No. 25-986

IN THE

Supreme Court of the United States

MFN PARTNERS, LP, *et al.*,

Petitioners,

v.

NEW YORK STATE TEAMSTERS CONFERENCE AND RETIREMENT FUND, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a regulation promulgated by the Pension Benefit Guaranty Corporation directing multiemployer pension plans to exclude money they received under the American Rescue Plan Act of 2021 from the calculation of withdrawal liability was a "reasonable condition."

2. Whether an employer may voluntarily, and in exchange for consideration, contract for withdrawal liability that is higher than it would otherwise be required to pay under the Employee Retirement Income Security Act, without approval from the Pension Benefit Guaranty Corporation.

CORPORATE DISCLOSURE STATEMENT

Respondents are not corporations, do not have parent corporations, and do not issue securities to the public. No publicly held company owns 10% or more of Respondents' stock, and no respondent has a stock ticker symbol.

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INTRODUCTION

The petition is premised on non-existent circuit splits and should be denied.

The first question presented relates to Petitioners' challenge to a regulation promulgated by the Pension Benefit Guaranty Corporation (PBGC). The regulation addresses how to treat money provided to multiemployer pension plans (MEPPs) under the American Rescue Plan Act of 2021. Petitioners' challenge to the regulation was rejected by the Bankruptcy Court and by a unanimous Third Circuit panel. There is obviously no circuit split—outside of this case, no other court has even issued a ruling addressing the regulation. Respondents understand that the United States intends to file an opposition to the petition regarding this issue. Accordingly, unless directed to by the Court, Respondents do not intend to separately brief the issue and simply note that there is no circuit split which warrants the Court's review and that the lower court decisions were correct.

The second question presented relates specifically to Respondent New York State Teamsters Conference Pension and Retirement Fund (Fund).[1] For more than a decade, Petitioners Yellow Corporation and its affiliates (Yellow) benefitted from an agreement with the Fund that reduced Yellow's contributions, but did not reduce

1. One other MEPP—the Western Pennsylvania Teamsters and Employers Pension Fund ("Western PA")—was involved in this issue below. Western PA's claim in the bankruptcy proceedings was purchased by Petitioner Mobile Street Holdings, LLC ("Mobile Street") and Petitioners have apparently elected not to identify Western PA as a respondent. *See, e.g.*, Pet. ii; *see also infra* at 5.

Yellow's preexisting share of the Fund's liability—terms Yellow bargained for. After filing for bankruptcy, Yellow challenged the agreement as unlawful, claiming that it violated the Employee Retirement Income Security Act of 1974 (ERISA) and could not be enforced because the Fund had not sought approval from PBGC for the agreement. No case in the more than fifty-year history of ERISA has invalidated such a voluntary agreement.

Far from creating a circuit split, the Third Circuit expressly followed the only two on-point Circuit Court decisions, both from the Seventh Circuit. *See* Pet. App. 24a–25a (citing *Peick v. Pension Benefit Guar. Corp.*, 724 F.2d 1247, 1256 (7th Cir. 1983); *Artistic Carton Co. v. Paper Indus. Union- Mgmt. Pension Fund*, 971 F.2d 1346, 1353 (7th Cir. 1992)). The petition does not even acknowledge either Seventh Circuit decision. Instead, it asserts that the Third Circuit's decision "conflicts with the Second Circuit's" decision in *National Retirement Fund ex rel. Legacy Plan of the National Retirement Fund v. Metz Culinary Management, Inc.*, 946 F.3d 146 (2d Cir. 2020). *See* Pet. 30–32. But the issue in *Metz*—when actuaries may select assumptions used to calculate withdrawal liability—has nothing to do with the issue here, which does not involve a dispute over actuarial assumptions. And, in any event, the Court just unanimously rejected *Metz* in *M & K Emp. Sols., LLC v. Trs. of the IAM Nat'l Pension Fund*, No. 23-1209, slip op. (U.S. May 21, 2026).

Not only is there no circuit split, but the Third Circuit's decision is correct and rested on two independent bases. *First*, the Third Circuit concluded that the agreement merely reflected an "accounting change" with respect to one employer, rather than a "completely different method"

of calculating withdrawal liability "for [the] plan as a whole"—and, therefore, did not require PBGC approval. Pet. App. 24a (quoting *Peick*, 724 F.2d at 1256). *Second*, the Third Circuit agreed with the Seventh Circuit that "employers may waive limitations on their withdrawal liability" without seeking PBGC approval. *Id.* at 24a–25a (emphasis omitted) (quoting *Artistic Carton*, 971 F.2d at 1354). Yellow's petition is a transparent attempt to undo its own bargain—as the Third Circuit found, it explicitly contracted for the withdrawal liability it now faces in order to obtain a massive reduction in its ongoing contribution rate. There is "no convincing statutory case against holding Yellow to its end of the bargain." Pet. App. 25a.

The petition should be denied.

STATEMENT

A. Yellow's Agreement with the Fund.

Struggling financially in the aftermath of the Great Recession, Yellow stopped making required contributions to the Fund, resulting in the temporary termination of its participation in the Fund. Supp. C.A. App. 156–57. At that point, it faced massive withdrawal liability that could have resulted in bankruptcy. To avoid bankruptcy and reenter the Fund, Yellow proposed a compromise that would help it remain solvent, while protecting the Fund if Yellow did ultimately fail or otherwise withdraw. Supp. C.A. App. 26; Pet. App. 25a ("Seeking to reenter these pension plans, [Yellow] bargained for a discount on its contributions by offering to pay full freight on its withdrawal liability if the time came."). Yellow would pay significantly reduced regular contributions to the Fund, but it would remain liable for the full amount of its withdrawal liability. *Id.*

In 2012, the Fund accepted Yellow's reentry request. Supp. C.A. App. 135–37. As a condition of its reentry, Yellow expressly agreed to "participate[] under Schedule G of the [Fund's] Rehabilitation Plan applicable to 'Distressed Employers.'" *Id.*; *see also id.* at 139–41. Schedule G provided that, in exchange for the 75% reduction in contribution rate that Yellow proposed, the Fund would calculate Yellow's withdrawal liability "as if [] Schedule G had not been elected." *See id.* at 26, 139–40. In other words, Yellow received a discount on its contributions, but it did not receive a discount with respect to its withdrawal liability—that remained unchanged.

Employers' contribution rates are used in calculating their withdrawal liability. *See, e.g.*, 29 U.S.C. § 1399(c)(1)(C)(i)(II). Therefore, the agreement ensured that, in the event of a subsequent withdrawal, the Fund's decision to accept the reduced contribution rates proposed by Yellow would not artificially reduce Yellow's liability that had accrued before its reentry—which would otherwise fall on, and harm, other employers. *See, e.g.*, *In re Int'l Shipholding Corp.*, No. 16-12220 (SMB), 2021 WL 624042, at *11 (Bankr. S.D.N.Y. Feb. 16, 2021) ("To the extent the pension plan does not collect the withdrawal liability from the withdrawing employer . . . the unfunded liability is reallocated to the remaining contributing employers . . . .").

Yellow's agreement and Schedule G protected the financial integrity of the Fund and its participants and beneficiaries in the event of a withdrawal by Yellow. Following its reentry, Yellow repeatedly reaffirmed, in writing, its contract with the Fund concerning how withdrawal liability would be calculated. In 2014, Yellow's

counsel "confirm[ed]" that the terms were "binding" on Yellow, Supp. C.A. App. 167, and Yellow again agreed in 2020 and 2022 to Schedule G and to be "bound by . . . Plan documents and all of the rules and regulations of the Fund." *Id.* at 76, 80, 85, 89. In fact, Yellow's counsel who negotiated the agreement with the Fund—a partner at the same large law firm representing Yellow in its petition—admitted during her deposition that she never rescinded her representation that Schedule G was "binding" and that she was not aware of anyone else rescinding that representation. *Id.* at 158. Until well into the underlying bankruptcy proceedings, Yellow never wavered from its commitment to be bound by its agreement with the Fund.

On August 6, 2023, Yellow filed for bankruptcy. Pet. App. 40a. On the eve of Yellow's bankruptcy, Petitioner MFN Partners, LP (MFN), a private equity fund, had purchased a plurality equity stake in Yellow, with the apparent purpose of forcing Debtors to challenge withdrawal liability assessments to free up money to pay Yellow's equity holders. *See* Bankr. Dkt. 1833 ¶¶ 20, 59. Yellow then raised piecemeal objections to withdrawal liability assessments against it on numerous grounds. As the litigation dragged on, MFN's affiliate, Mobile Street, purchased certain creditors' claims, including MEPP withdrawal liability claims. *See, e.g.*, Bankr. Dkt. 4346, 4347.

Nearly a year after the bankruptcy was filed, on July 3, 2024, Yellow asserted for the first time that its agreement with the Fund was invalid because the Fund did not obtain PBGC approval to enter into the agreement. Appellants' App. 992. Yellow has never disputed that it entered into its agreement with the Fund knowingly,

voluntarily, and with the advice of sophisticated counsel, nor identified any purported harm or prejudice arising from the Fund not seeking PBGC approval.

B. Methods for Calculating Withdrawal Liability.

ERISA sets forth rules for calculating withdrawal liability that address, among other things, "methods" for calculating withdrawal liability and "assumptions" for calculating withdrawal liability. *See* 29 U.S.C. § 1391 ("Methods for computing withdrawal liability"); 29 U.S.C. § 1393 ("Actuarial assumptions"). Assumptions, such as mortality rates and interest rates, are selected by a MEPP's independent actuary and are used to calculate a plan's overall unfunded vested benefits (UVBs). *See Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 610 (1993). Methods, by contrast, are selected by a MEPP and are used to divide a MEPP's overall UVBs between each of its participating employers. *See id.*

ERISA provides four statutorily approved methods of calculating withdrawal liability: "the presumptive method (§ 1391(b)); the modified presumptive method (§ 1391(c)(2)[)]; the rolling–5 method (§ 1391(c)(3)); and the direct attribution or allocation method (§ 1391(c)(4))." *Advance Foundry Co. v. Kaufman*, No. C-3-94-205, 1996 WL 1712775, at *6 (S.D. Ohio Mar. 25, 1996). "Under the 'direct attribution' method . . . each employer is responsible for th[e] portion of the unfunded, vested liabilities earned by its current and former employees." *Joseph Schlitz Brewing Co. v. Milwaukee Brewery Workers' Pension Plan*, 3 F.3d 994, 997 (7th Cir. 1993) (citing 29 U.S.C. § 1391(c)(4)), *aff'd*, 513 U.S. 414 (1995). By contrast, under the other three methods, an employer's liability is

"proportional to the employer's share of contributions," *Concrete Pipe*, 508 U.S. at 610, with the proportional share calculated over different time periods in each method.[2]

ERISA provides that, by default, a MEPP shall use the "presumptive method"—one of the three proportional methods—unless it elects another of the statutorily approved methods or obtains approval from PBGC to use a methodology not specified by ERISA. 29 U.S.C. § 1391(c)(5)(A). The Fund has used the presumptive method since the enactment of mandatory withdrawal liability in 1980.

REASONS FOR DENYING THE PETITION

The Court should deny the petition for two reasons.

First, there is no circuit split. Petitioners posit that there is a conflict between the Third Circuit's decision below and the Second Circuit's decision in *Metz*. Pet. at 30–32. But the issue in *Metz* was when actuarial assumptions may be selected. *Metz*, 946 F.3d at 150. By contrast, this case has nothing to do with actuarial assumptions. Moreover, the Court just unanimously rejected the holding from *Metz* in *M & K*.

Petitioners nevertheless attempt to manufacture a split by arguing that the approach to statutory interpretation used by the Third Circuit is inconsistent with the approach

2. The differences between these three methods relate to the periods of time over which liabilities are determined. *See, e.g.*, *Chi. Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund v. CPC Logistics, Inc.*, 698 F.3d 346, 348–49 (7th Cir. 2012) (presumptive method); *Borden, Inc. v. Bakery & Confectionery Union & Indus. Int'l Pension*, 974 F.2d 528, 530 n.1 (4th Cir. 1992) (modified presumptive method).

to statutory interpretation used by the Second Circuit. Pet. 30–32. According to Petitioners, the Third Circuit allowed considerations of statutory purpose to override the plain text of the statute while the Second Circuit did not. *See id.* Not only do Petitioners mischaracterize the respective decisions, but, under their theory, virtually every interpretation of a federal statute—including those that address issues of first impression—would present a circuit split.

Second, the Third Circuit's decision was correct. It rested on two separate and independent bases. First, the agreement did not reflect a "completely different method" of calculating withdrawal liability "for [the] plan as a whole." Pet. App. 24a (quoting *Peick*, 724 F.2d at 1256). Second, "employers may waive limitations on their withdrawal liability" without seeking PBGC approval. *Id.* at 24a–25a (emphasis omitted) (quoting *Artistic Carton*, 971 F.2d at 1354).

A. There Is No Circuit Split.

Before the Third Circuit's decision, only two Circuit Court decisions had addressed the issue presented, both in the Seventh Circuit. *See Peick*, 724 F.2d at 1256; *Artistic Carton*, 971 F.2d at 1353. The Third Circuit correctly followed those decisions. Not only do Petitioners not allege a split between the Third and Seventh Circuits, they ignore both Seventh Circuit decisions—the petition does not even cite them.

Petitioners instead argue that the Third Circuit's decision created a split with the Second Circuit's decision in *Metz*. Pet. 30–31. But that case, which addressed when

actuarial assumptions may be selected, *Metz*, 946 F.3d at 150, has nothing to do with this case, which does not even involve actuarial assumptions. There is no split.

Petitioners nevertheless attempt to manufacture a split by arguing that the approach to statutory interpretation used by the Third Circuit is inconsistent with the approach to statutory interpretation used by the Second Circuit. Pet. 30–32. Petitioners argue the Second Circuit "followed th[e] straightforward language" of ERISA, while the Third Circuit did not. *Id.* at 31.

As a threshold matter, such a difference in approach cannot be the basis of a circuit split. If it could, every new decision interpreting a statute would create a "conflict" with some other case—another decision from any point in time that arguably leaned too much on text, or purpose, or legislative history.

Moreover, Petitioners' characterization of the purported differences in statutory interpretation rests on the false premise that the Third Circuit departed from norms of statutory interpretation. Specifically, Petitioners argue that the Third Circuit replaced textual analysis with a purpose-driven inquiry. Pet. 31–32. Because the Third Circuit plainly did no such thing, Petitioners resort to using a truncated quote to misrepresent the Third Circuit's decision.

Petition's Quotation	Third Circuit's Decision
"***[T]he Third Circuit . . . agreed*** that [the agreement] 'run[s] headlong into the statutory requirement that "any other alternative methods for determining an employer's" withdrawal liability must be approved by PBGC.'" Pet. 32 (emphasis added) (quoting App. 24).	"True, at first glance the contractual provision here ***seems*** to run headlong into the statutory requirement that 'any other alternative method for determining an employer's' withdrawal liability must be approved the by the PBGC. 29 U.S.C. § 1391(c)(5)(A). ***Yellow would have us believe so. But we do not*** . . . ." Pet. App. 24a (emphasis added).

After stating that it did not agree with Petitioners' textual argument, the Third Circuit then explained the basis for its disagreement. The Third Circuit concurred with the Seventh Circuit's decision in *Peick*, 724 F.2d at 1267–68, concluding that the Fund's method of setting withdrawal liability was not an "alternative method," but an accounting adjustment to the "presumptive method," countenanced by Section 1391(b). *See* Pet. App. 24a.

The court bolstered its interpretation by reviewing the context of the provision. Pet. App. 24a. The "alternative method" approval process requires the PBGC to determine that the method "would not significantly increase the risk of loss to plan participants and beneficiaries or to the [PBGC]." 29 U.S.C. § 1391(c)(5)(A). The court reasoned that there was no such risk here because the Fund required Yellow to contribute *more*, not less. Pet. App. 24a. In sum, the Third Circuit relied on the statutory text. It supplemented its analysis through

an examination of the text's context, the legislative history of the statute, and its purpose. That does not depart from norms of statutory analysis.

There is no circuit split. Even as Petitioners define the split—one based on interpretive methods—none exists. The complete lack of conflict is basis enough to deny certiorari. And because there is no circuit split, and the decision in *Metz* has no impact on this case, there is no basis to GVR based on the Court's recent decision in *M & K*, as Petitioners urge in the alternative.

B. The Third Circuit Correctly Held that ERISA Does Not Prohibit MEPPs and Employers from Contracting for Greater Withdrawal Liability.

The Court should also deny the petition because the Third Circuit's decision is correct.

The Third Circuit concluded that, even to the extent the presumptive method was modified by the agreement between Yellow and the Fund, the method was not "a completely different method" for "allocating a plan's unfunded vested liability" that would require "PBGC approval." Pet. App. 24a (quoting *Peick*, 724 F.2d at 1256). Petitioners offer no authority that disputes the Third Circuit's (or *Peick*'s) reasoning.

Moreover, the Third Circuit also correctly concluded, as the Seventh Circuit did before it, that ERISA sets a floor for withdrawal liability. Pet. App. 25a. As the Seventh Circuit explained in *Artistic Carton*, ERISA establishes "mandatory liability, overriding contracts that allowed firms to withdraw with an effective transfer of unfunded liability to the federal Treasury. It does not

forbid employers from agreeing to pay extra money to a pension trust[.]" 971 F.2d at 1353. Here, Yellow was not required to pay "extra" money—it only had to pay the amount it owed disregarding the significant discount the Fund allowed it on its regular contributions. Pet. App. 24a.

The Third Circuit's (and Seventh Circuit's) conclusion is based on Section 1391's requirement that PBGC approval be secured to avoid putting the plan, participants, or the PBGC at significant risk of loss. Pet. App. 24a. It is self-evident that requiring *higher* withdrawal liability than otherwise mandated would not put a plan at risk. The PBGC also weighed in at the Third Circuit, explaining that "PBGC review of such contracts is neither necessary nor required." PBGC Supp. C.A. Br. at 9. The Third Circuit thus concluded that even on this alternative ground, the Fund had not improperly calculated Yellow's withdrawal liability. Pet. App. 24a–25a.

All Petitioners can muster in response is a suggestion that the Third Circuit's decision destroys "certainty" that previously existed regarding "Congress's precise, rigid guardrails" on the calculation of withdrawal liability, such that "MEPPs can now" engage in allegedly abusive tactics. *See* Pet. 36–37. But there is nothing remotely new about the Third Circuit's decision, which reflects the settled understanding of ERISA's withdrawal liability provisions since they were enacted in 1980. The Third Circuit followed not only longstanding Seventh Circuit precedent from 1983 and 1992 (*Peick* and *Artistic Carton*) but a PBGC Opinion Letter from 1989. Pet. App. 24a–25a (citing PBGC, Opinion Letter 89-8, 1989 WL 224526 (Oct. 19, 1989)). Moreover, the legislative history from 1980 makes this crystal clear:

> We also wish to make it clear that the statutory imposition of withdrawal liability is not intended to restrict the parties' freedom to agree to additional or supplemental measures to protect a plan from the consequences of an employer's withdrawal . . . . ***Of course, employers can also agree by contract to waive limitations on their statutory withdrawal liability.***

126 Cong. Rec. 23,039 (1980) (emphasis added).

As the Court recognized in another context, "[p]erhaps the best indication that the sky will not fall after today's decision is that it has not done so already." *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 325 (2009). Tellingly, Petitioners do not point to a single example of the allegedly abusive tactics about which they speculate, despite more than 45 years of settled understanding. Were they to ever arise, they could and should be addressed by lower courts in the first instance—which, as the Third Circuit recognized, are capable of distinguishing between genuinely voluntary agreements (like the one at issue here) and circumstances where such consent is lacking:

> Yellow offers no good reason why we should not enforce its own contract against it, instead pointing us to an array of cases in which a plan imposed, without consent, a higher contribution rate on a withdrawing employer's liability calculation. That is not the case here, where Yellow *contracted for this result*.

Pet. App. 25a (internal citation omitted).

Finally, in a last ditch effort, Petitioners argue that the presumptive method, as set forth in ERISA, should be unilaterally rewritten by the courts. Pet. 35. Under the presumptive method—which the Fund always used—withdrawal liability is calculated based on, in part, contributions "required to be made under the plan by the employer." 29 U.S.C. § 1391(b)(2)(E)(ii)(I).[3] With no analysis, Petitioners simply assert that the word "required" should be interpreted to mean "actual." Pet. 33 ("Under that method, NY/WPA Teamsters needed to calculate Yellow's allocable unfunded vested benefits by using the contributions that Yellow was 'required to [make] under the plan[s],' i.e., Yellow's actual contributions.") (alterations in original). But "required" and "actual" are not synonyms, and where Congress intended to refer to actual contributions, it did so expressly. *See, e.g.*, 26 U.S.C. § 433(j)(1)(A)(ii) (referring to "the amount *actually* contributed to . . . the plan for the plan year") (emphasis added). Courts "presume differences in language like this convey differences in meaning." *Wis. Cent. Ltd v. United States*, 585 U.S. 274, 279 (2018).

In sum, the Third Circuit's decision was correct. Petitioners have not demonstrated otherwise.

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3. Petitioners told the Third Circuit the Fund used the presumptive method. *See, e.g.*, Appellants' C.A. Br. 10 ("NY Teamsters . . . utilize the presumptive method in calculating an employer's allocable UVBs [unvested benefits]."); 15, 17 (same). Petitioners now backtrack, saying that the Fund only "purported to use" the presumptive method. Pet. 33. But the Court should not wade into that debate. *See Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212–13 (1998) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.").

CONCLUSION

The petition should be denied.

Respectfully submitted,

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