No. 14-1000

IN THE

Supreme Court of the United States

PHILIP A. MURPHY, JR., *et al.*,

Petitioners,

v.

VERIZON COMMUNICATIONS INC., *et al.*,

Respondents.

On Petition For a Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

BRIEF FOR THE VERIZON RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

This case concerns the transfer of pension plan assets and liabilities as part of a corporate spinoff. The Employee Retirement Income Security Act of 1974 ("ERISA") permits such pension plan mergers and spinoffs, and it is undisputed that the transfer at issue here was done in compliance with the specific statutory and regulatory provisions governing such transactions. It is further undisputed that Petitioners' pension benefits have continued uninterrupted. Petitioners nonetheless filed a lawsuit alleging violations of ERISA's fiduciary duty and prohibited transaction provisions. The questions presented are:

1. Whether, as every court of appeals to consider the issue has found, the decision to transfer pension plan assets and liabilities in connection with a spinoff is a settlor function that does not implicate ERISA's fiduciary duty requirements.

2. Whether, as every court of appeals to consider the issue has found, the decision to transfer pension plan assets and liabilities in connection with a spinoff is a settlor function that does not implicate ERISA's prohibited transaction provisions.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

This brief is filed on behalf of Respondents Verizon Communications Inc., Verizon Employee Benefits Committee, Verizon Pension Plan for New York and New England Associates, Verizon Management Pension Plan, Verizon Corporate Services Group, Inc., Verizon Enterprises Management Pension Plan, and Verizon Pension Plan for Mid-Atlantic Associates (collectively, the "Verizon Respondents").

Verizon Communications Inc. is a publicly-traded corporation, and no other publicly traded corporation owns 10% or more of the stock of Verizon Communications Inc.

Verizon Corporate Services Group, Inc. is a wholly-owned subsidiary of Verizon Communications Inc.

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INTRODUCTION

This case involves a straightforward and uncontroversial application of the Employee Retirement Income Security Act of 1974 ("ERISA") to the transfer of pension plan assets and liabilities in connection with a corporate spinoff. When Verizon Communications Inc. ("Verizon") divested its telephone directories business to Idearc, Inc. ("Idearc"), it transferred the pension obligations to retirees associated with that business from Verizon pension plans to "mirror" Idearc pension plans. Petitioners do not dispute that the transfer was done in conformity with the ERISA provisions specifically governing such transactions, or that their pension benefits have continued uninterrupted since the transfer.

The decision below followed settled law in holding that Verizon did not act in a fiduciary capacity in transferring plan assets and liabilities to Idearc. Accordingly, Petitioners' claims that Verizon breached ERISA's general fiduciary duty requirement and its prohibited transaction provisions failed. In the face of overwhelming authority supporting this result, Petitioners allege that the decision below conflicts with a one-paragraph holding in a 1994 decision of the Eighth Circuit. But that decision did not hold that simply transferring the obligations for participants' benefits to another plan is a fiduciary act. Even if that decision could be read as Petitioners assert, it would no longer be good law in the face of three subsequent decisions by this Court – decisions that other courts of appeals have invoked as establishing that such a transfer is a settlor action, not a fiduciary one.

There is, in short, no circuit split or any other reason to review the application of established law to the facts of this case. The petition should be denied.

STATEMENT

1. In the early 2000s, Verizon's domestic operations consisted of three separate business units: (i) the "Domestic Telecom" business, which provided traditional wireline telephone services; (ii) the "Domestic Wireless" business, which provided wireless services and products; and (iii) the "Information Services" business ("VIS"), which published on-line and print telephone directories. As a result of regulatory changes, as well as Verizon's increased focus on wireless services and fiber optics, the traditional synergies between Verizon's core operations and the directories business dissipated. Accordingly, Verizon made the business decision to divest the VIS business unit.

Verizon estimated in 2006 that, on a stand-alone basis in the years immediately following a spinoff, the VIS business unit would have annual revenues in excess of $3 billion and that its EBITDA ("Earnings Before Interest, Taxes, Depreciation And Amortization") would exceed $1.5 billion. C.A. Rec. 1258. An investment bank opined that the spun-off entity "should be able to pay its debts." *Id.* at 1262. The spinoff was consummated on November 17, 2006, resulting in the creation of Idearc.

2. Four Verizon pension plans are relevant to this case: the Verizon Pension Plan for New York and New England Associates, the Verizon Pension

Plan for Mid-Atlantic Associates, the Verizon Management Pension Plan, and the Verizon Enterprises Management Pension Plan (the "Verizon Plans"). At all relevant times, each of these plans contemplated that the plan's "assets or liabilities" might be "transferred" to another plan. Each also expressly reserved to Verizon the authority to modify or amend the plan. C.A. Rec. 1589, 1607, 1621-22, 1629-30.

As part of the 2006 spinoff, Idearc assumed responsibility for the benefits of current and former VIS employees. Specifically, Verizon transferred pension assets and liabilities associated with former VIS employees from the Verizon Plans to "mirror" Idearc pension plans. These "mirror" plans "changed nothing" regarding participants' pension benefits, aside from the "particular corporate entity sponsoring and administering their plans." Pet. App. 43.

Verizon caused the Verizon Plans to transfer to the Idearc plans assets equal to the liabilities associated with current and former VIS employees. As the district court recognized, these transfers were done "in accordance with" statutory provisions governing pension plan transfers "and their implementing regulations." Pet. App. 24-25 (citing 29 U.S.C. §§ 1054(g), 1058). The total value of pension assets ultimately transferred to Idearc's pension plans was approximately $765 million, C.A. Rec. 1425, resulting in the Idearc plans being "overfunded . . . on an accounting basis" by approximately $163 million, *id.* at 1241, 1342, 1386, 1399.

On December 22, 2006, Verizon amended the plans to memorialize the transfer.

During the recession that began in late 2007, Idearc experienced financial distress that ultimately led to its filing for Chapter 11 reorganization. Pet. App. 21. It emerged from those proceedings under the name SuperMedia, Inc. *Id.* Petitioners "do not dispute that the master trust that holds their pension assets is a separate entity from Idearc and SuperMedia and was not a part of Idearc's Chapter 11 reorganization." *Id.* at 26.

3. Petitioners Phillip A. Murphy, Sandra R. Noe, and Claire M. Palmer were long-term employees in the directories business of NYNEX and its predecessors. Pet. App. 23-24. After retiring from NYNEX in the mid-1990s, Petitioners began receiving pension benefits from NYNEX pension plans. Following the merger of NYNEX and Bell Atlantic, Petitioners became participants in Bell Atlantic's pension plans. *Id.* at 23 n.1. When Bell Atlantic subsequently merged with GTE to form Verizon, Petitioners became participants in Verizon's pension plans. *Id.* And when Verizon spun off its telephone directories business, Petitioners became participants in Idearc's pension plans. *Id.* at 23-24. In January and February 2007, Petitioners received letters notifying them of the plan changes resulting from the spinoff, and confirming that the new "mirror" plans "provided the same benefits the individuals had been receiving prior to the changes." *Id.* at 27.

As the district court observed, Petitioners "do not contend that their pension plan benefits have been diminished or interrupted since their transfer to Idearc's plans." Pet. App. 25. Nonetheless, they

filed this lawsuit in 2009, alleging that the transfer of their pension obligations from Verizon to Idearc violated ERISA.

4. Petitioners filed their lawsuit in the U.S. District Court for the Northern District of Texas. In 2011, with agreement of the parties, the district court certified a class of former participants (and any beneficiaries) in the Verizon Plans who were transferred into Idearc's pension plans in connection with the spinoff. Pet. App. 31.

In 2013, the district court granted Verizon's motion for summary judgment. Following "[t]he dominant rule in the case law," it held that Verizon's "spinoff of its pension plans and its transfer of certain retirees to the spun-off plans were not fiduciary functions." Pet. App. 50. Accordingly, Petitioners had no viable claims for breach of ERISA's fiduciary duty or prohibited transaction provisions. *Id.* at 50, 54. The district court also found that the Verizon Plans authorized the transfer of participants to the spunoff plans, rejecting as "absurd" Petitioners' contrary reading of the plan documents. *Id.* at 42. Because the court concluded that the pre-existing terms of the Verizon Plans authorized the spinoff, it did not need to address Petitioners' argument that the December 2006 plan amendments were impermissibly retroactive. *Id.* at 39 n.5.

5. The Fifth Circuit summarily affirmed the district court's decision on the fiduciary duty and prohibited transaction claims "for essentially the reasons expressed" by the district court. Pet. App. 3.

Petitioners sought rehearing or rehearing en banc. No judge called for a vote on the en banc petition, and the petitions were denied. Pet. App. 76.

ARGUMENT

I. The Dismissal Of Petitioners' Fiduciary Duty Claim Does Not Warrant Review.

The district court correctly held, and the court of appeals properly affirmed, that Verizon's "spinoff of its pension plans and its transfer of certain retirees to the spun-off plans were not fiduciary functions," and therefore could not have breached ERISA's fiduciary duty provisions. Pet. App. 50. That decision follows directly from this Court's precedents, creates no circuit split, and does not merit further review.

A. The Decision Below Is Correct.

Under ERISA, an employer or plan sponsor can have "two hats," but wears only one hat at a time. *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000). The employer "wear[s] the fiduciary hat when making fiduciary decisions," but not when acting in the role of employer or plan sponsor. *Id.* "In every case charging breach of ERISA fiduciary duty, then, the threshold question is . . . whether [the defendant] was acting as a fiduciary (that is, was performing a fiduciary function) when taking the action subject to complaint." *Id.* at 226.

In a series of decisions, this Court has distinguished between "such actions as the administration

of the plan's assets," which are fiduciary functions, and actions "concern[ing] the composition or design of the plan itself," which are settlor functions that "do[] not implicate the employer's fiduciary duties." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999). The Court recognized in *Curtiss-Wright Corp. v. Schoonejongen* that employers "are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." 514 U.S. 73, 78 (1995). Shortly thereafter, the Court "extended" this rule to pension plans, holding that pension "[p]lan sponsors who alter the terms of a plan do not fall into the category of fiduciaries," but rather act like "the settlors of a trust." *Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996). And in *Hughes Aircraft*, the Court held that "ERISA's fiduciary duty requirement simply is not implicated where [the defendant], acting as the Plan's settlor, makes a decision regarding the form or structure of the Plan." 525 U.S. at 444.

It is not a hard question which "hat" Verizon wore in transferring the Verizon Plans' obligations to pay benefits to certain retirees to the new Idearc plans. As the Internal Revenue Service has confirmed, a "change[]" to a plan "resulting from a merger, consolidation, or transfer" is a "plan amendment." I.R.S. Private Letter Ruling 200936045, 2009 PLR LEXIS 7164, at *13-14 (June 11, 2009). Such a change to the structure of the plan is a paradigmatic "settlor" function, not a fiduciary one.

To be clear, this does not mean that pension plans are free to divest their obligations to participants without constraint. On the contrary, Congress and the Treasury Department have enacted detailed requirements tailored to protect plan participants. *See* 29 U.S.C. § 1058; 26 U.S.C. § 414(*l*); 26 C.F.R. § 1.414(*l*)-1. But it does mean that Petitioners' attempt to challenge a valid spinoff under ERISA's general fiduciary-duty provisions is misplaced.

B. There Is No Circuit Split.

The courts of appeals have uniformly and correctly applied the above analysis, holding that the decision to transfer the assets and liabilities of a pension plan as part of a corporate spinoff is a settlor act, and therefore does not implicate ERISA's fiduciary duty provisions:

- <u>Second Circuit</u>: The "allocation of pension plan assets and liabilities resulting from the spin-off of a division" does not "trigger[] fiduciary duties under ERISA." *Flanigan v. Gen. Elec. Co.*, 242 F.3d 78, 87 (2d Cir. 2001).

- <u>Third Circuit</u>: The "decision to sell [corporate divisions] and to transfer the pension plans [is] a business decision not subject to ERISA's fiduciary provisions." *Blaw Knox Ret. Income Plan v. White Consol. Indus., Inc.*, 998 F.2d 1185, 1189 (3d Cir. 1993).

- <u>Sixth Circuit</u>: "[A]n employer's decision to transfer plan assets" in connection with the spinoff of a subsidiary "is not a fiduciary decision." *Hunter v. Caliber Sys., Inc.*, 220 F.3d 702, 719 (6th Cir. 2000).

- <u>Ninth Circuit</u>: The "decision to spin a plan off . . . is not a fiduciary act." *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1076 (9th Cir. 2009).

- <u>D.C. Circuit</u>: AT&T did not "act[] in a fiduciary capacity" when it "allocated the assets and liabilities of [its pension and welfare] plans between AT&T and [a spun-off entity]." *Sys. Council EM-3 v. AT&T Corp.*, 159 F.3d 1376, 1379 (D.C. Cir. 1998).

Petitioners ignore this extensive authority, which the district court accurately described as expressing "[t]he dominant rule in the case law." Pet. App. 50. Instead, they claim a circuit split between the decision below and the Eighth Circuit's decision in *Howe v. Varity Corp.*, 36 F.3d 746 (1994). They are mistaken, for several reasons. First, *Howe* is easily distinguishable, and has correctly been characterized as an outlier limited to the egregious facts of that case. Second, to the extent this single decision meant to announce an anomalous rule that spinoff decisions are fiduciary acts, it has been effectively overruled by subsequent decisions of this Court. And third, even if *Howe* were both read broadly and still considered good law, Petitioners' claim would still fail under the law of the Eighth Circuit.[1]

1. Petitioners read far too much into a one-paragraph holding of the Eighth Circuit. *Howe*, 36 F.3d at 756. *Howe* involved the transfer of welfare benefit obligations to a new entity known to be "essentially bankrupt," and a failure even to "inform[]" retirees of the transfer "until [the new entity] went into receivership." *Id.* at 750, 756. Thus, as the Sixth Circuit recently noted, *Howe* can reasonably be read as "limited to the unique and egregious facts of that case, in which the employer deceived its employees and essentially attempted to conceal its underhanded actions with respect to the retirees by keeping them in the dark as to the status of their benefits." *Sengpiel v. B.F. Goodrich Co.*, 156 F.3d 660, 668 n.8 (6th Cir. 2010); *see also* Pet App. 46-47 ("Underlying *Howe*'s holding with respect to the retirees . . . was the notion that the act of withholding from the retirees information about the new corporation before involuntarily transferring the retirees was an act that could be construed . . . as an attempt to induce the retirees' acceptance of the transfer by misleading them. The *Howe* panel could therefore

[1] This Court affirmed a different part of the Eighth Circuit's decision in *Howe*, holding that the employer breached its fiduciary duties by making false statements to induce *current* employees to elect to transfer to the new entity voluntarily. *Varity Corp. v. Howe*, 516 U.S. 489, 506 (1996). However, the Court specifically declined to review the question of whether the defendant "breached a fiduciary duty with respect to the . . . retirees whose benefit obligations had been involuntarily assigned." *Id.* at 496.

construe this 'complete disregard of the rights and interests of beneficiaries' as a fiduciary function.").

Whether or not the Eighth Circuit was right that the acts of "deception" at issue involved conduct done in a fiduciary capacity, *Howe* need not be read as holding that the decision to transfer plan participants as part of a corporate spinoff is, by itself, subject to ERISA's fiduciary duties. Moreover, the facts of this case do not come close to approaching the sort of egregious conduct that led to the result in *Howe*. To the contrary, the district court correctly found that Verizon did not "fraudulently induce[] or otherwise materially misle[a]d the retirees into accepting a pension plan transfer," that there was no "evidence from which a reasonable factfinder could conclude that Idearc was an entity doomed, and known by Verizon to be doomed, from the beginning of its existence," and that the spinoff included substantial protections for plan participants. *See* Pet. App. 46-50.

2. Even if *Howe* could be read broadly to hold that the spinoff of benefit obligations to a different plan is a fiduciary act, that decision would no longer be good law. As discussed above, this Court has held – subsequent to *Howe* – that changing the structure of a plan is a settlor function, not a fiduciary one. *See supra* pp. 6-7. The courts of appeals have relied on this line of authority to conclude that the transfer of participants to a new plan "is more analogous to amending, modifying, or terminating the then-existing" plan, *i.e.*, a settlor function, "than to administering or managing" benefits under the plan, *i.e.*, a

fiduciary function. *Sengpiel*, 156 F.3d at 665. As the D.C. Circuit put it, this Court's decision in *Spink* is "dispositive" of the question. *Sys. Council EM-3*, 159 F.3d at 1379; *see also Flanigan*, 242 F.3d at 87 ("Although it is an issue of first impression in this Circuit whether an allocation of pension plan assets and liabilities resulting from the spin-off of a division triggers fiduciary duties under ERISA, *recent Supreme Court case law* and that of at least four circuit courts of appeals indicate that it does not." (emphasis added)). Thus, if the same issue were to arise in the Eighth Circuit today, that court would be compelled to agree with the uniform rule in its sister circuits – regardless of whether *Howe* set forth a different approach prior to this Court's decisions in *Curtiss-Wright*, *Spink*, and *Hughes Aircraft*.

3. Finally, even if the outlier decision in *Howe* could be treated as good law, Petitioners' claims would still clearly fail even in the Eighth Circuit. *Howe* involved welfare plans, 36 F.3d at 750, but this case concerns the transfer of *pension* plan assets and liabilities.[2] ERISA specifically permits a pension

[2] ERISA defines pension plans as plans, funds, or programs that "provide[] retirement income to employees" or that "result[] in a deferral of income." 29 U.S.C. § 1002(2)(A). It defines welfare benefits plans as plans, funds, or programs established or maintained to provide participants with additional benefits, such as medical and disability coverage. *Id.* § 1002(1). "ERISA treats these two types of plans differently." *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926, 933 (2015). While ERISA contains detailed minimum funding and other rules governing pension plans, it does not contain comparable provisions governing welfare plans. *See id.*

plan to "merge or consolidate with, or transfer its assets or liabilities to" another plan, provided applicaapplicable requirements are met: each participant must "receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer." 29 U.S.C. § 1058. It is undisputed in this case that Verizon complied with the detailed statutory and regulatory regime governing pension plan spinoffs. Pet. App. 24-25 & n.2.

The Eighth Circuit has held that compliance with § 1058 "provides a safe harbor for employers, while fully protecting the benefits earned by participants prior to a spinoff." *Bigger v. Am. Comm. Lines*, 862 F.2d 1341, 1348 (8th Cir. 1988). Because Congress has, in the context of pension plans, codified "a specific standard that employers can rely upon in allocating assets to spunoff plans," the Eighth Circuit rejects the view that the "general standard of fiduciary duty supersedes and imposes a higher standard than section 1058." *Bigger*, 862 F.2d at 1344; *see also Blaw Knox Ret. Income Plan*, 998 F.2d at 1190 ("[C]ompliance with ERISA's provisions for the funding of merged, transferred or acquired pension plans as set forth in 29 U.S.C. § 1058 preclude[s] a finding that a fiduciary breach had occurred." (second alteration in original)).

Thus, whatever the meaning and vitality of *Howe* in a case concerning welfare plans, the rule in the Eighth Circuit is that a *pension* plan transfer that complies with ERISA's specific statutory and regulatory requirements cannot be considered a breach of fiduciary duty. Petitioners' breach of fiduciary duty claim would thus fail in the Eighth Circuit, just as it would fail in every other circuit.[3]

II. The Dismissal Of Petitioners' Prohibited Transaction Claim Does Not Warrant Review.

The courts below were also correct to reject the claim that 29 U.S.C. § 1106(b)(2) prohibited the fiduciaries of the Verizon Plans from taking part in the spinoff transaction. That result is consistent with the text of the statute, decisions of this Court and, as Petitioners do not dispute, the uniform position of the courts of appeals.

As this Court has held, a defendant has not "violated the prohibited transaction section of ERISA" unless there has been "the requisite finding of fiduciary status." *Spink*, 517 U.S. at 892. *Spink* involved § 1106(a)(1), which provides that "[a] *fiduciary* with respect to a plan shall not" engage in certain transactions. 29 U.S.C. § 1106(a)(1) (emphasis added). Where the claims involve the defendant "act[ing] not as a fiduciary but as a settlor," *Spink* holds that the statute's threshold "requirement of fiduciary status is not met." 517 U.S. at 891.

[3] In the middle of their argument that the fiduciaries of the Verizon Plans breached their duty of loyalty, Petitioners take a detour to contend that the spinoff violated the terms of the plans in place at the time of the spinoff. Pet. 12-13. Petitioners do not explain how this fact-bound argument relates to their alleged circuit split, or why this Court should grant review to second-guess the lower courts' reading of the plan documents. In any event, the district court was plainly correct. The Verizon Plans indisputably "permitted transfers of *assets and liabilities*." Pet. App. 39. "The 'liabilities' the Verizon plans' provisions permitted to be transferred were not free-floating abstractions," but rather "included, quite plainly, liabilities to pay benefits to individuals." *Id.* at 40.

This case involves a different subsection of the prohibited transaction rule – § 1106(b) – but that subsection has an identical "requirement of fiduciary status." Like § 1106(a)(1), it provides that "[a] *fiduciary* with respect to a plan shall not" engage in certain transactions. 29 U.S.C. § 1106(b) (emphasis added). The parallel structure of the two subsections compels the conclusion that fiduciary status is also a "requirement" for claims under § 1106(b). *See Spink*, 517 U.S. at 891; *see also Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 860 (1986) ("The normal rule of statutory construction assumes that 'identical words used in different parts of the same act are intended to have the same meaning.'").

Petitioners cannot and do not dispute that this is exactly what every court of appeals to consider the issue has decided. *See, e.g., DeLuca v. Blue Cross Blue Shield of Mich.*, 628 F.3d 743, 748 (6th Cir. 2010) (no violation of § 1106(b) where defendant "was not acting in a fiduciary capacity"); *Flanigan*, 242 F.3d at 87 (holding that "prohibited transaction rules apply only to decisions by an employer acting in its fiduciary capacity," and citing § 1106(b)); *Chi. Dist. Council of Carpenters Welfare Fund v. Caremark, Inc.*, 474 F.3d 463, 472 n.4 (7th Cir. 2007) ("Carpenters alleged that Caremark violated section 1106(b) when it engaged in certain transactions. . . . Because we find that Caremark was not a fiduciary when it engaged in any of the relevant transactions, we need not address this section further.").

Instead, Petitioners emphasize a *dissent* agreeing with their position that individuals who are not acting as fiduciaries are nonetheless subject to § 1106(b)(2). *See DeLuca*, 628 F.3d at 751 (Kethledge, J., dissenting) (recognizing that the case law limits § 1106(b) to fiduciary acts, but criticizing this interpretation as "Orwellian"). Judge Kethledge viewed the statute's use of the phrase "in any other capacity" as establishing its application to non-fiduciary acts "[i]n the plainest conceivable English." *Id.* But that interpretation disregards this Court's instruction that a few words in a statute must be understood "not in a vacuum, but with reference to the statutory context." *Abramski v. United States*, 134 S. Ct. 2259, 2267 (2014). Here, the relevant context is contained earlier in the same provision, which specifically limits its application to a "fiduciary." This Court has left no doubt that when an employer undertakes a settlor function, at that juncture it is not a "fiduciary." *See Pegram*, 530 U.S. at 225.[4]

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[4] Petitioners fare no better with their reliance on the general proposition that "Congress intended to prevent the fiduciary from 'being put in a position where he has dual loyalties.'" Pet. 19-20 (quoting *NLRB v. Amax Coal Co.*, 453 U.S. 322, 333-34 (1981)). That just begs the question: is the defendant a *fiduciary* when engaged in the transaction in question? If the "requirement of fiduciary status is not met," then the prohibited transaction provisions do not apply. *Spink*, 517 U.S. at 891.

In any event, this Court typically grants review to resolve serious and important disagreements among the circuit courts – not to reconsider its own prior decisions and the unanimous holdings of the courts of appeals in light of a single dissenting view. Nothing about this case warrants an exception from the Court's usual practice.

CONCLUSION

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

Respectfully submitted,

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