No. 26-482

IN THE

Supreme Court of the United States

MAURA A. JENKINS,

Petitioner,

v.

HARRISBURG ROTARY CLUB, AKA
ROTARY CLUB OF HARRISBURG, *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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QUESTION PRESENTED

Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e, *et seq*. ("Title VII" or the "Act") prohibits discrimination in employment by employers, employment agencies, and labor unions. 42 U.S.C. § 2000e-2(a), (b), (c). Title VII makes it unlawful for an employer to discriminate against an employee based upon race, color, sex, religion or national origin. 42 U.S.C. § 2000e-2(a).

Title VII's definition of employer requires the employer to have a minimum of fifteen (15) employees. 42 U.S.C. § 2000e(b). To maintain her Title VII claim, Petitioner argues that Rotary International and Harrisburg Rotary Club should be treated as Jenkins's "single employer" and consolidated for the purpose of satisfying the numerosity requirement under Title VII.

The question stated by Petitioner is an abstract question untethered to the decisions below. The question, properly framed, is whether the courts below erred in applying the test set forth in *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 85 (3d Cir. 2003), *cert. denied*, 541 U.S. 959 (2004), in determining that Petitioner had not produced sufficient evidence to show that Harrisburg Rotary Club and Rotary International should be treated as a single employer for the purpose of the numerosity requirement under Title VII, where Petitioner Jenkins did not propose any other standard and, in particular, did not and does not propose any standard that would have resulted in a different outcome?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

Petitioner is Maura Jenkins.

Respondents are Harrisburg Rotary Club AKA Rotary Club of Harrisburg ("RCH") and Rotary International ("RI").

RI is a registered non-profit corporation pursuant to the Illinois Not-for-Profit Corporation Act (805 ILCS 105 (West 1987)). RI has no parent company, and no publicly held corporation owns 10% or more of its stock.

RCH is an independent, autonomous non-profit membership club of RI. RCH has no parent company, and no publicly held corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

Maura A. Jenkins v. Harrisburg Rotary Club A.K.A. Rotary Club of Harrisburg and Rotary International, United States District Court for the Middle District of Pennsylvania, Civil Action No. 1:24-CV-1724-SAC. Summary Judgment entered in favor of Defendants/Respondents on October 16, 2025.

Maura A. Jenkins v. Harrisburg Rotary Club AKA Rotary Club of Harrisburg and Rotary International, United States Court of Appeals for the Third Circuit, No. 25-3195. October 16, 2025 Order of the District Court, granting the Motions for Summary Judgment in favor of Defendants/Appellees, affirmed and judgment entered in favor of Appellees/Respondents on July 13, 2026.

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COUNTER STATEMENT OF THE CASE AND PROCEEDINGS BELOW

RCH is a non-religious, non-political volunteer service club. RCH is a member club of RI. The District Court determined that RI and RCH are separate and distinct entities, and the Court of Appeals affirmed that determination.

RI is a worldwide service organization that seeks to bring together people from a broad variety of professions and trades. Members are expected to respect all individuals, regardless of race, religion, ethnicity, gender, sexual orientation, gender identity, and any other characteristic protected by law.

Rotary members are members of local Rotary clubs. Worldwide there are over 45,000 Rotary clubs. This case involves one of RI's member clubs: RCH. RCH, like all other Rotary clubs, is a separate entity with its own directors, officers, and employees. In 2023, RCH had a single, part-time employee, Petitioner Jenkins. She had been hired by RCH to attend to day-to-day administrative matters. Petitioner maintained a personal Facebook profile. Petitioner's Facebook posts were viewable by some members of RCH. Petitioner posted a meme on her Facebook page that one of her Facebook friends, who was a member of RCH, complained was disrespectful to the transgender community. RCH decided to terminate Petitioner's employment with RCH because of this post. RCH found that Petitioner's conduct was inconsistent with RCH's core values and standards. On August 21, 2023, RCH terminated Petitioner's employment. RCH's termination letter gave several reasons for the

termination, including that the posting of the meme violated RI's Code of Conduct. However, RI's Code of Conduct did not address matters of employment or even apply to the conduct of member club employees.

Petitioner claimed that her employment was terminated based upon her religion, retaliation, and her sex in violation of Title VII, 42 U.S.C. § 2000e. Petitioner filed charges of employment discrimination against RCH and RI with the Equal Employment Opportunity Commission ("EEOC"). Petitioner received a right to sue letter in connection with her charge of discrimination against RCH and filed suit in the District Court against RCH and RI. (Appx. A at 2a-5a). RI first learned of Petitioner's employment with RCH and termination when it received the charge of discrimination from the EEOC.

RI and RCH filed motions to dismiss Petitioner's Amended Complaint on the grounds that RCH was not an "employer" under Title VII because it had fewer than fifteen (15) employees. Petitioner argued that while RCH had only one employee (Petitioner), RCH and RI should be deemed to be a single employer. The District Court directed the parties to conduct discovery on the employer issue, "including whether the [Respondents] were acting as a single entity and whether Harrisburg Rotary Club was acting as an agent of Rotary International." (Appx. A at 6a).

After the conclusion of this discovery, RI and RCH each moved for summary judgment. Pursuant to Federal Rule of Civil Procedure 56, RI and RCH submitted Statements of Undisputed Material Facts that Petitioner did not controvert pursuant to Rule 56(e)(2). (Appx. D at

15a, n.1). Instead, Petitioner submitted responses that the District Court described as "muddled, confusing and ineffectual", including irrelevant cross-references to other responses. (Appx. D at 25a n.5). Nevertheless, the District Court endeavored to decipher Petitioner's responses and "discerned no genuine issues of material fact in dispute as to the essential elements . . . ." (Appx. D at 26a). The District Court noted that Petitioner did not dispute with references to parts of the record one third of Respondents' statements of material facts, instead responding that she "cannot confirm or deny." (Appx. D at 15a n.1, 25a n.5). The District Court deemed admitted the facts that Petitioner failed to dispute. (Appx. D at 15a n.1). The District Court expressly found that there were no "disputed issues of material fact regarding the issue of whether the Defendants can be considered a single employer or that RI can be considered the Plaintiff's employer." (Appx. D at 26a). The District Court's specific factual findings included the following:

- RCH had only one employee, Petitioner Jenkins (Appx. D at 16a, 21a).

- RI exerted no control over RCH and its operations (Appx. D at 24a).

- [RI] plays [no] role in . . . the hiring, firing, training and/or supervising of employees – of RCH (Appx. D at 24a).

- Respondents share no common officers or directors (Appx. D at 25a).

- Una Martone [the RCH member who complained to RCH regarding Petitioner's Facebook post] was never an employee of RCH or RI (Appx. D at 24a n.4).

- Una Martone did not include any officer or director of RI on her communications to RCH regarding Petitioner's Facebook post (Appx. D at 16a).

- After learning of the post from Una Martone, RCH convened a board meeting and voted by majority to terminate Petitioner's employment. (Appx. D at 16a).

Based on these findings, the District Court rejected Petitioner's claim that "the record is flooded with evidence" that RI exercised control over RCH, noting that Petitioner "does not identify a single piece of record evidence to support that claim." (Appx. D at 26a). The District Court found "no support for the contention that the 'record is flooded' with evidence that the [Respondents, two separate and distinct entities,] operated as a single entity or that RI controlled RCH." (Appx. D at 26a).

Thus, the District Court, applying the single employer test established under *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 85-87 (3d Cir. 2003), *cert. denied*, 541 U.S. 959 (2004), concluded that RI and RCH "cannot be viewed as a single employer to meet Title VII's numerosity requirement" and granted RI and RCH's motions for summary judgment. (Appx. D at 27a).

Petitioner appealed. The Court of Appeals observed that Petitioner invoked the tests described in *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d at 85-87[1], the decision Petitioner now questions. (Appx. A at 2a). On *de novo* review, the Court of Appeals affirmed the decision of the District Court. The Court of Appeals held that with respect to the second *Nesbit* test, Petitioner had not produced any evidence that RI is the parent corporation of RCH and did not advance any argument why RI should be treated as a parent. (Appx. A at 8a). The Court of Appeals did not disturb the findings of the District Court that Petitioner had not produced evidence that would satisfy the third *Nesbit* test: "whether two or more entities' affairs are so interconnected that they collectively caused the alleged discriminatory employment practice." 347 F.3d at 86-87. Petitioner has never argued that *Nesbit's* first test applied.

REASONS FOR DENYING THE PETITION

I. Jenkins Did Not Raise the Issue for Which She Now Seeks Review in the Courts Below.

This Court does not normally reach issues that were not raised or briefed below. *TRW, Inc. v. Andrews*, 534

1. *Nesbit* comprises three (3) independent tests governing whether two distinct legal entities may be considered a single employer. Two distinct legal entities may be deemed a single employer if any one of the tests applies. These tests are: (1) if an entity has split itself into multiple entities to evade Title VII; (2) if there is a parent-subsidiary relationship and the parent has directed the alleged discriminatory act in question; and (3) if the entities' affairs are so interconnected that they collectively caused the alleged discriminatory employment practice. 347 F.3d at 85-86.

U.S. 19, 34 (2001); *Berkemer v. McCarty*, 468 U.S. 420, 443 (1984). In the District Court and in the Court of Appeals, all parties cited *Nesbit* as the source of the applicable test for determining whether two entities should be combined when determining the number of employees for purposes of applicability of Title VII, 42 U.S.C. §2000e(b). No party argued or even suggested that *Nesbit* is wrong or even inconsistent with standards used in other Circuits. In particular, the Court of Appeals observed that Petitioner Jenkins did not propose a standard different from the *Nesbit* standard. (Appx. A at 8a-9a).

"[T]he traditional rule . . . precludes a grant of certiorari when 'the question presented was not pressed or passed upon below.'" *United States v. Williams,* 504 U.S. 36, 41 (1992). "It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed." *Youakim v. Miller,* 425 U.S. 231, 234 (1976) (quoting *Duignan v. United States*, 274 U.S. 195, 200 (1927)). This case involves an employment decision affecting a single employee under a particular set of facts. Jenkins's Petition does not state facts that would show that this is an exceptional case, and Jenkins does not argue that it is.

Even in her Petition, Jenkins does not propose that a standard different than *Nesbit* is the proper standard, or that any different standard would result in a different outcome as to whether RCH and RI should be combined for purposes of counting employees.

II. There Is No Genuine Conflict Among the Circuits.

There is not a genuine conflict among the Circuits regarding the test to determine whether multiple entities should be combined for the purpose of determining whether Title VII is applicable. The tests applied in the Circuits are not substantially or meaningfully different.

One of the *Nesbit* tests has two components: a "parent-subsidiary" relationship and the parent controlling the subsidiary's employment decision at issue. Another of the *Nesbit* tests is whether the operations of two entities are sufficiently interrelated that the entities should be deemed to have collectively caused the allegedly discriminatory employment act. These tests are substantially the same tests described by the Fourth and Seventh Circuits in *Johnson v. Flowers Industries, Inc.,* 814 F.2d 978, 980-81 (4th Cir. 1987) and *Papa v. Katy Industries, Inc.,* 166 F.3d 937, 940-41 (7th Cir. 1999), *cert. denied,* 528 U.S. 1019 (1999), respectively.

The other Circuits' cases cited by Petitioner use a test described as the "integrated enterprise" test. The most recent of these, *Sandoval v. City of Boulder, Colorado,* 388 F.3d 1312, 1322 (10th Cir. 2004), sets forth the typical formulation: "We weigh four factors in considering whether two nominally separate entities constitute an "integrated enterprise" or a single employer: (1) interrelations of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership and financial control."

These tests focus on whether the entities share management and ownership, which amounts to whether

they are effectively in a parent-subsidiary relationship. A further element of the "integrated enterprise" test is whether their relationship involves common control of employment decisions, which is an element of the second component of the second *Nesbit* test. The four elements of the "integrated enterprise" test, taken together, address whether the entities' operations are sufficiently integrated, particularly with respect to employment decisions, to combine the entities for purposes of the numerosity issue. Thus, the "integrated enterprise" test is substantially the same as the third *Nesbit* test, and is not meaningfully different from *Nesbit* overall.

III. The Decision Below Does Not Conflict With Precedent in This Court.

The decision in *Board of Directors of Rotary International v. Rotary Club of Duarte,* 481 U.S. 537 (1987), does not bear on any of the issues in the present case and its findings do not conflict with those in this case. *Duarte* does not involve a claim under Title VII, much less the numerosity requirement under Section 2000e.

Contrary to Petitioner's assertion, *Duarte* does not hold that RI has operational control of member organizations, either generally or with respect to employment decisions. Rather, *Duarte* involved a claim of discrimination in membership qualifications and a California statute.

Duarte also did not address the issue of whether RI and its member local Rotary clubs should be treated as a single entity. The issue in *Duarte* was whether RI was a "public accommodation" within the meaning of a California

statute. The conclusion in *Duarte* that RI and a local Rotary club were each "business establishments", which was a prerequisite to being "public accommodations" under that California statute, was not a conclusion that the two entities were either a single business establishment or a single public accommodation.

Petitioner has not even begun to explain how *Duarte's* conclusion that RI and a local Rotary club were each "business establishments" could possibly conflict with the District Court's decision in this lawsuit that Jenkins had failed to identify a single piece of record evidence to show that RI exercised control over RCH, much less that RI exercised control over RCH's decision to terminate Jenkins's employment. These decisions involve different legal analyses directed at different issues and are based on different factual records developed forty (40) years apart. The District Court's decision in the instant case does not conflict with *Duarte.*

IV. Petitioner Failed to Fully Describe the Findings of the Courts Below.

Petitioner asserts at page 9 of her petition that "the facts clearly indicate that RI directed [RCH's] 'discriminatory act of which the plaintiff is complaining.'" The "act" can only refer to the termination of Petitioner's employment. Yet Petitioner has continually failed, and still fails, to cite any factual record supporting this bald assertion. Indeed, Petitioner's citation in support of this statement is to language from the *Nesbit* opinion, not factual findings or evidence in Petitioner's case.

The factual record in this case is contained in the District Court's decision, which found that RI "plays [no]

role in . . . the hiring, firing, training and/or supervising of employees—of RCH." (Appx. D at 24a). The District Court explained:

> The Plaintiff claims that "the record is flooded with evidence" that RI exercised control over RCH, but does not identify a single piece of record evidence to support that claim.

(Appx. D at 26a).

The District Court also found that Petitioner's claim that RI directed her termination through actions by Una Martone was unfounded because Petitioner failed to controvert the Respondents' evidence that Ms. Martone was never an employee of either RI or RCH with "anything of substance from the record." (Appx. D at 24a n.4).

Petitioner refers to RI's code of conduct, which states an expectation that members and member clubs will "respect all individuals, regardless of their sexual orientation, gender identity, or any other characteristic protected by law" (Petition at 5). But, Petitioner does not cite any RI policy or directive relating to enforcement of this expectation, much less anything controlling or relating to individual membership club employees or employment decisions.

V. The Petition Does Not Identify Any Unsettled Issue of Great Importance.

The Circuit Courts of Appeals' different formulations of what is largely the same test for determining whether a distinct entity should be treated as a single employer

have existed since the Seventh Circuit issued Judge Posner's opinion in *Papa v. Katy Industries, Inc.,* 166 F.3d 937 (7th Cir. 1999), *cert denied,* 528 U.S. 1019 (1999). To the extent that there are subtle differences between the *Papa-Nesbit* tests and the "integrated enterprise" test, they do not present a "vitally important issue," see *Apache Stronghold v. United States,* 145 S.Ct. 1480 (2025) (Gorsuch, J. dissenting), because each formulation includes the need for an organizational relationship constituting or comparable to a parent-subsidiary relationship between the entities proposed to be combined, and a joint involvement in employment decisions generally or regarding a particular act.

Finally, Petitioner Jenkins has made no showing that application of the "integrated enterprise" test would have changed the outcome of her claim in light of the now conclusive finding in the District Court that "RI plays [no] role in . . . the hiring, firing, training and/or supervising of employees – of RCH." (Appx. D at 24a). Nor has Petitioner suggested any alternate test that could conceivably do so under the facts found by the District Court and affirmed by the Circuit Court. This case remains a matter involving a decision of a small independent non-profit organization to terminate its only part-time employee based on a particular set of facts. This case was decided by the District Court, and that decision was affirmed in the Court of Appeals. Petitioner fails to establish that this case should proceed any further.

CONCLUSION

For all the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully submitted,

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