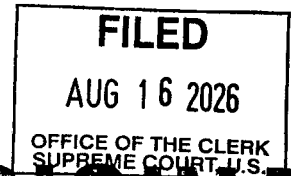


No. _____

26-5428



ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

ZARA NORTHOVER,

Petitioner,

v.

WILLIAM BANFIELD, ROCKET MORTGAGE, LLC

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE MICHIGAN COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, consistently with 28 U.S.C. § 1738 and Title VII's administrative framework, a State may apply claim-preclusion and compulsory-joinder doctrines to make amendment or supplementation of a pending action effectively mandatory for preservation of a Title VII retaliation claim arising from post-complaint conduct, where the claimant satisfied the applicable Title VII pre-suit requirements and filed a separate action.

PARTIES TO THE PROCEEDING

Petitioner Zara Northover was the plaintiff in the Wayne County Circuit Court and the appellant in the Michigan Court of Appeals and Michigan Supreme Court.

Respondents William Banfield an individual and Rocket Mortgage, LLC were defendants in the Wayne County Circuit Court and appellees in the Michigan Court of Appeals and Michigan Supreme Court.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case:

Wayne County Circuit Court

Northover v. Banfield, No. 22-010389-CD (Wayne Cnty. Cir. Ct.), order granting summary disposition entered March 27, 2023.

Michigan Court of Appeals

Northover v. Banfield, No. 365700 (Mich. Ct. App.), judgment entered May 23, 2025.

Michigan Supreme Court

Northover v. Banfield, No. 168725 (Mich.), order denying application for leave to appeal entered May 22, 2026.

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PROCEDURAL CHRONOLOGY

July 7, 2021

Petitioner files First Action.

December 2021

Petitioner returns from leave and alleges subsequent retaliation.

May 25, 2022

Petitioner files EEOC Charge concerning subsequent retaliation.

July 14, 2022

EEOC issues Notice of Right to Sue.

August 31, 2022

Petitioner files Second Action asserting subsequently accruing retaliation claims.

November 29, 2022

Trial court hears both actions; Petitioner proposes consolidation rather than dismissal; court takes both matters under advisement.

December 14, 2022

The trial court enters an interlocutory order in First Action expressly stating that the order "is not a final order," does not resolve the last pending claim, and does not close the case.

January 10, 2023

Wayne County Circuit Court enters final judgment in First Action.

March 27, 2023

Wayne County Circuit Court dismisses Second Action under claim-preclusion and compulsory-joinder principles.

May 23, 2025

Michigan Court of Appeals affirms dismissal.

May 22, 2026

Michigan Supreme Court denies leave to appeal.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ZARA NORTHOVER,

Petitioner,

v.

WILLIAM BANFIELD, ROCKET MORTGAGE, LLC, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT
OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

Petitioner Zara Northover respectfully prays that a writ of certiorari issue to review the judgment of the Michigan Court of Appeals.

In the alternative, to the extent this Court concludes that its existing precedents resolve the Question Presented, Petitioner requests that the Court summarily reverse the judgment below and remand for further proceedings.

OPINIONS BELOW

The unpublished opinion of the Michigan Court of Appeals affirming the dismissal of Petitioner's action, *Northover v. Banfield*, No. 365700 (Mich. Ct. App. May 23, 2025), is reproduced at Appendix A, 1a–11a. The Wayne County Circuit Court Opinion and Order granting summary disposition and dismissing Petitioner's complaint, entered March 27, 2023, is reproduced at Appendix B, 12a–18a. The Michigan Supreme Court order denying Petitioner's application for leave to appeal, entered May 22, 2026, is reproduced at Appendix C, 19a.

JURISDICTION

The Michigan Court of Appeals entered judgment on May 23, 2025. The Michigan Supreme Court denied Petitioner's application for leave to appeal on May 22, 2026. *Pet. App.* 1a–11a, 19a.

This Court has jurisdiction under 28 U.S.C. § 1257(a). The judgment below is final, and the Michigan Supreme Court is the highest court of the State in which a decision could be had. This petition presents federal questions concerning the Supremacy Clause of the United States Constitution and the enforcement of rights arising under Title VII of the Civil Rights Act of 1964.

The federal question was raised below. Petitioner argued in the Michigan appellate proceedings that her post-complaint retaliation claims arose from subsequent conduct, were subject to Title VII's administrative process, and were not barred by res judicata; she expressly relied on *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). The Michigan Court of Appeals nevertheless affirmed dismissal under res judicata and collateral-estoppel principles, and the Michigan Supreme Court denied discretionary review. *Pet. App.* 1a–11a, 19a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, Clause 2 of the United States Constitution provides, in relevant part:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby”

28 U.S.C. § 1738 provides, in relevant part:

“[J]udicial proceedings . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State . . . from which they are taken.”

Section 704(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), provides, in relevant part:

“It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any

practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”

Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1), provides, in relevant part:

“[T]he Commission . . . shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge . . . by the person claiming to be aggrieved.”

INTRODUCTION

Congress established a comprehensive framework governing the enforcement of Title VII. Before bringing a Title VII claim in court, a claimant ordinarily must first file a charge with the Equal Employment Opportunity Commission, permitting administrative investigation and conciliation before litigation.

That federal framework intersects here with state preclusion and compulsory-joinder doctrines in a way that presents an important and recurring question.

Petitioner filed her first employment-discrimination action in July 2021, challenging conduct that had already occurred. She remained employed by Respondent Rocket Mortgage while that action proceeded. In December 2021, months after the operative complaint was filed, Petitioner’s Product Manager position was eliminated and she was reassigned to refinance mortgage banking. Petitioner had substantial prior experience and demonstrated success in purchase mortgage banking and contended that available purchase positions were more comparable and better aligned with her experience. Instead, she was placed in refinance, a role for which she alleged she was not adequately trained. Petitioner further alleged that the reassignment constituted a demotion, resulted in an approximately \$20,000 reduction in compensation, and substantially reduced the workplace flexibility she had enjoyed as a Product Manager. Those events had not occurred when she commenced the First Action. Petitioner thereafter pursued the Title VII administrative process concerning the subsequent conduct, received a Notice of Right to Sue, and commenced the Second Action while the First Action remained pending.

Michigan applied claim-preclusion and compulsory-joinder principles on the ground that the subsequent retaliation should have been incorporated into the earlier litigation. The Court of Appeals reasoned that Petitioner could have amended her pleadings after the subsequent conduct occurred and held that the claims were barred by res judicata and, as to the reassignment itself, collateral estoppel. The Court of Appeals also conducted an alternative analysis under MCR 2.116(C)(10), addressed below. But the availability of amendment or supplementation does not itself answer the federal question presented; it exposes it. The question is whether a State may make incorporation of post-complaint conduct into an already-pending action effectively mandatory on pain of preclusion when that conduct gives rise to a Title VII claim subject to the federal administrative process.

The procedural history sharpens that question. When the parties argued the Second Action on November 29, 2022, both actions remained pending before the same trial judge. Petitioner's counsel expressly proposed consolidation rather than dismissal if the court concluded the actions overlapped, and the court considered that alternative while the First Action remained unresolved. The court subsequently entered judgment in the First Action on January 10, 2023, and did not dismiss the Second Action until March 27, 2023. The Court of Appeals later reasoned that consolidation was unavailable because the First Action was no longer pending when the Second Action was dismissed. But that reasoning does not address the earlier period during which both actions were simultaneously pending and consolidation had already been placed before the trial court.

This Court's precedents make the distinction between existing claims and claims arising from post-complaint conduct significant. In *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 590 U.S. 405, 412 (2020), this Court reaffirmed that claim preclusion generally does not bar claims predicated on events postdating the filing of the initial complaint because subsequent events may create new material operative facts giving rise to a new claim for relief. That principle traces to *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 327–328 (1955), which rejected the use of an earlier judgment to extinguish claims arising from subsequent conduct. And in the Title VII context, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 110–114 (2002), recognizes discrete retaliatory acts as separately actionable unlawful employment practices.

The resulting tension is substantial. Petitioner alleges that retaliation occurred after commencement of the First Action. She pursued the federal administrative process concerning that subsequent conduct and obtained a Notice of

Right to Sue. Yet Michigan treated her failure to incorporate that conduct into the already-pending action as a basis for precluding the later suit. Indeed, the Court of Appeals reasoned both that Petitioner could have amended the First Action to encompass the subsequent retaliation and that, by raising the reassignment as an adverse action in opposition to summary disposition in that case, she had litigated the issue sufficiently to trigger collateral estoppel.

That combination presents the question warranting this Court's review. Amendment or supplementation may provide a procedural means of bringing subsequent events into an existing action. But this Court has not held that the availability of amendment or supplementation permits a State to convert that procedural option into an effectively mandatory condition for preserving a Title VII claim arising from post-complaint conduct, on pain of preclusion, where the claimant instead pursued the applicable federal administrative process and filed a separate action.

The issue is recurring and consequential. Employment litigation does not freeze the employment relationship in place. An employee may remain at work while an earlier discrimination action proceeds, during which new transfers, reductions in compensation, denials of opportunities, discipline, or other asserted retaliation may occur. Those subsequent acts may trigger Title VII's administrative process while the earlier lawsuit remains pending. Employees, employers, and courts therefore need a clear rule governing whether state claim-preclusion and compulsory-joinder doctrines may convert a procedural mechanism for addressing subsequent events into an effectively mandatory condition for preserving a federal claim arising from post-complaint conduct.

This case squarely presents that question. The First Action was filed before the subsequent conduct occurred and before Petitioner pursued the EEOC process concerning that conduct. Petitioner separately presented the subsequent conduct to the EEOC, obtained a Notice of Right to Sue, and filed the Second Action while the First Action remained pending. The rule applied below nevertheless treated Petitioner's failure to incorporate the subsequent Title VII claim into the earlier litigation as a basis for preclusion. The petition therefore asks whether, consistently with this Court's post-filing-claim precedents and Title VII's statutory framework, a State may make amendment or supplementation of an earlier action effectively mandatory for preserving a federal claim arising from conduct that occurred after that action was filed and was separately presented through Title VII's applicable administrative process.

STATEMENT OF THE CASE

A. THE FIRST ACTION

On July 7, 2021, Petitioner filed an employment-discrimination action in the Wayne County Circuit Court arising from alleged discrimination and retaliation that had occurred up to that time. The claims asserted in that action were based on conduct that had already occurred and did not include the retaliation claims at issue here because the events giving rise to those claims had not yet occurred.

B. POST-FILING RETALIATION

While the First Action remained pending, Petitioner alleges that Respondents engaged in additional acts of retaliation occurring after commencement of that lawsuit. In December 2021, Petitioner's Product Manager position was eliminated and she was reassigned to refinance mortgage banking. Petitioner alleged that the reassignment constituted a demotion and resulted in an approximately \$20,000 reduction in compensation. She further alleged inadequate training and denial of transfer opportunities, including opportunities better aligned with her prior experience in purchase mortgage banking.

These alleged acts occurred after Petitioner commenced the First Action and were not among the operative facts existing when the original complaint was filed.

C. TITLE VII'S ADMINISTRATIVE PROCESS

The post-filing conduct formed the basis of a separate Title VII retaliation claim. Title VII ordinarily requires a claimant to file a charge with the Equal Employment Opportunity Commission before bringing such a claim in court. See 42 U.S.C. § 2000e-5; *Fort Bend County v. Davis*, 587 U.S. 541, 548–550 (2019).

Petitioner pursued that process by filing a separate EEOC charge addressing retaliation beginning in December 2021, after commencement of the First Action. While that administrative process proceeded, the First Action continued in the Wayne County Circuit Court under an existing scheduling order.

The EEOC issued Petitioner a Notice of Right to Sue on July 14, 2022, while the First Action remained pending. At that point, amendment or supplementation of the First Action may have been procedurally available. Petitioner instead commenced the Second Action after completing the applicable federal administrative process.

The relevant distinction is therefore not whether amendment or supplementation became available. The conduct underlying the subsequent Title VII retaliation claim occurred after commencement of the First Action, proceeded through Title VII's administrative process, and was thereafter asserted in a separate action rather than incorporated into the earlier litigation.

D. THE SECOND ACTION

After receiving the Notice of Right to Sue, Petitioner commenced the Second Action asserting Title VII and related retaliation claims arising from the post-filing conduct.

Respondents moved to dismiss, arguing that those claims should have been asserted in the First Action through amendment or supplementation. The Wayne County Circuit Court dismissed the Second Action under Michigan's preclusion and compulsory-joinder principles.

At oral argument, Respondents argued that Petitioner should have sought leave to amend the First Action rather than file a separate lawsuit. Petitioner's counsel proposed consolidation rather than dismissal if the court concluded that the matters belonged together. Both actions were then pending before the same trial judge, who took both matters under advisement and later entered separate judgments.

The trial court also questioned why Petitioner had not sought leave to amend and posed a hypothetical concerning what would occur if Petitioner were subsequently terminated. Petitioner's counsel responded that, if termination occurred at that stage of the Second Action, he would move to amend that action. Those proceedings illustrate the procedural question presented here: whether the availability of amendment or supplementation may be made effectively mandatory on pain of preclusion for preserving a Title VII retaliation claim arising from post-complaint conduct.

E. PROCEEDINGS BELOW

The Wayne County Circuit Court dismissed the Second Action.

The Michigan Court of Appeals affirmed. It conducted an alternative analysis under MCR 2.116(C)(10) and also concluded that dismissal was proper under MCR 2.116(C)(7) based on the judgment in the First Action. In applying *res judicata* and collateral-estoppel principles, the Court of Appeals reasoned, among other things,

that Petitioner could have amended the First Action after the subsequent conduct occurred rather than pursue the claims in a separate lawsuit.

The Michigan Supreme Court denied leave to appeal, stating that it was “not persuaded that the questions presented should be reviewed by this Court.”

The Court of Appeals’ alternative C(10) analysis and its preclusion holdings therefore provide distinct grounds addressed in this petition. As explained below, the alternative analysis does not eliminate the federal question concerning the application of claim-preclusion and compulsory-joinder principles to the subsequent Title VII claim.

F. THE QUESTION PRESENTED

The decision below treated the availability of amendment or supplementation as effectively necessary to preserve Petitioner’s Title VII retaliation claim arising from post-complaint conduct. Petitioner does not contend that amendment or supplementation remained unavailable after the EEOC issued the Notice of Right to Sue. Rather, the question is whether that procedural availability permitted state claim-preclusion and compulsory-joinder doctrines to make amendment or supplementation effectively mandatory on pain of preclusion.

This case therefore presents the question whether, consistently with 28 U.S.C. § 1738 and Title VII’s administrative framework, a State may apply claim-preclusion and compulsory-joinder doctrines to make amendment or supplementation of a pending action effectively mandatory for preservation of a Title VII retaliation claim arising from post-complaint conduct, where the claimant completed the applicable federal administrative process and filed a separate action.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH THIS COURT’S PRECEDENTS GOVERNING CLAIMS ARISING FROM SUBSEQUENT CONDUCT.

This Court has long recognized that claims arising from subsequent conduct are distinct from claims that existed when an earlier action commenced. In *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002), the Court held that “[e]ach discrete retaliatory . . . act constitutes a separate actionable unlawful employment practice.” Likewise, in *Lawlor v. National Screen Service Corp.*, 349

U.S. 322, 328 (1955), this Court explained that a prior judgment “cannot be given the effect of extinguishing claims which did not even then exist.”

More recently, this Court unanimously reaffirmed the significance of post-filing conduct in *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 590 U.S. 405 (2020). The Court explained that claim preclusion generally “does not bar claims that are predicated on events that postdate the filing of the initial complaint.” *Id.* at 412. Events occurring after the filing of an initial complaint may create new “material operative facts” giving rise to “a new claim to relief.” *Id.* In doing so, *Lucky Brand* expressly relied upon *Lawlor*’s recognition that subsequent conduct may give rise to claims an earlier judgment cannot extinguish.

Petitioner’s retaliation claim arose from conduct occurring after she filed her initial lawsuit on July 7, 2021. The subsequent claim was based upon alleged retaliation during the pendency of that action, including reassignment, reduction in compensation, denial of training opportunities, and other alleged adverse employment actions that had not occurred when the first complaint was filed.

That chronology matters. The subsequent retaliation was not merely a new legal theory based upon the same operative facts alleged in the first complaint. It arose from subsequent conduct and new operative facts. Under *Morgan*, the alleged discrete retaliatory acts constituted separately actionable unlawful employment practices. Under *Lucky Brand* and *Lawlor*, the fact that those operative events postdated the filing of the initial complaint bears directly upon whether the resulting claim could properly be extinguished through preclusion.

The full-faith-and-credit framework does not eliminate that temporal inquiry. Under 28 U.S.C. § 1738, a state-court judgment generally receives the same preclusive effect it would receive in the courts of the rendering State. See *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380–382 (1985); *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 466 (1982). That framework therefore requires determining the scope of the earlier judgment’s preclusive effect; it does not itself answer whether subsequently occurring conduct constitutes the same claim or whether the availability of supplementation makes supplementation mandatory to preserve a claim arising from that conduct. This Court’s decisions in *Lawlor* and *Lucky Brand* make the timing of the operative facts central to that inquiry.

In applying preclusion principles, the decision below reasoned that Petitioner could have amended the First Action to include the subsequent conduct. In effect, the rule applied below treated the availability of amendment or supplementation as

a claim-preservation requirement: because Petitioner did not incorporate the claim arising from post-complaint conduct into the First Action, the subsequent federal claim was subject to preclusion.

But the availability of amendment does not answer the Question Presented; it creates it. The question is whether the availability of amendment or supplementation permits a State to make use of those procedural mechanisms effectively mandatory on pain of preclusion when subsequent conduct gives rise to a Title VII retaliation claim subject to the federal administrative process.

Lucky Brand, *Lawlor*, and *Morgan* do not answer that precise question. But together they establish the principles from which it arises: post-filing events may create new material operative facts giving rise to a new claim; subsequent conduct is not automatically extinguished by earlier litigation; and discrete retaliatory acts are separately actionable under Title VII.

The decision below creates tension with those principles by treating Petitioner's failure to incorporate subsequent retaliation into the pending First Action as grounds for precluding the resulting federal claim. This case therefore presents the unresolved question whether a State may effectively make amendment or supplementation mandatory on pain of preclusion when post-complaint conduct gives rise to a Title VII retaliation claim subject to the federal administrative process.

II. STATE PRECLUSION RULES CANNOT UNDERMINE CONGRESS'S TITLE VII ENFORCEMENT FRAMEWORK.

Congress established an administrative framework governing Title VII claims. Before bringing a Title VII claim in court, a claimant ordinarily must first present the claim to the Equal Employment Opportunity Commission, permitting administrative investigation and conciliation. This Court has recognized that Title VII's charge-filing requirement is a mandatory claim-processing rule, although not jurisdictional. *Fort Bend County v. Davis*, 587 U.S. 541, 548–550 (2019).

Petitioner followed that process. While the First Action remained pending, she pursued a separate EEOC charge addressing subsequent retaliation. The charge identified retaliation beginning in December 2021, after commencement of the First Action, and expressly invoked Title VII. *Pet. App.* 43a–44a. The Equal Employment Opportunity Commission subsequently issued a Notice of Right to Sue

on July 14, 2022. *Pet. App.* 39a–42a. Petitioner thereafter commenced the Second Action seeking judicial relief concerning that subsequent conduct.

Respondents' own arguments below illustrate the tension between the federal administrative process and the state preclusion rule applied here. At the November 29, 2022 hearing, Respondents argued that "Title VII requires a plaintiff to exhaust administrative remedies, before bringing suit," and that a Title VII plaintiff may file suit "only after the EEOC issues a right to sue letter." *Pet. App.* 27a–28a. Yet Respondents also argued that "what the plaintiff was required to do was to move to amend to add additional acts" to the First Action and that Petitioner "should've moved to amend the first case" to add the subsequent reassignment as "another adverse employment action." *Pet. App.* 28a, 30a–31a.

After completing the administrative process, Petitioner filed the Second Action while the First Action remained pending before the same judge. When Respondents argued that the subsequent claim should have been incorporated into the First Action, Petitioner's counsel proposed consolidation rather than dismissal: "If the Court believes that these matters should be consolidated, then the Court should consolidate them. But I do not believe that the Court should dismiss what is a viable claim." *Pet. App.* 34a. The trial court thereafter took "both matters under advisement." *Pet. App.* 38a. The First Action remained pending after that hearing. In its December 14, 2022 order, the trial court expressly stated: "This Order is not a final order, does not resolve the last pending claim, and does not close the case." *Pet. App.* 46a.

The question here is not whether consolidation should have been ordered or whether amendment became procedurally available after Petitioner received her Notice of Right to Sue. Petitioner does not contend that Title VII made amendment impossible after completion of the administrative process. Rather, the question is whether the availability of amendment permitted state preclusion and compulsory-joinder rules to make incorporation of a Title VII claim arising from post-complaint conduct effectively necessary to preserve that claim.

That distinction is consistent with the federal appellate decisions addressing supplementation of claims arising from subsequent conduct. The Sixth Circuit has recognized that such claims generally are not barred merely because the plaintiff could have supplemented a pending action. *Rawe v. Liberty Mutual Fire Insurance Co.*, 462 F.3d 521, 529–530 (6th Cir. 2006). The Eleventh Circuit likewise rejected the proposition that a plaintiff must supplement pending litigation to preserve

claims arising from subsequent discrimination. *Pleming v. Universal-Rundle Corp.*, 142 F.3d 1354, 1357–1359 (11th Cir. 1998).

Respondents' position before the Michigan Supreme Court further illustrates the issue. They characterized Petitioner's pursuit of the EEOC remedy as irrelevant to preclusion while relying upon completion of that process to argue that, once the Notice of Right to Sue issued, Petitioner could have amended the First Action. Completion of the federal administrative process may have made amendment available. Nothing in Title VII itself, however, makes amendment or supplementation of previously filed litigation a condition for preserving a retaliation claim arising from post-complaint conduct.

The resulting question implicates federal law, not merely the proper application of Michigan procedure. The Supremacy Clause limits a State's authority to impose procedural conditions upon the enforcement of federal rights. *Felder v. Casey*, 487 U.S. 131, 138, 147 (1988). As *Felder* explained, a State's authority to prescribe rules governing proceedings in its courts "does not extend so far as to permit States to place conditions on the vindication of a federal right." *Id.* at 147. Whether state preclusion and compulsory-joinder principles may make incorporation of a Title VII claim arising from post-complaint conduct into previously filed litigation effectively necessary for its preservation presents an important federal question warranting this Court's review.

III. THE QUESTION PRESENTED IS RECURRING AND WARRANTS THIS COURT'S REVIEW.

The question presented extends beyond the facts of this case. Retaliation may occur after an employee has engaged in protected activity or initiated litigation. When new retaliatory conduct occurs while earlier litigation remains pending, the Title VII administrative process applicable to that conduct may proceed on a different timeline from the existing lawsuit.

That procedural posture raises an important federal question: whether state claim-preclusion and compulsory-joinder doctrines may require a claimant to incorporate a Title VII claim arising from post-complaint conduct into earlier pending litigation in order to preserve that claim, even though the subsequent conduct is separately subject to Title VII's administrative process.

The issue has practical consequences for employees, employers, and courts. An employee confronting new retaliation while earlier litigation remains pending

needs to know whether completing the applicable federal administrative process and filing a separate action preserves the resulting claim, or whether the claim must instead be incorporated into the existing litigation to avoid preclusion. Employers likewise need to know the scope of claims resolved by an earlier action, and courts need a clear rule governing the interaction between claims arising from post-complaint conduct, Title VII's administrative process, and state preclusion doctrines.

The federal question was presented by Petitioner throughout the appellate proceedings. Petitioner challenged application of *res judicata* and Michigan's compulsory-joinder rule to her separate federal retaliation claims, arguing that the challenged retaliation occurred after commencement of the First Action and addressing the significance of the separate EEOC process and Notice of Right to Sue. Before the Michigan Supreme Court, Respondents contested that position, maintaining that once the EEOC issued Petitioner's Notice of Right to Sue while the First Action remained pending, Petitioner could have amended that action to add her Title VII claim.

The broader significance of the question was also addressed by *amicus curiae*. The Michigan Supreme Court granted the Honorable Charles E. Walker, Jr. (Ret.), a former Chief Commissioner and Administrative Law Judge of the Massachusetts Commission Against Discrimination, leave to participate as *amicus curiae* and accepted his brief for filing. *Pet. App.* 47a. Amicus addressed whether retaliation occurring after the filing of an initial action may be foreclosed by *res judicata* and the relationship between subsequent retaliation and Title VII's administrative process. Respondents thereafter contested that position and requested that the amicus brief be stricken. Petitioner responded, again addressing whether post-filing retaliation could be barred by *res judicata*.

The dispute below thus presents more than a disagreement over the application of Michigan preclusion law to a single litigant. It presents a recurring question concerning the interaction between Title VII's federal administrative framework and state rules governing preservation of claims arising from post-complaint conduct. This Court's review is warranted to provide guidance on that question.

IV. THIS CASE IS AN APPROPRIATE VEHICLE FOR RESOLVING AN IMPORTANT FEDERAL QUESTION.

This case presents an appropriate vehicle for resolving the Question Presented because the Court need not determine whether Petitioner ultimately can prove retaliation. The threshold question is whether Michigan may apply claim-preclusion and compulsory-joinder doctrines to extinguish a Title VII retaliation claim arising from post-complaint conduct because it was not incorporated into an earlier pending action, notwithstanding the federal administrative process applicable to that claim. If Petitioner prevails, the appropriate disposition would be to reverse or vacate the judgment below and remand for further proceedings under the proper legal framework.

First, the relevant chronology is established by the record. Petitioner filed the First Action on July 7, 2021. The retaliatory conduct underlying the subsequent claim occurred thereafter. Petitioner pursued a separate administrative charge concerning that conduct, receiving a Notice of Right to Sue on July 14, 2022, Pet. App. 39a-42a, and thereafter sought judicial relief. The temporal sequence necessary to resolve the Question Presented therefore does not depend upon resolution of disputed facts.

Second, Petitioner completed the federal administrative process before commencing the Second Action. The question is therefore not whether Petitioner obtained a Notice of Right to Sue or whether amendment became procedurally available thereafter. It is whether that availability permitted state law to make amendment or supplementation of the First Action effectively mandatory for preservation of the federal claim arising from post-complaint conduct, such that pursuing the claim separately after completing Title VII's administrative process resulted in preclusion.

Third, the procedural relationship between the two actions is established by the contemporaneous record. Both actions were simultaneously pending before the same trial judge when they were heard on November 29, 2022. Respondents maintained both that Title VII required exhaustion before suit and that Petitioner should have amended the First Action to add the subsequent retaliation. Pet. App. 27a-31a. Petitioner's counsel expressly urged that, if the court believed the matters should proceed together, "the Court should consolidate them" rather than dismiss a viable claim. Pet. App. 34a. The trial court thereafter stated that it would take "both matters under advisement" and issue opinions. Pet. App. 38a. Its December 14, 2022 order in the First Action expressly left the remaining retaliation claim under advisement and stated that the order was not final and did not close the case. Pet. App. 45a-46a. The court did not enter final judgment in the First Action until

January 10, 2023, Pet. App. 20a–24a, while the Second Action remained pending; it subsequently dismissed the Second Action on March 27, 2023. Pet. App. 12a–18a.

The Court of Appeals nevertheless reasoned that consolidation was unavailable because the First Action was no longer pending when the Second Action was ultimately dismissed. Pet. App. 1a–11a. That chronology matters. The absence of simultaneously pending actions at the time of dismissal resulted from the sequencing of the trial court’s decisions, not from the absence of simultaneous proceedings when consolidation was presented. Petitioner does not ask this Court to decide whether consolidation was required as a matter of Michigan procedure. Rather, the chronology demonstrates that the relationship between the two actions, and the consequences attributed to Petitioner’s failure to incorporate the subsequent claim into the First Action, are concretely presented by this record.

The Court of Appeals’ alternative C(10) analysis does not remove the federal preclusion question from the judgment below or eliminate the need to determine the proper legal framework governing the relationship between the two actions. Although discovery in the Second Action remained open when that action was dismissed, the Court of Appeals relied upon discovery conducted in the First Action, including depositions concerning Petitioner’s subsequent reassignment, in concluding that additional discovery was unnecessary and that summary disposition could alternatively be sustained under MCR 2.116(C)(10). Pet. App. 1a–11a. Thus, the procedural relationship between the actions informed both the preclusion ruling and the alternative merits analysis: the First Action supplied the judgment invoked to preclude the Second Action and the discovery relied upon in sustaining the alternative C(10) disposition, even though consolidation had been expressly proposed while both actions remained pending.

Fourth, the judgment below squarely rests on Michigan’s application of preclusion principles to the subsequent retaliation claim. The Michigan Court of Appeals affirmed dismissal based on res judicata and collateral estoppel, including its conclusion that Petitioner could have amended the First Action after receiving her Notice of Right to Sue. Pet. App. 1a–11a. The federal issue is therefore embedded in the reasoning supporting the judgment below rather than arising from a factual dispute collateral to that judgment.

Finally, resolution of the Question Presented does not require this Court to decide whether Respondents actually retaliated against Petitioner, whether Petitioner ultimately can establish the elements of a Title VII retaliation claim, or what relief she may ultimately obtain. Those questions remain for further

proceedings under the proper legal framework if the judgment below is reversed or vacated. The issue before this Court is antecedent: whether state preclusion and compulsory-joinder principles may operate to foreclose the federal claim arising from post-complaint conduct under these circumstances.

This case therefore provides an appropriate vehicle for determining whether the availability of amendment or supplementation permits a State to make those procedures effectively mandatory for preservation of a Title VII retaliation claim arising from post-complaint conduct and subject to the federal administrative process.

V. THE DECISION BELOW CONFLICTS WITH A BROADLY RECOGNIZED FEDERAL PRINCIPLE REGARDING LATER-ACCRUING CLAIMS.

Although this case does not present a conventional conflict among the federal courts of appeals, the decision below departs from a broadly recognized federal principle: conduct occurring after the filing of an action may create new operative facts giving rise to a new claim, and the availability of amendment or supplementation does not ordinarily require that subsequently accruing claim to be added to the pending action on pain of preclusion.

This Court's precedents establish the foundation for that principle. In *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 328 (1955), the Court explained that a prior judgment "cannot be given the effect of extinguishing claims which did not even then exist." More recently, *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 590 U.S. 405, 412 (2020), reaffirmed that claim preclusion generally "does not bar claims that are predicated on events that postdate the filing of the initial complaint," because subsequent events may create new "material operative facts" giving rise to "a new claim to relief." And in the Title VII context, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002), holds that each discrete retaliatory act constitutes a separate actionable unlawful employment practice.

The federal courts of appeals have applied the same basic principle. Of particular significance here, the Sixth Circuit has rejected the argument that claims based on post-filing conduct are barred because the plaintiff could have amended the earlier complaint. In *Rawe v. Liberty Mutual Fire Insurance Co.*, 462 F.3d 521, 529-530 (6th Cir. 2006), the court followed what it described as the majority rule and explained that "the opportunity to file a supplemental complaint is not an

obligation.” It therefore held that claims arising from conduct occurring after the filing of the earlier complaint were not barred by claim preclusion.

The Eleventh Circuit has reached the same conclusion in an employment-discrimination setting. In *Pleming v. Universal-Rundle Corp.*, 142 F.3d 1354, 1357-1359 (11th Cir. 1998), alleged discriminatory conduct occurred while the plaintiff’s first employment action remained pending. Although the plaintiff discussed those subsequent events in briefing in the first action, she did not supplement her complaint to assert claims based upon them. The Eleventh Circuit nevertheless reversed dismissal of the subsequent action, explaining that supplementation under Rule 15(d) is optional and that res judicata does not require a plaintiff to supplement an existing action with after-acquired claims.

Other circuits reinforce the same temporal distinction. See *TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 499-503 (2d Cir. 2014) (recognizing that claims based on subsequent conduct are not barred merely because they concern conduct similar to that challenged in an earlier action); *Howard v. City of Coos Bay*, 871 F.3d 1032, 1039-1041 (9th Cir. 2017) (holding that claim preclusion does not apply to claims accruing after the filing of the operative complaint). These authorities arise in differing procedural settings, but they reflect the same principle: post-filing events may create new operative facts giving rise to claims that a plaintiff is not required to add to pending litigation on pain of preclusion.

A recent decision from the Eastern District of Michigan illustrates the significance of that temporal distinction in the Title VII retaliation context. In *Cammon v. Blue Cross Blue Shield of Michigan*, No. 24-10422, 2025 WL 2201660 (E.D. Mich. Aug. 1, 2025), the court applied *Morgan* to a subsequent alleged retaliatory act—the December 2022 rescission of a job offer. The court determined that the retaliation claims based principally on that subsequent act were timely because the plaintiff filed an EEOC charge within the applicable period and commenced suit within 90 days after receiving her right-to-sue letter. The court then separately considered the sufficiency of those retaliation claims and, although finding the allegations deficient, permitted amendment because some of the deficiencies could be cured. *Cammon* did not address the preclusion question presented here. It illustrates, however, the operation of *Morgan* and Title VII’s pre-suit framework when retaliation occurs later: the subsequent discrete act was measured under its own charge-filing timeline and received separate judicial consideration.

The significance of these authorities lies not in a conventional circuit split, but in the consistency of the underlying federal principle. Post-filing conduct may create new operative facts giving rise to a distinct claim. Amendment or supplementation may be available, but *Rawe* and *Pleming* expressly reject treating that opportunity as an obligation whose nonuse results in claim preclusion. That distinction is especially consequential where, as here, the subsequent claim arises under Title VII and is subject to Title VII's charge-filing process before suit.

Petitioner's retaliation claim arose from alleged conduct occurring after she commenced the First Action. She pursued the applicable Title VII pre-suit process concerning that subsequent retaliation, received a Notice of Right to Sue, and filed the Second Action while the First Action remained pending. Michigan nevertheless applied claim-preclusion and compulsory-joinder principles because Petitioner had not incorporated the subsequent claim into the earlier litigation. Although the Court of Appeals also supplied an alternative C(10) analysis, that analysis relied on the record developed in the First Action rather than a record developed through discovery on the subsequent claim in the Second Action. The significance of that alternative ground, and why it does not eliminate the federal question presented, is addressed in Part VI below.

The decision below thus presents a question this Court's precedents have not resolved. Federal law recognizes that subsequent conduct may generate a new claim; federal appellate courts recognize that supplementation of pending litigation is not ordinarily mandatory to preserve claims arising from subsequent conduct; and Title VII subjects the subsequent federal claim to an applicable pre-suit administrative process. The rule applied below nevertheless permitted state preclusion principles to attach forfeiture to Petitioner's failure to add the subsequent claim to litigation commenced before the alleged retaliatory conduct occurred.

This Court has not resolved whether state claim-preclusion and compulsory-joinder doctrines may make amendment or supplementation effectively mandatory on pain of forfeiture where subsequent retaliatory conduct gives rise to a federal claim subject to Title VII's applicable pre-suit requirements. Review is warranted to resolve that question.

VI. THE JUDGMENT BELOW CANNOT BE SUSTAINED ON ALTERNATIVE GROUNDS.

A. THE COURT OF APPEALS' ALTERNATIVE C(10) ANALYSIS DOES NOT ELIMINATE THE FEDERAL QUESTION PRESENTED.

The Court of Appeals did not rely exclusively on claim preclusion and collateral estoppel. It also concluded that summary disposition could be affirmed under MCR 2.116(C)(10). That alternative analysis does not eliminate the federal question presented here.

The trial court stated that it granted summary disposition in the Second Action under MCR 2.116(C)(7) and (C)(8). Pet. App. 4a. The Court of Appeals concluded, however, that the trial court's analysis effectively proceeded under C(10) and determined that it could review the judgment under that provision. Pet. App. 4a–5a. The court acknowledged that discovery had not been completed in the Second Action. Indeed, discovery was scheduled to close sixteen days after dismissal but held that additional discovery was unnecessary because of what it described as the “unique posture of the two lawsuits.” Pet. App. 5a.

That conclusion rested substantially upon the First Action. The Court of Appeals emphasized that discovery in the First Action continued after Petitioner's December 2021 reassignment and that depositions taken there addressed the reassignment. Pet. App. 5a–6a. It later explained that the trial court had “relied on facts developed in the depositions in the first lawsuit” in granting summary disposition. Pet. App. 9a. The appellate court therefore used the evidentiary development of the First Action as the basis for concluding that further discovery concerning the subsequent retaliation in the Second Action was unnecessary.

That procedural relationship is confirmed by the underlying record. The Second Action alleged Title VII retaliation, and Respondents themselves argued at the November 29, 2022 hearing that Title VII required exhaustion before suit and that Petitioner had filed an EEOC charge concerning the December 14, 2021 reassignment. Pet. App. 27a–28a. The Second Action nevertheless proceeded to dismissal without completion of its own discovery.

The significance here is not whether Michigan correctly applied its summary-disposition rules. It is that the alternative C(10) analysis itself depended upon treating the evidentiary record developed in the First Action as sufficient to adjudicate retaliation arising after that action commenced and subjected to Title VII's separate administrative process.

The Court of Appeals' own treatment of the alternative ground confirms its relationship to the preclusion question. After conducting its C(10) analysis, the court held that even if summary disposition under C(10) were erroneous, the error was harmless because "[s]ummary disposition would have also been proper under MCR 2.116(C)(7) because of the prior final judgment in the first lawsuit." Pet. App. 9a. It then applied res judicata and collateral estoppel, reasoning that Petitioner could have amended the First Action to add the subsequent retaliation and that the reassignment had been addressed in the First Action. Pet. App. 9a-12a.

Thus, the alternative merits analysis and the preclusion holding are not unrelated features of the judgment below. Both rest upon treating the First Action as the proceeding in which the subsequently accruing retaliation could or should have been adjudicated. The Question Presented asks whether state preclusion principles may produce that result for a later-accruing Title VII claim subject to the federal pre-suit process. The Court of Appeals' alternative C(10) analysis therefore does not remove that federal question from the case.

B. Completion Of The Administrative Process Did Not Transform The Subsequent Claim Into A Claim Existing When The First Action Was Filed.

Respondents may contend that because Petitioner received a Notice of Right to Sue while the First Action remained pending, she could have amended or supplemented that action after completing the administrative process. But that argument concerns procedural availability; it does not alter when the operative facts underlying the subsequent retaliation claim arose.

The retaliation claim arose from conduct occurring after the First Action was filed. The record confirms that Petitioner filed an EEOC charge concerning the December 2021 reassignment and thereafter received a Notice of Right to Sue before commencing the Second Action. Pet. App. 43a-44a, 39a-42a. Receipt of that notice did not transform those subsequent events into operative facts existing when the initial complaint was filed.

Lucky Brand recognizes that post-filing events may create new material operative facts giving rise to a new claim for relief. 590 U.S. at 412. *Morgan* recognizes discrete retaliatory acts as separately actionable unlawful employment practices. 536 U.S. at 114. And *Lawlor* recognizes that subsequent wrongful conduct may give rise to claims an earlier judgment cannot extinguish. 349 U.S. at 327-328.

The decision below nevertheless reasoned that Petitioner could have amended the First Action to add the subsequent retaliation and relied upon that conclusion in applying res judicata. Pet. App. 10a-11a. That reasoning makes the availability of amendment dispositive of the preclusive effect of the first judgment, notwithstanding that the alleged retaliation occurred after commencement of the First Action and was subjected to Title VII's administrative process.

Thus, even assuming Petitioner could have sought amendment or supplementation after receiving the Notice of Right to Sue, the federal question remains: whether a State may make that procedural option effectively mandatory and extinguish a subsequently accruing Title VII retaliation claim when the claimant instead files a separate action after completing the applicable federal administrative process.

C. This Case Presents A Federal Question, Not A Mere Dispute Concerning Michigan Res Judicata Law.

Respondents may characterize this case as involving only the application of Michigan claim-preclusion law. But the question presented does not ask this Court to determine whether Michigan correctly applied its own res judicata doctrine as a matter of state law. It asks whether state claim-preclusion and compulsory-joinder principles may operate to extinguish a subsequently accruing Title VII retaliation claim because the claimant did not incorporate that claim into litigation commenced before the alleged retaliatory conduct occurred.

Section 1738 does not eliminate that federal question. Although state-court judgments ordinarily receive the same preclusive effect they would receive in the rendering State, see 28 U.S.C. § 1738; *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380–382 (1985); *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 466 (1982), that principle does not itself resolve whether the state preclusion rule, as applied to a subsequently accruing federal claim, may operate consistently with the governing federal statutory framework.

Title VII establishes a charge-filing process that a claimant ordinarily must satisfy before bringing the federal claim to court. See *Fort Bend County v. Davis*, 587 U.S. 541, 548-550 (2019). This Court has also examined preclusion principles in the Title VII context by asking “whether a common-law rule of preclusion would be consistent with Congress’ intent in enacting Title VII.” *University of Tennessee v. Elliott*, 478 U.S. 788, 796 (1986).

That inquiry is implicated here. Petitioner does not contend that amendment or supplementation was unavailable after she received the Notice of Right to Sue. Rather, the question is whether that procedural availability permitted state claim-preclusion and compulsory-joinder doctrines to make incorporation of the subsequent Title VII claim into the First Action effectively necessary to avoid forfeiture, even though the alleged retaliation occurred after that action commenced and proceeded through the applicable Title VII pre-suit process.

That question extends beyond the proper application of Michigan *res judicata* law. The Supremacy Clause limits a State's authority to impose procedural conditions upon the enforcement of federal rights. See *Felder v. Casey*, 487 U.S. 131, 138, 147 (1988). As *Felder* explained, a State's authority to prescribe rules governing proceedings in its courts "does not extend so far as to permit States to place conditions on the vindication of a federal right." *Id.* at 147. The Question Presented therefore concerns the permissible interaction between state preclusion rules and the federal framework governing a subsequently accruing Title VII retaliation claim, not merely whether Michigan correctly applied Michigan law.

VII. THIS CASE PRESENTS AN EXCEPTIONALLY IMPORTANT QUESTION CONCERNING THE ENFORCEMENT OF FEDERAL CIVIL-RIGHTS STATUTES.

Congress created Title VII's administrative framework to encourage investigation, conciliation, and voluntary compliance before litigation. That framework reflects Congress's judgment concerning the process by which employment-discrimination and retaliation claims proceed toward judicial review.

This Court has recognized the central role of the charge-filing requirement within Title VII's enforcement structure. See *Fort Bend County v. Davis*, 587 U.S. 541, 548–550 (2019). Although *Fort Bend* held that Title VII's charge-filing requirement is a mandatory claim-processing rule rather than a jurisdictional prescription, a claimant ordinarily must satisfy the applicable charge-filing requirements before bringing a Title VII claim in court. This Court has likewise examined preclusion principles in light of Congress's design for Title VII, asking "whether a common-law rule of preclusion would be consistent with Congress' intent in enacting Title VII." *University of Tennessee v. Elliott*, 478 U.S. 788, 796 (1986).

This case presents the unresolved interaction between those principles. Petitioner pursued the applicable Title VII pre-suit process concerning alleged retaliation occurring after commencement of the First Action, received a Notice of

Right to Sue, and filed the Second Action while the First Action remained pending. Michigan nevertheless applied claim-preclusion and compulsory-joinder principles because the subsequent claim had not been incorporated into the earlier litigation.

The rule applied below creates a consequential claim-preservation problem when alleged retaliation occurs during pending litigation. The subsequent Title VII claim proceeds through its applicable federal pre-suit process while the earlier lawsuit continues on a separate litigation timeline. Once the claimant receives a Notice of Right to Sue, amendment or supplementation of the earlier action may become procedurally available. The question is whether state preclusion law may then make use of that procedural option effectively necessary to preserve the subsequently accruing federal claim, such that filing a separate action after satisfying Title VII's applicable pre-suit requirements may nevertheless result in forfeiture.

That problem is recurring by its nature. Retaliation may occur precisely because an employee has complained of discrimination, filed a charge, or pursued litigation. When additional alleged retaliation occurs while an earlier employment action remains pending, the employee may confront two proceedings moving on different tracks: existing litigation concerning earlier conduct and the Title VII process applicable to subsequent conduct. Employees need to know how subsequently accruing federal claims must be preserved; employers need to know which claims remain subject to future litigation; and state and federal courts need a clear rule governing the interaction between later-accruing federal claims and state preclusion doctrines.

The issue also has significance beyond Title VII. Other federal employment-discrimination statutes employ administrative charge-filing procedures before certain claims proceed to court. The relationship between federally prescribed pre-suit processes and state rules governing preservation of subsequently accruing claims therefore has implications beyond a single litigant or a single statutory claim.

This case concretely presents the problem. The alleged retaliation occurred after Petitioner commenced the First Action. Petitioner pursued the applicable Title VII process concerning that subsequent conduct, received a Notice of Right to Sue, and commenced the Second Action while the First Action remained pending. The Court of Appeals nevertheless concluded that Petitioner could have amended the First Action and applied preclusion principles to the subsequent claim. *Pet. App.* 10a–11a. Nothing in Title VII expressly makes amendment or supplementation of

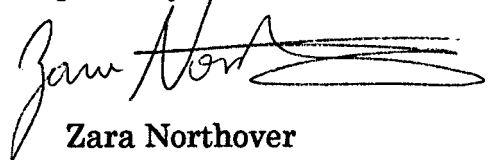
earlier pending litigation a condition for preserving a subsequently accruing retaliation claim.

This Court's review is warranted to determine whether state claim-preclusion and compulsory-joinder doctrines may attach forfeiture to the failure to incorporate a subsequently accruing Title VII claim into earlier pending litigation after the claimant has satisfied the applicable federal pre-suit requirements. As *Elliott* demonstrates, the inquiry is not merely whether Michigan correctly applied its own res judicata doctrine, but whether the preclusion rule applied to the federal Title VII claim may operate consistently with Congress's design for enforcement of that federal right.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Alternatively, if this Court concludes that its existing precedents already resolve the Question Presented, the Court should grant the petition, vacate the judgment below, and remand for further proceedings consistent with those precedents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Zara Northover', with a stylized flourish at the end.

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Executed on August 17, 2026