F.3d 439, 448 (3d Cir. 1994); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51, 258, 272-73 (1989)). The panel then noted that the complaint both "invoke[d] by inference this sex stereotype" and also "explicitly allege[d]" various ways in which Ms. Parker was treated differently than the men in her workplace. *Id.* The opinion outlined various allegations of disparate treatment that were in the complaint:

> that males in the RCSI workplace started and circulated the false rumor about Parker; that, despite Parker and Pickett's shared tardiness, Parker as a female, not Pickett as a male, was excluded from the all-staff meeting discussing the rumor; that Parker was instructed to have no contact with Jennings, her male antagonist, while Jennings was not removed from Parker's

> workplace, allowing him to jeer and mock her; that only Parker, who complained about the rumor, but not Jennings, who also complained of harassment, was sanctioned; and that Parker as the female member of the rumored sexual relationship was sanctioned, but Pickett as the male member was not.

Id. 11a-12a. In light of the totality of Ms. Parker's allegations, the panel determined, "[T]he dichotomy that RCSI, as well as the district court, purports to create between harassment 'based on gender' and harassment based on 'conduct' is not meaningful in this case because the conduct is also alleged to be gender-based." *Id.* 12a.

Accordingly, given the nature of the rumor and its invoked stereotypes, the role of Parker's supervisor and employer in spreading and reacting to the rumor, and the disparate treatment that Ms. Parker suffered, the panel concluded that she "plausibly alleged" she "suffered harassment because she was a woman." *Id.* 4a, 10a-12a. The mere existence of a "sleeping to the top" rumor in Ms. Parker's workplace did not lead to the panel's conclusion; it was the full spectrum of Ms. Parker's alleged facts "in combination" that "fairly permit[ted] the inference that Parker was treated with less dignity because she is a woman." *See id.* 18a (Diaz., J., concurring).

The opinion below takes great care to emphasize that its conclusion was made upon analyzing the specific universe of "allegations . . . *in this case*." *Id.*

4a (emphasis added). Contrary to Petitioner's unfounded assertions, the opinion did not "h[o]ld that rumors about affairs are *per se* based on sex," Pet. 16, or that "rumors about an employee's sexual conduct are *per se* actionable under Title VII," Pet. 2.

In its opinion, the Fourth Circuit also held that Ms. Parker's allegations of a hostile work environment rose to a sufficiently severe or pervasive level to survive a motion to dismiss. Pet. App. 13a-16a. Petitioner did not challenge this factual finding for review before this Court.

REASONS FOR DENYING THE WRIT

A. *The Fourth Circuit's Decision Does Not Conflict with this Court's Precedent*

Contrary to Petitioner's arguments, the Fourth Circuit's finding that Ms. Parker's well-pled allegations plausibly alleged a sex-based hostile work environment is entirely consistent with this Court's precedents. Petitioner relies on a single case, *Oncale v. Sundowner*, in its misguided attempt to devise conflict, but Petitioner's arguments reveal a fundamental misunderstanding of the relevant factual circumstances and legal analysis underpinning both opinions.

The central question presented in *Oncale* was "whether workplace harassment can violate Title VII's prohibition against 'discrimination . . . because of . . . sex' . . . when the harasser and the harassed employee are of the same sex." 523 U.S. at 76 (citing 42 U.S.C. § 2000e-2(a)(1)). Upon confronting this question, the unanimous Court in *Oncale* held "that

nothing in Title VII necessarily bars a claim of discrimination 'because of . . . sex' merely because the plaintiff and the defendant (or the person charged with acting on behalf of the defendant) are of the same sex." *Id.* at 79. It rejected the categorical rule invoked by the Fifth Circuit that same-sex sexual harassment claims are never cognizable under Title VII. *Id.* In its reasoning, the Court observed that "sexual harassment of any kind that meets the statutory requirements" falls under the ambit of Title VII, *id.* at 80, and it noted the range of evidence a plaintiff could present to persuade a trier of fact that the discrimination was indeed "because of sex," *id.* at 80-81. The "harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex." *Id.* at 80. Instead, the plaintiff could, for example, "offer direct comparative evidence about how the alleged harasser treated members of both sexes in a mixed-sex workplace," or she could demonstrate harassment that was sufficiently "sex-specific" and "derogatory" to create a reasonable inference that the harasser was "motivated by general hostility to the presence of women in the workplace." *Id.*

Ms. Parker's well-pled allegations did exactly as the *Oncale* Court instructed. She alleged that a male subordinate employee who began his employment with Ms. Parker became jealous when she, a woman, rose to a managerial position in a workplace where few women advanced. In his jealousy, he fabricated and circulated a false rumor that she had slept her way to the top, invoking a negative sex stereotype that women use sex, rather than merit, to advance. Together, these allegations create a reasonable inference that she was victimized and harassed because of

her sex and that one of her harassers, the subordinate male who invented the rumor, was motivated by hostility to women advancing in the workplace.[9]

Ms. Parker's allegations continue, however, beyond the initial mistreatment by her subordinate: she pleads that she, and she alone, suffered disparate treatment, hostilities, sanctions, and termination by her employer while her two male counterparts faced little to no repercussions. Her complaint offers direct, comparative allegations about how the highest-ranking manager, a man who himself helped circulate the false rumor throughout her workplace, treated her differently than either the male employee implicated in the same rumor or the male employee who created the rumor. Her complaint also offers direct, comparative allegations about how the employer's human resources department treated her and her complaints of harassment differently than Jennings, who filed a false harassment claim against her.

The Fourth Circuit took note of the totality of Ms. Parker's complaint—the circumstances of the rumor's genesis, the rumor's invoked sex stereotypes, the disparate treatment that Ms. Parker suffered when compared to members of the opposite sex, and the employer's role in spreading and reacting to the rumor—when it concluded that she plausibly alleged she had suffered a hostile work environment "because

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[9] Given the breadth and scope of Ms. Parker's allegations and resulting reasonable inferences regarding motivation and animus, Petitioner's claim that "[t]he Fourth Circuit's decision would . . . create liability under Title VII for employers for actions taken without discriminatory animus" is unfounded. Pet. 14.

she was a woman." Pet. App. 12a. The Fourth Circuit's opinion complies with *Oncale*, which instructs that the relevant question in this inquiry is whether the plaintiff's allegations present a reasonable inference that she suffered mistreatment because of sex. The Court of Appeal's analysis was not a departure from *Oncale*; it was entirely harmonious with *Oncale*'s reasoning and holding.

It is also important to note that unlike *Oncale*, which was decided on summary judgment, this case is at the pleading stage and the decision below addressed nothing more than the sufficiency of Ms. Parker's complaint on a motion to dismiss. The court of appeals correctly "consider[ed] the complaint in its entirety" when analyzing "whether all of the facts alleged, taken collectively," gave rise to a plausible claim that the alleged hostile work environment was on the basis of sex, as it must at this more permissive stage. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322-23 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (noting the "tenet that a court must accept as true all the [factual] allegations contained in a complaint" at the pleading stage). Petitioner refuses to read Ms. Parker's complaint (or the opinion below) as a whole and instead asks the Court to consider only an "individual allegation, scrutinized in isolation," in conflict with this Court's established precedent. *See, e.g.*, *Tellabs*, 551 U.S. at 323.

Petitioner's unfounded claim that "the Fourth Circuit's position is that the rumor is gender based *per se* because Parker is a woman" is contradicted by the Fourth Circuit's well-reasoned opinion. Pet. 28. Peti-

tioner incorrectly focuses on a single and isolated aspect of the Fourth Circuit's decision regarding sex stereotyping. The Fourth Circuit did not hold, as Petitioner asserts, that "the phrase 'sleeping to the top'" is equated "with an egregious gender based slight against only women." Pet. 27. It merely acknowledged that in the context of her allegations, Ms. Parker "plausibly invokes a deeply rooted perception—one that unfortunately still persists—that generally women, not men, use sex to achieve success." Pet. App. 11a. (citing *McDonnell*, 84 F.3d at 259-60; *Spain*, 26f.3d at 448; *Price Waterhouse*, 490 U.S. at 250-51, 258, 272-73). The court of appeals then observed "[t]he complaint not only invokes by inference this sex stereotype, it also explicitly alleges" a myriad of ways in which Ms. Parker, a woman, was treated differently than her male counterparts in the workplace.[10] *Id.*

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[10] As noted above, the Fourth Circuit observed the following allegations:

> that males in the RCSI workplace started and circulated the false rumor about Parker; that, despite Parker and Pickett's shared tardiness, Parker as a female, not Pickett as a male, was excluded from the all-staff meeting discussing the rumor; that Parker was instructed to have no contact with Jennings, her male antagonist, while Jennings was not removed from Parker's workplace, allowing him to jeer and mock her; that only Parker, who complained about the rumor, but not Jennings, who also complained of harassment, was sanctioned; and that Parker as

Petitioner's argument that the alleged rumor was "sexually-explicit" but not "gender-explicit" again misunderstands the standard in which the Court has mandated courts must read complaints at the motion to dismiss phase: complaints are read in their entirety with all reasonable inferences awarded to the Plaintiff. *See, e.g., Tellabs*, 551 U.S. at 322, 324. The Fourth Circuit did not hold below that it was the mere sexual connotation of the alleged rumor that creates a plausible allegation of discrimination on the basis of sex; the Court of Appeals allowed her case to go forward due to the full breadth and scope of Ms. Parker's complaint. The Fourth Circuit was therefore procedurally and substantively correct—and well supported by this Court's precedent, including *Oncale*—in so doing.

Remarkably absent from Petitioner's brief is any citation or discussion of *Price Waterhouse v. Hopkins*. There, this Court affirmed the legal relevance of sex stereotyping for purposes of Title VII liability and noted that "in forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes." *Price Waterhouse*, 490 U.S. at 251 (citation omitted). Remarks based on sex stereotypes "can certainly be evidence that gender played a part" in the alleged misconduct, *id.*, and Ms. Parker's allegations

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> the female member of the rumored sexual relationship was sanctioned, but Pickett as the male member was not.

Pet. App. 11.

regarding the motivation, circumstances, and circulation of the fabricated rumor, which invoke a negative sex stereotype about women and resulted in Ms. Parker's targeted harassment, support the plausible inference that her sex was, indeed, the basis for her hostile work environment.

Petitioner's remaining arguments fail to provide any support to its request for certiorari and, in fact, further reveal the inherently fact-based nature of its challenge. Petitioner first argues that because Ms. Parker did not allege a hostile work environment during her first five promotions, her harassment cannot have been because of sex. Pet. 29. There is no requirement, however, that an individual suffer a hostile work environment throughout her employment to sustain a credible claim. More importantly, this argument misframes the relevant allegations. Ms. Parker's most recent promotion was her first to a managerial level, and she alleges that very few women reached the managerial level in her workplace. The timing of the hostile work environment as a reaction to her *promotion to manager* supports rather than undercuts her claim.

Petitioner also misses the mark entirely in suggesting that in order to make a claim of sex discrimination, all women at a company must be similarly disadvantaged. *See* Pet. 29. Title VII aims to provide an equal employment opportunity to each individual worker, not to particular classes of workers. *Connecticut v. Teal*, 457 U.S. 440, 453-54 (1982) ("The principal focus of the statute is the protection of the individual employee, rather than the protection of the minority group as a whole."). Moreover, there is no legal or

common sense presumption that female co-workers or superiors are incapable of harboring misogynistic views themselves. *See Oncale*, 523 U.S. at 79 ("we hold today that nothing in Title VII necessarily bars a claim of discrimination 'because of sex' merely because the plaintiff and the defendant (or the person charged with acting on behalf of the defendant) are of the same sex."). A plaintiff need not allege that all women at a company have been discriminated against based on gender or that the perpetrators of discrimination were all male in order to make out a claim of gender bias, just that she suffered harassment because of her sex.

Contrary to Petitioner's argument, advancement of "the rights of those with different sexual preferences and identities," Pet. 29, does not foreclose Ms. Parker's claim that the rumor about her "sleeping her way to the top" is based on her gender. The court of appeals' recognition that "traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior stubbornly persist in our society," Pet. App. 11 (quoting *Spain*, 26 F.3d at 448), in no way "trampl[es] on the recognized rights of individuals who may have different sexual orientations." *See* Pet. 30. The court of appeals did not create a *per se* rule that rumors about a woman earning promotions due to a heterosexual affair with a supervisor constitute sexual harassment. It merely recognized, as part of the totality of the circumstances analysis, that women are more likely than men to be (falsely) accused of the negative sex stereotype of "sleeping to the top" and have their status in the workplace questioned than

their male counterparts. Courts and juries will continue to consider the totality of circumstances in all cases—including cases involving members of the same sex or rumors about a male sleeping his way to the top, and nothing in the Fourth Circuit's opinion will prevent employees from any gender or orientation from invoking the full protections of Title VII.[11]

Petitioner's reliance on the Tenth Circuit opinion, *Winsor v. Hinckley Dodge, Inc.*, 79 F.3d 996 (10th Cir. 1996), to further argue that rumors about sexual activity are "about conduct and favoritism and are not gender based," is misplaced. Pet. 30. As a threshold matter, a Tenth Circuit opinion does not create conflict with Supreme Court precedent. More importantly, however, Petitioner fails to point out that the findings in *Winsor* relied in great part on the fact that the rumor at issue *was not false* and stemmed from a pre-existing sexual relationship with a male manager that appeared to have actually played a role in the female employee's professional success. *Id*. at 1001. A key distinction, then, is that according to Ms. Parker's complaint, the rumor attacking Ms. Parker's earned advancement was false, it was fabricated to harm her (and did harm her) because she was a woman, and her employer sanctioned her (and only

[11] To be sure, a male employee cannot invoke the same reality of sex stereotypes that has continued to plague female employees in the workplace, but depending on the nature and context of the allegations, an employer could be just as liable under Title VII for creating a hostile environment stemming from a "sleeping to the top" rumor about a male employee. The conduct and context at the heart of the rumor here cannot be easily separated from gender simply because it could possibly, in a scenario not before this Court, impact a man.

her), despite being informed about the rumor's falsehoods and motivating animus.

Petitioner's repeated assertions that Title VII does not prohibit "every slight, insult or indignity" in the workplace, and assertion that the Fourth Circuit's decision below "would eliminate the distinction between general co-worker animus and sexual harassment," Pet. 10, 14, miss the point and rely on an incorrect reading of both the complaint and opinion below. To the extent Petitioner is using these arguments as a veiled attack on whether Ms. Parker's allegations of a hostile work environment rose to a sufficiently severe or pervasive level, it failed to properly raise this issue in its Petition and these argument are properly preserved for trial.

Accordingly, the Fourth Circuit's conclusion that Ms. Parker's well-pled allegations adequately and plausibly pled her hostile work environment was because of sex follows the well-trodden path created by this Court and its precedent. The Fourth Circuit's opinion is entirely consistent with the reasoning and holding of both *Oncale* and *Price Waterhouse*, and Petitioner's flawed arguments fail to provide any credible basis for certiorari.

B. This Case Does Not Implicate Any Conflict Among the Circuits

Petitioner misunderstands the findings made by various courts of appeals to invent an intercircuit conflict where none exists. To support its claim there is an "irreconcilabl[e] split" demanding resolution, Petitioner asserts three courts of appeals (the Second, Seventh, and Tenth Circuit) have held that rumors of

an employee's affair are "conduct based and not prohibited by Title VII" whereas three other courts of appeals (the Third, Fourth, and again the Seventh Circuit) have "held that rumors about affairs are *per se* based on sex." Pet. 15-16. However, a reading of the cited opinions reveals that Petitioner's claim is unfounded. No bright-line or *per se* rules were created by any of the cited opinions, and a review of these cases underscores the clear consensus that already exists amongst the courts of appeals: whether discrimination is based on sex for purposes of Title VII is a fact-intensive inquiry turning on the unique circumstances of each case. Petitioner confuses the reasonable, consistent, and harmonious fact-bound analyses in the cited opinions for purportedly conflicting legal conclusions.

1. As noted repeatedly throughout this brief, Petitioner's argument "the Fourth Circuit held that rumors about affairs are per se based on sex" is contradicted by the court of appeals' own, fact-intensive written opinion. The court below clearly identified the various factual allegations of animus and disparate treatment that, together with allegations of a false rumor, plausibly raised a claim of sex-based discrimination to survive a motion to dismiss. The court of appeals did not create any *per se* rule in the opinion below, nor did the opinion reflect a "departure from the 'because of' element necessary" for this claim. *See* Pet. 15. Petitioner refuses to acknowledge the full breadth of either Ms. Parker's complaint or the court of appeals' opinion, and it instead cherry picks narrow portions or inferences from the face of both documents in

a misguided attempt to craft its justifications for review. Such unsupported exaggerations do not merit credence.

Petitioner also paints with too broad a brush when it suggests that the Third and Seventh Circuit have created "decisive authority" that "rumors about affairs are per se based on sex" for purposes of Title VII liability. Pet. 16. Regarding the Seventh Circuit, Petitioner later retracts its statement when, in describing the findings of *McDonnell v. Cisneros*, 84 F.3d 256 (7th Cir. 1996), Petitioner acknowledges "the Seventh Circuit did not adopt an express rule that [allegations of a woman sleeping her way to the top] was sufficient, standing alone, to state a claim for relief" and instead looked to the particular "circumstances present in that case." Pet. 26-27. So too did the Third Circuit in *Spain v. Gallegos*, 26 F.3d 439 (3d Cir. 1994).

The parallels between *Spain* and Ms. Parker's case are clear: the plaintiff in *Spain* "was the subject of false rumors that she was having a sexual relationship with [her male superior]," the rumors led both to her coworkers "treat[ing] her like an outcast" and her supervisors "evaluat[ing] [her] negatively for advancement," her supervisor himself "perpetuated the rumors," and she was ultimately denied a promotion because of the "rumors and the[ir] resulting effects." *Id*. at 447-48. The Third Circuit, in reaching the conclusion that she had adequately demonstrated discrimination because of sex to survive summary judgment, took note of the various distinguishing factors in her case. It acknowledged the "stubborn[] per-

sist[ance]" of "traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior" that could lead a reasonable jury to conclude she had suffered because she was a woman, but it also observed two additional facts. First, it noted that the male supervisor implicated in the same rumors "did not have to endure a hostile working environment," as the female employee had been forced to suffer, and second, it pointed to the male supervisor's "improper conduct" in facilitating and perpetuating the rumors in her workplace. *Id*. at 478. Collectively, as it was in Ms. Parker's case, the full spectrum of this evidence resulted in the Third Circuit's findings. No *per se* rule was established in *Spain*.[12]

2. A review of the remaining courts of appeals decisions shows that each case shapes its findings based on the allegations or facts at issue—indeed, contrary to Petitioner's assertions, the fact-bound findings of all the cited courts of appeals decisions conform to the same legal framework and are ultimately consistent with one another.

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[12] Petitioner also argues that, because the Third Circuit made passing remarks in its *Spain* opinion regarding the differences between same-sex and different-sex working relationships through a heteronormative lens, the "legal assumption upon which Spain was decided is no longer acceptable for courts or in society." Pet. 18-19. To the extent this dicta reflects outdated thinking, this provides no basis for questioning the independent factual findings in *Spain*, and Petitioner is misguided in attempting to mischaracterize dicta as "legal foundation."

Petitioner's claim that decisions from the Second, Seventh, and Tenth Circuits "irreconcilably" conflict with that of the Fourth Circuit here rests on citation of opinions that, based on easily distinguishable sets of facts at an entirely different stage of litigation, determined that the evidence in each individual case was insufficient to carry the plaintiff's burden to show that the purported discrimination was "based on sex." All the opinions involved deliberations at the summary judgment (rather than pleading) stage, and none makes the categorical holding Petitioner describes in its brief.

The first case cited, *Brown v. Henderson*, 257 F.3d 246 (2d Cir. 2001), involved a female employee who was ousted from her post as a union shop steward, a position she had held for eighteen years, and who suffered a campaign of harassment preceding and following the bitterly contested union election. *Id.* at 249. She was frequently mocked for being a slob, for being overweight, and for her injury-related workplace accommodations, and she and a married male coworker were both publicly teased with false rumors about a purported romance. *Id.* Her harassment came at the hands of coworkers, not supervisors. *Id.* at 252. The Second Circuit observed that to the extent the coworkers' conduct "revealed their hostility toward [her], or was part of a campaign to isolate her from workplace allies, on account of her sex, such conduct could contribute to the creation of an actionably hostile work environment for plaintiff." *Id.* at 255. However, this particular case involved "overwhelming evidence that the hostility toward Brown was grounded in workplace dynamics unrelated to her

sex." *Id*. at 255-56. A "crucial[]" part of the evidentiary record included the plaintiff's "own view, clearly expressed" in both her EEOC complaint and in her deposition, that the harassment "stemm[ed] from the union election, and not from her being a woman." *Id.* at 256.

The Second Circuit observed there was no evidence proffered that "the union-related dispute was itself rooted in or exacerbated by Brown's gender," nor was there "any indication that the mockery of her relationship with [her married coworker] was related to her being a woman." *Id*. at 255 n.3. Accordingly, given the plaintiff's contrary admissions, the Second Circuit affirmed the district court's conclusion that she could not carry her burden at summary judgment of demonstrating her harassment was rooted in her sex. *Id*. at 256. The unique facts at issue in *Brown* are a far cry from the well-pled allegations in Ms. Parker's complaint which, as the Fourth Circuit outlined, both implicitly invoke *and explicitly plead* that her harassment was because of her sex.

The second case, *Pasqua v. Metropolitan Life Insurance Company*, 101 F.3d 514 (7th Cir. 1996), involved a male employee, Pasqua, who learned that other coworkers were spreading false rumors that he and a female employee he had hired, Vukanic, were engaged in an intimate relationship. *Id*. at 515. Rumors of the sexual relationship continued to spread, including rumors that Pasqua was showing favoritism to Vukanic. *Id*. He reported the rumors to his supervisor, who informed Pasqua he was handling the situation properly, admonished several of the offenders, and eventually met with both Pasqua and Vukanic

once she indicated an intent to file a sexual harassment lawsuit because of the rumors. *Id*. at 515-16. Pasqua was later demoted for unrelated reasons. *Id*. at 516.

The Seventh Circuit expressly observed the possibility that slanderous workplace rumors about a sexual affair could indeed be motivated by sex, but it indicated that the evidentiary record in this case failed to demonstrate this nexus. *Id*. at 517. The court observed "[t]here is not even a hint in the record that any rumors or vulgar statements concerning an illicit relationship between Pasqua and Vukanic were made because Pasqua was a male," and it noted that the rumor impacted both parties similarly in light of Vukanic's intent to file her own sexual harassment suit. *Id*. Here, unlike in *Pasqua*, there are allegations that Ms. Parker received disparate treatment when compared to her male counterparts, including the male manager implicated in the same rumor (who did not face the professional sanctions or the hostility that Ms. Parker suffered). Such allegations lead to the plausible conclusion that she suffered a hostile work environment because of sex. Moreover, it is disingenuous for Petitioner to claim that Ms. Parker's allegations of sex-based discrimination amount to nothing more than "bare rumors of extramarital affairs in the workplace." Pet. 16. Allegations that Jennings fabricated a false rumor invoking negative sex stereotypes about women in the workplace because he, a male employee, was jealous that a female employee like Ms. Parker rose to a managerial position in a company where few women advanced, creates a more than reasonable inference that his harassment of Ms. Parker

was because of her sex. Accordingly, Ms. Parker's allegations of her disparate treatment as well as the targeted animus animating the false rumor together create a portrait of sex-based discrimination that was entirely missing in *Pasqua*.

The third case, *Duncan v. Manager, Department of Safety, et al.*, 397 F.3d 1300 (10th Cir. 2005), is given no more attention than an explanatory parenthetical four pages into Petitioner's argument. Pet. 16, 22. In any event, Petitioner's reliance on this case suffers from the same flaws as its reliance on *Pasqua*. In *Duncan*, a female employee of the police department attempted to file a hostile work environment claim that spanned her eighteen years of employment, and the Tenth Circuit time barred many of her allegations. *Id*. at 1309. However, the plaintiff was allowed to introduce two anonymous letters she had received to support her claim that the City's unwillingness to stem rumors of her sleeping to the top contributed to a hostile work environment. *Id*. at 1311-13. The court of appeals deemed this evidence insufficient because the letters made "salacious allegations about [both] male and female officers" or "critique[d]" both the female and male employees implicated in the affairs, and the letters "did not single her out for disparate treatment because of her gender." *Id*. at 1312. Again, Ms. Parker's well-pled allegations of disparate treatment and targeted hostilities on the basis of sex that she, and only she, was forced to suffer clearly distinguish her case from both *Duncan* or *Pasqua*.

The additional district court decisions, many unpublished, and the single unpublished court of appeals opinion cited by Petitioner fare no better. They,

too, rely on different sets of facts that are entirely distinguishable from this case (and were often decided at summary judgment rather than on a motion to dismiss),[13] or are inapposite for other reasons.[14]

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[13] Petitioner relies on cases where, unlike Ms. Parker's complaint, there was an absence of facts that the female employee subjected to the sexually-explicit rumor received any disparate treatment on the basis of sex. *See Ptasnik v. City of Peoria*, 93 F. App'x 904, 909 (7th Cir. 2004) (noting men and women were treated similarly); *Rose-Stanley v. Commonwealth*, 2015 U.S. Dist. LEXIS 150282, at *16 n.4 (W.Va. 2015) (same); *Lewis v. Bay Indus.*, 51 F. Supp. 3d 846, 856 (E.D. Wis. 2014) (noting absence of evidence that similarly situated men were treated differently); *Lawrence v. Christian Mission Ctr., Inc.*, 780 F. Supp. 2d 1209, 1214 & n.2 (M.D. Al. 2011) (same); *Snoke v. Staff Leasing, Inc.*, 43 F. Supp. 2d 1317 (M.D. Fla. 1998) (same); *Reiter v. Oshkosh Corp.*, 2010 U.S. Dist. LEXIS 74094, at *14 (E.D. Wis. 2010) (noting absence of any evidence beyond conclusory statements); *Bystry v. Verizon Servs. Corp.*, 2005 U.S. Dist. LEXIS 5634, at (D. Md. 2005) (same).

[14] Petitioner also relies on district court cases that, contrary to its assertion, do not analyze allegations regarding sexual rumors in the context of hostile work environment claims. *See McDonnell v. Cisneros*,[14] 1995 U.S. Dist. LEXIS 3160, at *14-15 (N.D. Ill. 1995), aff'd in part, rev'd in part, 84 F.3d 256 (7th Cir. 1996) (both men and women were questioned similarly during the challenged investigation conducted by a third party of allegations of sexual misconduct in the workplace); *Fletcher v. Illinois*, 2006 U.S. Dist. LEXIS 80717, at *19 (S.D. Ill. 2006) (discussing whether sexually-explicit rumors rose to a sufficiently severe or pervasive level in the context of retaliation, not whether the allegations of discrimination were based on sex); *Campbell v. Masten*, 955 F. Supp. 526, 530 (D. Md. 1997) (plaintiff explicitly alleges "her work was criticized and ridiculed by Masten because of his fears that his wife would learn of their past affair," not because of sex).

Accordingly, contrary to Petitioner's repeated assertions, none of the identified courts of appeals has produced conflicting decisions; there is no intercircuit conflict to address. Petitioner asks for "clarification" where none is needed. Pet. 14. Well-established consensus, remarkable in its consistency, exists among the courts: "context *is* relevant in determining whether or not a rumor related to sexual conduct violates Title VII." *Id*. (emphasis added).

C. The Public Policy Issues Raised by Petitioner Do Not Warrant Review

Petitioner's arguments that the decision below presents an "issue affecting the public interest" significant enough to warrant certiorari are unfounded. *See* Pet. 15. Contrary to Petitioner's assertions, the opinion below did not "create[] a general code of civility" or "create a standard [of liability] where the motivation for conduct is irrelevant." Pet. 31-32. Petitioner's misinterpretation of the opinion below, and of the relevant allegations in Ms. Parker's complaint, inform its misguided arguments.

Petitioner makes various misstatements that are contradicted by the record. As detailed above, the Fourth Circuit's opinion did not hold that rumors of sexual affair create a "*per se* claim for a violation of Title VII." *See* Pet. 32. Nor did the court of appeals ignore the "context" or "intent" motivating the false rumor. Indeed, by isolating narrow snippets of Ms. Parker's allegations and dismissing the totality of her complaint, Petitioner ignores the relevant context of the sex-based hostile work environment alleged here.

As discussed above, the Fourth Circuit rightly evaluated the totality of the alleged facts, including the nature of the rumor, the disparate treatment and hostilities targeting only Ms. Parker, and the employer's role in circulating and punitively reacting to the rumor. Although Petitioner faults the court of appeals for turning to "notions of traditional stereotypes faced by women," *see id.*, Petitioner ignores decades of Title VII jurisprudence that probes motivation by looking at the way an action is taken, such as here where the court of appeals probed the content of the rumor and recognized a sex stereotype. *See, e.g., Price Waterhouse*, 490 U.S. at 250-51. As noted above, the circumstances of the false rumor's genesis as well as the rumor's invoked sex stereotype regarding women in the workplace, in addition to the allegations referenced above, together illustrate animus and hostility towards Ms. Parker precisely because of her sex.

Accordingly, the Court of Appeals correctly concluded that a plethora of factual allegations raised a reasonable inference that Ms. Parker suffered harassment because of sex. A review of the decision below underscores the reality that, contrary to Petitioner's unfounded assertion, it has not altered any liability standards for employers.

The court of appeals' decision neither reinforces illegal negative stereotypes, nor tramples on the rights of others (contrary to Petitioner's protestations). Rather, it clears a path towards remedying the injustices caused by such stereotypes. Unfortunately, women are still not treated equally on the job and face negative assumptions about their place in the workforce. The court of appeals agreed and recognized that

"traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior stubbornly persist in our society . . . and may cause superiors and coworkers to treat women in the workplace differently from men[.]" Pet. App. 12a (citing *Spain*, 26 F.3d at 448 (internal quotations omitted)); *see also Price Waterhouse*, 490 U.S. at 250-51, 258, 272-73; *McDonnell*, 84 F.3d at 259-60; *Passananti v. Cook Cty.*, 689 F.3d 655, 665-66 (7th Cir. 2012); *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 810 (11th Cir. 2010) (en banc); *Chadwick v. WellPoint, Inc.*, 561 F.3d 38, 47 (1st Cir. 2009); *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107, 119-21 (2d Cir. 2004). Acknowledging such historical and continued injustice and its disparate impact on women is not reinforcing or supporting that injustice; it is a step towards resolving it.

The fact that several *amici* participated in Ms. Parker's appeal does not support certiorari, as Petitioner claims. The forty-five *amici* who participated in the proceeding below each unanimously supported Ms. Parker's position, not Petitioner's. It is clear, then, that Petitioner's reference to the *amici* is only a feeble attempt to distort what is clear consensus in favor of the court of appeals' correct analysis of the complaint.

Additionally, as discussed above, there is neither a split among the circuits, nor a conflict between this Court's decision in *Oncale* and the court of appeals' decision that this Court needs to resolve. Thus,

the importance Petitioner imparts upon the issue presented by this case is unsupported and misplaced.

Finally, Petitioner also ignores various protections that ensure employers need not "police every rumor and statement made by an employee." Petitioner's attempt to conflate the "gender-based" requirement with the "severity" requirement of Title VII is unavailing. *See, e.g.,* Pet. 34 ("general vulgarity or references to sex . . . will not . . . generally actionable"), 35 ("Sexual language and discussions that truly are indiscriminate do not themselves establish sexual harassment."). They are two distinct requirements — the severity requirement serves to filter out insignificant acts of discrimination, even if they are sex-based. *See Oncale*, 523 U.S. at 81 ("And there is another requirement that prevents Title VII from expanding into a general civility code . . . 'Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview.'"). The court of appeals conducted a separate analysis of this severity requirement, and found that "the harassment she experienced was severe or pervasive such that it altered the conditions of her employment and created an abusive atmosphere." Pet. App. 13a. Notably, Petitioner did not include the severity holding in its questions presented, and it is entirely unrelated to the inquiry at the heart of the Petition—whether the range of Ms. Parker's well-pled allegations of false rumors invoking negative sex stereotypes, repeated hostilities, and disparate treatment that all targeted her and her alone—raise a plausible inference that her hostile work environment was on the basis of sex under Title

VII (an inquiry already resolved by the reasoning and holdings made by this Court in various opinions, including *Oncale* and *Price Waterhouse*, with which the opinion below wholly complies).

CONCLUSION

For the foregoing reasons, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

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