No. _____

SUPREME COURT OF THE UNITED STATES

Cara Wessels Wells

Petitioner,

vs.

Texas Tech University, Samuel Prien, and Lindsay Penrose

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED

Respondents, a public research university and two of its employees, allegedly discriminated against Petitioner because of her sex while she was a student, graduate student, and Mentor at Respondent university from 2009 to 2022. App. 89, 130. The Fifth Circuit held that Petitioner was an employee only during her graduate studies, which ended in 2017. App. 12. In holding that she was not an employee for purposes of Title VII thereafter, the Court applied a strict standard requiring remuneration. App. 10-11. The Court then reasoned that her claims, which arose from misconduct ending prior to the applicable 300-day deadline, were time-barred. App. 10. Accordingly, the question presented is:

1. Does an unpaid position qualify someone to be an "employee" within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(f)?

II. PARTIES TO THE PROCEEDING

Petitioner is Cara Wessels Wells ("Wells"), who was Plaintiff-Appellant in the Fifth Circuit.

Respondents are Texas Tech University ("TTU"), Samuel Prien, and Lindsay Penrose, who were Defendants-Appellees in the Fifth Circuit.

III. LIST OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Cara Wessels Wells v. Texas Tech University, Samuel Prien, and Lindsay Penrose,* No. 5:23-cv-60, U.S. District Court for the Northern District of Texas. Judgment entered May 7, 2024.
- *Cara Wessels Wells v. Texas Tech University, Samuel Prien, and Lindsay Penrose*, No. 24-10518, U.S. Court of Appeals for the Fifth Circuit. Judgment entered March 3, 2025.

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VII. PETITION FOR WRIT OF CERTIORARI

Petitioner, Cara Wessels Wells ("Wells"), respectfully seeks a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit.

VIII. OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fifth Circuit, No. 24-10518, is unreported. The opinion of the U.S. District Court for the Northern District of Texas, No. 5:23-CV-60, is unreported.

IX. STATEMENT OF JURISDICTION

The Fifth Circuit rendered judgment on March 3, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

X. STATUTORY PROVISIONS

This case involves the statutory definitions contained in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e.

42 U.S.C. § 2000e DEFINITIONS For the purposes of this subchapter –

> (f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political

> subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

XI. INTRODUCTION

The Fifth Circuit Court of Appeals erroneously affirmed dismissal of Petitioner Cara Wessels Wells's claims for sexual discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"). To determine whether Wells was an employee for purposes of Title VII in 2022, the court applied a stringent standard, the "threshold-remuneration" test, which is contrary to the text and intent of Title VII. This Court should grant a writ of certiorari to correct the Fifth Circuit's error, resolve a split between the Circuit Courts of Appeals, and protect the civil rights of non-traditional employees.

Some lower federal courts, including the Fifth Circuit, are applying a rigid threshold-remuneration test to deny millions of non-traditional employees the civil rights intended by Congress to protect them. These courts are refusing to consider the full mandate of Title VII, as well as this Court's instruction in *Oncale v. Sundown Offshore Srvcs., Inc.* to interpret Title VII broadly: "statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils."[1]

Certain courts have recognized the need for broad interpretation, but there is a pronounced division among the United States Circuit Courts of Appeals. The Sixth and Ninth Circuits, for example, apply a totality-of-circumstances test guided by common-law principles. At the opposite end of the spectrum, the Fifth Circuit in this case claimed that "[w]ithout a financial benefit, *no* plausible

[1] 523 U.S. 75, 79 (1998).

employment relationship of *any* sort can be said to exist." App. 11 (quoting *O'Connor v. Davis*, 126 F.3d 112, 115–16 (2d. Cir. 1997)) (internal quotation marks omitted, emphasis added).

Petitioner Wells is a scientist and entrepreneur who participated as a Mentor in TTU's Accelerator program. She alleges TTU employed her in this program and that, while an employee, she was subjected to sexual harassment, a hostile work environment, and retaliation for protected activity. If this Court rules that she was an employee in June 2022 under Title VII, all three claims will be preserved for consideration on remand.[2]

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[2] Importantly, the "continuous violation" doctrine establishes that as long as an "act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability."*Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002). The Fifth Circuit conceded the application of this doctrine to Title VII harassment claims, citing Title VII caselaw in its Title IX analysis. App. 16, note 4. Wells contests the Fifth Circuit's conclusion that intervening actions in 2017 and 2019 "sever[ed] the acts that preceded it from those subsequent to it, precluding liability for preceding acts outside the filing window."

Wells asserts three claims for sex discrimination in violation of Title VII and prays that this Honorable Court will correct the error of the Fifth Circuit for her sake and the sake of all non-traditional employees across this country.

XII. STATEMENT OF THE CASE

A. Factual Background

Petitioner began her undergraduate studies at Texas Tech University ("TTU") in 2009. App. 89. She stayed at TTU for her doctoral studies and earned a PhD in 2017. App. 105 After completing her PhD, she applied her skills and knowledge as an entrepreneur, maintaining ties to TTU through its Accelerator program. App. 111 – 128.

In May 2022, Petitioner executed an agreement to become a Mentor in the Accelerator program. App. 130 – 131. Her participation was finalized in June

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Stewart v. Mississippi Transp. Com'n, 586 F.3d 321, 328 (5th Cir. 2009).

2022, after successfully completing rigorous interviews, background checks, and onboard procedures. App. 131. Petitioner's name was added to the TTU website, publicly noting her position with the program. App. 131.

Petitioner joined the Accelerator program to advance her career through the key benefits afforded to Mentors, especially the opportunity to be hired full-time by TTU or one of the participating companies. App. 131-132.

On June 10, 2022, the Office of the General Counsel at TTU instructed the Accelerator Program Director to remove Petitioner from the program. App. 132. Petitioner was also removed from the TTU website, and the Program director instructed Accelerator participants to terminate formal relationships with Petitioner as well as foregoing future programming with her. App. 132. Finally, Petitioner was removed from all TTU publications.

App. 132. No explanation was given for any of these actions. App. 132 – 133.

B. The District Court's Erroneous Decision Dismissing Wells's Title VII Claims

Petitioner filed an EEOC charge on November 11, 2022, and first filed this lawsuit on March 22, 2023, alleging—among other claims not relevant here—that Respondents discriminated against her because of her sex in violation of Title VII. App. 88, 135 – 138. On May 18, 2023, Respondents moved to dismiss under Fed. R. Civ. P. 12(b)(6), arguing among other things that Petitioner was not an employee for purposes of Title VII while she was an Accelerator Mentor in 2022. App. 38-39. Petitioner then filed a First Amended Complaint on June 23, 2023. App. 35. Respondents again moved to dismiss on July 6, 2023. App. 35.

Petitioner argued that her Title VII claims were timely because she filed them within 300 days of the

alleged unlawful employment practice and within 90 days of receiving a Notice of Right to Sue from the EEOC. App. 39-40. Her timeliness under these deadlines turns on when she was an employee of TTU. App. 39. Petitioner argued that her role in the Accelerator program made her an employee in June 2022. App. 39-40. She asserted that the benefits of the program, including consideration for future employment, adequately allege her status as an employee even without direct financial compensation. App. 40.

On May 7, 2024, Judge Hendrix of the United States District Court for the Northern District of Texas issued an order granting Respondents' motions to dismiss. App. 75. The court's dismissal of the Title VII claims rested on its determination that Petitioner had not been a TTU employee since 2017. App. 39. The court stated that "Fifth Circuit precedent forecloses her argument that an unpaid position counts as

employment," citing the Circuit Court's decision in *Juino v. Livingston Par. Fire Dist. No. 5*. App. 39 (citing 717 F. 3d 431, 439 (5th Cir. 2013)).

As the court explained, the Fifth Circuit applies a two-step approach; the first step "asks whether the putative employee received remuneration in the form of salary, wages, or significant indirect benefits that are not incidental to the service performed." App. 39-40. The court described the second step as "the economic realities and common law agency test" but did not elaborate, as it held Petitioner failed at the first step. App. 39-40. Comparing *Juino*, where a volunteer firefighter was not an employee despite receiving "some compensation, a life insurance policy, a uniform, and training," the court held that Petitioner's expectation of future employment and other benefits in the Accelerator program were insufficient remuneration. App. 39-40.

C. The Fifth Circuit's Erroneous Decision Dismissing Wells's Title VII Claims

On March 3, 2025, the Fifth Circuit issued its opinion affirming the District Court's application of the threshold-remuneration test. App. 10-11. The court took a hard stance in briefly considering the question, claiming that "[w]ithout a financial benefit, *no* plausible employment relationship of *any* sort can be said to exist." App. 11 (quoting *O'Connor* at 115–16 (2d. Cir. 1997)) (internal quotation marks omitted, emphasis added). The court briefly cited one case each from the Second and Tenth Circuits and reiterated the District Court's comparison to *Juino*. App. 10-11.

On appeal, Petitioner argued that the District Court misapplied the "threshold-remuneration" test by ignoring the indirect benefits of her role in the Accelerator program. App. 10-11. In its Title VII discussion, the Fifth Circuit failed to address Petitioner's argument that lower courts have

recognized volunteer positions which "regularly lead[] to regular employment" as a "compelling" basis for conferring employee status. App. 7-12, *but cf. Weaver v. City of Runaway Bay, Texas*, 2020 WL 13607739, at *4 (N.D. Tex. Feb. 11, 2020). The court likewise did not address outcomes in the Fourth Circuit, applying a similar test, which ruled that "because compensation is not defined by statute or case law . . . it cannot be found as a matter of law." App. 7-12, *but see Haavistola v. Community Fire Co. of Rising Sun, Inc.*, 6 F.3d 211, 221 (4th Cir.1993).

XIII. REASONS FOR GRANTING THE PETITION

A. The Courts of Appeals Are Divided Over Whether Unpaid or Nominally Paid Workers Are "Employees" Under Title VII

The question of when unpaid or minimally compensated individuals qualify as "employees" under federal anti-discrimination laws has divided the Circuit Courts of Appeals. The decision below squarely implicates an entrenched split on this important issue.

The Fifth Circuit in this case adhered to a rule—called the "threshold-remuneration" test—that categorically denies Title VII protection to volunteers or other workers who lack substantial compensation. In contrast, other Circuits, notably the Sixth and Ninth, reject such a rigid prerequisite and instead evaluate the worker's status under a common-law agency test or a hybrid test, treating compensation as merely one factor in the analysis.

On one side of the split, a majority of circuits require significant remuneration as an essential condition of employee status. The Fifth Circuit's rule originates from the Second Circuit's two-step approach in *O'Connor* and the Eighth Circuit's decision in *Graves v. Women's Professional Rodeo Ass'n*.[3] Under this approach, a Title VII plaintiff who worked in a volunteer or unpaid capacity must first demonstrate that she

[3] 907 F.2d 71 (8th Cir. 1990).

received direct or indirect compensation—"wages or a salary or other compensation"—in exchange for her services, as a "crucial and elementary initial inquiry."[4] If and only if that threshold showing is made (for example, by proof of a salary, stipend, tangible benefits, or other significant remuneration) will the court proceed to examine the conventional common-law factors, also known as *Darden* factors,[5] to determine the existence of an employment relationship. If no remuneration is present, the inquiry ends: the individual is not an "employee," no matter the degree of control, integration, or mutual reliance between the parties.

This strict remuneration test has been explicitly adopted by the Second, Fourth, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits. For example, the Eighth Circuit in *Graves* reasoned that compensation is "an essential condition to the existence of an employer-

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[4] *Juino* at 436.
[5] *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992).

employee relationship," and found it unnecessary to analyze any further factors where the plaintiff received no pay from the defendant.[6] The Second Circuit similarly held that the question of whether someone is or is not an employee under Title VII usually turns on whether she has received "direct or indirect remuneration" from the alleged employer.[7] The Fourth Circuit takes a comparable view, while allowing that "indirect but significant remuneration" (such as pensions, insurance, or other substantial benefits) may satisfy the test and create a fact issue on employee status.[8] In short, under the rule applied by these courts, an individual who does not receive a paycheck or substantial employment perks is per se outside Title VII's protections, regardless of the nature of the work or the degree of workplace discrimination they suffer. The Fifth Circuit's decision in this case, following *Juino*,

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[6] *Graves* at 73.
[7] *O'Connor* at 116.
[8] *Haavistola* at 222.

squarely aligns with this majority approach: it refused to recognize any Title VII employment relationship between TTU and Wells due to the lack of monetary compensation or "significant benefits" for her Mentor role.

In contrast, a minority of circuits have rejected the threshold-remuneration test and instead apply the traditional multifactor test for employment, without any fixed compensation requirement. The Sixth Circuit's decision in *Bryson v. Middlefield Volunteer Fire Dep't* is the leading example.[9] In *Bryson*, a volunteer firefighter alleged sexual harassment, and the defendant argued she was not an employee because her benefits were de minimis. The Sixth Circuit "decline[d] to adopt the Second Circuit's view" that a volunteer must first prove she was a paid "hired party" before the common-law test can be applied.[10] The court held that nothing in Title VII

[9] 656 F.3d 348 (6th Cir. 2011).
[10] *Id.* at 354.

or this Court's precedents mandates a pay threshold: rather, since the statute defines "employee" only circularly as a person "employed by an employer," courts must "consider and weigh all of the incidents of the relationship."[11] Remuneration is one factor in that analysis—an important one, to be sure—but "no one factor, including remuneration, is decisive, and therefore no one factor is an independent antecedent requirement."[12] The Sixth Circuit concluded that the district court in *Bryson* erred by treating remuneration as an absolute prerequisite, and it reversed a summary judgment that had been based solely on lack of pay. On remand, the question was whether the plaintiff's volunteer firefighting duties, the benefits she did receive (insurance coverage, workers' compensation, training, gift cards, etc.), and the degree of control and integration in the fire department collectively sufficed to establish

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[11] *Id.* (quoting *Darden*).
[12] *Id.*

an employment relationship. In a subsequent case, the Sixth Circuit reaffirmed that *Bryson* opened the door to Title VII coverage for certain unpaid workers, even though it ultimately found two volunteer nuns were not employees after considering all the *Darden* factors in that specific context.[13] Crucially, though, the *Bryson* rule ensures that those factors will at least be weighed, rather than short-circuited by a dispositive pay standard.

The Ninth Circuit has adopted a similar common-law, fact-intensive approach in cases under both Title VII and related statutes. In *Fichman v. Media Center*, the Ninth Circuit considered whether unpaid directors of a nonprofit and volunteer content producers counted as employees under the Age Discrimination in Employment Act (ADEA) and the Americans with

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[13] *Marie v. American Red Cross*, 771 F.3d 344 (6th Cir. 2014).

Disabilities Act (ADA).[14] The court expressly relied upon this Court's analysis in *Clackamas Gastroenterology Associates, P.C. v. Wells*,[15] which applied common-law agency principles to determine if physician-shareholders were employees under the ADA and held that the same analysis governs volunteers under the ADEA. The Ninth Circuit examined a set of factors (including the organization's right to hire or fire the worker, the supervision and control over the work, the parties' expectations, and the worker's financial stake in the endeavor). Applying those factors, the Ninth Circuit agreed that the nonprofit's unpaid board members were not employees (they had full-time jobs elsewhere, were not compensated, and could not be fired by any superior). Importantly, however, the Ninth Circuit did not impose a dispositive rule that lack of pay ends the

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[14] 512 F.3d 1157 (9th Cir. 2008); 29 U.S.C. § 621 et seq. (1967); 42 U.S.C. § 12101 et seq. (1990).
[15] *Fichman* at 1160 (citing *Clackamas Gastroenterology Associates, P.C. v. Wells* 538 U.S. 440 (2003)).

inquiry. Instead, it treated compensation as one relevant consideration in an overall assessment of whether the relationship "plausibly approximate[s] an employment relationship."[16] Thus, the Ninth and Sixth Circuits both reject the threshold-remuneration test and instead ask whether, looking at the totality of circumstances, the relationship is the kind of relationship that Title VII is intended to cover.

This clear split among the circuits is directly implicated by the facts of the present case. Had Wells been able to pursue her Title VII claims in the Sixth or Ninth Circuits, the courts would have considered the full scope of her relationship with TTU—including the many years she worked under TTU's direction, the valuable services she provided in the lab and mentorship program, and whatever intangible benefits or institutional support TTU afforded her—in determining whether she was an "employee." No single factor would

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[16] *Graves* at 74.

have been dispositive; the courts would weigh all evidence of a master-servant relationship (per *Darden* and *Clackamas*), and a factfinder could ultimately conclude that TTU "employed" Wells even during her unpaid work in the Mentor program. In the Fifth Circuit, by contrast, that inquiry was cut off at the threshold: because Wells did not receive a paycheck or comparable financial benefits in 2022, she was deemed outside the Title VII employee definition as a matter of law, and her case was dismissed without ever reaching the merits of her harassment and retaliation claims.

Only this Court can resolve the conflict in governing law. Indeed, the Fifth Circuit has acknowledged that the circuits are split "into two camps" on this issue.[17] The result is that similarly situated victims of discrimination receive disparate protection based purely on geography. An unpaid volunteer firefighter in Tennessee (Sixth Circuit) may

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[17] *Juino* at 435.

be able to prove she is an employee and hold her harasser accountable under Title VII, whereas her counterpart just across state lines in Mississippi (Fifth Circuit) could be categorically denied any recourse under the statute, no matter how egregious the discrimination. Such an outcome is intolerable under a comprehensive federal civil rights statute and demands this Court's intervention.

B. The Fifth Circuit's Rigid Remuneration Rule is Incorrect and Undermines Title VII's Purposes, Especially Given the Modern Workforce's Reliance on Unpaid Interns and Volunteers

The threshold-remuneration test applied below is not only a source of division; it is also wrong. By treating compensation as a sine qua non of employment, the Fifth Circuit's rule conflicts with the text and spirit of Title VII, as well as this Court's guidance on interpreting the term "employee." The payment requirement severely constricts the scope of Title VII's protections in a manner that Congress did not require

or intend, leaving a vulnerable class of workers exposed to unchecked discrimination.

As an initial matter, Title VII's statutory language does not impose any monetary-payment requirement in its definition of "employee." The Act defines "employee" as "an individual employed by an employer."[18] This Court has observed that such a definition "is completely circular and explains nothing," and thus, in the absence of further statutory clarification, courts must presume Congress intended to incorporate "the conventional master-servant relationship as understood by common-law agency doctrine."[19] Accordingly, the task is to apply the multifactor common-law test—considering all aspects of the relationship, including but not limited to the hiring party's right of control, the manner of compensation, provision of equipment, length of relationship, method

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[18] 42 U.S.C. § 2000e(f).
[19] *Darden* at 322-23.

of termination, and so forth. This Court's decisions in *Darden* and *Community for Creative Non–Violence v. Reid*,[20] make clear that courts are to assess all the components of the relationship "with no one factor being decisive."[21] If Congress had intended to categorically exclude volunteer workers by imposing a compensation floor, it could have said so in the statute (for instance, by defining employee as "an individual who receives compensation from an employer"). It did not. Nothing in Title VII's text excludes an unpaid individual from the term "any individual" in the phrase "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment."[22] The Fifth Circuit's approach thus adds an extra-textual requirement that finds no support in the plain language Congress enacted.

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[20] 490 U.S. 730 (1989).
[21] *Darden* at 324 (quoting *NLRB v. United Ins. Co. of America*, 390 U.S. 254 (1968)).
[22] 42 U.S.C. § 2000e-2(a)(1).

Nor is the remuneration test required by Title VII's purpose or legislative history. Circuits who have adopted the threshold-remuneration test have reasoned that Title VII and similar laws were enacted to combat discrimination in the workplace, and because unpaid volunteers by definition do not derive their livelihood from their volunteer work, their livelihoods are not in jeopardy when discrimination occurs. But this misconceives Title VII's objectives. Congress's primary goal in Title VII was to eliminate all forms of invidious discrimination in employment, thereby ensuring that opportunities are not denied or limited on the basis of race, sex, and other protected traits.[23] That goal is not confined to high-wage earners or those for whom a job is their sole source of income. Indeed, discrimination is no less repugnant simply because the victim is an unpaid intern or volunteer. A student who volunteers in a

[23] *See* 42 U.S.C. § 2000e-2(a)(1) (prohibiting discrimination in any employment practice).

hospital or a law clerk who serves without pay can be sexually harassed or racially abused just as severely as a salaried employee. Yet, under the rule applied in the Fifth Circuit decision below, such victims have no remedy under Title VII, solely because they agreed to perform the work for experience or other benefits instead of money.

In practice, the threshold-remuneration rule excludes a vast swath of workers from a fundamental antidiscrimination protection. Millions of individuals—from unpaid interns hoping to gain experience, to volunteer firefighters and community health workers, to graduate student researchers and teaching assistants who receive only academic credit—fall into this category. These roles are increasingly common and often essential stepping-stones in certain professions. Yet if those individuals are subjected to egregious discrimination or harassment, the remuneration rule denies them access to the protections of Title VII. This

outcome cannot be what Congress intended. Nothing in the text or the broader design of Title VII suggests that the statute's prohibition on discrimination was meant to protect only those on an employer's payroll, and not those who perform substantively similar work for non-monetary rewards. In fact, some employers might exploit the remuneration test as a loophole to evade liability for discriminatory practices.

The Sixth and Ninth Circuits' approach, by contrast, faithfully implements this Court's mandate to apply the common-law test and better advances Title VII's remedial purpose. By examining all facets of the relationship, courts can distinguish between a true volunteer and a worker who, although unpaid, functions in practice as an employee. The Sixth Circuit in *Bryson* correctly noted that the term "employee" should be understood through common-law agency principles whenever Congress has not defined it otherwise, and that the use of the phrase "hired party" in *Darden* and

Reid did not silently import a strict pay requirement. The common-law test is flexible: it allows consideration of indirect or deferred benefits as part of the analysis (e.g., whether the volunteer receives training, certifications, insurance, free lodging, academic credit, or other benefits that "are not merely incidental to the activity performed").[24] It also accounts for whether the putative employer had the right to control the individual's work and whether the work was an integral part of the employer's business—factors which may indicate an employment relationship even absent a traditional salary. In short, the minority rule already incorporates remuneration as one factor but does not elevate it to the role of gatekeeper. This approach not only aligns with *Darden* and *Clackamas* but also yields more equitable results by covering those non-traditional workers who in truth function as employees.

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[24] *Juino* at 435.

Legal scholars and commentators have criticized the threshold-remuneration test as unduly rigid and out of step with Title VII's aims. Commentary in the wake of *Bryson* observed that "most circuits" had taken a narrow, dictionary-bound view of "what it means to be an employee," whereas the Sixth Circuit's decision "took a more substantive approach, and arrived at a more reasonable result."[25] One academic note argued that the majority rule "conflicts with the Restatement of Agency" and arbitrarily denies protection to volunteers even when they function indistinguishably from paid staff.[26] That commentator called the remuneration prerequisite "inappropriate" for failing to account for Congress's broad intent to protect workers (paid or unpaid) from discrimination. In short, the time has come to clarify whether unpaid workers are categorically excluded from

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[25] Christopher R. Morgan, Note, Bryson v. Middlefield Volunteer Fire Department *and the Changing Understanding of Volunteer as Employee*, 17 Lewis & Clark L. Rev. 1 (2013).
[26] Keiko Rose, Note, *Volunteer Protection under Title VII: Is Remuneration Required?*, 2014 U. Chi. Legal Forum 605 (2014).

Title VII, especially as modern economic conditions force more individuals to take unpaid internships or gig roles to advance their careers. The Sixth Circuit's reasoned decision and its progeny provide a ready vehicle for this Court to affirm that Title VII's promise of equal opportunity cannot be defeated by the simple expedient of not cutting a paycheck.

This case is an ideal vehicle to address the issue. The alleged facts starkly illustrate the stakes: by all accounts, Wells dedicated over a decade of service to TTU's research programs, endured alleged sexual harassment during that service, and then was allegedly retaliated against when she tried to continue contributing as a volunteer mentor. Under one interpretation of Title VII, she would have her day in court to prove those claims; under the Fifth Circuit's interpretation, she is not an "employee" and thus has no rights under Title VII, purely because her last role at TTU was unpaid. The conflict and the legal error are

squarely presented, and no procedural obstacles bar this Court's review.

Clarification from this Court is urgently needed to ensure uniform and fair application of Title VII across jurisdictions. A definitive ruling from this Court would have a wide-ranging beneficial impact, settling the law for several major federal anti-discrimination regimes.

XIV. CONCLUSION

This Honorable Court should grant a writ of certiorari in this case to confirm that discrimination against unpaid employees is still discrimination in violation of Title VII of the Civil Rights Act of 1964. The Circuits are split over this critical question, and the Fifth Circuit has in this case erroneously refused to recognize that its preferred test is contrary to the text and intent of Title VII. Other lower courts are similarly left to apply conflicting regimes for the same federal law.

The Circuit split on this question also threatens consistency and predictability because it causes the

protections afforded to employees to vary across the country. The lower courts have ignored this Court's directive in *Oncale* and developed rules which require conflicting results. Title VII was not meant to be a switch, only flipped on as soon as a single dollar flowed to a worker.

The question of whether "an individual employed by an employer" includes someone receiving only non-financial benefits should not categorically be "no." The text and intent of Title VII, as elucidated over decades by this Court's decisions in cases like *Oncale*, favor the conclusion reached by the Sixth and Ninth Circuits in *Bryson* and *Fichman*, respectively.

Petitioner Wells, as well as similarly situated employees around the country, would benefit from this Court's answer to the question of whether someone hired to work without formal pay is an employee under Title VII of the Civil Rights Act of 1964.

Dated this 2nd day of June, 2025.

Respectfully submitted,

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