No. _____

IN THE
Supreme Court of the United States

SAM INENDINO,

Petitioner,

v.

ANNETTE NANCE-HOLT, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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October 14, 2026

QUESTION PRESENTED

Under *Pickering*, the government's authority to restrict a public employee's private speech on matters of public concern rests on its interest in providing efficient public services. The circuits disagree over how the government may establish that interest. Five circuits require record evidence connecting actual or reasonably threatened disruption to government operations. Two circuits credit unmaterialized but predicted disruption, requiring either contextual evidence or a reasonable possibility of disruption. One circuit conditions the required showing on timing, allowing predictions initially but demanding evidence of disruption as time passes. Another circuit credits predicted damage to public trust when paired with operational harm. Two circuits allow potential loss of public trust to constitute harm, substituting for disruption.

Here, the Seventh Circuit upheld the firing of a veteran firefighter for off-duty speech he made on Facebook—despite no evidence of reasonable threat of or actual workplace disruption. Instead, speculation about reputation and public trust outweighed his interest in speaking as a private citizen. This case thus presents the question Justice Thomas recently invited the Court to address regarding "unsupported claims of disruption."

The question presented is:

Whether *Pickering* permits a government employer's asserted interests in public trust to outweigh an employee's right to speak as a private citizen on matters of public concern when there is no evidence

that the speech caused or reasonably threatened to cause workplace disruption.

PARTIES TO THE PROCEEDING

Petitioner Sam Inendino is an individual and was the plaintiff-appellant below.

Respondents are Annette Nance-Holt, in her individual capacity, Brian Casey, in his individual capacity, and the City of Chicago, and were the defendants-appellees below. The City of Chicago does not maintain a stock ticker symbol.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Inendino* v. *Nance-Holt*, No. 24-2908, U.S. Court of Appeals for the Seventh Circuit. Judgment entered July 16, 2026.
- *Inendino* v. *Nance-Holt*, No. 22-C-4982, U.S. District Court for the Northern District of Illinois. Judgment entered Oct. 7, 2024.

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OPINIONS BELOW

- *Inendino* v. *Nance-Holt*, 753 F. Supp. 3d 641 (N.D. Ill. 2024), reproduced at Pet.App.31a–45a.
- *Inendino* v. *Nance-Holt*, 182 F.4th 571 (7th Cir. 2026), reproduced at Pet.App.1a–30a.

JURISDICTION

Judgment was entered July 16, 2026. This petition is timely filed under Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

INTRODUCTION

For sixteen years, Sam Inendino served as a firefighter and emergency medical technician for the Chicago Fire Department, before the City terminated him for Facebook posts made on his personal time. Nearly twenty months passed between his posts and his dismissal—without any disruption to his work or the Department's operations. No coworker complained about him; no citizen declined his assistance; no emergency service was interrupted.

The Seventh Circuit expressly acknowledged that the City offered no evidence of workplace disruption or even a reasonable threat of it. Pet.App.24a. Yet the court upheld Inendino's termination under *Pickering*, reasoning that the posts could diminish public confidence in the Department. Pet.App.28a–30a.

That result exposes an unresolved question at the heart of *Pickering*. This Court has long recognized that public employers need not wait for disruption to materialize before acting to protect efficient public services. But anticipated disruption must be reasonable, not merely conceivable. *Pickering* v. *Board of Education* declined to presume operational harm from controversial speech, 391 U.S. 563, 570–73 (1968); *Waters* v. *Churchill* afforded substantial weight to "reasonable predictions of disruption," 511 U.S. 661, 673 (1994) (plurality opinion); and *Rankin* v. *McPherson* focused the governmental interest on the effective functioning of the public employer's enterprise, 483 U.S. 378, 388–89 (1987). Those decisions, however, do not define the evidentiary showing necessary for predicted harm to outweigh individual speech rights, and

the courts of appeals have filled the gap in sharply different ways.

Four reasons warrant review. First, the conflict is entrenched and nationwide. All eleven circuits have addressed the evidentiary showing required under *Pickering*, but they divide among five approaches.

The Third, Fifth, Sixth, Eighth, and Ninth Circuits require record evidence connecting actual or reasonably anticipated disruption to government operations. The First and Eleventh Circuits give substantial weight to supported predictions of disruption, with the First Circuit permitting reliance on contextual evidence and the Eleventh Circuit requiring a reasonable possibility of disruption. The Tenth Circuit makes timing decisive, permitting supported predictions when an employer acts promptly but requiring evidence of actual disruption after substantial time has passed. The Fourth Circuit rejects hostile public reaction alone while crediting public-trust concerns supported by evidence of actual or reasonably anticipated interference with government operations. The Second and Seventh Circuits permit threats to public trust to constitute operational harm.

The circuit disagreement therefore concerns more than the weight assigned to an established governmental interest. It concerns the threshold showing required before that interest may enter the *Pickering* balance at all. The contrast is concrete. In the Eighth Circuit, jammed city telephone lines and residents' statements that they did not want a firefighter responding to their emergencies were insufficient without evidence that these reactions actually disrupted

the fire department's operations. See *Melton* v. *City of Forrest City*, 147 F.4th 896, 901–04 (8th Cir. 2025). Here, the Seventh Circuit upheld termination despite expressly finding no actual or reasonable threat of disruption. The scope of a public employee's First Amendment protection thus turns on geography.

Second, the question is exceptionally important and recurring. Government entities employ millions of Americans, and appellate courts repeatedly confront discipline arising from employees' off-duty expression on public matters. The governing rule determines whether those employees may participate in public debate without sacrificing their livelihoods to public reaction. If anticipated distrust alone can supply the government's interest under *Pickering*, mere offense can justify dismissal.

That approach invites viewpoint discrimination. Employers may characterize controversial speech as diminishing confidence in the agency without demonstrating any corresponding effect on its work. And because dismissal is a "potent means of inhibiting speech," uncertainty over the required evidentiary showing chills both employees who are disciplined and those who remain silent rather than risk their careers. *Pickering*, 391 U.S. at 574.

Third, the decision below cannot be reconciled with this Court's precedents. *Pickering* distinguished controversy and injury to government officials' reputations from effects on the "actual operation" of the employer. *Id.* at 571. *Rankin* likewise focused on workplace discipline, working relationships, employee performance, and the employer's "regular operation." 483

U.S. at 388–89. Although *Waters* permits reliance on predicted disruption, it requires a prediction that is reasonable in light of the available facts. See 511 U.S. at 673–74.

The Seventh Circuit acknowledged those principles and found the City's prediction of workplace disruption unsupported. Yet it allowed assumptions to do the work of evidence. Without record evidence of operational harm, it treated assumptions about Inendino's public-facing position, the offensiveness of his speech, and *possible* diminished public trust as sufficient to establish an otherwise unsupported governmental interest. That approach untethers *Pickering* from the operational justification that permits government, acting as employer, to restrict speech it could not suppress as sovereign.

Finally, this case cleanly presents the question for review. When this Court denied certiorari in *MacRae*, Justice Thomas warned against allowing "purely speculative" predictions of disruption to carry weight under *Pickering*, stating that, "[i]n an appropriate case," he would clarify that public employers cannot use unsupported claims of disruption to target disfavored speech. 606 U.S. 937, 941, 942–43 (Thomas, J., respecting denial of certiorari). This case is that vehicle. *Pickering* indisputably governs, the material record is developed, and the Seventh Circuit expressly found no evidence supporting disruption. The remaining question—whether predicted injury to public trust may satisfy the government's burden—is squarely presented and outcome determinative.

STATEMENT OF THE CASE

For Inendino, a 16-year veteran of the Chicago Fire Department, firefighting reflected a longstanding commitment to his community in Chicago's Englewood neighborhood. Inendino formed lasting relationships with colleagues and superiors, as reflected by thirty-one coworkers writing in support of him after his termination, detailing his performance, character, and compassion. Brief and Required Short Appendix of Plaintiff-Appellant at 24–25, *Inendino* v. *Nance-Holt*, 182 F.4th 571 (7th Cir. 2026) (No. 24-2908). He maintained a strong employment record, with no history of discipline or performance concerns. *Ibid.*

In October 2019, the City received two complaints from Facebook users concerning comments Inendino made on other individuals' Facebook pages. Pet.App.4a. The complaints prompted the City's Office of Inspector General ("OIG") to investigate Inendino's Facebook activity. *Id.* at 5a. The OIG began reviewing and preserving posts from Inendino's personal Facebook page and continued doing so until at least January 15, 2021. *Plaintiff-Appellant's Br.* at 7.

While that investigation was ongoing, in 2020, Inendino used his Facebook account to post on political and social issues, including Black Lives Matter protests, immigration, and Chicago city government and officials. *Id.* at 7–16. His posts included criticism of public officials and provocative commentary concerning protests and other current events. *Ibid.* The OIG ultimately relied on nine of Inendino's "offensive" Facebook posts in a report recommending Inendino's firing. *Id.* at 7.

Inendino was terminated on June 8, 2021, nineteen and a half months after the two complaints and approximately eight months after his last cited Facebook post. *Id.* at 33. During that time, no workplace disruption occurred based on Inendino's speech. Pet.App.24a–25a. No coworkers complained, and no citizens complained. *Ibid.* There was no disruption to CFD operations or to Inendino's performance, and he consistently provided effective and efficient service. *Plaintiff-Appellant's Br.* at 24–25.

Inendino sued the City and several City officials in the United States District Court for the Northern District of Illinois, alleging they violated the First Amendment by terminating him for his speech. Pet.App.7a. The district court granted defendants' motion for summary judgment and entered final judgment, concluding that Inendino's speech did not address matters of public concern because his speech did not make a "contribution" to public discourse, Pet.App.40a, and related to public matters in only a "tangential way," Pet.App.44a.

The Seventh Circuit rejected the district court's conclusion that Inendino's speech did not address matters of public concern but affirmed the judgment under *Pickering*. Pet.App.2a. The court acknowledged that the record contained no evidence of workplace disruption and that none of Inendino's coworkers "ever complained about his posts or the views they expressed." Pet.App.24a. It further recognized that "the passage of twenty months without incident undermine[d] the reasonableness" of the City's assertion of potential workplace disruption, Pet.App.25a, so the factor addressing the "need to maintain 'harmony

among coworkers'" favored Inendino, Pet.App.23a, 26a.

But the Seventh Circuit concluded that the City's interests "substantially outweigh[ed]" Inendino's rights. Pet.App.30a. The court concluded that the "time, place, and manner of the speech" cut against him because he posted "indiscriminately for the world" rather than to a "particular audience." Pet.App.26a. It likewise weighed Inendino's Facebook identification as a CFD firefighter against him, reasoning that viewers would not regard him as a member of the general public. Pet.App.27a. The court did not explain why this identification should diminish Inendino's interest in off-duty speech, particularly given that Pickering identified himself as a teacher when speaking. See *Pickering*, 391 U.S. at 578–79.

To tip the balance for the government, the Seventh Circuit relied heavily on the City's unsupported predictions of potential impeded job performance and diminished public trust, despite no record evidence of disruption or distrust. Pet.App.28a–29a. The court also placed the "offensive" nature of Inendino's speech on the government's "side of the scale," Pet.App.30a, weighing its "extremely derogatory and divisive" character against Inendino's First Amendment interests, Pet.App.26a.

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are divided over the evidentiary showing required under *Pickering*.

A public employee's First Amendment protection against dismissal for off-duty speech turns on a

geographic lottery. *Pickering* requires courts to "arrive at a balance between the interests of [the employee] ... in commenting upon matters of public concern and the interest of the [employer] ... in promoting the efficiency of the public services it performs through its employees," but left unclear what evidence of disruption is necessary to tip that balance in the employer's favor. 391 U.S. at 568.

The *Pickering* framework emerged from a dispute over a school board's dismissal of a teacher for publicly criticizing its handling of school finances. See *id.* at 564–67. The board offered no evidence that the speech impaired job performance or school operations, and this Court declined to presume those consequences from the speech itself. See *id.* at 571–74.

Later decisions recognize that employers do not always need to wait for harm to materialize before acting. The Court in *Connick* v. *Myers* stated that an employer need not "allow events to unfold" until disruption manifests. 461 U.S. 138, 152 (1983). The *Waters* plurality instructed courts to give "substantial weight" to "reasonable predictions of disruption," while recognizing that speech more substantially involving matters of public concern may demand a stronger justification. 511 U.S. 661, 673–74 (1994). But neither decision supplied an evidentiary standard for determining when anticipated disruption is sufficiently grounded to outweigh a public employee's First Amendment interests.

The courts of appeals have since adopted conflicting rules governing that showing, dividing all eleven regional circuits among five competing approaches.

Some require record-based evidence, tying predicted disruption to government operations; others give weight to public-trust concerns or contextually supported predictions; still others focus on the timing of the employer's prediction or require a demonstrated connection between public-trust concerns and actual or reasonably anticipated operational harm. Collectively, they reflect disagreement about what the government must prove before predicted disruption may outweigh individual speech rights—if it may do so at all.

A. The Eighth Circuit requires evidence of actual or reasonably anticipated disruption to public services.

In the Eighth Circuit, the employer must establish an adverse effect on workplace harmony, employee performance, or agency operations before the employer's efficiency interest enters the balance. See *Melton*, 147 F.4th at 902–03. A prediction may suffice, but only when supported by actual or reasonably anticipated disruption. See *id.* at 903; see also *Mayfield* v. *Mo. House of Representatives*, 122 F.4th 1046, 1055 (8th Cir. 2024) (employer must produce evidence that the speech adversely affected operational efficiency before *Pickering* balancing is triggered). Otherwise, there is "no governmental [efficiency] interest to weigh." *Melton*, 147 F.4th at 904.

Like Inendino, the plaintiff in *Melton* was a firefighter dismissed for controversial off-duty Facebook speech perceived as racially offensive. *Id.* at 900. He reposted an image depicting a fetus with a rope around its neck and the caption "I can't breathe!" *Ibid.*

The public response was substantially greater than for Inendino: calls jammed city telephone lines, police officers and city-council members objected, and residents expressly stated that they "did not want [Melton] 'coming to their house ... for a medical call or fire emergency.'" *Id.* at 901 (citation omitted).

Even so, the Eighth Circuit concluded that the controversy did not satisfy the evidentiary threshold necessary to place the employer's efficiency interest on the *Pickering* scale. See *id.* at 903. Training and emergency services continued without disruption, and no coworker complained, confronted Melton, or refused to work with him. See *ibid.* Even the residents' stated unwillingness to receive Melton's assistance did not establish an effect on the department's operations because "there was no showing that [his] post had an impact on the fire department itself." *Ibid.* The mayor's prediction of diminished trust among firefighters likewise lacked sufficient factual support to remove the issue from the jury. See *id.* at 903–04.

Because "the record and the prediction [did] not match," the Eighth Circuit remanded for a jury to determine whether the predicted disruption was reasonable or instead rested on speculation. *Ibid.* Only if the jury found the prediction sufficiently supported would the City's asserted efficiency interest receive weight. See *ibid.*

B. The Tenth Circuit requires actual disruption after substantial time passes without incident.

The Tenth Circuit adds a temporal requirement to *Pickering*. Under this interpretation, when an employer acts soon after the speech occurs, it may rely on a reasonable prediction of disruption, supported by specific evidence. See *Duda* v. *Elder*, 7 F.4th 899, 912–13 (10th Cir. 2021). But when an employer acts long afterward, it must prove actual disruption. See *ibid.* Although the circuit has not fixed a precise boundary, it has held that six disruption-free months are enough to require actual evidence of harm rather than ongoing prediction. See *Kent* v. *Martin*, 252 F.3d 1141, 1146 (10th Cir. 2001).[1]

C. The Third, Fifth, Sixth, and Ninth Circuits require a substantiated connection between the speech and the asserted operational harm.

Four other circuits take an entirely different approach. The Sixth Circuit requires an objectively reasonable prediction of disruption grounded in the factual circumstances surrounding the speech. A public employer need not await actual disruption, but its

[1] In *Kent*, the Tenth Circuit treated the passage of time as altering the employer's evidentiary burden. In *Duda*, the circuit reaffirmed that temporal principle in a case involving a sheriff's alleged retaliation against a patrol sergeant for supporting an electoral opponent. See 7 F.4th at 905–09, 912–13. Because the employer's evidence failed even under the more permissive potential-disruption standard, the court did not decide whether the delay required proof of actual disruption. *Id.* at 913–15.

anticipated harm must bear on the *Pickering* interests in workplace harmony, employee performance, working relationships, agency operations, or the agency's mission. See *Noble* v. *Cincinnati & Hamilton Cnty. Pub. Libr.*, 112 F.4th 373, 383–85 (6th Cir. 2024).

In *Noble*, a library security guard posted the same "All Lives Splatter" meme Inendino posted, and the library terminated him after several coworkers complained. *Id.* at 378–79. Applying *Pickering*, the Sixth Circuit held that the library could not reasonably predict operational disruption where the post remained online for less than a day, reached fewer than one hundred Facebook friends, and drew no public complaints. See *id.* at 383–85. Moreover, the employee had a "spotless record" as a security guard. *Id.* at 384. His public-facing position did not alter the court's conclusion because no patron had complained about—or apparently even seen—the post. *Id.* at 385 n.5.

The Sixth Circuit's decision in *Bennett* v. *Metropolitan Government of Nashville & Davidson County*, 977 F.3d 530 (6th Cir. 2020), illustrates the evidence that can satisfy that standard. There, an emergency-communications employee's use of a racial slur on Facebook prompted "nonstop conversation" in the office for days, reduced communication among employees, led to counseling and diversity training, and caused coworkers to question whether they could rely on her during emergency work. *Id.* at 534–35, 540–42. Those facts substantiated impairment of workplace harmony and working relationships—interests expressly weighed under *Pickering*—and supported the court's conclusion that the employer's interests outweighed the employee's speech interests. *Id.* at 545. Read

together, *Noble* and *Bennett* demonstrate a consistent demand for evidence substantiating the employer's asserted operational concerns.

The Ninth Circuit similarly requires an evidentiary foundation for predicted disruption under *Pickering*. In *Moser* v. *Las Vegas Metropolitan Police Department*, a SWAT sniper was transferred from SWAT to patrol after commenting that it was a "shame" a suspect who shot an officer did not "have a few holes in him." 984 F.3d 900, 903 (9th Cir. 2021). The department asserted that the comment could undermine public confidence in Moser's fitness as a sniper and expose the department to liability after a future use of force. See *id*. at 904. But no media outlet reported the comment, only one anonymous tipster had complained, and the asserted litigation risk depended on a chain of speculative future events. See *id*. at 910–11. Because "bare assertions of future conflict" could not satisfy the government's *Pickering* burden, the Ninth Circuit reversed the district court's grant of summary judgment. *Id*. at 909–12; see also *Hernandez* v. *City of Phoenix*, 43 F.4th 966, 978–80 (9th Cir. 2022) (under *Pickering*, a public employer may rely on anticipated disruption, but not where the evidentiary record precludes assessment of whether the asserted disruption justified the threatened discipline).

The Third Circuit applies the same approach. In *Jorjani* v. *New Jersey Institute of Technology*, the university placed a lecturer on leave and declined to renew his contract after his off-campus comments about race and politics generated student and alumni complaints, faculty denunciations, and calls and emails to administrators. See 151 F.4th 135, 138–40 (3d Cir.

2025). The court applied the "ordinary *Pickering* analysis" and asked whether the asserted distractions outweighed Jorjani's interest in speaking. *Id*. at 141–42. They did not. There was no objective evidence that students questioned Jorjani's ability to teach or grade fairly, that faculty disagreement interfered with research or teaching, or that the complaints required additional staffing. See *id*. at 143. As the Third Circuit put it, the "minimal evidence of disruption" differed little from "the ordinary operation of a public university," and therefore could not outweigh Jorjani's speech interest. *Id*. at 142.

When presented with concrete operational consequences, the Third Circuit ruled differently. In *Munroe* v. *Central Bucks School District*, a teacher's blog disparaging students prompted more than two hundred parental requests to remove children from her classes and required another teacher to cover her schedule. See 805 F.3d 454, 462 (3d Cir. 2015). The public reaction mattered under *Pickering* not merely because it was substantial, but because it translated into tangible interference with the school's ability to deliver educational services. *Id.* at 477–78.

The Fifth Circuit likewise requires record support that the asserted efficiency interest is reasonably threatened. In *Kinney* v. *Weaver*, the en banc court emphasized that "engaging in *Pickering* balancing is not like performing rational basis review," under which any "imaginable legitimate basis" will suffice. 367 F.3d 337, 363 (5th Cir. 2004) (en banc). In *Kinney*, police officials boycotted the classes of police-academy instructors after they testified that an officer had used excessive force. *Id*. at 341–44. But the court explained

that generalized interests in loyalty, training, and effective law enforcement could not suffice without record support for a reasonable threat to those interests. *Id.* at 362–63.

So too in *Salge* v. *Edna Independent School District*, where the Fifth Circuit applied *Pickering* to community controversy, administrative attention, and asserted reputational injury following an employee's comments to a reporter. See 411 F.3d 178, 195–96 (5th Cir. 2005). The court distinguished interference with the district's "actual operations" from merely creating "a bureaucratic hassle." *Id.* at 196 n.64. Given the "dearth of evidence" that the speech "actually or potentially interfered with or disrupted the functioning of the school district," the *Pickering* balance favored the employee. *Id.* at 197.

D. The First and Eleventh Circuits give substantial weight to contextual predictions, while the Fourth Circuit rejects public reaction alone.

Three other circuits adopt yet a different approach to *Pickering*'s government-efficiency prong. The First Circuit permits an employer to rely on record-supported predictions of operational disruption even when the actual disruption shown is limited. For example, in *MacRae* v. *Mattos*, Hanover Public Schools terminated a newly hired teacher after her social-media posts generated extensive controversy in the neighboring Bourne school system. See 106 F.4th 122, 128–30 (1st Cir. 2024). Bourne students and staff were reportedly upset, the teacher's association publicly condemned the posts, and more than a dozen

people addressed them at a school-committee meeting. See *id.* at 139. At Hanover, meanwhile, a teacher alerted administrators to the controversy, and students were overheard discussing the posts. See *id.* at 139–40. Although Hanover received no calls or complaints from students, parents, or community members, and the record showed no significant diversion of school resources, the First Circuit held that the circumstances made the prediction of similar disruption objectively reasonable. See *id.* at 137–38, 140–41. The court nevertheless emphasized that an employer's "prediction of disruption must be reasonable based upon the record." *Id.* at 138.[2]

The Eleventh Circuit articulates a more permissive predictive threshold. In *Moss* v. *City of Pembroke Pines*, it stated that the government's interest in avoiding disruption "does not require proof of actual disruption" and that a "[r]easonable possibility of adverse harm is all that is required." 782 F.3d 613, 622 (11th Cir. 2015). The case involved an assistant fire chief who spoke during contentious budget and collective-bargaining negotiations and a trial record showing substantial institutional tension—including testimony that disputes over concessions had escalated to violence among coworkers. *Id.* at 621–22. Although

[2] A divided panel applied this framework in *Hussey* v. *City of Cambridge*, concluding that the surrounding context and rapid dissemination of an officer's off-duty Facebook post reasonably supported the police department's prediction of harm to community trust. See 149 F.4th 57, 71–73 (1st Cir. 2025). The First Circuit later granted rehearing en banc, withdrew the panel opinion, and vacated the judgment. See *Hussey* v. *City of Cambridge*, 165 F.4th 638, 639–40 (1st Cir. 2026). The en banc decision remains pending.

actual disruption attributable to the employee's speech was unnecessary, the court emphasized that "a wealth of evidence" supported the reasonable possibility of harm. *Id.* at 622. Having concluded that the employee spoke pursuant to his official duties, the court's *Pickering* analysis was an alternative holding: even assuming the speech was constitutionally protected, the developed record satisfied its predictive standard. See *id.* at 621–22.

The Fourth Circuit draws a different line, rejecting hostile public reaction alone while permitting public-trust concerns to carry weight when accompanied by evidence of operational disruption. In *Berger* v. *Battaglia*, a police department conditioned an officer's continued employment on his cessation of off-duty blackface performances after members of the community objected and protested. See 779 F.2d 992, 995–96 (4th Cir. 1985). The department conceded that the speech caused no internal disruption. See *id.* at 1000. Applying *Pickering*, the Fourth Circuit held that "threatened disruption by others reacting to public employee speech" could not itself justify discipline. *Id.* at 1001.

The Fourth Circuit's decision in *Grutzmacher* v. *Howard County*, 851 F.3d 332 (4th Cir. 2017), illustrates concrete evidence of disruption supporting the employer's decision. A battalion chief posted comments joking about violence against political opponents, "liked" a racially charged response, and later posted material mocking his chain of command after being directed to remove the content. See *id.* at 338–40. The record showed actual internal consequences: the speech caused dissension within the department,

prompted concerns among subordinate firefighters, and led one employee to state, "I don't want to work for [Plaintiff] anymore. I don't trust him." *Id.* at 345–46. The court also credited the potential for the posts to "interfere with the public trust" and diminish the department's standing with the community. *Id.* at 347. The Fourth Circuit upheld the dismissal because the public-trust concern accompanied concrete evidence of impaired working relationships, discipline, and departmental authority. See *id.* at 345–48.

E. The Seventh Circuit and Second Circuit treat potential loss to public trust as impairing the employer's operation.

This case illustrates the Seventh Circuit's government-tilted interpretation of *Pickering*. The City terminated Inendino after two individuals whose identities were not disclosed complained about his off-duty Facebook posts. See Pet.App.4a–6a. The City documented no resulting disruption to his work or its operations. Pet.App.24a. Its only justification was speculation that the posts may damage the fire department's reputation or undermine public confidence. Pet.App.23a.

Despite the City "not offer[ing] any evidence that demonstrate[d] a disruption or even a reasonable threat of a disruption," the court affirmed summary judgment. Pet.App.24a. In doing so, the court emphasized the posts' "derogatory and divisive" content, their public accessibility, and the possibility that readers could identify Inendino as a CFD employee. Pet.App.26a–27a. Because Inendino served "a predominantly Black neighborhood," the court credited

the concern that the posts "might reflect an unwillingness to treat all citizens of Chicago equally, regardless of race." Pet.App.28a.

Many months passed between Inendino's final cited post and his dismissal without evidence that anyone refused his assistance, patient care was compromised, or emergency services were disrupted. See Pet.App.24a. Nevertheless, the court held that the posts "eroded the public's trust in the CFD as a whole," and this threatened loss of trust—"vital to the department's effectiveness and success"—was enough to tip the *Pickering* balance in the City's favor. Pet.App.29a–30a.

In reaching that conclusion, the Seventh Circuit expressly relied on the Second Circuit's public-trust analysis in *Locurto* v. *Giuliani*, 447 F.3d 159 (2d Cir. 2006). See Pet.App.27a–28a. There, the court upheld the dismissal of police officers and firefighters who participated in a widely publicized parade float involving racist stereotypes. See *Locurto*, 447 F.3d at 164–65, 183. The Second Circuit characterized the distinction between potential operational disruption and harm to public perception as a "false one." *Id.* at 179. For employees whose jobs involve substantial public contact, the court held, public perception may bear on whether speech disrupts government operations, and "the disruption need not be actual." *Ibid.* The court reasoned that first responders are "quintessentially public servants" whose effectiveness depends on community trust. *Id.* at 178–79. Thus, under the Second Circuit's approach, potential injury to

public confidence may supply the operational harm necessary to justify discipline.

* * *

The circuits divide into five discernible approaches. These divergent approaches expose three fractures in the *Pickering* standard: (i) what evidence is sufficient to place the employer's efficiency interest on the scale, (ii) when the passage of time renders a prediction of disruption insufficient, and (iii) whether threatened loss of public trust itself constitutes operational harm.

II. The question is exceptionally important and recurring.

The question presented implicates whether tens of millions of public employees can participate in public discourse without placing their livelihoods at the mercy of others' reaction. For those employees, the distinction between mere offensiveness and government disruption marks the boundary between protected speech and speech that may justify discipline. Unless that boundary rests on an identifiable evidentiary showing, employees cannot reliably assess whether their speech is protected, and courts lack clarity about when the government may punish it.

Three features make this Court's review urgent. First, the question repeatedly arises across occupations and jurisdictions, leaving employees and employers without a reliable standard for distinguishing mere offensiveness from actual or reasonably predicted government disruption. Second, allowing speculation about community trust to substitute for evidence of disruption invites a heckler's veto and

permits officials to enforce political orthodoxy through employment decisions. Third, the uncertainty threatens employees' livelihoods and chills public discourse. As this Court has recognized, the threat of adverse employment action is a "potent means of inhibiting speech." *Pickering*, 391 U.S. at 574. That threat reaches beyond the employee who is discharged: it warns others that participating in public debate may cost them their careers.

A. The recurring conflict leaves public employees and employers without a reliable standard for when speech is protected.

Justice Thomas recently warned of "a trend of lower court decisions that have misapplied our First Amendment precedents in cases involving controversial political speech," observing that "a concerning number of these cases have arisen in the context of the *Pickering-Garcetti* framework." *MacRae*, 606 U.S. at 942 (Thomas, J., respecting denial of certiorari). "If left unchecked," he cautioned, "this number will likely increase" because public employers "may find it convenient to attempt to 'restrict disfavored or unpopular speech in the name of preventing disruption.'" *Ibid.* (quoting *Dodge* v. *Evergreen Sch. Dist. #114*, 56 F.4th 767, 786 (9th Cir. 2022)).

This petition presents the opportunity Justice Thomas identified. Although *MacRae* focused narrowly on whether the framework applies to "unrelated, preemployment speech," Justice Thomas invited consideration of the broader problem: "In an appropriate case, I would make clear that public employers cannot use *Pickering-Garcetti* balancing generally or unsupported claims of disruption in particular to

target employees who express disfavored political views." *MacRae*, 606 U.S. at 942–43 (Thomas, J., respecting denial of certiorari).

Unsupported claims of institutional harm have become a justification for suppressing disfavored speech. When this Court denied certiorari in *Kennedy* v. *Bremerton School District*, four Justices questioned the Ninth Circuit's expansive understanding of teachers' and coaches' official duties. 586 U.S. 1130, 1132–33 (2019) (statement of Alito, J., joined by Thomas, Gorsuch, and Kavanaugh, JJ., respecting denial of certiorari). That understanding appeared to permit schools to regulate expression whenever it was visible to students, and suggested that a coach's role-model responsibilities could restrict religious expression even while off duty. *Id.* at 1133. It also threatened to place private expression under official supervision merely because the speakers held a public-school position. See *ibid.*

In *Porter* v. *Board of Trustees of North Carolina State University*, Judge Richardson's dissent emphasized the need to substantiate asserted institutional harm rather than treat disagreement as sufficient disruption. See 72 F.4th 573, 595–96 (4th Cir. 2023) (Richardson, J., dissenting). Likewise, in *Dodge*, a principal defended restrictions on a teacher's display of a "Make America Great Again" hat at teacher-only training sessions by pointing to staff members' feelings of intimidation and distress. 56 F.4th at 782. Yet both sessions proceeded without incident, no students or parents were present, and no record evidence indicated that the hat interfered with the teacher's performance or school operations. See *id.* at 782–83. When

the principal argued that the hat conflicted with the school's commitment to inclusivity and interest in creating a safe environment for immigrants, the Ninth Circuit rejected that justification because allowing the principal's preferred message to override the teacher's political expression would permit viewpoint discrimination under the guise of protecting administrative interests. *Id.* at 786–87.

These cases illustrate why courts must clarify the connection between an employer's asserted interests and the consequences of an employee's speech. Otherwise, hypothetical concerns about offense, institutional values, or employee disagreement can masquerade as evidence of disruption.

The frequency and breadth of these disputes make clarification especially important. Six published appellate decisions since 2021, spanning five circuits, involve a police officer's Facebook comment, a teacher's display of a campaign hat, a teacher's TikTok posts, a library security guard's Facebook meme, and two firefighters' Facebook posts. See *Moser*, 984 F.3d at 902; *Dodge*, 56 F.4th at 772; *MacRae*, 106 F.4th at 126; *Noble*, 112 F.4th at 377; *Melton*, 147 F.4th at 900; Pet.App.1a–2a. In each instance, courts determined whether reactions to controversial expression established a sufficiently grounded threat to public services to justify adverse employment action.

The stark circuit inconsistencies leave employees and employers without reliable guidance on that recurring question. A uniform standard is therefore essential to protect public employees' participation in

civic life and to guide the officials responsible for maintaining effective public services.

B. Allowing speculation about community trust to substitute for evidence of operational disruption invites a heckler's veto and distorts *Pickering*.

Pickering ties the government's interest as an employer to the efficient provision of public services. See 391 U.S. at 568. Thus, the balance considers whether an employee's speech impairs discipline, working relationships, job performance, or government operations. See *Rankin*, 483 U.S. at 388. Allowing anticipated public distrust to substitute for evidence of actual disruption or reasonable threat of disruption removes that constraint. An employer may then tip the balance merely by predicting that the public would distrust an employee who expressed a disfavored view.

The resulting heckler's veto requires no actual complaints. Officials need only speculate that listeners would view an employee's speech as incompatible with the agency's mission, then invoke anticipated distrust to justify adverse employment action. Under that reasoning, continued employment turns on the reactions officials imagine rather than the operational disruption the evidence supports.

This Court's precedents reject offense as a free-standing justification for suppressing public debate. In *Rankin*, the Court held that a statement's "inappropriate or controversial character" does not determine whether it addresses a matter of public concern. *Id.* at 387. In *Snyder* v. *Phelps*, the Court likewise

explained that speech on matters of public concern "cannot be restricted simply because it is upsetting or arouses contempt." 562 U.S. 443, 458 (2011). The Court rejected an outrageousness standard that would permit liability to turn on a jury's subjective dislike of the expression. See *id.* at 458–59; see also *R.A.V.* v. *City of St. Paul*, 505 U.S. 377, 391–92 (1992) (rejecting selective restrictions directed at disfavored subjects and viewpoints).

A loose community-trust standard allows officials to treat disagreement with an agency's preferred message as evidence that an employee cannot serve the public effectively. See *MacRae*, 606 U.S. at 941 (Thomas, J., respecting the denial of certiorari). Whenever employees express unpopular views, their constitutional protections risk turning on the preferences of their supervisors.

C. Uncertainty about speech protections threatens livelihoods, professional identity, and public participation.

As of March 2025, state and local governments employed 20.3 million people. Ross Jacobson et al., *Annual Survey of Public Employment & Payroll Summary Report: 2025*, U.S. CENSUS BUREAU (Apr. 16, 2026), https://www.census.gov/library/publications/2025/econ/g25-aspep3.html [https://perma.cc/X8BS-CPH5]. For those millions of employees, deciding whether to express a private opinion can mean risking their income and career. With those high stakes, employees who cannot predict whether their speech is protected may choose silence, making the surrender of protected expression the practical price of public employment. Yet this Court has long

recognized that conditioning public employment on such surrender penalizes the exercise of constitutional rights. See *Perry* v. *Sindermann*, 408 U.S. 593, 597–98 (1972).

The public loses as well. Public employees bring firsthand experience to debates about schools, policing, emergency services, and government institutions. In fact, *Pickering* specifically recognized the public importance of allowing employees with informed views to participate in debates about government operations "without fear of retaliatory dismissal." 391 U.S. at 572. This Court has reiterated that public employees remain citizens entitled to discuss the same political and social issues as their neighbors. *United States* v. *Nat'l Treasury Emps. Union*, 513 U.S. 454, 465–66 (1995).

The decision below further chills employee speech by treating Inendino's identification as a firefighter and the public availability of his posts as factors against protection. See Pet.App.26a–27a. That approach pressures employees to conceal an important part of their identities or restrict their participation in public discourse.

This Court's precedent teaches the opposite. Just because someone may be known as a firefighter, teacher, or police officer does not mean they speak for the government whenever expressing a private opinion. See *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 528–30 (2022) (rejecting reliance on an employee's role-model responsibilities to treat private expression as government speech). In the related state-action context, *Lindke* v. *Freed* recognized that public

officials retain private lives and constitutional rights on personal social-media platforms. See 601 U.S. 187, 196–98 (2024). Although an employee's public identification as a government employee may be relevant to the *Pickering* balance, that identification alone does not establish that private speech threatens effective public service. Expanding affiliation into a near-automatic loss of speech rights, as the Seventh Circuit did, exposes millions of public employees to potential sanction for their personal social-media expression.

Nor should an employee's speech receive less protection simply because it reaches more people. Social media is a central forum for contemporary public discussion. Making public accessibility an adverse factor gives uneven protection for political expression based on how many people it reaches. See *Packingham* v. *North Carolina*, 582 U.S. 98, 104–07 (2017). It also places constitutional protection in the hands of others, who may circulate a post beyond its intended audience.

The doctrinal uncertainty is especially consequential for employees who directly serve the public. But the importance of those responsibilities does not relieve the employer of its burden to substantiate the asserted threat. See, e.g., *Rankin*, 483 U.S. at 390–91 (directing attention to an employee's actual duties and public accountability). Employees entrusted with protecting the public should not be excluded from political debate simply because their work requires public confidence.

* * *

As these disputes repeatedly arise nationwide, the absence of a uniform standard leaves employees uncertain whether their public participation will get them fired. The consequences include improper adverse employment actions and self-censorship.

III. The decision below conflicts with this Court's precedents and misapplies *Pickering*.

The decision below departs from this Court's precedents in three respects. First, this Court has consistently focused the government's efficiency interest on disruption to workplace operations—not generalized concerns about an employee's duties or public perception. See *Pickering*, 391 U.S. at 571. Second, under this Court's precedents, an employer may not rely on predicted disruption unless that prediction is supported by substantial evidence. *Ibid.* Third, the Seventh Circuit improperly gave the "offensive" nature of Inendino's speech substantial weight, a consideration that should never be in the *Pickering* balance. Pet.App.30a.

A. *Pickering* centers the government's interest on effective workplace operation.

The decision below extends the government's interest under *Pickering* beyond the limits this Court has recognized. The Seventh Circuit allowed the City's asserted interests to outweigh protected speech, despite acknowledging the predicted disruption had no evidentiary support, with "twenty months" passing without incident. Pet.App.24a.

In 1968, this Court established a balance between a public employee's interest in speaking "as a citizen"

on matters of public concern and the government's interest, "as an employer," in "promoting the efficiency of the public services it performs." *Pickering*, 391 U.S. at 568. Deciding in Pickering's favor, the Court made clear that the balance does not turn on the identification of a *conceivable* government interest. See *id.* at 571. While the government may exercise "broader discretion" to restrict speech when it acts as employer, restrictions "must be directed at speech that has some potential to affect its operations." *Garcetti* v. *Ceballos*, 547 U.S. 410, 418 (2006) (district attorney's speech was not protected where it was "made pursuant to his duties as a calendar deputy").

Applying that balance, this Court examined whether Pickering's speech impaired the school system's operation. *Pickering*, 391 U.S. at 571–73. The school board determined that Pickering's critical letter was "'detrimental to the efficient operation and administration of the schools,'" and his dismissal would be in the schools' best interest. *Id.* at 564. Pickering's letter "constituted, basically, an attack" on the board's handling of school funding, as well as the superintendent's efforts to prevent opposition from teachers. *Id.* at 566. The board charged that the letter contained false statements and would damage its members' professional reputations, disrupt faculty discipline, and foster "'controversy, conflict and dissension'" among the school community. *Id.* at 567.

The Court focused the government's efficiency interest on the speech's impact on the employer's "actual operation." *Id.* at 571. The alleged falsity of Pickering's statements did not establish the requisite harm, particularly because such falsity would "not normally

have any necessary impact on the actual operations of the schools." *Ibid.* Rather, Pickering's statements reflected a "difference of opinion" on issues of "general public interest" and were not "detrimental" to a school. *Ibid.*

Government efficiency interests have been credited where disruption either materialized or was reasonably supported by evidence linking the speech to workplace operations. In *Connick*, workplace operations were directly affected when Myers distributed a questionnaire at work addressing office morale, the need for a grievance committee, and other workplace concerns. 461 U.S. at 153. It required employees to leave the office to complete it. *Ibid.* The Court also credited concerns that the speech, stemming from an ongoing office-policy dispute, threatened supervisory authority. *Ibid.* Those circumstances supported the employer's concern that "the functioning of [the] office was endangered," with Myers described as creating a "'mini-insurrection' within the office." *Id.* at 141, 153.

The Court's operational focus continued in *Rankin*, where this Court's government-interest inquiry looked to the "effective functioning of the public employer's enterprise." 483 U.S. at 388. Because the government bears the burden of justifying an adverse employment action on "legitimate grounds," the Court identified as "pertinent considerations" whether the speech impaired workplace discipline or harmony, affected close working relationships, impeded the employee's job performance, or interfered with the "regular operation" of the workplace. *Ibid.* When there was "no evidence" that the employee's speech "interfered with the efficient functioning of the office," the

Court held that the employer failed to demonstrate a state interest that outweighed the employee's First Amendment rights. *Id.* at 389.

This Court has always required evidence of operational harm before allowing a government employer's efficiency interests to override an employee's speech. That evidence is absent here, where the City asserted—without supporting evidence—that Inendino's posts damaged the CFD's image and reputation. Pet.App.23a. The City's justifications echo the Board of Education's in *Pickering*, which claimed the speech "*damaged the professional reputations* of its members and of the school administrators, *would be disruptive* of faculty discipline, and *would tend to foment 'controversy, conflict and dissension*' among teachers, administrators, the Board of Education, and the *residents* of the district." 391 U.S. at 567 (emphasis added).

When the Seventh Circuit discussed the need to maintain "harmony among coworkers," the panel acknowledged that the record contained no evidence of actual disruption. Pet.App.23a–24a. In fact, "none of [Inendino's] co-workers ever complained about his posts or the views they expressed." Pet.App.24a. Any disruption among the "rank-and-file" had ample time to manifest before the City's decision to fire him, as nearly "twenty months passed" after the Inspector General complaints, and eight months after his last documented post. *Ibid.* The panel observed that the passage of time "undermine[d] the reasonableness" of the City's concerns and acknowledged that the City's interest could not stand on asserted disruption,

concluding that the factor at the heart of the *Pickering* analysis "favor[ed] Inendino." Pet.App.25a–26a.

B. This Court's precedents do not permit public employers to suppress protected speech based on speculative predictions of disruption.

Pickering made clear that pure speculation about reputational harm and disruption cannot outweigh an employee's right to speak. See 391 U.S. at 572. The record in *Pickering* did not substantiate the Board's predicted disruption: "[n]o evidence was introduced at any point" as to the effect of the letter on the community or on the administration of the school system. *Id.* at 567. In assessing the Board's predictions, the Court looked to whether disruption had materialized in the workplace—it had not. *Ibid*. Because Pickering's statements were not directed toward anyone with whom he normally interacted at work, "no question of maintaining either discipline by immediate superiors or harmony among coworkers [was] presented." *Id.* at 569–70.

This Court has recognized that a government employer need not always wait for disruption to materialize before acting. *Connick*, 461 U.S. at 152. But that recognition did not abandon *Pickering*'s central focus on workplace operations or permit government reliance on speculation. A distinction lies between a "reasonable" prediction of disruption and one that is "purely speculative." *MacRae*, 606 U.S. at 941 (Thomas, J., respecting the denial of certiorari). Stressing that "the key word here is 'reasonable,'" Justice Thomas explained that courts should discard

purportedly disruptive factors whose potential impact is "purely speculative." *Ibid.*

The Seventh Circuit's application of *Pickering* below departs from the workplace-focused inquiry by allowing speculative, unsupported predictions of disruption to carry weight in the balance. See Pet.App.28a. The same passage of time that "undermine[d] the reasonableness" of the City's prediction of disruption undercuts the reasonableness of its prediction that Inendino's speech could impede his job performance. Pet.App.25a. Emphasizing Inendino's "job duties" as a firefighter and the racial demographics of those he served, the court concluded that his posts "might" reflect an "unwillingness to treat all citizens of Chicago equally." Pet.App.28a. But no evidence in Inendino's unblemished sixteen-year record with the CFD suggests he would ever treat citizens differently based on race, or that his speech affected his abilities as a "public servant[]." Pet.App.29a; *Plaintiff-Appellant's Br.* at 24–25. Yet the court weighed this consideration "substantially in the City's favor"—even in the absence of evidence. Pet.App.27a.

Allowing purely speculative concerns to outweigh Inendino's First Amendment interest, the court concluded that Inendino had "undermined [the] trust" placed in firefighters, "damaged the public's view of his willingness to serve," and "eroded" the public's trust in the CFD "as a whole." Pet.App.29a. The court reached that conclusion despite "the lack of complaints over the course of nearly two years." Pet.App.25a.

Even if public trust is "vital" to the CFD's "effectiveness and success," Pet.App.29a, conjecture about diminished trust does not constitute government disruption. The decision below thus departs from this Court's consistent demands for evidence before the government's interest can outweigh an employee's protected speech.

C. The decision below improperly gave weight to the "offensive" nature of Inendino's speech.

The Seventh Circuit's reliance on the "offensive" nature of Inendino's posts substitutes the content and viewpoint of speech for the evidence of disruption required by *Pickering*. Pet.App.30a. Emphasizing the objectionable nature of Inendino's speech, the Seventh Circuit described it as so "offensive and racist" that the court was "reluctant to amplify" it. Pet.App.17a. The court assessed the "extremely derogatory and divisive content of the posts" as a consideration that "cut[] against him." Pet.App.26a. But *Pickering* does not authorize courts to weigh the content of protected speech in the abstract. See 391 U.S. at 570.

The offensiveness of speech should never enter the balance at all. *Pickering-Garcetti* cannot be used to "target employees who express disfavored political views." *MacRae*, 606 U.S. at 943 (Thomas, J., respecting the denial of certiorari). But that is exactly what the City did here.

It is a "bedrock principle" that the government may not prohibit an idea merely because society finds it "offensive or disagreeable." *Snyder*, 562 U.S. at 458 (quoting *Texas* v. *Johnson*, 491 U.S. 397, 414 (1989)).

The Constitution does not permit the government to decide when otherwise protected speech is sufficiently offensive to justify stripping it of its First Amendment protections. *Id.* at 459. These principles remain true in the public-employment context. See *MacRae*, 606 U.S. at 940 n.1 (Thomas, J., respecting the denial of certiorari) (noting that *Snyder* relied on public-employment precedent and that "*Pickering-Garcetti* cases have not treated the tone or style of an employee's speech as bearing on its First Amendment value"). The relevant question is never whether a court finds an employee's speech offensive or objectionable, but whether the speech so greatly interferes with the government's operations to justify restricting it. See *Pickering*, 391 U.S. at 573.

Hussey illustrates the danger of allowing the tone of an employee's speech to carry weight. 149 F.4th at 69. The First Circuit relied on *Connick* to conclude that Hussey's "derogatory or disparaging" speech was not entitled to "special protection." *Id.* at 68. But *Connick* held that "speech on public issues" occupies the "highest rung" of First Amendment protection. 461 U.S. at 145. That guarantee does not hinge on whether the employee expressed the protected viewpoint in inoffensive terms. Considering the "derogatory" or "disparaging" nature of speech turns the "narrowly circumscribed rule" into a "free pass" for governments to "police the viewpoints expressed by their employees." *Hussey*, 149 F.4th at 79 (Howard, J., dissenting).

The Seventh Circuit's own summary of its *Pickering* balance confirms the weight it assigned to the nature and content of Inendino's speech. See Pet.App.30a. On

Inendino's side of the scale, the court identified his interest as "uploading the thirteen Facebook posts." *Ibid.* On the City's side, the court emphasized "the racially offensive content of those posts" and weighed the "offensive[ness]" of Inendino's speech in favor of the government. *Ibid.*

* * *

No workplace disruption occurred, and no record evidence supported a reasonable prediction that it would. Instead, the Seventh Circuit allowed abstract concerns about job performance and public trust, together with the "offensive content" of Inendino's speech, to carry substantial weight in the employer's favor. *Ibid.* The panel's reasoning undermines the First Amendment's core protection of public discourse and sets a dangerous precedent for allowing speculative concerns to outweigh speech rights in a manner that contradicts *Pickering*.

IV. This case presents a perfect vehicle for resolving the question presented.

Members of this Court have identified the need to clarify the extent to which *Pickering-Garcetti* balancing permits a public employer to rely on generalized predictions of disruption. *MacRae*, 606 U.S. at 942–43 (Thomas, J., respecting the denial of certiorari). Because that issue was not squarely presented in *MacRae*—where the petition asked whether *Pickering* applies to preemployment speech—Justice Thomas emphasized that this Court should address the issue "[i]n an appropriate case." *Id.* at 942. This is that case.

In *MacRae*, the First Circuit applied *Pickering*, giving "significant weight" to the public employer's unsupported prediction of disruption and allowing that prediction to tip the balance against the employee's First Amendment interest. 106 F.4th at 141. Justice Thomas characterized the First Circuit's analysis as "deeply flawed," explaining that the court "should have discarded factors whose disruptive potential was purely speculative." *MacRae*, 606 U.S. at 940–41 (Thomas, J., respecting the denial of certiorari).

The dispositive constitutional issue is clearly presented here. Unlike *MacRae*, this case does not involve a threshold question of whether *Pickering* applies. See Pet.App.7a. There is no dispute that Inendino was a public employee when he engaged in the speech. Pet.App.10a. This case comes before the Court with a clean record, free from factual or procedural impediments to the Court squarely deciding the question presented. See Pet.App.11a. The Seventh Circuit expressly applied *Pickering*, and, like the First Circuit in *MacRae*, afforded substantial weight to unsupported predictions of disruption in the balance against Inendino's First Amendment interest. See Pet.App.28a–29a. Because *Pickering* requires greater evidentiary support than this record provides before a predicted harm may outweigh a public employee's interests, the balance below cannot stand. *Pickering*, 391 U.S. at 567. Thus, the question presented is outcome-determinative.

The relevant facts are undisputed. The Seventh Circuit acknowledged that predictions of workplace disruption require evidentiary support and that "the

record lacks any meaningful evidence to substantiate the City's concerns about workplace disruption." Pet.App.26a. The dispositive question is whether predicted loss of public trust—when there is no reasonable threat or actual disruption—can be imputed from an employee's position, tipping the *Pickering* balance.

Comparison with another recent Seventh Circuit application of *Pickering* further demonstrates why this case cleanly presents the question at issue. In *Hedgepeth* v. *Britton*, the record contained substantial and undisputed evidence of actual workplace disruption, making actual rather than predicted disruption central to the *Pickering* analysis. 152 F.4th 789, 796–97 (7th Cir. 2025). This Court denied cert. *Hedgepeth* v. *Britton*, 146 S. Ct. 2641 (2026). But the petition presented the broader question "whether and under what circumstances public employers may discipline employees based on their expressions of controversial views while off the job." Pet. for Writ of Cert. at i, *Hedgepeth*, No. 25-819 (U.S. Jan. 8, 2026).

The question of precise evidentiary limits on predicted disruption was not presented, because the record included "113 emails about [Hedgepeth's] posts" from both current students and parents, evidence that school and district operations were in "disarray," and classrooms that were "unsettled." *Hedgepeth*, 152 F.4th at 796–97. Hedgepeth's posts drew media attention from both local and international outlets. *Id.* at 793.

That narrower question concerning evidentiary limits is presented here, where "nearly two years" passed without a complaint concerning Inendino's

speech and no other evidence supported the City's asserted risk of disruption. Pet.App.25a. Because the record is undisputed, the Seventh Circuit's *Pickering* analysis turned on unsupported predictions of disruption based on Inendino's role as a "public servant[]." Pet.App.29a. Whether this approach is a permissible application of *Pickering* depends on the circuit, as the eleven numbered circuits follow five distinct approaches. And this Court's answer to the question here would put the confusion to rest.

Unlike *MacRae* and *Hedgepeth,* this case presents the question without complicating factual circumstances. The question is squarely presented, its resolution is outcome determinative, and the record isolates the evidentiary issue. This is precisely the "appropriate case" for the Court to clarify the evidentiary limits on predicted disruption under *Pickering*. *MacRae*, 606 U.S. at 942 (Thomas, J., respecting the denial of certiorari).

CONCLUSION

The Court should grant the petition and reverse the Seventh Circuit's decision.

Respectfully submitted,

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October 14, 2026