No. 21-136

In The
Supreme Court of the United States

MELANIE PELCHA,

Petitioner,

v.

WATCH HILL BANK,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether the Age Discrimination in Employment Act ("ADEA") requires a plaintiff to prove by a preponderance of the evidence that age was the "but for" cause of her termination; meaning that age had a determinative influence on the outcome of the employer's decision-making process?

II. Whether this Court's decision in *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009), is still binding precedent?

III. Whether a petition for writ of certiorari should be granted when the asserted error consists of erroneous factual findings and the misapplication of a properly stated rule of law?

RULE 29.6 DISCLOSURE

Watch Hill Bank is a registered tradename of Forcht Bank, N.A. Forcht Bank, N.A. is a wholly-owned subsidiary of Forcht Bancorp, Inc. No publicly-held company owns ten percent or more of Forcht Bancorp, Inc. stock.

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INTRODUCTION

This case presents no question worthy of the Court's review. The primary reason that the Petition should be denied is because the Petition is based on a false premise – that the Sixth Circuit Court of Appeals imposed a "sole-cause" standard for the ADEA in contravention of established Court precedent. As demonstrated below, the Sixth Circuit made no such determination when it affirmed the district court's summary judgment decision. The Sixth Circuit correctly followed and applied this Court's holding in *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009), to the facts of this case when it determined that plaintiff must prove that age was the "but for" cause of her termination from employment; meaning that age had a determinative influence on the outcome of the employer's decision-making process. While the Petitioner claims that "the Circuits are split" regarding whether the sole cause standard applies to the ADEA, Petitioner's false characterization of the Sixth Circuit's decision establishes only that the Sixth Circuit's interpretation of *Gross* is consistent with other circuit decisions in which Petitioner claims a conflict exists. Thus, the "split" touted by the Petition is far from a real split among the circuit courts.

Petitioner further claims that the Sixth Circuit erred when it did not incorporate and follow the but-for causation analysis set forth in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). As detailed below, the Sixth Circuit correctly observed in its Opinion and Amended Opinion that *Bostock's* holding is limited to

Title VII and does not extend to ADEA cases. Thus, contrary to the Petitioner's claims, the Sixth Circuit followed this Court's holding in *Bostock* when it limited its application to Title VII cases.

Ultimately, the Petition is nothing more than a regurgitation of the arguments advanced at the appellate briefing stage regarding why this Court, pursuant to *Bostock*, should expand Title VII's motivating factor analysis to ADEA cases. Consistent with the limiting language contained in *Bostock*, this Court should decline Petitioner's invitation to engage in judicial activism. Thus, for these reasons, and because this case otherwise is a poor vehicle for further review, the Petition should be denied.

STATEMENT

A. Legal Framework

The Age Discrimination in Employment Act ("ADEA") prohibits an employer from terminating an employee "because of such individual's age." 29 U.S.C. § 623(a)(1). A plaintiff must "prove by a preponderance of the evidence (which may be direct or circumstantial) that age was the 'but-for' cause of the challenged employer decision." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 177-78 (2009). "Under *Gross*, satisfying but-for cause requires plaintiffs to show that age '*had a determinative influence on the outcome*' of the employer's decision-making process." Pet. App. 4 (emphasis in original).

"'Direct evidence is evidence that proves the existence of a fact without requiring any inferences' to be drawn." Pet. App. 6. Direct evidence is "'smoking gun' evidence that 'explains itself.'" *Id*. "Conversely, circumstantial evidence requires the factfinder to draw inferences from the evidence presented to conclude that the plaintiff was terminated based on age." *Id*.

"If a plaintiff cannot show age discrimination with direct evidence, plaintiff[] may attempt to show age discrimination with circumstantial evidence. . . ." Pet App. 6. Circumstantial evidence is evaluated "using the three-step burden shifting analysis set forth in *McDonnell Douglas Corp. v. Green*, 411, U.S. 792, 802-06 (1973)." *Id*. The plaintiff must first establish a prima facie case of discrimination. *Id*. "If the plaintiff succeeds, the burden of production shifts to the employer to identify a legitimate, nondiscriminatory reason for the termination." *Id*. If the employer succeeds, " . . . the burden shifts back to the plaintiff to prove the employer's reason is a mere pretext." *Id*. "If the plaintiff prevails, the factfinder may reasonably infer discrimination." *Id*. at 6-7.

Under either the direct or circumstantial methods, "the ultimate inquiry remains the same: 'the evidence must be sufficiently probative to allow a factfinder to believe that the employer intentionally discriminated against the plaintiff because of age.'" Pet. App. 7.

B. Factual Background

1. Petitioner Melanie Pelcha began working for Watch Hill as a bank teller in August 2005. Pet. App. 2. Between 2005 and 2016, Pelcha held several different job titles and worked under several different managers. *Id*. at 36-37. In May 2016, Pelcha, who was now a managerial employee working at Watch Hill's Mount Washington branch, *id*. at 16, 36, began reporting to Brenda Sonderman. *Id*. at 37. "[Pelcha] and Sonderman did not get along." *Id*. at 37. "For example, [Pelcha] questioned Sonderman's knowledge of banking systems . . . [and] qualifications to be manager (particularly in light of the fact that [Pelcha] had worked at Watch Hill longer), though [Pelcha] says she does not believe she was wrongfully passed over for the manager position. . . ." *Id*. Pelcha also felt that "Sonderman exercised 'more authority' than previous managers. . . ." *Id*.

2. Shortly after Sonderman became Pelcha's supervisor in May 2016, Sonderman began requiring her direct reports to submit written requests for time off instead of sending an email. Pet. App. 2. "These written requests had to be submitted by the middle of the month before the month of the requested time off." *Id*. In early July 2016, Pelcha planned to take a few hours off from work but decided not to fill out the written request form. *Id.* at 2. Instead, she orally obtained permission from Sonderman. *Id.* Pelcha " 'bridled at the notion of having to fill out a written request,' . . . and told Sonderman that she was 'not filling [the request out] because [she didn't] have to.' " *Id*. On July 7, 2016,

the day before Pelcha's requested time off and in violation of the written time off request policy, Pelcha completed the time off form and placed it in Sonderman's office. *Id*. at 3.

3. On July 12, 2016, Watch Hill CEO Greg Niesen terminated Pelcha's employment and informed her that it was because of her insubordination. *Id.* at 3. Pelcha was 47 years old at the time of her termination. *Id*. at 3.

C. Procedural History

1. Pelcha sued Watch Hill, her former employer, and its then-holding company, MW Bancorp, Inc.,[1] in July 2017. Pelcha alleged, among other things, that Watch Hill terminated her employment on the basis of her age in violation of the ADEA. Pet. App. 2, 36. The district court dismissed Pelcha's claims against Watch Hill on summary judgment. *Id*. Applying the traditional "but-for" causation standard established in *Gross* and its progeny, *id*. at 52-53, the district court analyzed Pelcha's evidence of alleged age discrimination using the direct evidence framework and the burden-shifting approach for circumstantial evidence as established in *McDonnell Douglas*. *Id*. at 52-55. The district court held that Pelcha's evidence did not create a triable issue of fact as to whether her age was the

[1] Pelcha did not appeal the district court's summary judgment order dismissing MW Bancorp, Inc., from the case. Thus, Watch Hill is the only respondent in this Petition. Pet. App. 2 at n.1.

"but-for" cause of her termination under either the direct evidence framework or the circumstantial evidence approach. *Id*. at 55.

2. Pelcha appealed the district court's order granting summary judgment as to Watch Hill. On January 12, 2021, the Sixth Circuit issued its original Opinion ("Opinion"), Pet. App. 18-34, in which it affirmed the district court's decision, holding that "[w]e see no error in the district court's decision." *Id*. at 19.

3. On February 19, 2021, the Sixth Circuit issued an amended Opinion. ("Amended Opinion"). Pet. App. 1-17. In the Amended Opinion, the Sixth Circuit reiterated and clarified the language in the Opinion, stating that, in order for a plaintiff to establish that age was the "but for" cause of the challenged employer decision, the plaintiff must show:

> . . . that age was *the* determinative reason they were terminated; that is, they must show "that age was the 'reason' that the employer decided to act." *Scheick v. Tecumseh Pub. Schs.*, 766 F.3d 523, 529 (6th Cir. 2014). Under *Gross*, satisfying but-for cause requires plaintiffs to show that age "*had a determinative influence on the outcome*" of the employer's decision-making process.

Id. at 4 (emphasis in original). The Sixth Circuit then affirmed the district court's decision granting summary judgment to Watch Hill on Pelcha's ADEA claim. *Id*. at 2.

On April 29, 2021, the Sixth Circuit denied Pelcha's petition for rehearing and rehearing en banc. Pet. App. 91. After circulating the petition to the full court, no judge requested a vote on the suggestion for rehearing en banc. *Id*.

REASONS FOR DENYING THE PETITION

I. THE DECISION BELOW FULLY ACCORDS WITH THIS COURT'S PRECEDENTS

A. The Sixth Circuit Never Adopted A "Sole-Cause Standard" When Determining Liability Under The ADEA

In an attempt to contrive a legal issue, Petitioner argues that the Sixth Circuit (and the district court) adopted a "sole-cause standard" when determining liability under the ADEA. Pet. 5, 10, 14. Not true. In reality, the term "sole-cause" does not appear *anywhere* in the Sixth Circuit's Opinion or Amended Opinion. Pet. App. 1-17, 18-34. Petitioner nevertheless argues that, because the Sixth Circuit accurately quotes from the language in *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176-80 (2009), using the word "the" in a "but-for" context, this somehow implies that the Sixth Circuit embraced a "sole-cause" standard of review. Pet. 5-6, 10-11. There is no support for Petitioner's false premise theory here.

The Sixth Circuit drew its standard *verbatim* from this Court's cases addressing what a plaintiff must prove to prevail in a disparate-treatment claim

pursuant to the ADEA. *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176-80 (2009); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 350-51 (2013); *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993). The Sixth Circuit never adopted a "sole-cause" ADEA standard. To the extent there is any doubt that the Sixth Circuit followed the mandates of this Court's decision in *Gross*, one need only look to the Sixth Circuit's February 19, 2021 Amended Opinion ("Amended Opinion"). Pet. App. 1-17. In the Amended Opinion, the Sixth Circuit reiterated and clarified that, in order for a plaintiff to prove that age was the "but for" cause of the challenged employer decision, he or she must show that age was the determinative reason that they were terminated; "that is, they must show 'that age was the reason that the employer decided to act.'" Pet. App. 4, quoting *Scheick*, 766 F.3d at 529 (quoting *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 350-51 (2013)). The Sixth Circuit then incorporated the very language from *Hazen Paper* that Petitioner objected to being absent from the Opinion: "Under *Gross*, satisfying but-for cause requires plaintiffs to show that age '*had a determinative influence on the outcome*' of the employer's decision-making process. *Gross*, 577 U.S. at 176 (quoting *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993))." Pet. App. 4.

B. Contrary To Petitioner's Claims, The Sixth Circuit Followed This Court's Holding In *Bostock*

Faced with the reality that the Amended Opinion moots any possible argument that the Sixth Circuit

disregarded the instruction from *Hazen Paper* when looking to *Gross*, Petitioner doubles down on her false premise theory, claiming – without any support – that by purportedly "eschewing *Bostock's* rejection of the sole-cause standard, the Sixth Circuit necessarily adopted the sole-cause standard for purposes of the ADEA." Pet. 5-6. This argument fails for several reasons. First, as previously discussed, the Sixth Circuit never imposed a sole-cause standard in this matter. Second, as the Sixth Circuit observed in its Opinion and Amended Opinion, *Bostock's* holding and its description of but-for causation is limited to Title VII itself. Pet. App. 5-6, 21-22. Indeed, the majority in *Bostock* went out of its way to delineate the narrow scope of the issue before the Supreme Court:

> The only question before us is whether an employer who fires someone for simply being homosexual or transgender has discharged or otherwise discriminated against that individual because of such individual's sex.

Bostock v. Clayton County, 140 S. Ct. 1731, 1739 (2020).

This Court also emphasized the limited scope of its holding in *Bostock* when it observed the following:

> The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, ***under Title VII itself,*** they say sex-segregated bathrooms, locker rooms, and dress codes will provide unsustainable after our decision today. ***But none of these other laws are before us; we have not had the benefit***

> ***of adversarial testing about the meaning of their terms, and we do not prejudge any such question today.***

Id. (emphasis added).

Thus, based on the foregoing, *Bostock's* application is limited to a ***sub-set*** of Title VII issues, and does not affect "other federal or state laws that prohibit sex discrimination."

Still, Petitioner argues (without any actual support) that "the Sixth Circuit expressly rejected *Bostock's* discussion of but-for with respect to cases arising under the ADEA . . . " Pet. 5. On the contrary, the Sixth Circuit ***followed*** this Court's holding in *Bostock* when it limited its application to Title VII cases. Indeed, this Court prefaced its description of but-for causation in *Bostock* by confining its application to Title VII:

> ***When it comes to Title VII***, the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some *other* factor that contributed to its challenged employment decision. So long as the plaintiff's sex was one but-for cause of that decision, that is enough to trigger the law.

Bostock, 140 S. Ct. at 1753 (emphasis added).

The limited nature of *Bostock's* holding is understandable and appropriate, especially when it concerns the ADEA. The text of Title VII provides that sex need only be "a motivating factor for any employment practice, even though other factors also motivated the

practice." 42 U.S.C. § 2000e-2(m). While the ADEA utilizes the same "because of" language as Title VII, the ADEA does not have an express authorization for motivating factor analysis. Thus, unlike Title VII, the ADEA does not allow a plaintiff to prove discrimination merely by showing that her age was a motivating factor behind the adverse employment action; the ADEA requires discrimination to be because of age, which means "but-for" causation. *Gross*, 557 U.S. at 174, 177-78 ("Unlike Title VII, the ADEA's text does not provide that a plaintiff may establish discrimination by showing that age was simply a motivating factor.").

Moreover, "Congress neglected to add such a provision to the ADEA when it amended Title VII to add §§ 2000e-2(m) and 2000e-5(g)(2)(B), even though it contemporaneously amended the ADEA in several ways . . . " *Gross*, 557 U.S. at 174 (citing the Civil Rights Act of 1991, § 15, 105 Stat. 1079, *id.* § 302, at 108); *See also Lewis v. Humboldt Corp., Inc.*, 681 F.3d 312, 318 (6th Cir. 2012) ("[m]aking this difference in language particularly salient was the reality that Congress amended both statutes in 1991, but added the 'motivating factor' language only to Title VII, not the ADEA." (citations omitted)).

Bostock is inapposite to this case.

C. There Is No Conflict Between The Sixth Circuit's Amended Opinion And The Law In The Fourth, Fifth, And Tenth Circuit Courts Of Appeals

Petitioner next claims that, based on "[t]he Sixth Circuit's rejection of *Bostock's* definition of but-for causation, and *Pelcha's* requirement that age must be 'the only cause of the termination,'" a conflict now exists "with the law in other circuits." Pet. 6. This argument fails for three reasons. First, the Sixth Circuit never held that age must be "the only cause of the termination." According to the Sixth Circuit, satisfying but-for causation under *Gross* "requires plaintiffs to show that age '*had a determinative influence on the outcome*' of the employer's decision-making process." Pet. App. 4. This critical component of the Sixth Circuit's decision is not referred to at all in the Petition. Second, as previously described, the Sixth Circuit did not reject *Bostock* but rather followed it. Third, none of the cases cited by Petitioner that purportedly create a conflict "with the laws in other Circuits" actually conflict with the Sixth Circuit's decision below.

The circuit decisions cited on page 6 of the Petition are consistent with *Gross* and the Sixth Circuit's Amended Opinion. The Fourth, Fifth, and Tenth Circuit opinions cited by Petitioner all correctly recite and apply the but-for standard established in *Gross*. While all three of the circuit courts explicitly reject a sole-cause standard, all three decisions cite *Gross*, and the Fourth Circuit cites the same language from *Gross* requiring age to have a determinative influence:

> Rather, according to *Gross*, to prevail on summary judgment the employee must only demonstrate, age-related considerations aside, that under the circumstances these other non-discriminatory grounds did not animate the employer to take the adverse employment action. *See Gross*, 129 S. Ct. at 2350 (indicating that an employer acts "because of" age when "the employee's protected trait actually played a role in the employer's decisionmaking process and had a determinative influence on the outcome" (emphasis omitted)) (quoting *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610, 113 S. Ct. 1701, 123 L.Ed.2d 338 (1993)).

Arthur v. Pet Dairy, 593 F. App'x 211, 220 (4th Cir. 2015).

The court in *Arthur* went on to explain in footnote 8 that the Fourth Circuit was joining at least five other circuits in this view of *Gross*, including the Sixth Circuit in *Scheick v. Tecumseh*, 766 F.3d 523, 532 (6th Cir. 2014), a case cited in the Opinion and Amended Opinion and ignored altogether by the Petitioner.

Petitioner contends that there is a circuit split regarding the causation standard applied under the ADEA. As explained above, however, the starting point for Petitioner's argument regarding a circuit split is her misrepresentation of the Sixth Circuit's Amended Opinion. All of the circuit court holdings referred to on page 6 of the Petition, including the Sixth Circuit's Amended Opinion in this matter, apply the same but-for standard in ADEA cases as established

in *Gross*, and none of these circuits apply a sole-cause standard.

II. THE SECOND QUESTION PRESENTED FAILS TO IMPLICATE ANY CIRCUIT SPLIT AND IS OTHERWISE UNWORTHY OF REVIEW

Petitioner cites several district court cases to support her erroneous argument that a circuit split exists based on "the tension in the language contained in various decisions from this Court." Pet. 7. The district court cases cited, however, do not demonstrate a circuit split or any tension in the language of this Court's decisions.

While the district court in *Douglas v. Banta Homes Corp.*, No. 11 CIV. 7217 KBF, 2012 WL 4378109 (S.D.N.Y. Sept. 21, 2012) interprets *Gross* to require sole causation, there are no Second Circuit decisions demonstrating that the Second Circuit requires sole causation for ADEA claims. In fact, the Second Circuit recently held in an Americans with Disabilities Act discrimination case that *Gross* requires a "but-for" causation standard. *See Natofsky v. City of New York*, 921 F.3d 337, 348 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 2668 (2020). Thus, *Douglas* – an unreported district court case in which the plaintiff did not appeal the court's decision – is an anomaly and is inconsistent with Second Circuit precedent and *Gross*.

In *U.S. ex rel. Barrick v. Parker-Migliorini Int'l, LLC*, No. 212CV00381JNPCMR, 2021 WL 2717952 (D.

Utah June 30, 2021), the district court grappled with the meaning of "because of" in the context of a False Claims Act retaliation claim for which the court had no on-point, binding case law. 2021 WL 2717952, at *3. *Barrick* is distinguishable because it involved the causation standard under the False Claims Act, not the ADEA. In declining to follow the Sixth Circuit's decision in *Pelcha*, the *Barrick* court explained that " . . . unlike the Sixth Circuit, which had binding case law (*Gross*) directly on point to define 'because of' in the context of an ADEA claim, the court here does not have on-point, binding case law on the meaning of 'because of' in the context of an FCA retaliation claim." *Id.* Thus, *Barrick* is irrelevant with respect to whether the circuits are split regarding the "but-for" causation standard that applies to ADEA claims.

The district courts in *Keller v. Hyundai Motor Manufacturing*, 2021 WL 190904 (M.D. Ala. 2021), and *Knapp v. Evgeros*, 205 F. Supp. 3d 946, 959 (N.D. Ill. 2016), apply the correct but-for causation standard established in *Gross* and are consistent with *Bostock*. More importantly, however, neither the Eleventh Circuit (*Keller*) nor the Seventh Circuit (*Knapp*) apply a sole causation standard to ADEA claims and instead apply the "but-for" causation standard established in *Gross*. *See King v. HCA*, 825 F. App'x 733, 736 (11th Cir. 2020) (applying the "but-for" causation standard established in *Gross*); *Carson v. Lake Cty., Indiana*, 865 F.3d 526, 533 (7th Cir. 2017) (rejecting the sole causation standard and applying the "but-for" causation standard established in *Gross*). Notably, the Third Circuit

also rejects a sole causation standard for ADEA claims. *See DiFrancesco v. A-G Adm'rs, Inc.*, 625 F. App'x 95, 99 (3d Cir. 2015); *Robinson v. City of Philadelphia*, 491 F. App'x 295, 299 (3d Cir. 2012).

Based on the foregoing, Petitioner is attempting to manufacture a circuit split where none exists by citing irrelevant or distinguishable district court decisions. These district court cases also fail to demonstrate any tension in the language of the decisions of this Court with respect to the proper causation standard under the ADEA.

Petitioner also attempts to create an issue worthy of review by claiming that the "inconsistency in the circuits may be traced to mixed messages in precedent from the highest court." Pet. 7. This argument fails for several reasons. First, as demonstrated above, the cases cited by Petitioner (beginning with *Pelcha*) do not create the "inconsistency" Petitioner claims. Second, Petitioner's description of this Court's prior decisions is not accurate. For example, according to Petitioner, this Court held in *Hazen Paper* that "the plaintiff need only prove that age was a 'determinative [] factor' in order to prove that a job action violates the ADEA." Pet. 8. *Hazen Paper* actually explained that an ADEA claim could not succeed "unless the employee's protected trait actually played a role in [the employer's decisionmaking] process ***and*** had a determinative influence on the outcome." *Hazen Paper*, 507 U.S. at 610 (emphasis added).

Likewise, while Petitioner claims that this Court's decision in *Burrage v. United States*, 571 U.S. 204 (2014) "clarified" (and modifies) the *Gross* "but-for cause" standard to "a but-for cause" standard, Pet. 11-12, this argument falls short for three reasons. First, the issues before the Court in *Burrage* had everything to do with criminal sentencing questions under the Controlled Substances Act and nothing to do with the ADEA. Second, *Burrage* cites *Gross* for the limited proposition that, when interpreting the phrase "because of" in a statute, courts apply the ordinary meaning of the words. *Burrage*, 571 U.S. at 212-13. Third, while Petitioner places great emphasis on the manner in which the Court quotes *Gross*, Pet. 12, this Court's citation to *Gross* was only provided as support for the conclusion "that a phrase such as 'results from' imposes a requirement of but-for causation." 571 U.S. at 214. Thus, Petitioner's claim that *Burrage* somehow modifies *Gross* (and all other ADEA cases in the process) is simply not supported by the language in the Court's opinion.

Ultimately, the Petition is nothing more than a regurgitation of the arguments advanced at the appellate briefing stage regarding why this Court, pursuant to *Bostock*, should expand Title VII's motivating factor analysis to ADEA cases. According to Petitioner, "[t]he legal system needs clarity about whether *Bostock's* understanding of but-for cause also applies to sister statutes such as the ADEA . . . " Pet. 15. Based on Petitioner's misrepresentations related to the Sixth Circuit's Amended Opinion, the actual holding in

Bostock¸ and the absence of an actual circuit split concerning but-for cause analysis under the ADEA, this Court should decline Petitioner's invitation to engage in judicial activism.

III. THE DECISION BELOW IS CORRECT AND DOES NOT CONFLICT WITH A DECISION OF THIS COURT

Petitioner's third question presented – "[i]s the evidence in this case sufficient to satisfy the proper causal standard on summary judgment" – assumes the district court applied the wrong causation standard. Pet. i. As discussed above, however, the district court and the Sixth Circuit applied the correct "but-for" causation standard established by this Court in *Gross*. For this reason alone, Petitioner's third question is unworthy of review.

After considering all of the record evidence in a light most favorable to Petitioner, the district court found that there was "no basis on which a jury could reasonably infer that the but-for cause of 47-year-old Pelcha's termination was her age." Pet. App. 87. The Sixth Circuit, applying the same "but-for" causation standard, affirmed the district court's summary judgment decision. *Id*. at 2. While Petitioner encourages this Court to revisit the factual findings of this case, "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10; *see*, *e.g.*, *City & Cnty. of S.F. v.*

Sheehan, 135 S. Ct. 1765, 1780 (2015) (Scalia & Kagan, JJ., concurring in part and dissenting in part) ("[W]e are not, and for well over a century have not been, a court of error correction."). As a result, this Court should deny the Petition.

This Court should not certify the Petition to correct any perceived errors, which is all she really seeks here. Petitioner's criticisms of the lower courts' application of the correct "but-for" causation standard established under this Court's binding precedent in *Gross* and the courts' careful analysis of the record evidence does not warrant this Court's attention. *See Exxon Co., USA v. Sofec, Inc.*, 517 U.S. 830, 841 (1996) ("A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." (citation omitted)). Accordingly, this Court should deny Petitioner's request to reevaluate the concurrent findings by the district court and Sixth Circuit, which is unworthy of the Court's review.

CONCLUSION

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

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