

No. 25-1303

IN THE
Supreme Court of the United States

CARYN DEVINS STRICKLAND

Petitioner,

v.

NANCY L. MORITZ, *et al.*,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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REPLY ARGUMENT

This petition presents this Court with the opportunity to resolve a significant deficiency in the administration of the judicial branch—one that has been known for years but remains unresolved.

The questions presented are plainly certworthy. Both questions—whether the Fifth Amendment’s Due Process and Equal Protection clauses permit the federal judiciary to require its employees to adjudicate unlawful workplace conduct claims through a process that does not offer the essential protections of Title VII, and whether a circuit’s Employment Dispute Resolution (“EDR”) Plan violates the Congressional Accountability Act (“CAA”) and the policy of the Judicial Conference promulgated thereto if it does not comport with Title VII—are questions of law, involve legitimate ambiguity, and harm real people such as petitioner. They also have been the very crux of this case since its inception.

To ascertain this case’s certworthiness, this Court need not look any further than the lower court record, where both the Western District of North Carolina and the court of appeals observed the deficiencies of the applicable law and the inherent conflicts in adjudicating judiciary employee claims under the current system. *See, e.g.*, Pet. App. 325a (“[I]n this case, a young woman with significant professional qualifications made a good faith claim of sexual harassment. . . . That she is without redress under the present legal framework cannot be a cause for congratulation on the part of federal judges or

administrators.”); *Strickland v. U.S.*, 32 F.4th 311, 340–41 (4th Cir. 2022) (discussing the need for the Chief Justice to twice designate and assign visiting judges in this matter because every judge in the district and circuit had to recuse themselves).

These deficiencies underscore why this case is appropriate for this Court’s review. While the government posits that this petition does not bring a real case or controversy and instead asks the Court to “opine in the abstract” on a “policy matter,” BIO 16, a case and controversy undoubtedly exists. The district court’s 127-page decision confirms as much. Even public policy weighs in favor of granting the petition, since matters of judicial administration—including policies set by the Judicial Conference at the behest of Congress—are appropriate for this Court’s review. *See Hollingsworth v. Perry*, 558 U.S. 183, 196 (2010) (recognizing this Court’s “significant interest in supervising the administration of the judicial system”).

And the government’s suggestion that petitioner’s withdrawal from the EDR Plan renders this case an inappropriate vehicle to address “issues of broader importance” for judiciary employees, BIO 16, has it exactly backwards. The unreasonable or indefinite timeframe of the EDR process, the doubt as to the Plan’s ability to grant effective relief, and the inherent bias of the EDR Plan’s internal review structure all cut against the suggestion that she was required to exhaust the EDR process before filing a civil action. *See McCarthy v. Madigan*, 503 U.S. 140, 146–48 (1992) (defining three broad sets of

circumstances in which individual interests weigh heavily against requiring administrative exhaustion).

For the reasons articulated both in the petition and in this reply, the Court should grant a writ of certiorari.

I. Both questions were raised and considered by the courts below

The government correctly notes that in *United States v. Williams*, this Court reiterated that “the traditional rule . . . precludes a grant of certiorari only when the question presented was not pressed or passed upon below.” BIO 9 (quoting 504 U.S. 36, 41 (1992)). Yet this Court in *Williams* also specified—in the very next paragraph—that the traditional rule “operates (as it is phrased) in the disjunctive, permitting review of an issue not pressed so long as it has been passed upon.” *Id.*

The government’s apparent interpretation of that rule would treat those terms *conjunctively*, thereby limiting certiorari only to those issues which were brought and ruled upon in exactly the same terms throughout the course of litigation. This is a marked deviation from the holding in *Williams*, which permits certiorari where an issue was pressed by the petitioner *or* where it was passed upon below. The appellate record demonstrates that both questions presented here were raised and considered by the courts below.

The government asserts that the first question is improperly preserved, citing the courts of appeals' holding that petitioner improperly challenged the exclusion of judiciary employees from Title VII for the first time on appeal. BIO 10 (citing Pet. App. 44a–45a). The government also notes that the petition does not dispute that holding. *Id.* This is true because the first question presented is not about the constitutionality of *the Title VII statute's* exclusion of judiciary employees.

Rather, the first question asks whether the Fifth Amendment's Due Process and Equal Protection clauses permit the federal judiciary to require its employees to adjudicate sexual harassment and employment discrimination claims *through an internal system that lacks an independent decisionmaker, meaningful procedural safeguards, and adequate remedies*, rather than affording those essential protections, which would have been available under Title VII. Pet. i. The government reads the question as pertaining to form, when it is actually pertaining to function. Petitioner does not ask this Court to find that Title VII is the governing law, but rather that the *substance* of Title VII—*independence, neutrality, enforceability, and protection*—is what the Fifth Amendment requires.

The record reflects that this has been the core question of the litigation since the beginning. Indeed, in 2020, the Western District of North Carolina noted that petitioner's claim relied on Title VII precedent to interpret the Fifth Amendment. *Roe v. United States.*, 510 F. Supp. 3d 336, 353 (W.D.N.C. 2020). In 2022, the

court of appeals rejected that portion of the district court's reasoning and found that petitioner had articulated a cognizable Fifth Amendment claim. *Strickland*, 32 F.4th at 360. The court of appeals also held that "[t]he EDR Plan provides . . . a right to redress injuries caused by workplace discrimination, a right that is functionally equivalent to a cause of action and one that is vitally important considering the lack of alternative means of seeking relief for employees of the federal judiciary." *Id.* at 351.

This ruling confirms the courts of appeals' recognition that the EDR Plan is supposed to provide comparable rights and remedies to Title VII's guarantees. And on remand, the district court noted that the EDR Plan was designed to prohibit conduct that would violate, *inter alia*, Title VII. Pet. App. 70a. Most recently, the court of appeals *did* reject her Title VII exclusion argument, Pet. App. 44a, but noted "structural imperfections or a lack of clarity in the Plan," which would not be permissible under Title VII standards.

The second question also meets the *Williams* pressed/passed upon standard. In its 2022 decision, the court of appeals detailed the history of the EDR Plan, which has its origins in the CAA, specifically its section mandating a report by the Judicial Conference on the applicability of Title VII and other federal employment statutes. *Strickland*, 32 F.4th at 321; *see also* 2 U.S.C. § 1434. This decision undergirds petitioner's continued reliance on Title VII jurisprudence in pursuing her Fifth Amendment claim and gives rise to the second question presented. The

second question presented is necessarily downstream of the first. This case has always been about the inadequacy of the EDR Plan. As the court of appeals noted in 2022, the EDR Plan is a product of Judicial Conference policy, promulgated pursuant to the CAA. Accordingly, the adequacy of the EDR Plan—which has been at the heart of this case from the beginning—has always fundamentally been a question of what the CAA requires.

II. Both questions are plainly certworthy and within the authority of the judicial branch

The government posits that neither question presented is proper for this Court, both on their merits and as a matter of public policy. *See* BIO 13–14, 16. But the record demonstrates a clear injury and precedent permits judicial resolution of questions of public policy pertaining to judicial administration. The petition offers this Court a chance to address both.

A. Petitioner’s rights were violated by a process that was both constitutionally and statutorily deficient

The district court itself noted that the EDR Plan is a “flawed” process. Pet. App. 324a. The judicial branch has long been aware of these flaws. In 2017, Chief Justice Roberts requested the Director of the Administrative Office of United States Courts (“AOUSC”) “to convene a working group that would evaluate the sufficiency of the safeguards currently in place to protect . . . judiciary employees from

inappropriate conduct in the workplace,” including updates to confidentiality guidelines, educational programs, and investigation processes. Pet. 26 (quoting 2018 Year-End Report on the Federal Judiciary at 3, <https://www.supremecourt.gov/publicinfo/yearend/2018year-endreport.pdf> (last visited Oct. 21, 2026)).

In March 2025, the Working Group reported the results of a survey conducted by the Federal Judicial Center (“FJC”) revealing the glaring deficiencies of the EDR process—including employees’ trust in it or willingness to use it at all—across circuits and districts. *See* Pet. 28 (internal citation omitted). Likewise, a 2024 report by the Government Accountability Office provided a number of recommendations for the AOUSC and Judicial Conference to improve the efficacy of the Model EDR Plan. Pet. 28–29.

These deficiencies are not mere inconveniences; they directly contravene the demands of both the Fifth Amendment and the manifest intent of Congress.

The fundamental constitutional defect of the EDR Plan is its inherent lack of impartiality. *Cf. Hampton v. Mow Sun Wong*, 426 U.S. 88, 100 (1976) (“The federal sovereign, like the States, must govern impartially.”) Courts addressed unlawful workplace conduct by way of the Fifth Amendment, even “long before” the enactment of Title VII. *Koger v. Ball*, 497 F.2d 702, 705 n.7 (4th Cir. 1974) (explaining that the Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972 embodied Congress’s

codification of rights established under the Fifth Amendment).

Petitioner is not connecting the Fifth Amendment to Title VII arbitrarily. Her claim follows a line of reasoning that has existed—and indeed, has been fundamental—throughout the modern civil rights era, which is that Title VII’s fundamental protections mirror what is already substantively required by the Fifth Amendment. *See id.*

That is not to say that the *exact* procedure of Title VII is required. Rather, petitioner asks this Court to find that in cases like hers, the Fifth Amendment requires four fundamental safeguards *reflected* by Title VII: independent enforcement, a neutral decisionmaker, meaningful and enforceable remedies, and anti-retaliation protections. *See, e.g., Concrete Pipe & Prods. of California, Inc. v. Constr. Laborers Pension Tr. for S. California*, 508 U.S. 602, 618 (1993) (“Where an initial determination is made by a party acting in an enforcement capacity, due process may be satisfied by providing for a neutral adjudicator.”); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (“Not only is a biased decisionmaker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness.”).

The Constitution is not the only source that establishes this rule (although petitioner maintains that the Fifth Amendment would suffice here). The plain text of the CAA reflects Congress’s intent that the “rights, protections, and procedures” of, *inter alia*,

Title VII, “including administrative and judicial relief,” be available to “employees of the judicial branch.” 2 U.S.C. § 1434.

The government dismisses this reading, arguing that the CAA “simply directed the judiciary to submit a report to Congress.” BIO 14. Such a reading disregards that the statutory section at issue requires that the report “*shall include any recommendations the Judicial Conference may have for legislation to provide . . . the rights, protections, and procedures*” available under Title VII. 2 U.S.C. § 1434 (emphasis added).

In effect, Congress told the Judicial Conference to report on how the judiciary was providing *the same substantive rights, protections, and procedures* as Title VII to judicial employees, and if they were not doing so, to *tell Congress how to fix it*. In its subsequent report, the Judicial Conference told Congress that “it has been *the avowed policy* of the federal judiciary . . . to *follow the equal employment opportunity principles* applicable to private sector and government employers.” *Dotson v. Griesa*, 398 F.3d 156, 172 (2d Cir. 2005) (citing Rep. of the Jud. Conf. of the United States, “Study of Judicial Branch Coverage Pursuant to the Congressional Accountability Act of 1995,” at 6 (Dec. 1996)) (emphasis added). Accordingly, Congress declined to act further, since the Judicial Conference told them *they did not have to*.

Yet almost three decades later, it is manifestly clear that the same rights, protections, and procedures available to private sector and government employees

do not apply to the federal judiciary, despite clear statements of intent from both Congress and the Judicial Conference to the contrary. *See* Pet. 27–30.

B. The judicial branch has a clear and vested interest in resolving questions of judicial administration

The government characterizes the petition as lacking any legal claims and instead merely asking this Court to “opine in the abstract on whether [the EDR Plan] is inadequate as a policy matter.” BIO 16. Even apart from the well-established legal claims already asserted, this Court should not find the government’s “policy matter” objection persuasive either, since the policy at issue here is precisely the kind this Court should be most interested in: matters of judicial administration, *i.e.*, the workplace of its very own employees.

This Court has long accepted that “Congress may delegate to the Judicial Branch nonadjudicatory functions that do not trench upon the prerogatives of another Branch and that are appropriate to the central mission of the Judiciary,” such as the essential work of the Judicial Conference or the AOUSC. *Mistretta v. United States*, 488 U.S. 361, 388 (1989).

Furthermore, this Court “has a significant interest in supervising the judicial system” and “ensuring compliance with proper rules of judicial administration.” *Hollingsworth*, 558 U.S. at 196. And earlier this year, this Court reiterated that federal courts “have an independent institutional interest in

ensuring that legal proceedings appear fair to all who observe them.” *Hunter v. United States*, 608 U.S. __ (2026), slip op. at 9.

To be clear, this case and the legal issues herein warrant review by this Court on their merits. Yet even if the government *were* correct and this petition *was* simply a policy matter, it would be one specifically pertaining to its very own workplace and the administrative resolution of disputes within this branch.

As petitioner has noted, the judiciary itself is the institution most directly and repeatedly affected by this ambiguity in the law. Pet. 38. Its own employees are the ones injured by these deficient processes, and its own reputation is most at stake in these proceedings. *See Williams-Yulee v. Florida Bar*, 575 U.S. 433, 446 (2015) (“[P]ublic perception of judicial integrity is a state interest of the highest order.”)

III. Claims of this nature evade review yet demand this Court’s attention

Lastly, the government asserts that this case is “a decidedly unsuitable vehicle” for adjudicating the real legal deficiencies of the EDR Plan due to petitioner’s purported choice not to exhaust the processes available to her therein. BIO 16.

However, this Court has held that individual interests “weigh heavily” against requiring exhaustion of administrative remedies where doing so

may occasion undue prejudice to a subsequent assertion of a court action, where there may be some doubt as to whether the process could grant effective relief, or where the adjudicatory body is shown to be biased or has otherwise predetermined the issue before it. *McCarthy v. Madigan*, 503 U.S. 140, 146–48 (1992) (collecting cases).

The court of appeals noted that a reasonable person in petitioner’s position may very well drop their EDR complaint due to, among other things, a “desire to speed up” the process or the “perceived bias” of the internal nature of the adjudication. Pet. App. 28a. The March 2025 Report of the Federal Judiciary Workplace Conduct Working Group found that between 64% and 73% of respondents who reported experiencing wrongful conduct did not use EDR procedures, and no more than 20% of those who did felt as though the conduct they reported was “thoroughly and impartially investigated.” Pet. 28. The court of appeals’ holding, together with these findings, strongly indicates that the EDR Plan is precisely the kind of flawed procedure described in *McCarthy*, where individual interests weigh heavily against an exhaustion of remedies. 503 U.S. at 146.

Lastly, the government notes a lack of conflict among the lower courts on these issues, and petitioner does not contend otherwise. But the reason no conflict may exist is not because of a consensus among the circuits; it is because the process itself prevents cases such as this one from ever getting this far.

Upon information and belief, petitioner's case is the first federal judiciary sexual harassment claim to survive dismissal and to develop such a comprehensive record in the courts below. Her experience speaks to precisely why. When lower courts agree that she was subject to a structurally flawed process that any reasonable person may withdraw from, yet also agree that they are powerless to change it, why would similarly situated plaintiffs subject themselves to everything the government says they must endure before bringing a case this far?

The Western District of North Carolina best characterized exactly why this case warrants this Court's review:

“[A] young woman with significant professional qualifications made a good faith claim of sexual harassment. As a result, she saw her desired career in public service stunted and ultimately withered such that her services have been lost to federal public service. That she is without redress under the present legal framework cannot be a cause for congratulation on the part of federal judges or administrators.”

Strickland v. United States, 744 F. Supp. 3d 477, 602 (W.D.N.C. 2024).

CONCLUSION

Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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