No. 26-436

In the Supreme Court of the United States

RADIALL USA, INC.,

Petitioner,

v.

GARY T. RAMADEI.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE CALIFORNIA EMPLOYMENT LAW COUNCIL AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

The California Employment Law Council ("CELC") files this brief as *amicus curiae* in support of petitioner Radiall USA, Inc.[1] CELC is a voluntary, nonprofit organization that promotes and fosters the development of reasonable, equitable, and progressive rules of employment law in California. Its members include approximately 70 private-sector employers in California. CELC regularly participates as *amicus* in employment cases, including before this Court.[2]

In addition to collectively employing hundreds of thousands of Californians, many of CELC's members operate in multiple States, including States located in circuits on opposite sides of the circuit split identified by Radiall's petition concerning the Family and Medical Leave Act ("FMLA")'s causation standard for retaliation claims. Those members thus face different causation standards under the same federal statute solely based on geographic location.

CELC submits this brief to explain why the FMLA requires but-for causation for damages attributable to an adverse employment action, why the competing rule imposes substantial practical burdens, and why a uniform national standard is needed.

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[1] Per Supreme Court Rule 37.2, counsel of record received timely notice of CELC's intent to file this brief. Per Supreme Court Rule 37.6, no counsel for a party authored the brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund its preparation or submission. No person other than CELC, its members, or its counsel made such a contribution.

[2] *See, e.g.*, *Bissonnette* v. *LePage Bakeries Park St., LLC*, No. 23-51; *Viking River Cruises, Inc.* v. *Moriana*, No. 20-1573.

SUMMARY OF ARGUMENT

For multistate employers, like many of CELC's members, the circuit split over the FMLA's causation standard poses a concrete operational problem: the same employer must assess its nationwide personnel decisions under multiple standards arising from the same federal law. The FMLA protects employees against retaliation for exercising their leave rights. It does not insulate them from employment decisions that would have occurred regardless of protected leave. Yet several courts of appeals have adopted the motivating-factor standard that permits liability even where protected leave did not change the outcome.

Thus, in California, an employee may establish FMLA retaliation by showing that protected leave was a motivating factor in an adverse employment decision. But in Florida, that same employee would need to show that the protected leave was a but-for cause. Congress enacted only one FMLA—multistate employers should not face different standards of federal liability for the same conduct merely because their employees work in different States.

The distinction is far from academic. A motivating-factor standard impacts which retaliation claims survive dismissal and which claims reach trial, even where the employer would have taken the same employment action irrespective of protected leave. It thus has the potential to expand litigation costs significantly, make trials more likely, and increase pressure to settle claims that would fail under the proper but-for standard. This case illustrates the stakes: a $187,714 jury award ultimately resulted in a judgment of $770,006. The resulting exposure may also cause employers to delay legitimate discipline, restructuring, and staffing decisions—creating costs borne by employers and employees alike.

CELC shares Radiall's view that the motivating-factor standard cannot be reconciled with the FMLA's text and structure. Congress enacted the FMLA against the traditional background rule of but-for causation, expressly limited monetary recovery to losses caused by a statutory violation, and made clear that employees are not entitled to positions they would have lost regardless of protected leave. And when Congress wished to authorize motivating-factor liability, it did so expressly for specified Title VII claims—but not for FMLA retaliation claims. Courts should not impose a standard Congress deliberately chose not to adopt.

The need for this Court's intervention is especially compelling because the circuit courts remain sharply divided. The Fourth and Eleventh Circuits require but-for causation while five other circuits apply a lesser standard (and two more have issued conflicting decisions). That disagreement has persisted despite this Court's decision in *Nassar* more than a decade ago, resulting in an untenable patchwork of causation standards under the same statute. The meaning of a federal law should not turn on geography.

CELC therefore urges this Court to grant Radiall's petition, resolve the longstanding circuit split, and confirm that the proper causation standard for FMLA retaliation claims is but-for causation.

ARGUMENT

I. FMLA Retaliation Claims Require But-For Causation

CELC agrees with Radiall that employees seeking damages for retaliatory employment actions must establish that the exercise of FMLA rights was a but-for cause of those actions. *See* Pet. at 20–23. The FMLA does not allow employees to recover for adverse

employment actions that protected leave did not cause. The statute's prohibitions and the ordinary principles of causation this Court has applied to federal tort-based statutes both reinforce this conclusion.

The FMLA prohibits discharging or otherwise discriminating against an individual "for" opposing practices the statute makes unlawful. 29 U.S.C. § 2615(a)(2). It further prohibits discharging or otherwise discriminating against an individual "because" the individual participated in FMLA-related proceedings or inquiries. *Id.* § 2615(b). In both provisions, Congress expressly linked the challenged employment action to the protected conduct, consistent with the traditional requirement of but-for causation. *See, e.g.*, *Univ. of Texas Sw. Med. Ctr.* v. *Nassar*, 570 U.S. 338, 350–52, 354, 360 (2013); *Burrage* v. *United States*, 571 U.S. 204, 212–13 (2014).

Claims alleging retaliation for taking leave, rather than opposing unlawful conduct, generally proceed under Section 2615(a)(1), which prohibits interference with, restraint of, or denial of FMLA rights. 29 U.S.C. § 2615(a)(1); *see also Surtain* v. *Hamlin Terrace Foundation*, 789 F.3d 1239, 1247 (11th Cir. 2015). While that provision does not use the "because" or "for" terms associated with but-for causation, statutory silence does not justify substituting a lesser standard.

This Court has repeatedly held that Congress legislates against the background rule of but-for causation unless a statute indicates otherwise. *See Nassar*, 570 U.S. at 347, 360; *Comcast Corp.* v. *Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 332–34 (2020) (applying the but-for causation standard even where the at-issue statute lacked the express causal language at issue in *Nassar*). The relevant inquiry is thus whether Congress displaced the default rule. Here, Section 2615(a)(1) lacks any language allowing

damages for an employment action that would have occurred without the protected leave.

Other FMLA provisions confirm this conclusion. Section 2617 allows recovery of compensation "denied or lost . . . by reason of the violation"—or, where no compensation was denied or lost, other actual monetary losses sustained "as a direct result of the violation." 29 U.S.C. § 2617(a)(1)(A)(i). These causal limitations require that the claimed loss result from the statutory violation, not just from the challenged employment action. An employee therefore cannot recover wages attributable to an employment action that would have occurred even absent the alleged retaliation.

This Court enforced that principle in *Ragsdale* v. *Wolverine World Wide, Inc.*, 535 U.S. 81 (2002). There, this Court invalidated a regulation that effectively authorized reinstatement and recovery of backpay for an employer's failure to designate leave as FMLA leave without requiring proof that the failure actually prejudiced the employee. *Id.* at 90–91. As this Court explained, Section 2617 requires an individualized inquiry into the violation's consequences, including what would have occurred had the employer complied with the FMLA. *Id.* at 89–91.

Although *Ragsdale* did not involve retaliation, its reasoning applies with equal force here. Just as an employer's failure to designate leave cannot support relief for losses it did not cause, an employee cannot recover damages for an adverse employment action that would have occurred regardless of protected leave. In both circumstances, the FMLA requires a causal connection between the violation and the claimed loss.

The FMLA's restoration provision further reinforces this conclusion. Section 2614(a)(3)(B) makes clear that employees returning from leave have no greater entitlement to employment

than they would have had absent that leave. 29 U.S.C. § 2614(a)(3)(B). Congress thus protected employees against adverse consequences resulting from protected leave, not independent employment decisions that would have occurred anyway. Imposing damages for such decisions would undermine that statutory distinction.

Finally, when Congress wants to authorize motivating-factor liability, it knows how to do so. The Civil Rights Act of 1991 expressly adopted that standard for specified Title VII discrimination claims—and expressly limited remedies where the employer would have made the same decision anyway. *See* 42 U.S.C. §§ 2000e-2(m), 2000e-5(g)(2)(B). Congress enacted the FMLA two years later without either provision, giving rise to the presumption that Congress's omission was deliberate and that it did not intend to extend Title VII's motivating-factor liability framework to FMLA claims. *See, e.g.*, *Gross* v. *FBL Fin. Servs., Inc.*, 557 U.S. 167, 174 (2009) ("We cannot ignore Congress' decision to amend Title VII's relevant provisions but not make similar changes to the ADEA. When Congress amends one statutory provision but not another, it is presumed to have acted intentionally.").

In passing the FMLA, Congress did not authorize damages for employment decisions that would have occurred regardless of protected leave, and courts should not impose the motivating-factor standard Congress chose not to adopt. This Court should grant review and confirm that but-for causation governs FMLA retaliation claims seeking damages for adverse employment actions.

II. A Reduced Causation Standard Imposes Substantial Burdens On CELC's Members

A. The standard can impact which claims survive dismissal and are tried.

The difference between but-for and motivating-factor causation matters long before trial. A rule under which protected leave need only have played *some* negative part in an employment decision—as opposed to being a but-for cause—changes what an employee must allege, what an employer must defend, and the risk that must be evaluated from the outset. And it increases the likelihood that even ultimately prevailing employers will incur substantial litigation costs along the way.

That distinction matters from the start of a lawsuit. This Court has held that a plaintiff must plausibly allege the causal relationship required by substantive law. *See Comcast*, 589 U.S. at 332, 341. Where but-for causation governs, it is not enough to allege that protected leave merely entered the employer's deliberations—the complaint must allege that the employer would have reached a different decision absent the leave. *See Bostock* v. *Clayton Cnty., Georgia*, 590 U.S. 644, 656 (2020) ("[A] but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause."). The realities of workplace decisionmaking illustrate why those concepts should not be conflated.

In the ordinary course of business, personnel matters and requests for protected leave may arise simultaneously. An employer may be reorganizing a department, investigating alleged misconduct, or addressing performance concerns when an

employee requests or takes protected leave.[3] In those situations, managers discussing an ongoing personnel matter may also need to address the practical implications of the employee's absence, including temporary staffing arrangements or the employee's anticipated return.

Those circumstances may warrant careful factual examination. But they do not, without more, establish that protected leave changed the employer's decision. Treating allegations of such incidental consideration as sufficient to plead causation would give ordinary workplace discussions legal significance they would not otherwise possess and could allow claims that Congress never intended the FMLA to create in the first place to proceed to discovery.

The implications of the causation standard do not end after a motion to dismiss. At summary judgment, the governing law determines which factual disputes are material. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248, 254–55 (1986). Under a but-for standard, an employee must show that a reasonable jury could find that an employer would not have taken the challenged action absent the protected leave. If a motivating factor suffices, a dispute about whether leave played *any* negative role can warrant a trial.

This contrast has had concrete consequences in cases like *Lapham* v. *Walgreen Co.*, No. 6:19-cv-579, 2021 WL 716630 (M.D. Fla. Jan. 14, 2021), *aff'd*, 88 F.4th 879 (11th Cir. 2023). After initially allowing an FMLA retaliation claim under the

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[3] *Cf.* Rafael Gely & Timothy D. Chandler, *Maternity Leave Under the FMLA: An Analysis of the Litigation Experience*, 15 Wash. U. J.L. & Pol'y 143, 160 (2004) (empirical study finding "the most common substantive defense [raised by employers] was that the adverse employment outcomes experienced by employees were not based on taking FMLA leave").

motivating-factor standard, the district court applied but-for causation on reconsideration and entered summary judgment for the employer. *Id.* at *4. Because the employee's performance "was an independent, non-retaliatory basis for her termination," the employee could not show that FMLA retaliation was the "real reason" for her termination and that she would not have been fired if not for that retaliation. *Id.* The choice of causation standard thus made the difference between proceeding to trial and judgment for the employer.[4]

This does not mean an employer is entitled to summary judgment simply by offering a legitimate reason for an employment decision. Evidence of pretext and shifting explanations may permit a jury to find but-for causation—and courts must draw reasonable inferences in favor of the nonmoving party at summary judgment. But those inferences must answer the right question: whether the employer would have acted differently absent the protected leave, not merely whether the leave played some negative role in its deliberations.

B. Greater exposure increases litigation costs and impacts workplace decisions.

It is no surprise that the longer a case goes on, the more expensive it becomes. If an FMLA claim survives a motion to dismiss, an employer often needs to take a number of steps as a result, including collecting communications, preparing witnesses, reviewing personnel records, and diverting human-resources

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[4] Notably, in one study of hypothetical employment retaliation claims, nearly 60% of mock jurors found retaliation to be a motivating factor in an employer's decision, yet more than 80% of those jurors also concluded the employer would have made the same decision regardless. *See* Sherwyn et al., *Experimental Evidence that Retaliation Claims Are Unlike Other Employment Discrimination Claims*, 44 Seton Hall L. Rev. 455, 497–98 (2014).

personnel and supervisors from their usual work to reconstruct decisions and conversations. And if summary judgment is denied, the relevant costs only increase (to say nothing of the costs expended on the summary judgment briefing process itself). Trial preparation requires significant attorney time, witness coordination, and management attention. The FMLA's remedial stakes can amplify that pressure substantially. *See, e.g.*, 29 U.S.C. § 2617(a) (allowing, on top of compensatory damages, liquidated damages, attorney's fees and costs, and equitable relief).

This Court has recognized that allowing claims to proceed beyond the dispositive-motion stages imposes substantial costs, even when defendants ultimately prevail. In *Bell Atlantic Corp.* v. *Twombly*—which established the civil pleading plausibility standard—this Court cautioned that "the threat of discovery expense will push cost-conscious defendants to settle even anemic cases" before summary judgment or trial. 550 U.S. 544, 559 (2007). And in *Nassar*, this Court applied that same concern directly to the causation standard governing retaliation claims, acknowledging that "a lessened causation standard" would make it "far more difficult to dismiss dubious claims at the summary judgment stage," thus "rais[ing] the costs, both financial and reputational," for even employers who ultimately prevail at trial. 570 U.S. at 358–60.

That is precisely the concern implicated by the motivating-factor causation standard. By permitting claims to proceed even where an employer would have made the same decision regardless of protected leave, that standard deprives employers of opportunities to dispose of such claims through motions to dismiss or at summary judgment. An employer may thus be forced to endure costly discovery and an entire trial merely to establish that its decision was lawful—or settle a claim that could not succeed under the proper but-for standard. The causation

standard thus determines not only which claims ultimately succeed, but also whether claims lacking the requisite causal link survive pretrial review, exposing employers to the very litigation burdens and settlement pressures this Court has cautioned against.

The proceedings here illustrate the scale of that exposure. The jury awarded $187,714 after finding that medical leave motivated Ramadei's termination, at least in part. Pet. App. 77a–78a. Yet, the final judgment, including liquidated damages, interest, front pay, attorney's fees, and costs, totaled *$770,006*. Pet. App. 75a–76a. Whether the jury would have returned the same verdict under a but-for causation standard is a question this Court could address upon review of the merits or leave for remand. What is clear is that the application of a lesser standard (here, the motivating-factor standard) was sufficient to carry the case through trial and result in substantial liability.

The threat of litigation under a reduced causation standard can also deter employers from making legitimate employment decisions pre-litigation. If an employer may be required to defend at trial a decision that would have been made regardless of protected leave, it has reason to hesitate before taking that action. That may mean postponing discipline or restructuring, seeking additional legal review, or retaining a position the employer had independently decided to eliminate. Those precautions can carry costs not only for employers but also employees. For example, forgoing discipline may leave performance problems unresolved, requiring coworkers to shoulder additional work. Delayed staffing calls may prolong uncertainty about employees' responsibilities. And resources devoted to those issues (not to mention defending claims that lack but-for causation) are unavailable for leave administration, workplace training, and resolving meritorious complaints.

CELC does not suggest that employers should be relieved of the costs associated with the leave rights Congress granted employees. But Congress expressly sought to accommodate the legitimate interests of employers while also protecting employees. *See* 29 U.S.C. § 2601(b)(3). The but-for causation standard respects that balance. It holds employers responsible when unlawful retaliation changes the outcome of an employment decision, without expanding liability—and its attendant litigation costs and settlement pressure—for decisions they would have made regardless of protected leave.

III. Multistate Employers, Including CELC's Members, Would Benefit From A Uniform National Standard

A. The circuit split is direct and has not resolved itself.

As Radiall's petition illustrates, the federal courts of appeals are anything but united on the causation standard for FMLA retaliation claims. *See* Pet. at 13–20. At one end of the spectrum stand the Fourth and Eleventh Circuits, both of which apply but-for causation to FMLA retaliation claims. *See Fry* v. *Rand Construction Corp.*, 964 F.3d 239, 245–46 (4th Cir. 2020); *Lapham* v. *Walgreen Co.*, 88 F.4th 879, 893 (11th Cir. 2023).

In contrast, five other circuits hold that FMLA retaliation claims can be proved by a less demanding causation standard. *See Woods* v. *START Treatment & Recovery Centers, Inc.*, 864 F.3d 158 (2d Cir. 2017); *Egan* v. *Delaware River Port Authority*, 851 F.3d 263 (3d Cir. 2017); *Marez* v. *Saint-Gobain Containers, Inc.*, 688 F.3d 958, 963 & n.3 (8th Cir. 2012); *Bachelder* v. *America West Airlines, Inc.*,

259 F.3d 1112, 1125 (9th Cir. 2001); *Hodgens* v. *Gen. Dynamics Corp.*, 144 F.3d 151, 160 (1st Cir. 1998).[5]

There are times when a circuit split resolves itself after this Court addresses a separate but related question at the heart of the split. *See, e.g.*, *Minard* v. *ITC Deltacom Commc'ns, Inc.*, 447 F.3d 352, 357 (5th Cir. 2006) (recognizing that this Court's decision in *Arbaugh*, although arising under Title VII, effectively "rejected the conflicting view of the Courts of Appeals" over the jurisdictional status of the FMLA's employee-numerosity requirement). That prospect has already proven itself unlikely here, however.

In 2013, this Court held that retaliation claims brought under Title VII "must be proved according to traditional principles of but-for causation." *Nassar*, 570 U.S. at 360. While interpreting a different statute, *Nassar* is "especially instructive" in interpreting the FMLA's retaliation provisions. *See Lapham*, 88 F.4th at 892. Indeed, as the Eleventh Circuit has acknowledged when applying *Nassar*'s reasoning to the causation issue here, the relevant provisions of both statutes use "'because [of]' language or an equivalent" and were "enacted against the historic, default but-for causation standard." *Id.*

Nassar has been the law for 13 years. While some circuit courts, to be sure, have not revisited their FMLA causation standard precedent since *Nassar*, others—including the Second and Third Circuits—have, and have maintained that FMLA retaliation

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[5] Two other courts of appeals, the Sixth and Seventh Circuits, have panel decisions going both ways. *See Chitwood* v. *Ascension Health All.*, 168 F.4th 493, 498 & n.2 (7th Cir. 2026) (collecting cases and recognizing that they "have not been fully consistent about the causation standard for an FMLA retaliation claim"); *compare Ahmed* v. *Hamtramck Public Schools*, 178 F.4th 975, 981 (6th Cir. 2026), *with Sharp* v. *Profitt*, 674 F. App'x 440, 451 (6th Cir. 2016) (mem.).

claims are governed by a lesser causation standard. *See Woods*, 864 F.3d at 168 (purporting to distinguish *Nassar*); *Egan*, 851 F.3d at 274 (treating a lesser standard as consistent with *Nassar*). The fact that some circuits have doubled down on their rejection of but-for causation even after *Nassar* was decided thus strongly indicates that a split will remain in some form, absent this Court's direct intervention.

B. The circuit split especially burdens multistate employers.

Circuit splits are often problematic, as they make geography the central factor in the application of law. *See* Tejas N. Narechania, *Which Splits?—Certiorari in Conflicts Cases*, 113 Cal. L. Rev. 487, 489 (2025) ("An unresolved split means that similar parties are treated differently under federal law for arbitrary reasons, such as geography.").[6] An employee asserting an FMLA claim in California should not face a different substantive causation requirement from an employee bringing the same claim in Florida. Nor should an employer's liability for the same conduct depend on where the claim is brought. That disparity is reason enough for this Court's review. *See* Supreme Court Rule 10(a).

But the circuit split at issue here is particularly problematic for employers that operate across circuit lines and are subject to multiple causation standards arising from the same federal statute. For multistate employers, including many of CELC's members, the lack of uniformity can have concrete consequences. Leave may be administered centrally, reductions in force planned

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[6] *See also Martin* v. *Hunter's Lessee*, 14 U.S. 304, 347–48 (1816) (recognizing "the importance, and even necessity of *uniformity* of decisions throughout the whole United States"); *Bowe* v. *United States*, 607 U.S. 13, 49 (2026) (Gorsuch, J., dissenting) ("[I]t is often this Court's job to resolve circuit splits and bring nationwide uniformity to the application of federal law.").

nationally and implemented across several States, and employment decisions reviewed by human-resources personnel located elsewhere. Employees may work remotely from yet another State. Yet employers must administer the same federal entitlement while evaluating liability under differing regional standards. The resulting uncertainty can complicate legal review, litigation budgets, reserves, and settlement assessments.

Moreover, when more than one forum is properly available, the conflict gives parties a reason to litigate over location rather than the employment dispute itself. Differing causation standards should not create an incentive to seek one forum over another. A uniform standard would remove that incentive and allow parties to assess claims on their merits.

Nor would a uniform federal standard displace more protective state and local laws. In the FMLA, Congress expressly preserved such laws providing greater family or medical leave rights than those established by the FMLA itself. 29 U.S.C. § 2651(b). Employers must comply with those laws. But the accommodation of state and local protections provides no justification to tolerate geographic variation in the *federal* causation requirement caused by conflicting judicial interpretations of the same federal enactment. CELC therefore urges this Court to grant Radiall's petition and resolve this longstanding conflict.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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