No. 24-2179

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARY ANN ARNOLD,
Plaintiff-Appellant,

v.

UNITED AIRLINES, INC.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Illinois

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF APPELLANT AND IN FAVOR OF REVERSAL

KARLA GILBRIDE
General Counsel

JENNIFER S. GOLDSTEIN
Associate General Counsel

JEREMY D. HOROWITZ
GEORGINA C. YEOMANS
Attorneys

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
202-921-2748
georgina.yeomans@eeoc.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other

STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission (EEOC) with administering and enforcing the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 *et seq*. This appeal presents important questions regarding the scope and application of the ADEA's disparate treatment and retaliation provisions. Because the EEOC has a substantial interest in the proper interpretation of the ADEA, it files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUES[1]

1. Whether the defendant's decision to remove the plaintiff from her primary, high-profile assignment, and its subsequent decision to place her on a performance improvement plan (PIP), each caused her "some harm" sufficient to state a claim for discrimination under *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024).

2. Whether the defendant's decision to place the plaintiff on a PIP was materially adverse under the standard for retaliation claims

[1] We do not address the plaintiff's age-based hostile work environment and constructive-discharge claims, or any other issue on appeal. The EEOC likewise takes no position on the ultimate merits of Arnold's ADEA disparate-treatment or retaliation claims.

established in *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006).

STATEMENT OF THE CASE

A. Statement of the Facts

Plaintiff Mary Ann Arnold worked at Defendant United Air Lines, Inc. (United) for twenty-six years before involuntarily retiring in May 2020. R.44-1 at 4, 30. During that time, she worked her way up from an airport sales agent to a corporate communications role, with various positions in between. *Id*. at 4-5.

Beginning in 2017, around the time that she moved into communications, Arnold began to protest what she perceived as discriminatory treatment by United. She filed an internal complaint alleging harassment and age discrimination by her then-supervisor, which United was "unable to substantiate." R.47-4 at 1. That year, Arnold also filed a charge with the Illinois Department of Human Rights, which she later withdrew, claiming that United's failure to promote her was age- and disability-based discrimination. R.47-1 at 1.

In 2018, Arnold filed a sexual harassment complaint against her supervisor, Stephen Jones, stemming from his conduct toward her on a

business trip. R.47-6 at 13. Arnold initially submitted the complaint anonymously, R.47-3 at 1, but after United pressured her to identify herself, she resubmitted the complaint under her name in September, *id*. at 2-3. United investigated and was again unable to substantiate Arnold's complaint but agreed to have Arnold report to a different supervisor, Stephanie Millichap, beginning in December. R.44-1 at 8-9; R.47-6 at 24; R.47-7 at 2.

Also in December 2018, Arnold began working on a major project called Core4. R.44-1 at 78. Core4 was an expression of "foundational company values," and Arnold was assigned to "help kind of bring that set of Core 4 values to life in [United's] station and … airport location and devise a communication plan and approach for doing that." R.44-2 at 15. Arnold "worked hard" on Core4 and found it "really rewarding." R.44-1 at 34, 112. In her 2019 mid-year review, she described it as "an enormous project that is truly affecting our corporate culture, leadership and customer service." *Id*. at 112. Her 2019 mid-year review also showed she planned to make significant progress on the project before the end of the year and that United valued her contribution. *Id*. at 114-17. Her manager commented in that review, "[A]s she leads the build out of the core4 Flying

Together page along with other deliverables in the second half of the year, her ability to represent the frontline, what they need and what they care about, will be very valuable." *Id*. at 119.

In September 2019, a year after Arnold's complaint about Jones, United reorganized its communications operations and moved Arnold from an airport operations communications position to "corporate communications." R.44 at 5 ¶¶ 16-17. During this reorganization process, United took Arnold off Core4. R.44-1 at 34. After the change, Arnold complained that she was assigned "an enormous volume of production type work" that was "less high profile, higher exposure" than before. *Id*. at 76. She also complained in late October 2019 that, "[a]s an employee of a protected class (over 40)," her "core4 project was taken away … and given to younger and lower level employee." R.47-7 at 8. This complaint was forwarded to United's Vice President and Deputy General Counsel the next day. *Id*. at 7-8. In December, Arnold met with United representatives to discuss her concerns. *Id*. at 1. Ten days later, Human Resources (HR) Manager Genesis Tirado sent Arnold an email denying her allegation of age discrimination and declaring that the "concern has been addressed and closed." *Id*. at 1-2.

Because of the reorganization, Arnold began reporting to a new supervisor, Courtney Schall, who in turn reported to Director of Operations Communications Laura Patterson. R.44-5 at 2. The reorganization also meant a new seating arrangement for Arnold. During the reorganization process, Arnold asked that she be allowed to sit far away from Stephen Jones at work, a request United partially accommodated (though only after Arnold escalated the request to HR and then to United's legal team). R.44-1 at 13, 78-81. During this period, Millichap and Schall had both apparently shared concerns about Arnold's performance with HR. R.44-2 at 14; R.44-3 at 8. In an early October 2019 email exchange between Patterson, HR Manager Tirado, and other higher-ups at United, Patterson floated the idea of offering Arnold "a package" to induce her to leave United. R.47-13 at 3. Tirado shut the idea down, asking "[w]hat message are we sending by providing her an option to leave (especially if she has not shared she wants to leave)." *Id*. at 2.

A few months after her late October 2019 complaint about age discrimination, Arnold received her first negative performance evaluation. Despite being rated "on track with peers" in her 2019 mid-year review,

Arnold scored "partially meeting expectations" on her end-of-year review. R.44-1 at 120, 131.

The United PIP policy allows United to require a PIP of "employees who partially meet expectation[s] at year-end two years in a row or at the discretion of the leader." R.44-1 at 64. HR and Arnold's supervisors decided to put her on a PIP in February 2020, even though this was only her first "partially meets expectations" score, and specifically denied Arnold's request for a "letter of expectation" in lieu of a PIP. R.47-16 at 1-2.

The PIP told Arnold that she was expected to show "[i]mmediate and sustained improvement" while it remained in effect. R.44-1 at 139. United warned Arnold that "[f]ailure to achieve expected behaviors and/or performance results will lead to disciplinary actions, up to and including termination. Additionally, a decrease in performance after successfully completing the PIP may result in termination from United without the issuance of another performance improvement plan." *Id*. Arnold felt that Schall became antagonistic and nitpicky with her while the PIP was in place. R.47-18 at 1-2.

Arnold was scheduled to meet with Schall and Patterson to discuss final feedback on the PIP on May 21, but on May 20, Arnold submitted an

"involuntary retirement" notice. R.44-1 at 155. Tirado responded, congratulating Arnold on her retirement. *Id*. at 154. In response, Arnold expressed her belief that she had been targeted for retaliation. *Id*.

B. District Court's Decision

Arnold sued United, alleging that it discriminated against her based on her age and retaliated against her for engaging in protected conduct under the ADEA, 29 U.S.C. § 623(a)(1), (d). The district court granted summary judgment to United. It held that Arnold could not sustain an age-discrimination claim because neither the shifting of responsibilities during the reorganization nor her placement on a PIP were "adverse employment actions," an essential element of an age-discrimination claim. The court did not cite the Supreme Court's recent *Muldrow* decision, but relied instead on pre-*Muldrow* Seventh Circuit case law requiring plaintiffs to establish that they experienced a "materially adverse" employment action. S.A. at 18-19.

Even assuming Arnold established adverse employment actions, the court held that she did not present evidence that could overcome United's explanations (1) that her duties were rearranged as part of a restructuring, without regard to age; and (2) that United put Arnold on a PIP purely because of her deficient performance. S.A. at 18-22.

The court also granted summary judgment to United on Arnold's retaliation claim, holding in part that being put on a PIP would not have dissuaded a reasonable employee from complaining of discrimination and therefore did not satisfy the claim's required materially adverse action element. S.A. at 25.

ARGUMENT

The district court relied on prior case law from this Court to conclude that Arnold's age-discrimination claim necessarily failed because the actions she complained of did not qualify as adverse employment actions. S.A. at 18. But the Supreme Court's *Muldrow* decision, which the district court did not acknowledge, abrogated this Court's case law regarding what types of employment actions can form the basis of a disparate-treatment claim. 601 U.S. at 353-54 & n.1. Drawing inference in Arnold's favor, United's decision to remove Arnold from her primary, high-profile assignment, and its decision to place her on a PIP, both caused her "some harm," satisfying *Muldrow*'s new test. *See id*. at 354-55. If motivated by discrimination, these measures are actionable under *Muldrow*.

The PIP also constitutes a materially adverse action sufficient to form the basis of Arnold's retaliation claim. The circumstances of Arnold's PIP,

her placement on which closely followed her complaint that her signature project was given to a younger employee, may well have dissuaded a reasonable worker from complaining of discrimination. It therefore satisfies the standard set forth in *Burlington Northern*. *See* 548 U.S. at 68.

I. Arnold experienced "some harm," satisfying the *Muldrow* standard.

The district court failed to account for the Supreme Court's newly announced standard for what constitutes actionable discrimination when it concluded that United's decisions to reassign Arnold's high-profile project to a younger employee and to place her on a PIP were not adverse employment actions.

The Age Discrimination in Employment Act prohibits employers from "discriminat[ing] against any individual with respect to his . . . terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). Title VII of the Civil Rights Act (Title VII) similarly prohibits discrimination in the "terms, conditions, or privileges of employment" based on "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a).

Before the Supreme Court's *Muldrow* decision, this Court required plaintiffs to establish they suffered a "materially adverse employment

action" to prevail under § 623(a)(1) of the ADEA or § 2000e-2(a) of Title VII. *See Williams v. Bristol-Myers Squibb Co.*, 85 F.3d 270, 273-73 (7th Cir. 1996); *O'Neal v. City of Chi.*, 392 F.3d 909, 911 (7th Cir. 2004), *abrogated by Muldrow*, 601 U.S. 346. This Court defined "adverse employment actions" as those effecting "a significant change in employment status." *Reives v. Ill. State Police*, 29 F.4th 887, 894 (7th Cir. 2022) (quoting *Boss v. Castro*, 816 F.3d 910, 917 (7th Cir. 2016)). Under that standard, discrimination was actionable only if it involved "the employee's current wealth, his career prospects, or changes to work conditions that include humiliating, degrading, unsafe, unhealthy, or otherwise significant negative alteration in the workplace." *Boss*, 816 F.3d at 917. "[N]egative performance reviews and performance improvement plans," without some accompanying material burden, could not form the basis of a Title VII or ADEA claim. *Fields v. Bd. of Educ. of Chi.*, 928 F.3d 622, 626 (7th Cir. 2019).

The Supreme Court's *Muldrow* decision upended that precedent by specifically rejecting a "material" adversity requirement for disparate-treatment claims. 601 U.S. at 353-54 & n.1 (citing *O'Neal*, 392 F.3d at 911); *see also Thomas v. JBS Green Bay, Inc.*, 120 F.4th 1335, 1337 (7th Cir. 2024) ("Decisions requiring allegations of 'significant' or 'material' injury did not

survive *Muldrow*."). The Court held that Title VII's disparate-treatment provision "prevents injury to individuals based on status, without distinguishing between significant and less significant harms." *Muldrow*, 601 U.S. at 358 (internal quotation marks and alteration omitted). The appropriate inquiry under the disparate-treatment provision of Title VII is therefore whether the discrimination the plaintiff experienced gave rise to "some harm respecting an identifiable term or condition of employment." *Id*. at 354-55. Materiality has no place in the analysis. *Id*. at 354-56 & n.2 (newly established "some harm" standard "lowers the bar Title VII plaintiffs must meet" "in any circuit that has previously required … 'material' … injury").

Although *Muldrow* dealt specifically with an allegedly discriminatory transfer, its reasoning extends to other harmful actions. The Court focused on Title VII's terms-or-conditions language and rejected adding "any … adjective suggesting that the disadvantage to the employee must exceed a heightened bar." *Muldrow*, 601 U.S. at 355. The challenged action must "respect[] an identifiable term or condition of employment." *Id*. at 354-55. But if it does so, plaintiffs must show merely that their employers treated them "worse" based on a protected characteristic. *Id*. at 355. The Court

"underscore[d]" the breadth of its ruling, without limiting it to transfers, declaring, "[T]his decision changes the legal standard used in any circuit that has previously required 'significant,' 'material,' or 'serious' injury. It lowers the bar Title VII plaintiffs must meet." *Id*. at 356 n.2. "[M]any cases" now "will come out differently." *Id*.; *see also Thomas*, 120 F.4th at 1337 (finding deferred training, denial of preferred vacation schedule, and schedule changes each entailed "some harm" under *Muldrow*).

Muldrow was a Title VII case, but its holding is equally applicable to Arnold's age-discrimination claim. The Title VII provision *Muldrow* interpreted was materially identical to the ADEA's anti-discrimination provision. Both statutory provisions state it is "unlawful" for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment." *Compare* 42 U.S.C. § 2000e-2(a)(1), *with* 29 U.S.C. § 623(a)(1); *see also Lorillard v. Pons*, 434 U.S. 575, 584 (1978) (observing that the substantive provisions of the ADEA "were derived *in haec verba* from Title VII"). Several circuit courts have already applied *Muldrow* in the ADEA context based on the statutes' common language. *See, e.g.*, *Yates v. Spring Indep. Sch. Dist.*, 115 F.4th 414, 420 n.4 (5th Cir. 2024); *McNeal v. City of Blue Ash*, 117 F.4th 887, 900 (6th Cir. 2024);

Milczak v. Gen. Motors, LLC, 102 F.4th 772, 787 (6th Cir. 2024); *Van Horn v. Del Toro*, No. 23-5169, 2024 WL 4381186, at *2-3 (D.C. Cir. Oct. 3, 2024).

In analyzing Arnold's age-discrimination claim, the district court did not cite *Muldrow* and relied entirely on pre-*Muldrow* case law. S.A. at 18. It therefore did not assess whether losing the Core4 project or the circumstances of Arnold's PIP met the Supreme Court's "some harm" threshold. A reasonable jury could find that each action suffices individually, and that the two in tandem are more than enough.[2]

As noted above, Arnold found the Core4 project rewarding and protested having it taken away. She described the project as "high profile" and "higher exposure," descriptors that are self-evident from the fact that Core4 was an expression of United's "foundational company values" and was a priority for the company. *See* R.44-1 at 76, R.44-2 at 14-15; *see also*

[2] The court also held that no reasonable jury could conclude that "age discrimination was the 'but for' cause of the alleged adverse actions." S.A. at 22. The district court's use of "the" preceding "but for" implies that it believed that a plaintiff must show discrimination was the *only* cause of an adverse action. That understanding would be incorrect: but-for causation requires the plaintiff to prove only "that age was *a* 'but for' cause of the employer's adverse decision." *Burrage v. United States*, 571 U.S. 204, 213 (2014) (cleaned up) (emphasis added); *see also Bostock v. Clayton Cnty.*, 590 U.S. 644, 656 (2020) ("Often, events have multiple but-for causes."); *United States v. Dyer*, 216 F.3d 568, 570 (7th Cir. 2000) ("'But for' causation … is poles apart from 'sole cause,' as innumerable cases … make clear.").

R.44-1 at 72 (Executive Vice President for Human Resources email to all employees highlighting importance of Core4 principles). At her mid-year review, both Arnold and her supervisor expected that she would continue working on it for the remainder of the year. R.44-1 at 114-17, 119. If a reasonable jury determined that Arnold was deprived of her priority, high-profile project because of her age, then it could conclude that United's reassignment was actionable age discrimination.

As to the PIP, Arnold testified that it created an "additional layer of constant scrutiny [and] threats about deadlines [that] was very pervasive." R.44-1 at 31. And a jury could reasonably find that her placement on the PIP was a step on the path to termination. United's handbook warns that failure to "meet performance expectations" while on a PIP subjects the employee to "termination of employment." *Id*. at 64. The handbook also says, "[i]f the severity of an incident warrants it, leaders may by-pass a performance improvement option and accelerate discipline up to and including termination of employment," suggesting the PIP is a step toward termination. *Id*.; *see also id*. ("Termination of employment will occur when the performance improvement process is unsuccessful or when the severity of an incident warrants immediate termination."). Even for United

employees who successfully complete a PIP, documentation related to the PIP process stays in personnel files for another eighteen months. *Id*. And, as explained above, a decrease in performance even after successfully completing the PIP may result in termination without the issuance of another PIP. *Id*. at 139. Based on these facts, a reasonable jury could therefore find that Arnold's PIP placement caused her "some harm."[3]

II. A reasonable jury could find Arnold engaged in protected conduct by complaining about losing her Core4 project and that she suffered a materially adverse action in the form of her onerous PIP.

The district court granted summary judgment to United on Arnold's retaliation claim, holding that she failed to connect any ADEA-protected activity to a materially adverse action. S.A. at 23-25. In doing so, the court held that Arnold's PIP was not materially adverse. That was error.

The ADEA prohibits employers from discriminating against employees "because such individual … has opposed any practice made unlawful by" the ADEA. 29 U.S.C. § 623(d). "To survive summary judgment on a retaliation claim, a plaintiff must come forward with sufficient evidence for a reasonable jury to conclude that (1) she engaged in

[3] Of course, an employer's good-faith decision to place an employee on a PIP, if in no way motivated by a protected characteristic or conduct, would not run afoul of the ADEA or Title VII.

protected activity, (2) she suffered an adverse employment action, and (3) causation." *Lewis v. Ind. Wesleyan Univ.*, 36 F.4th 755, 761 (7th Cir. 2022); *see also id*. (noting that the elements of Title VII and ADEA retaliation claims are the same). We address the first and second factors.

The ADEA's prohibition on retaliation protects a broad range of activity, including informal complaints. *See Casna v. City of Loves Park,* 574 F.3d 420, 427 (7th Cir. 2009); EEOC Enforcement Guidance on Retaliation and Related Issues § II(A)(2)(a), 2016 WL 4688886, at *7-8 (Aug. 25, 2016). To merit protection, the plaintiff must have a reasonable, good-faith belief that the conduct she opposes is discriminatory. *Brooks v. City of Kankakee*, 7 F.4th 649, 660 (7th Cir. 2021). But the plaintiff's claim that the conduct she opposes is discriminatory need not be correct or vindicated in court: "It is improper to retaliate against anyone for claiming a violation of [the ADEA] unless that claim is 'completely groundless.'" *Fine v. Ryan Int'l Airlines*, 305 F.3d 746, 752 (7th Cir. 2002) (quoting *McDonnell v. Cisneros*, 84 F.3d 256, 259 (7th Cir. 1996)). "[A] groundless claim is one resting on facts that no reasonable person possibly could have construed as a case of discrimination." *Id*. The "groundless claim" standard "is not meant to be a high bar." *Nelson v. Realty Consulting Servs., Inc.*, 431 F. App'x 502, 506 (7th

Cir. 2011). And because *Muldrow* expanded the universe of actionable discrimination, it arguably broadened what an employee may reasonably believe to be discriminatory for purposes of assessing whether her complaint constituted protected activity. *See, e.g.*, *Davis v. Orange Cnty.*, No. 23-12759, 2024 WL 3507722, at *4 (11th Cir. July 23, 2024) (remanding to district court to consider whether, under *Muldrow*, plaintiff could have had a good-faith, reasonable belief that employer conduct was discriminatory).

The retaliation provision's adverse action standard is also capacious. As the Supreme Court has explained in the Title VII context, Title VII's antiretaliation provision protects employees from materially adverse actions that "well might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'" *Burlington N.*, 548 U.S. at 67-68 (citation omitted); *see Boston v. U.S. Steel Corp.*, 816 F.3d 455, 464 (7th Cir. 2016) (treating Title VII and ADEA retaliation claims under the same standard). This Court has interpreted that standard "quite broadly," applying it to things like "significantly diminished material responsibilities." *Atanus v. Perry*, 520 F.3d 662, 677 (7th Cir. 2008) (quotation marks omitted).

Arnold engaged in protected activity when she complained in October 2019 that, "[a]s an employee of a protected class (over 40)," her "core4 project was taken away although all deliverables on track and given to younger and lower level employee." R.47-7 at 8. This complaint was forwarded to United's Vice President and Deputy General Counsel the next day. *Id*. at 7-8. Arnold then met with representatives for United in December to discuss this concern, among others. *Id*. at 1. Ten days later, Genesis Tirado of HR sent Arnold an email responding, "We disagree with your stated comment," explaining that Core4 work "no longer exists as its own project" but was instead "infused in all the work" of the Corporate Communications group, and declaring that the "concern has been addressed and closed." *Id*. at 1-2. Less than two months after that email exchange, United gave Arnold her negative review and placed her on a PIP.

The district court dismissed Arnold's retaliation claim, reasoning in part that PIPs, "particularly minimally onerous ones … are not, without more, adverse employment actions." S.A. at 25 (quoting *Davis v. Time Warner Cable of Se. Wis., L.P.*, 651 F.3d 664, 677 (7th Cir. 2011), and citing *Langenbach v. Wal-Mart Stores, Inc.*, 761 F.3d 792, 799 (7th Cir. 2014)). To be

sure, this Court has held that PIPs, standing alone, are not materially adverse. But it has also noted that PIPs resulting in "quantitative or qualitative change[s] in the terms or conditions of employment" can be. *Lauth v. Covance, Inc.*, 863 F.3d 708, 717 (7th Cir. 2017) (citation omitted).

The district court overlooked that Arnold's PIP, which went in tandem with her negative review, was not "minimally onerous," but instead qualitatively changed the conditions of her work. As noted above, Arnold testified that it created an "additional layer of constant scrutiny [and] threats about deadlines [that] was very pervasive." R.44-1 at 31. The PIP itself promised that "[f]ailure to achieve expected behaviors and/or performance results will lead to disciplinary actions, up to and including termination." *Id*. at 139. A record of the PIP would remain in her file for a year and a half, even if she successfully completed it. *Id*. at 64. And a later perceived decrease in her performance could lead to termination without another intervening PIP. *Id*. at 139. Such consequences "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington N.*, 548 U.S. at 68 (quotation marks omitted).

These circumstances distinguish Arnold's PIP from ones this Court has found insufficient to potentially dissuade a reasonable worker because,

for instance, their "most onerous aspect … was [a] requirement [of] daily and weekly schedule[]" updates. *Cole v. Illinois*, 562 F.3d 812, 816 (7th Cir. 2009) (applying *Burlington Northern* to FMLA retaliation claim); *see also Langenbach*, 761 F.3d at 798-99 (PIP merely identified improvement measures and a time frame for their implementation); *Bagwe v. Sedgwick Claims Mgmt. Servs., Inc.*, 811 F.3d 866, 889 (7th Cir. 2016) (a PIP with "materially adverse consequences" could be actionable retaliation). The facts distinguish Arnold's PIP from the precedent the district court relied on; its holding was therefore error.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be vacated and the case remanded for further proceedings.

Respectfully submitted,

KARLA GILBRIDE
General Counsel

JENNIFER S. GOLDSTEIN
Associate General Counsel

JEREMY D. HOROWITZ
Attorney

s/*Georgina C. Yeomans*
GEORGINA C. YEOMANS
Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
202-921-2748
georgina.yeomans@eeoc.gov

December 16, 2024

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 4,059 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Book Antiqua 14 point.

s/*Georgina C. Yeomans*
GEORGINA C. YEOMANS
Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
202-921-2748
georgina.yeomans@eeoc.gov

December 16, 2024

CERTIFICATE OF SERVICE

I certify that on this December 16, 2024, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

s/*Georgina C. Yeomans*
GEORGINA C. YEOMANS
Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
131 M St. N.E., 5th Floor
Washington, D.C. 20507
202-921-2748
georgina.yeomans@eeoc.gov