23-_____

In The

SUPREME COURT OF THE UNITED STATES

October Term 2023

Dawn C. Polk,

Applicant/Petitioner,

v.

Amtrak National Railroad Passenger Corporation; Andrew Collins; Alton Lamontagne; Tracey Armstrong,

Respondents.

Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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APPLICATION TO THE HONORABLE CHIEF JUSTICE JOHN G. ROBERTS, JR. AS CIRCUIT JUSTICE

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July 13, 2023

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PARTIES TO THE PROCEEDING

Applicant Dawn C. Polk ("Applicant") was plaintiff-appellant in the proceeding below.

Respondents Amtrak National Railroad Passenger Corporation ("Amtrak"), Andrew Collins, Alton Lamontagne, and Tracey Armstrong were defendants-appellees in the proceeding below.

APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's Rule 13.5 and 28 U.S.C. § 2101(c), Applicant hereby requests a 45-day extension of time within which to file a petition for a writ of certiorari, to and including September 8, 2023.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is the decision of the United States Court of Appeals for the Fourth Circuit in *Polk v. Amtrak Nat'l R.R. Passenger Corp.,* No. 22-1912, a copy of which is attached as Exhibit A.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered judgment on April 26, 2023. This Court's jurisdiction will rest on 28 U.S.C. § 1254. Under Supreme Court Rules 13.1, 13.3, and 30.1, a petition for a writ of certiorari is due to be filed on or before July 25, 2023. In accordance with Rule 13.5, Applicant has filed this application more than 10 days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 45-day extension of time, up to and including September 8, 2023, to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Fourth Circuit in this case. An extension is warranted because of the importance of the issues presented and the undersigned counsel's need for additional time to prepare a petition that will assist this Court in deciding whether to grant certiorari.

1. This case concerns the applicability of the Railway Labor Act's ("RLA") arbitration requirements to race discrimination claims arising under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e *et seq*.

2. Applicant has brought this instant action *pro se* in the District of Maryland, alleging state-law claims of breach of contract and tort, as well as racial discrimination in violation of Title VII. In June 2022, the district court granted Respondents' motion to dismiss and denied Polk's motion for summary judgment and for leave to amend her complaint, reasoning that the RLA preempted Polk's state-law claims and precluded her Title VII claim because the claims would "require that the Court interpret the rights within the CBA" between Amtrak and the Sheet Metal, Air, Rail and Transportation Workers ("SMART") union. The Fourth Circuit affirmed, reasoning that Applicant "raised a minor dispute," and held that her Title VII claim was subject to arbitration under the RLA.

3. The instant case implicates an entrenched and long-running disagreement among the circuits: whether the RLA precludes federal causes of action. The issue arose after the ruling of *Hawaiian Airlines v. Norris*, 512 U.S. 246 (1994), which established a

test for determining whether the RLA's mandatory arbitration mechanism preempts *state*-law claims.

As it stands, the Circuits are split three ways. The Second, Eighth, and Ninth Circuits have held that claims arising from federal statute are categorically exempt from the RLA's mandatory arbitration requirements. *See, e.g.*, *Saridakis v. United Airlines*, 166 F.3d 1272, 1277 (9th Cir. 1992) (a dispute under the Americans with Disabilities Act ("ADA") is not minor and is not precluded by the RLA); *Bates v. Long Island Railway Co.*, 997 F.2d 1028, 1035 (2d Cir. 1993) (claims of discrimination under the Rehabilitation Act were not barred by prior agreement pursuant to the RLA); *Benson v. Nw. Airlines*, 62 F.3d 1108, 1115 (8th Cir. 1995) (claim under the ADA was not preempted by the RLA).

In this decision, the Fourth Circuit joins the Sixth, Seventh, and Tenth's circuits in subjecting both state *and* federal claims to the RLA. *See, e.g.*, *Stanley v. ExpressJet Airlines, Inc.*, 808 F. App'x 351, 356 (6th Cir. 2020) (the CBA resolves the Title VII claim and is therefore pre-empted by the RLA); *Brown v. Illinois Central Railroad Co.*, 254 F.3d 654 (7th Cir. 2001) (resolution of ADA claim would require interpretation of CBA terms and is therefore precluded by the CBA); *Fry v. Airline Pilots Ass'n, Int'l*, 88 F.3d 831, 836 (10th Cir. 1996) (stating that under *Norris* and *Lingle*, the question is whether resolution of federal and state law requires interpretation of CBAs).

The Fifth Circuit explicitly recognized this conflict in *Carmona v. Sw. Airlines*, 536 F.3d 344, 350–51. It rejected the notion that the "source of the rights" asserted in a union member's claims determined whether the action was precluded by the RLA. *Id.* at 351. While still placing emphasis on the importance of interpreting the CBA, the court ultimately held that the fact that the claims alleged Title VII and ADA violations, evidenced that the suit did not require CBA interpretation. *Id.* at 350–51.

4. Furthermore, the decision of the Fourth Circuit, along with the aforementioned circuits, warrants review because of its potentially erroneous application of this Court's holding in *Atchison, Topeka & Santa Fe Railway Co. v. Buell*, 480 U.S. 557 (1987). Relying on footnote 6 of *Hawaiian Airlines*, the Fourth Circuit stated that there is no distinction between the preemption inquiry for both state and federal law claims. However, *Buell* explicitly stands for the proposition that the RLA does not preempt a federal statute—here, the Federal Employers' Liability Act—where it provides "substantive protection" against conduct independent of the employer's obligations under its CBA. *Buell*, 480 U.S. at 557.

Final resolution of this issue would have widespread impact on the civil rights of workers in the railroad and airline industries. Given the importance and complexity of the issues presented, a 45-day extension would allow counsel to analyze the issues and present them in the most effective manner for this Court's consideration.

5. Applicant has requested that Professor Eric Schnapper of the Washington University School of Law assist in the preparation of her petition. An extension of time will permit him the time necessary to effectively contribute to the preparation of a comprehensive petition.

6. Undersigned counsel respectfully submits that there is good cause for a 45-day extension of time to file a petition for writ of certiorari. The undersigned counsel of record has client obligations in other matters that would make it difficult to prepare a petition for certiorari by the current deadline. Those other matters include the preparation of responses to several dispositive motions in federal district court in the

District of Columbia and the District of Maryland, as well as an appeal in *Nguyen v. Yellen*, No. 23-1220, currently due August 15, 2023.

7. Both of the undersigned's heavy litigation schedule and the need for additional time to coordinate with Professor Schnapper demonstrate good cause for the extension of time.

CONCLUSION

For these reasons, Applicant respectfully requests that this Court grant an extension of 45 days, up to and including September 8, 2023, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

/s/ Denise M. Clark

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