

No. 25-261

IN THE
Supreme Court of the United States

CHRISTINE ASING,

Petitioner,

v.

HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION,
AFSCME LOCAL 152, AFL-CIO,

Respondent.

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

BRIEF IN OPPOSITION

DEIRDRE MARIE-IHA

Counsel of Record

GOODSILL ANDERSON

QUINN & STIFEL

999 Bishop St., Suite 1600

Honolulu, Hawaii 96813

(808) 547-5600

dmarieiha@goodsill.com

Counsel for Respondent

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QUESTION PRESENTED

1. Whether a dismissal for failure to state a claim was correctly granted for an attempted claim for religious discrimination when: (1) there was no “comparable grievances based on secular objections,” (Pet. at *i*), because the operative complaint admitted that the Respondent union did *not* file grievances about the COVID testing or vaccination policy for *any* union member, for any reason; (2) Petitioner’s complaint failed to identify any similarly situated union members of different religious backgrounds who were treated more favorably; (3) the union filed class-wide grievances about other, unrelated COVID policies for *all* affected members, *including* religious objectors; and (4) both lower courts properly applied the plausibility standard under *Iqbal* and *Twombly*.

CORPORATE DISCLOSURE STATEMENT

As required by U.S. Sup. Ct. R. 29.6, Respondent Hawaii Government Employees' Association, American Federation of State, County and Municipal Employees, Local 152, AFL-CIO, files this Corporate Disclosure Statement. HGEA is a domestic nonprofit corporation with no parent company and no stock ownership.

CITATION OF DECISIONS BELOW

The Ninth Circuit's decision is unpublished and is available at Pet. App. 1a. *See also* 2025 WL 1588732, (9th Cir. June 5, 2025).

The district court's two decisions are also unpublished and are available at Pet. App. 19a and Pet. App. 6a. *See also* 2024 WL 1639523, (D. Haw. Apr. 15, 2024) and 2024 WL 150318 (D. Haw. Jan. 12, 2024), respectively.

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BRIEF IN OPPOSITION

INTRODUCTION

Petitioner Christine Asing’s petition for writ of certiorari does not actually present the questions she claims are before this Court (at *i*). She contends (at 3) that this case asks whether a labor organization violates Title VII of the Civil Rights Act of 1964 if it “refuses to pursue grievances based on religious objections to workplace policies while pursuing to comparable grievances based on secular objections[.]”

In truth, this question is not presented on this record, because the petition inaccurately summarizes both the factual allegations and the procedural posture of the case below. This case was decided on a motion to dismiss for failure to state a claim, with leave to amend. Pet. App. 6a. Where Petitioner says otherwise (at 7-8), she is mistaken. The amended complaint was dismissed because it failed to correct the deficiencies identified when the case was dismissed the first time.

In short, Petitioner’s operative complaint *admitted* that Respondent Hawaii Government Employees Association (HGEA) did not file *any* grievances for any union members who did not comply with the State of Hawaii’s COVID testing or vaccination policy. Petitioner made no allegation about any similarly situated union member, of different religious beliefs, who was treated more favorably. And her allegations about HGEA’s class-wide response to other, unrelated COVID policies, which HGEA pursued for all of its affected members, simply showed that HGEA was treating its members alike. Furthermore, as detailed below, the actual allegations of the operative complaint demonstrate

that the case is fact-bound, based on Petitioner's unique circumstances.

In other words, this case cannot serve as a vehicle for the issues that Petitioner focuses upon (at 3-4), because they are not actually present on this record. Petitioner does not attempt to identify any circuit split, and there is none.

Finally, the decision below was correct. The Ninth Circuit correctly affirmed the district court's dismissal of the complaint after leave to amend had been granted, but the deficiencies in the complaint were not cured, and the allegations showed that no claim could be plausibly stated for discrimination.

The petition for writ of certiorari should be denied.

STATEMENT OF THE CASE

A. Factual Background

Petitioner alleged that she was an employee of the State of Hawaii Department of Agriculture, and that she was terminated in 2021 for failing to comply with the State's COVID-19 testing or vaccination policy. ER at 25, 32-44 (first am. compl.).¹ This policy required that State employees either undergo weekly COVID testing *or* receive a COVID vaccine. *Id.* at 33.

At her request, Petitioner received an exemption from the State for purposes of the vaccination requirement, based on stated religious beliefs. *Id.* at 36, 37, 40, 54 (¶¶43, 51, 52, 124). (Where Petitioner now implies otherwise (at 2, 5), this is inconsistent with her complaint.) The State denied her request for an exemption from the testing requirement, because

¹ ER refers to the Excerpts of Record before the Ninth Circuit, CA9 No. 24-3101, Dkt. 13.1.

she had voluntarily sought COVID testing before for travel. *Id.* at 40 (¶52). When she failed to comply with either option, she was terminated from her position. *Id.* at 61 (¶158). She alleged that her termination from the State was the result of religious discrimination. But the State of Hawaii was *not* a defendant in this case.

Instead, Asing sued her union, HGEA, for allegedly discriminating against her based on her religion, because she claimed that HGEA should have filed a grievance on her behalf about her termination. *Id.* at 79. Grievances are the process by which the union may object to alleged violations of its collective bargaining agreement with the State.

In seeking certiorari now, Asing's petition fails to disclose critical factual allegations from her own operative first amended complaint:

- HGEA did not file a grievance for *any* union member about the COVID testing or vaccination policy. *See id.* at 47, 63 (¶¶95, 170, 172). This was their consistent position across the board. *Id.* at 63 (¶172: complaint quoting email from HGEA: "Because you did not test nor get vaccinated, I will not be filing a grievance. That is our [HGEA] stance as a whole."). Petitioner thus failed to allege that there were any similarly situated union members, with different religious beliefs, for whom HGEA *did* file a grievance about the testing or vaccination policy. Petitioner's arguments to the contrary now (at 2, 5) are based on HGEA's class-wide objections to different, unrelated COVID policies, not individualized grievances to the same policy to which she objected. Her implications otherwise are incorrect. *See* ER at 81-86 (first am. compl., ¶¶242-61).

- HGEA consistently explained to Petitioner that no grievance was possible because the collective bargaining agreement did not itself govern alleged discrimination. *Id.* at 60-61, 63 (§§152-59, 170, 172). Without an alleged violation of the collective bargaining agreement, no grievance was possible. Instead, HGEA suggested that she pursue any alleged discrimination by her employer with the EEOC. *Id.* at 49 (§103).
- Petitioner's allegations of *direct* discrimination on the basis of religion were against the State only, based on allegedly derogatory comments. *Id.* at 33-34 (§§31-32). No such allegations were made—at all—about the actual defendant, HGEA, or any of its union representatives.
- Petitioner voluntarily submitted to COVID testing in order to travel, contrary to her claim that she could not test for COVID due to her religious beliefs. *Id.* at 54 (§124). This was part of the State's rationale in denying her request for an exemption from the testing requirement (as opposed to her request for an exemption from the vaccination requirement, which was granted). *Id.* at 36, 40 (§§43, 52). HGEA explained to Petitioner that this factor would show how the State, as her employer, would respond to her objection. *Id.* at 55 (§128). As alleged by Petitioner, this was also one of the reasons HGEA declined to file a grievance on her behalf. *Id.* at 54 (§§124, 128-31, 172).
- The operative first amended complaint contains lengthy allegations against the State of Hawaii, but Petitioner's former employer was not a defendant in this case. *Id.* at 32-45.

Asing's petition for writ carefully ignores all these facts.

B. Procedural Background

Petitioner's explanation of the procedural history below (at 4-5) is likewise misleadingly incomplete. Leave to amend *was* granted, but Petitioner's amended complaint failed to address the deficiencies in her factual allegations identified by the district court. On appeal before the Ninth Circuit, Petitioner did not identify any additional facts she would have pled if a second attempt at leave to amend had been granted, reinforcing the district court conclusion's that further leave to amend would have been futile.

1. First District Court Order, Granting HGEA's Motion to Dismiss With Leave to Amend

Petitioner filed suit against HGEA in August 2023. ER at 109. The initial complaint included lengthy allegations of religious discrimination against the State of Hawaii, including claims that her former employer had failed to provide a reasonable accommodation. *Id.* at 120, 125. But HGEA was the only named defendant, and the only allegations made against HGEA itself was that the union had declined to pursue a grievance on Petitioner's behalf after her employment was terminated. *Id.* at 128.

The district court granted HGEA's motion to dismiss for failure to state a claim, *with* leave to amend. Pet. App. 6a. In doing so, the court identified and applied the plausibility standard from *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). *Id.* at 10a. (Petitioner incorrectly (at 5, 6-8) summarizes the procedural history on both of these points.)

In its first order, the district court concluded that: (1) Petitioner could not assert a failure-to-accommodate claim against HGEA, since HGEA was not her employer, Pet. App. 12a; (2) no claim for direct discrimination could be made against HGEA because the complaint included no allegations about derogatory comments by HGEA or its representatives, *id.* at 13a-14a; and (3) Petitioner's alleged claim for religious discrimination under the *McDonnell-Douglas* burden-shifting framework failed, *id.* at 16a-17a.

Petitioner's complaint failed to state a claim for discrimination because "there are no allegations" that HGEA "elected to pursue grievances for union members that were similarly situated to Plaintiff but were not of her religious beliefs." *Id.* at 16a. As noted above, HGEA did not file grievances about the COVID testing or vaccination policy for *any* members. In addition, the complaint failed to state a claim because Petitioner failed to comply with her employer's policy requiring testing or vaccination despite her own allegations that she had "voluntarily agreed to test for COVID-19 in order to travel." *Id.* at 16a-17a. Finally, the complaint included no allegations "to support her theory" that HGEA's "proffered reason to decline to pursue" her grievance was "a pretext for religious discrimination." *Id.* at 17a.

Because it was "not absolutely clear at this stage of the proceedings that amendment would be futile[.]" the district court granted leave to amend. *Id.*

Petitioner filed the operative first amended complaint, which was largely unchanged but added new paragraphs 242-267. ER at 81-87.

**2. Second District Court Order, Granting
HGEA's Motion to Dismiss the First
Amended Complaint**

The district court granted HGEA's motion to dismiss the first amended complaint for failure to state a claim, for much the same reasons as the initial complaint had been dismissed. Pet. App. 19a. Again the court identified and applied the plausibility standard from *Iqbal* and *Twombly*. *Id.* at 24a.

The district court noted again that HGEA “declined to file grievances on behalf of anyone who did not comply with the State of Hawaii’s COVID-19 testing or vaccination policy.” *Id.* at 20a, 30a. Likewise, the first amended complaint “acknowledges” that HGEA had “explained to Plaintiff that her employer’s COVID-19 testing policy did not violate the Collective Bargaining Agreement.” *Id.* at 20a-21a. And, as before, the district court noted that HGEA had declined to pursue a grievance for Petitioner because she had previously voluntarily sought COVID testing in order to travel. *Id.* at 23a-24a.

Again, the only allegations against HGEA itself—as opposed to Petitioner’s former employer—was that HGEA did not file a grievance on her behalf. *Id.* at 25a. And, as before, there are no allegations of derogatory comments made by HGEA or its decisionmakers. *Id.* at 28a. The first amended complaint once again focused on Petitioner’s allegations against the State, not HGEA, the actual defendant. *Id.* at 33a. (This is also true for the portion of the amended complaint that mentions that she never received a response to the grievance she filed herself. ER at 64. The grievance would have been made against the State, not HGEA. *See id.* at 63 (¶173).)

Under *McDonnell-Douglas*, the district court concluded that there “are no allegations to establish” that HGEA “declined to pursue a grievance on Plaintiff’s behalf due to her religious beliefs.” Pet. App. 30a.

Petitioner’s new allegations, as added in the first amended complaint, concerned HGEA’s class-wide objections to “different, unrelated State of Hawaii COVID-19 policies.” *Id.* The district court concluded that these allegations did not state a claim for religious discrimination either.

Petitioner pointed to HGEA’s objection to a 2021 State policy that required State employees to quarantine for 10 days after traveling—and to use their vacation leave if they could not work from home—even though vaccinated travelers were no longer being required to quarantine at the time. ER at 82-86 (first am. compl., ¶¶246-261). According to Petitioner’s complaint, HGEA had filed “class action” grievances as to this policy, as to all affected workers. *Id.* at 84. There was no allegation that the decision to file these class-wide grievances were based on any member’s religion. Thus, as the district court concluded, these allegations do not establish that she was “singled out or treated less favorably due to her religion. Rather, the allegations establish that [HGEA] treated its members the same regardless of their religion.” Pet. App. 30a-31a. In any event, this was not the same policy as Petitioner objected to, and Petitioner’s allegations as to the COVID testing or vaccination policy itself remained unchanged in the first amended complaint. ER at 32-80 (first am. compl.).

In addition, the district court noted that, to establish that other union members were “similarly situated,” Petitioner was obliged to provide “allegations that establish that the union members were similar in all

material respects based on the context of the case.” Pet. App. 31a. She did not do so, because the amended complaint did not identify *any* “other union members of religious backgrounds different than Plaintiff who were treated more favorably.” *Id.*

Furthermore, Petitioner’s own pleading “provides the non-discriminatory reasons” that HGEA told her as to why it declined to pursue a grievance for her. *Id.* at 33a-34a. As alleged in the operative first amended complaint, HGEA did not file a grievance on Petitioner’s behalf “because it did not file grievances for anyone who failed to comply with her employer’s policy requiring testing or vaccination for COVID-19.” *Id.* at 34a. *See also* ER at 63 (first am. compl., ¶¶170, 172).

As the district court observed, the operative complaint also states that HGEA had declined to pursue a grievance for Petitioner because she had “previously, voluntarily agreed to test for COVID-19 in order to travel[.]” Pet. App. 34a. And HGEA’s representative repeatedly explained that the employer’s testing policy did not violate the collective bargaining agreement and thus did not provide a basis for a grievance. *Id.* “According to Plaintiff’s own pleading, the Defendant’s representative explained to her that the Defendant would not file a grievance for anyone who failed to comply with the State’s COVID-19 policy” and that she could pursue a claim for employment discrimination against her employer through the EEOC, and not a grievance through the union. *Id.*

The first amended complaint “acknowledges” that HGEA provided Petitioner “with a non-discriminatory reason for declining to pursue a grievance on her behalf.” *Id.* at 34a-35a. Thus, the first amended complaint “does not plausibly allege” that HGEA “would have assisted” Petitioner “in filing a grievance

against her employer ‘but-for’ her religious practice.” *Id.* at 35a.

The operative complaint also did not include factual allegations that would support Petitioner’s theory that HGEA’s proffered reasons for declining to file a grievance were in fact a pretext for religious discrimination. *Id.*

Finally, since Petitioner was given two chances to plausibly allege a claim and failed to do so, the district court declined further leave to amend as futile. *Id.*

3. Ninth Circuit Memorandum Decision Affirming

The Ninth Circuit affirmed in a short, unpublished decision. Pet. App. 1a. The Ninth Circuit agreed that the first amended complaint “alleges that the union consistently declined to pursue grievances for its members who did not comply with the testing requirement, suggesting that the union did not decline to file a grievance because of Asing’s religious beliefs.” *Id.* at 3a. As to the other COVID post-travel quarantine policy for which HGEA did pursue grievances, “[t]hose members are not proper comparators because they engaged in materially different conduct than Asing.” *Id.* at 4a. And “the union pursued those grievances on behalf of *all* members, ‘affected by the policy,’ including members who share Asing’s religious beliefs. Thus, these comparators do not support the inference that the union acted more favorably towards members *outside* the protected class.” *Id.* Asing’s conclusory allegations were insufficient, and the Ninth Circuit agreed that she had failed to state a claim for discrimination. *Id.*

The Ninth Circuit likewise affirmed the district court’s decision to deny further leave to amend as

futile. *Id.* at 5a. The first amended complaint failed to cure the defects in the original complaint, and Asing did “not specify any additional facts she would plead if granted leave to amend.” *Id.*

REASONS FOR DENYING THE PETITION

I. This Case Cannot Serve as a Vehicle for the Issues Identified by Petitioner Because Petitioner Has Misstated the Facts Alleged and the Procedural History

As detailed above, this case does not actually raise the issues Petitioner attempts to focus upon (at *i*, 3-4) because she has inaccurately summarized the actual allegations in the operative complaint. The actual allegations—including, critically, that HGEA did not file grievances for *any* member based on the COVID testing or vaccination policy, regardless of the member’s reason—is absent from her summary, even though it appears explicitly in the operative complaint. ER at 47, 63 (¶¶95, 170, 172). This amounts to a misrepresentation of the record, because the actual decisions from both lower courts expressly relied on this important fact. Pet. App. 3a-4a, 30a, 33a-34a.

The new facts Petitioner added to the first amended complaint did not improve her position. Those allegations concerned *other*, unrelated COVID policies, for which the operative complaint admits that HGEA filed class-wide grievances for *all* affected members, including those who share in Petitioner’s religious beliefs. *See, e.g.*, ER at 83 (¶248). Both lower courts relied on the distinctive nature of the other COVID policies to conclude that Petitioner had not alleged that there were similarly situated union members, of different religious beliefs, who were

treated more favorably. Pet. App. 4a, 31a-32a. Here too, Petitioner’s summary of the actual facts alleged (at 2, 5) is incorrect, and does not accurately describe the basis for the decisions below nor, consequently, the posture of this case before the Court today.

For the same reason, Petitioner’s argument that HGEA had somehow engaged in “per se” discrimination (at 7) is wholly mistaken, because the facts alleged simply do not support this assertion. Petitioner’s own complaint shows that she failed to allege that there were any similarly situated objectors to the COVID testing and vaccine policy, outside her protected class, who were treated more favorably by HGEA. And, as detailed above, HGEA did not pursue grievances about this policy for any member, for any reason.

The petition also fails to disclose that the district court ruled that Petitioner had failed to make allegations sufficient to state a claim as to the second and third prongs under *McDonnell-Douglas*. That is, after her complaint *admitted* that HGEA had legitimate non-discriminatory reasons for their decisions (prong two), Petitioner failed to allege facts that would show that HGEA’s “proffered reason to decline to pursue” her grievance “was a pretext for religious discrimination[,]” Pet. App. 17a, (prong three). This is an independent ground on which the result below could be affirmed, and it is entirely ignored by the Petition. *See also* Pet. App. 4a (Ninth Circuit decision: after noting the lack of allegations regarding similarly situated members outside the protected class, remainder of the FAC was found to be conclusory and insufficient to state a claim).

Finally, Petitioner’s procedural summary is also inaccurate, where it states (at 5, 7-8) that the district court simply denied leave to amend. What actually

occurred is that further leave to amend was denied only after the first amended complaint failed to correct the deficiencies identified by the district court in its first order. Pet. App. 35a. The Ninth Circuit noted that, on appeal, Petitioner failed to “specify any additional facts she would plead” if further leave to amend had been granted. Pet. App. 5a. This is a further procedural reason why this case does not actually present the issues Petitioner claims.

II. This Case is Fact-Bound and Petitioner Overstates Its Supposed Importance

Petitioner claims that this case is important for two reasons: alleged religious discrimination by a labor organization, and an alleged misapplication of the pleadings standards to a case based on *McDonnell-Douglas* (at 3-4).

Neither of these issues actually exist on this record.

First, Petitioner failed to adequately plead the elements of a claim for alleged religious discrimination, because she *did not allege* that HGEA submitted grievances for similarly-situated members who sought to advance secular reasons for exemptions from the COVID testing or vaccination requirements. Also, in her petition she has failed to disclose to this Court that, as alleged in her own complaint: (1) HGEA did not submit grievances for *any* members who refused to comply with the COVID testing or vaccination policy, regardless of their reasons; (2) the other grievances Petitioner alludes to were *not* based on the same State policy, but instead on other, unrelated COVID policies; and (3) for the *other* COVID policies, HGEA filed class-wide grievances for *all* affected members, including religious objectors. ER at 47, 63, 81-86 (¶¶95, 170, 172, 242-61) (first am. compl.).

Petitioner's claim that this case presents the question of whether a union may "process grievances for secular objections to workplace policies while refusing to process grievances for religious objections," (at 3) is thus wholly incorrect on this record. On certiorari, Petitioner has selectively recited the facts alleged in her own complaint. In truth, even after leave to amend was granted and the district court explained the deficiencies in her initial complaint, Petitioner's first amended complaint presented no "apples to apples" comparison of how the union treated its members, upon which a claim of religious discrimination could be properly pled.

In addition, Petitioner's case is necessarily fact-bound, based on the unique circumstances presented in the operative complaint. The respondent union here did not file any grievances for *anyone*, for any reason, as to the COVID testing or vaccination policy Petitioner focuses upon. ER at 47, 63 (§§95, 170, 172) (first am. compl.); Pet. App. 3a (Ninth Cir. decision); Pet. App. 30a, 34a (d. ct. decision). And the bulk of her complaint turns not on the union's actions, but on those of her former employer, which was not a defendant in this case. *See id.* at 33a. Finally, for the other, unrelated COVID policies alleged in the first amended complaint, Petitioner admits that class-wide grievances were filed as to all affected members, including any religious objectors. ER at 82-86 (§§247-261) (first am. compl.); Pet. App. 4a (Ninth Cir. decision); Pet. App. 30a-31a (d. ct. decision). Petitioner's inability to state a claim is inextricably intertwined with these unique factual circumstances, making it impossible for this case to serve as a vehicle for the broader questions Petitioner sees there.

Second, Petitioner’s argument that the district court’s ruling on the motion to dismiss for failure to state a claim somehow violates *Swierkiewicz v. Sorema*, 534 U.S. 506 (2002) (at 2, 4), was never preserved or argued below. See R. Dkts. 12, 24 (Asing opps. to mots. dismiss). Instead, both Petitioner and HGEA argued that the lower courts should apply the plausibility standard from *Iqbal* and *Twombly*, which is what the lower courts did. See Asing’s Ninth Cir. Open. Br. at 10 (CA9 24-3101, Dkt. 14.1); HGEA’s Ninth Cir. Ans. Br. at 16 (Dkt. 20.1); Pet. App. 2a, 10a, 24a.

Consequently, neither the district court nor the Ninth Circuit had occasion to pass on Petitioner’s newfound alleged error under *Swierkiewicz*. Instead, both courts correctly applied the *Iqbal-Twombly* plausibility standard. Pet. App. 2a, 10a, 24a.

Along the same lines, Petitioner’s argument (at 6-7) that the lower courts somehow misapplied *McDonnell-Douglas* as a premature evidentiary standard is simply wrong. Both lower courts correctly applied the plausibility standard. Pet. App. 2a, 10a, 24a. In all three orders, the *McDonnell-Douglas* framework was used to identify the *elements* of a properly stated claim for discrimination, but the viability of the claim itself was judged based on the plausibility standard. Pet. App. 3a, 14a, 27a.

In any event, this Court has already clarified in *Twombly* that “*Swierkiewicz* did not change the law of pleading, but simply re-emphasized that the Second Circuit’s use of a heightened pleading standard for Title VII cases was contrary to the Federal Rules’ structure of liberal pleading requirements.” 550 U.S. at 570 (citation and internal quotation marks omitted). The *Swierkiewicz* decision itself was necessary only because the court of appeals in that case “had

impermissibly applied what amounted to a heightened pleading requirement by insisting that Swierkiewicz allege “specific facts” *beyond those necessary to state his claim and the grounds showing entitlement to relief.*” *Id.* (emphasis added).

That is not what happened here. Petitioner failed to state a claim because her amended complaint failed to allege even the most basic elements of a discrimination claim: that others, outside her protected class, were treated more favorably than her. Instead, the allegations in the amended complaint established HGEA’s consistent treatment of all members, regardless of their religion, as well as HGEA’s non-discriminatory reasons for declining to pursue a grievance on Petitioner’s behalf. The lower courts’ conclusions that Petitioner had failed to state a claim was a correct application of the plausibility standard from *Iqbal* and *Twombly*. No issue based on *Swierkiewicz* is presented here.

Petitioner does not identify any other reasons for the supposed importance of her petition, and she does not claim that there is an alleged circuit split either. Petitioner’s claim that important issues are presented within this case is therefore illusory, as the record itself shows differently.

III. The Court of Appeals’ Decision Affirming the District Court’s Dismissal Was Correct

Finally, this Court should deny further review because the result below was correct. Petitioner failed to correct the deficiencies in her complaint after leave to amend was granted, and her own allegations in the operative complaint admit that HGEA treated all of its members the same as to filing grievances about COVID policies, without reference to their religion. ER at 47, 63, 81-86 (¶¶95, 170, 172, 242-61) (first am. compl.).

Since there were no allegations about similarly situated union members (with different religious beliefs) who had been treated more favorably by HGEA, the most basic elements of a discrimination claim were missing. The lower courts thus correctly concluded that Petitioner's complaint failed to state a claim.

Finally, as noted above, Petitioner fails to address the second and third prongs of *McDonnell-Douglas* at all, both of which were explicitly decided by the district court in HGEA's favor, twice. Pet. App. 16a-17a, 34a-35a. There are no allegations at all in the operative complaint to support Petitioner's theory that HGEA's reasons for declining to pursue a grievance on Petitioner's behalf were a pretext for discrimination. This issue has been waived, and this presents an independent ground for affirmance left entirely unaddressed by the petition.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

DEIRDRE MARIE-IHA
Counsel of Record
GOODSILL ANDERSON
QUINN & STIFEL
999 Bishop St., Suite 1600
Honolulu, Hawaii 96813
(808) 547-5600
dmarieiha@goodsill.com
Counsel for Respondent

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