No. 23-1269

In the Supreme Court of the United States

SUZY MARTIN,

Petitioner,

v.

SUSAN HALING, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION

KWAME RAOUL
Illinois Attorney General
JANE ELINOR NOTZ*
Solicitor General
LEIGH J. JAHNIG
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5376
Jane.Notz@ilag.gov

* *Counsel of Record*

Counsel for Respondent Nathan Rice

(additional counsel on inside cover)

ALEX HEMMER
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603

Counsel for Respondent Susan Haling

THOMAS A. DOYLE
1 North Dearborn Street, 9th Floor
Chicago, Illinois 60602

Counsel for Respondents Board of Education of the City of Chicago and Jonathan Maples

CYNTHIA B. HARRIS
60 East Van Buren Street, 12th Floor
Chicago, Illinois 60605

Counsel for Respondents Chicago Housing Authority, Mark Lischka and Michael Moran

QUESTION PRESENTED

Whether a government contractor was deprived of occupational liberty when she lost business with some state and local government agencies but continued operating her business for other government and private clients.

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BRIEF IN OPPOSITION

The Seventh Circuit correctly applied this Court's longstanding precedent when it affirmed the dismissal of Martin's complaint because she did not allege she was deprived of occupational liberty under a "stigma plus" theory of due process. In *Board of Regents of State Colleges v. Roth*, the Court held that a person is not deprived of occupational liberty when she is not foreclosed from obtaining other employment, even if she loses her government job. 408 U.S. 564, 573-575 (1972). Because Martin was able to continue working in her profession of providing elevator services, she experienced no loss of occupational liberty.

Martin now asks this Court to review the Seventh Circuit's decision under the guise of a purported circuit split in lower court treatment of occupational-liberty claims brought by debarred government contractors. But there is no split in authority. The cases that Martin cites do not reflect different analytical approaches; rather, they reflect the application of the same standard to different facts. When those same lower courts were confronted with similar facts as in this case, they reached the same result as the Seventh Circuit.

Not only is there no circuit split, but the fact-dependent inquiry that this Court's precedents, including *Roth*, require for occupational-liberty claims, which has been honed by decades of harmonious application in the lower courts, raises no question of sufficient importance for this Court's review. And this case is particularly unsuitable because the facts at hand do not recur often, meaning that review will not produce a generally applicable rule for lower courts to follow.

Finally, and in any event, this case is a uniquely poor vehicle for evaluating when debarred contractors have been deprived of occupational liberty. As Judge Easterbrook explained in concurrence, the inspector general's report about which Martin complains did not debar her from doing business with any government agency. Thus, the question presented will not be dispositive in this case, nor do these facts present an effective vehicle for examining the liberty interests of government contractors.

STATEMENT

1. The Office of the Executive Inspector General for the Agencies of the Illinois Governor ("OEIG") investigates waste, fraud, abuse, and violations of law in Illinois executive branch agencies. 5 ILCS 430/20-10(c), 20-20(1). The OEIG also has jurisdiction over vendors and those doing business with those agencies. *Id.* § 20-10(c). Respondent Susan Haling serves as the Executive Inspector General of the OEIG. *See* Dist. Ct. Doc. 68 at 4.

If, upon investigation, the OEIG finds reasonable cause to believe that a violation of law has occurred, it must issue a report to the agency involved, describing the misconduct and recommending corrective or disciplinary action. 5 ILCS 430/20-50(a)-(b). The agency must respond to the report, and the report and agency's response are then sent to the Illinois Executive Ethics Commission ("Ethics Commission"). *Id.* §§ 20-50(a), 20-50(c)-(c-5). The Ethics Commission, in turn, can make the report and agency response available to the public, after inviting a response from the sub-

ject of the investigation. *Id.* § 20-52. Respondent Nathan Rice is the Executive Director of the Ethics Commission. *Cf.* Dist. Ct. Doc. 68 at 4.[1]

2. Petitioner Suzy Martin owns Smart Elevators, an elevator service and repair company. *Id.* Before the events underlying this action, 80% of Smart Elevator's work was for "public-sector clients, primarily Chicago-area state and municipal work," as either "a direct contractor or as a subcontractor for other entities." *Id.* at 6, 18-19. Martin focused her company's work on servicing such agencies because of state and municipal "procurement rules" favoring "minority- and woman-owned businesses." *Id.* at 6.

Among Smart Elevator's clients was the University of Illinois Chicago ("University"). *Id.* at 7-8. In 2015, a University employee sent a complaint to the OEIG about Martin and Smart Elevators. *Id.* at 8. The complaint described "potential improprieties" between Martin, Smart Elevators, and a University employee named James Hernandez. *Ibid.* When the OEIG investigated these allegations, it learned that Martin had, over the course of several years, written checks to Hernandez's daughter. *Id.* at 9. On appeal, Martin claimed that Hernandez's daughter had "performed work" for Smart Elevators. 7th Cir. Doc. 20 at 11; *see* Dist. Ct. Doc. 68 at 9. In March 2016, the University accepted Hernandez's resignation and informed Martin that it would no longer retain Smart Elevators for elevator services. Dist. Ct. Doc. 68 at 10.

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[1] Director Rice is automatically substituted as a part for his predecessor in office, Michelle Casey, pursuant to Rule 35.3 of the Rules of this Court.

In April 2017, the OEIG sent the University its report, stating that Martin had paid Hernandez "at least $83,530 in kickbacks, and likely as much as $199,430," and had also "violated the gift ban provision of the [Illinois] State Officials and Employees Ethics Act," 5 ILCS 430/10-10. *Ibid.* The OEIG also "recommended" that the University stop contracting with Smart Elevators and Martin. *Id.* at 11.

Over a year later, in May 2018, Martin and Hernandez were charged with violating federal bribery law. *Id.* at 12. In January 2019, the Ethics Commission published the report the OEIG had sent to the University on the Commission's website, along with the University's response. *See id.* at 13.[2] Also in early 2019, Hernandez pleaded guilty to the federal bribery charges. *Ibid.* Martin proceeded to trial and was acquitted. *Ibid.*

3. Martin filed this lawsuit against Haling and Rice's predecessor, in their official capacities, as well as officials with the University and two Chicago municipal agencies (the Chicago Housing Authority and Chicago Public Schools), alleging that they had deprived her of occupational liberty without due process under the Fourteenth Amendment. *See* Dist. Ct. Doc. 1.[3] Namely, Martin alleged that these agencies had refused to contract with Smart Elevators because of the

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[2] *In re Suzy Martin and James Hernandez*, OEIG Final Report (Redacted) (Ill. Exec. Ethics Comm'n), https://eec.illinois.gov/content/dam/soi/en/web/eec/eig-summary-reports/12.20.18-martin-and-hernandez-released-summary-report.pdf (last visited Oct. 17, 2024).

[3] Martin later stipulated to the dismissal of the claims against the University defendant. 7th Cir. Docs. 62, 63.

OEIG report. *Id.* at 8-17. Martin alleged that the University had "effectively imposed a 'shadow debarment'" of Martin and Smart Elevators because of the OEIG report. *Id.* at 13. She alleged that the Chicago Housing Authority declared her "ineligible" for new contracts at its properties after that agency's inspector general investigator learned of the OEIG report, made inquiries at the University, and determined that there was evidence Martin and Smart Elevators had engaged in a kickback scheme. *Id.* at 14-16. And she also alleged that Chicago Public Schools similarly rendered her "ineligible" for contracts after she met with that agency's procurement office and responded to a notice of proposed debarment that it issued. *Id.* at 16-17.

On defendants' motions, the district court dismissed Martin's initial complaint for failure to state a claim but granted leave to amend. Pet. App. 40a, 56a. The court began by noting that to state a claim for deprivation of occupational liberty under a "stigma plus" theory, Martin was required to show that she "'suffered a tangible loss of other employment opportunities'" as a result of defendants' conduct. *Id.* at 52a (quoting *Townsend v. Vallas*, 256 F.3d 661, 669-670 (7th Cir. 2001)). In other words, Martin had to show that it was "'virtually impossible'" for her to find work in her chosen profession. *Id.* at 53a (quoting *Townsend*, 256 F.3d at 669-670) (emphasis removed).

Martin failed to make this showing, the district court reasoned, because her complaint alleged that "Smart Elevators currently has contracts with the Department of Justice, private entities, and state agencies, and that it is free to compete for contracts with the Department of the Navy." *Id.* at 54a (citing Doc. 1 at ¶¶ 25, 70-71). These allegations showed that Martin

was able to work in the "elevator service and repair industry — including with state and federal governmental clients." *Ibid.* Indeed, Martin had stated at the hearing on the motions to dismiss that she still had contracts with "various" state agencies. *Id.* at 56a; see *id.* at 54a. Martin therefore did not suffer a tangible loss of employment opportunities, and so she was not deprived of occupational liberty. *Id.* at 54a-55a.

4. Martin filed an amended complaint, which made two substantive modifications to her initial complaint. See *id.* at 31a. First, Martin alleged that she was "barred from any municipal work in Chicago" and "ha[d] no direct contracts" with "the State of Illinois or any of its agencies." Dist. Ct. Doc. 68 at 7. Second, she alleged that her "chosen professional field of work" was "for Chicago-area municipal and state public agencies, both as a direct contractor and sub-contractor." *Id.* at 19. The OEIG report, she claimed, prohibited her from working in "this chosen field." *Ibid.*

Defendants again filed motions to dismiss, which the district court granted. Pet. App. 14a-38a. The court first noted that Martin's amended complaint indicated that Martin still worked for state agencies as a subcontractor, even if not as a direct contractor. *Id.* at 32a-33a. Thus, the district court reasoned, even if it accepted Martin's characterization of her "chosen field" — servicing and repairing elevators "for Chicago-area municipal and state public agencies, both as a direct contractor and sub-contractor," Dist. Ct. Doc. 68 at 19 — her allegations, if proven, would not show that Martin had been deprived of occupational liberty because she continued to work in that field, as a subcontractor for state agencies, Pet. App. 33a.

But the district court added, it did not need to accept Martin's legal conclusion that her "chosen field" consisted of elevator service and repair for Chicago-area state and municipal agencies. See *id*. at 33a-37a. Under longstanding precedent, the Due Process Clause protects a plaintiff's right to "'pursue a *calling or occupation*,'" not "'a specific job.'" *Id*. at 33a (quoting *Wroblewski v. City of Washburn*, 965 F.2d 452, 455 (7th Cir. 1992)) (emphasis in original); see also *id*. at 34a-36a (collecting cases). Drawing on this precedent, the district court concluded, performing elevator work specifically for Chicago-area state and local government agencies, while "broader than one specific job," was not an entire occupation. *Id*. at 34a-35a. Rather, Martin's occupation was elevator service and repair generally, and her ongoing work for federal and private entities demonstrated that she was not deprived of the freedom to work in this occupation. *Id*. at 35a.

5. The Seventh Circuit affirmed. *Id*. at 1a-13a. At the outset, the court agreed with the district court that Martin's occupation was "operating an elevator service and repair business," not working for Chicago-area state and local governmental agencies, specifically. *Id*. at 6a-7a. The court rejected Martin's description of her occupation because "a plaintiff does not have a constitutional right to work for a particular customer." *Id*. at 6a (citing *Biggs v. Chi. Board of Educ.*, 82 F.4th 554, 561 (7th Cir. 2023)). And in any event, "[a]round 20 percent of Smart Elevators's business came from private clients even before OEIG's investigation began," demonstrating that Martin's occupation had always been broader than state and local government contracts. *Id*. at 7a.

The Seventh Circuit then considered whether Martin had experienced a tangible loss of employment opportunities within her occupation. *Ibid.* The court noted this Court's decision in *Roth*, which contemplated that a defendant could deprive a plaintiff of occupational liberty if the defendant barred the plaintiff "'from all other public employment.'" *Id.* at 8a (quoting *Roth*, 408 U.S. at 573). But Martin's allegations were unlike the situation *Roth* contemplated for two reasons. First, the OEIG report did not bar Martin from any public employment, "let alone all public employment." *Ibid.* Second, even if Martin was unable to bid for contracts with a handful of state and city agencies, "she can still pursue other avenues of public employment with the federal government and other cities, municipalities, and counties." *Id.* at 8a-9a. Indeed, Martin's own complaint showed that she had done just that. *Id.* at 9a.

Judge Easterbrook concurred, explaining that he agreed with the majority's analysis but found it "unnecessary." *Id.* at 10a. He would have affirmed on the alternate ground that the OEIG report did not prohibit any government agency from doing business with Martin, and so the report did not debar Martin from anything. *Id.* at 10a-11a. Absent a debarment, the OEIG report was at worst defamatory, which does not implicate an occupational liberty interest. *Id.* at 11a-12a.

REASONS FOR DENYING THE PETITION

Martin has not identified any split in authority in the lower courts. All circuits, in assessing occupational-liberty claims, apply a standard derived from this Court's decision in *Roth*, which held that an occupational-liberty claim requires the plaintiff to show an

inability to obtain other employment, not just the loss of one specific job. Thus, when assessing claims brought by government contractors, courts evaluate whether a contractor's loss of business is more akin to losing a single job than to foreclosure from an industry altogether. The cases Martin cites to fashion her proposed circuit split all adhere to *Roth*, and their outcomes merely reflect their different facts. But when confronted with similar facts, these courts reach similar results. Martin's proposed circuit split thus does not exist.

Martin also attacks the Seventh Circuit's cases stating that occupational-liberty plaintiffs must show it is "virtually impossible" for them to work in their chosen profession. As Martin tells it, the court has grafted an additional requirement onto occupational-liberty claims. But the Seventh Circuit has done no such thing. Its cases hew to *Roth*, where this Court held that a loss of occupational liberty entails the inability to obtain other employment.

And the Seventh Circuit applied the *Roth* standard correctly. While Martin alleged that she lost some state and local government business, she continued operating her elevator company, including by obtaining work for federal and private clients. Any government business she lost was tantamount to losing a specific job, not banishment from her occupation. At most, Martin's arguments merely seek correction of a purported error in applying settled precedent. But even if the court below erred (and it did not), the petition fails to present a sufficiently important question to warrant this Court's consideration. Occupational-liberty claims depend on their facts, and thus any decision will necessarily be narrow.

Finally, even if there were a split in authority on a question sufficiently important for the Court's review, this case is the wrong vehicle for resolving it. Martin asks this Court to create a bright-line rule that any debarred contractor is deprived of occupational liberty, but as Judge Easterbrook noted, the OEIG report did not debar Martin from working for any government agency. This Court's resolution of the question presented therefore will not impact the outcome of this case.

I. There Is No Circuit Split Because Lower Courts Reach Similar Outcomes When Faced With Similar Facts.

To state a claim for deprivation of occupational liberty without due process, a plaintiff must satisfy two elements, often known together as the "stigma plus" test. See *Siegert v. Gilley*, 500 U.S. 226, 234 (1991); Pet. App. 4a. First, the plaintiff must show that the government imposed a stigma that foreclosed her not just from one specific job, but from obtaining future employment in her profession. See *Roth*, 408 U.S. at 573-575. Second, she must show that a right or status recognized by state law, which she previously enjoyed, was altered or diminished, see *Paul v. Davis*, 424 U.S. 693, 711 (1976), sometimes called the "plus" element, see Pet. App. 5a.

As Martin tells it, a majority of circuits have adopted a *per se* rule that a government contractor's debarment by any federal, state, or local government agency automatically states a stigma-plus claim, while the Seventh Circuit requires a "heightened" showing. See Pet. 17. Martin is wrong. Stigma-plus claims are necessarily fact dependent, and the different outcomes in the cases

Martin cites reflect differences in the facts of those cases, not in the legal rule applied. When those same circuits were faced with similar facts, they reached similar outcomes.

A. This Court's decision in *Roth* dictates that a plaintiff is deprived of occupational liberty only when foreclosed from other employment.

This Court discussed occupational-liberty claims in *Roth*, in which the plaintiff, a non-tenured professor at a state university, alleged that he was deprived of liberty without due process when the university declined to renew his appointment after his fixed term concluded. See 408 U.S. at 566, 569. The Court held that the plaintiff did not have a liberty interest in being reappointed. See *id.* at 573-575. The Court added that it would be a "different case" if the defendant had "imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities," such as if the defendant had barred him from working at "all" state universities. *Id.* at 573-574. But, the Court explained, it "stretche[d] the concept too far to suggest that a person is deprived of 'liberty' when he simply is not rehired in one job but remains as free as before to seek another." *Id.* at 575.

Lower courts have consistently applied *Roth* to hold that a plaintiff is entitled to bring an occupational-liberty claim only if the defendant's action has foreclosed his or her future employment opportunities. *E.g.*, *Jones v. McNeese*, 746 F.3d 887, 898 (8th Cir. 2014) (government "effectively eviscerated [plaintiff's] ability to work in his chosen profession"); *Valmonte v. Bane*, 18 F.3d 992, 999 (2d Cir. 1994) (examining

whether government action "denies [plaintiffs] employment in their chosen field"); *Old Dominion Dairy Prod., Inc. v. Sec'y of Def.*, 631 F.2d 953, 964 (D.C. Cir. 1980) (plaintiff, whose sole business was providing products to military bases, stated occupational liberty interest when government action "effectively foreclosed [the plaintiff's] freedom to take advantage of other Government employment opportunities").

The Seventh Circuit's decisions are to the same effect. In *Smith v. Board of Education of Urbana School District*, for example, the Seventh Circuit considered a due process claim brought by two former high school sports coaches. 708 F.2d 258, 260 (7th Cir. 1983). The court applied *Roth* to conclude that the plaintiffs did not state a claim because it was not "virtually impossible for them to find new employment in similar coaching positions." *Id.* at 265. In other words, the defendant had not foreclosed the plaintiffs' ability "'to take advantage of other employment opportunities.'" See *ibid.* (quoting *Roth*, 408 U.S. at 573); accord *Biggs v. Chi. Bd. of Educ.*, 82 F.4th 554, 560-563 (7th Cir. 2023) (former school principal did not state an occupational-liberty claim when she did not show it was "virtually impossible" for her find work as a school administrator).

B. The cases to which Martin points are easily reconcilable on their facts.

The cases that Martin cites for her proposed circuit split do not reflect a deviation from *Roth*'s requirement that to demonstrate an occupational-liberty claim, a plaintiff must show that the defendant foreclosed her from pursuing her chosen occupation. Instead, Mar-

tin's cases reflect the fact-intensive nature of occupational-liberty claims, and they reached different outcomes based on the different facts presented. *Cf. McKnight v. Se. Penn. Transp. Auth.*, 583 F.2d 1229, 1237 (3d Cir. 1978) ("Supreme Court decisions" on occupational liberty reflect "concentration on the facts of the case at hand"). Courts have consistently found that contractors were deprived of a liberty interest when the government's action foreclosed them from operating their business. By contrast, courts have consistently rejected occupational-liberty claims brought by contractors that were able to find other clients and continue operating their businesses.

1. To begin, Martin cites a number of decisions holding that a government contractor was deprived of occupational liberty. But each of these involved contractors who were effectively foreclosed from obtaining other business. In the D.C. Circuit, for example, the contractor in *Old Dominion Dairy Products* relied on the Department of Defense for nearly "one hundred percent" of its business and the loss of those contracts represented "a total loss of its primary source of business." 631 F.2d at 956, 959. Likewise, in *Kartseva v. Department of State*, the plaintiff alleged that she was "unable to find new employment" as a Russian translator after the State Department declared her ineligible to work on its contracts. 37 F.3d 1524, 1526 (D.C. Cir. 1994). In *Conset Corp. v. Community Services Administration*, the defendant agency had repeatedly sent a memo to Congress and other government agencies in an effort to prevent the plaintiff from obtaining contracts and destroy its business. 655 F.2d 1291, 1293, 1295, 1297 (D.C. Cir. 1981). And in *Reeve Aleutian Airways, Inc. v. United States*, the government did not dispute that

the military airlift contractor was deprived of a liberty interest when an agency deemed the contractor "unsafe," which caused a significant decline in the contractor's civilian business on top of the loss of its military contracts. 982 F.2d 594, 598 (D.C. Cir. 1993).

The cases Martin cites from other circuits are to the same effect: In each, the court found a deprivation of occupational liberty under circumstances where a government contractor was foreclosed from working in its chosen field. In *Transco Security, Inc. v. Freeman*, for example, the plaintiff's business was providing security to government agencies, but the defendant suspended it from bidding on all General Services Administration contracts. 639 F.2d 318, 319-320 (6th Cir. 1981). In *Jones v. McNeese*, Jones's company was removed from a list of state-approved treatment providers, leading to such a decrease in business that Jones shut down his company and filed for bankruptcy. 746 F.3d at 892-893.[4] And in *ATL, Inc. v. United States*, the plaintiff's business was "almost entirely with the Federal Government," and the Navy's suspension prevented it "from further contracting with any Federal Government agency." 736 F.2d 677, 679-680 (Fed. Cir. 1984).

Other cases cited by Martin do not involve government contractors, but are still consistent with the rule described above, in that the plaintiffs in question were precluded from their occupations. In *Campbell v. District of Columbia*, the plaintiff had been unemployed for over two years, despite applying for more than

[4] The Eighth Circuit determined that this "effectively eviscerated [Jones's] ability to work in his chosen profession," but held that there was no deprivation of a liberty interest on a different ground. *Jones*, 746 F.3d at 899-900.

thirty jobs. 894 F.3d 281, 289 (D.C. Cir. 2018). In *Valmonte v. Bane*, the plaintiff was listed on a register of individuals suspected of child abuse or neglect, which childcare providers were required to consult when hiring, and so inclusion on the list "place[d] a tangible burden on her employment prospects." 18 F.3d at 1001.[5] Finally, in *Phillips v. Vandygriff*, the plaintiff was denied a government official's recommendation to work in the savings and loan industry, and as a result was "exclude[d]" from that industry altogether. 711 F.2d 1217, 1220 (5th Cir. 1983).

Consistent with these decisions, the Seventh Circuit has held that plaintiffs who were foreclosed from pursuing other employment stated due-process claims. In *Larry v. Lawler*, for example, the court held that the plaintiff's debarment, which allegedly "deprived [him] of the opportunity to work in any capacity for any branch of the government," implicated his occupational liberty interest. 605 F.2d 954, 958 (7th Cir. 1978). Similarly, that court held that a university's "formal[ ] determin[ation]" that the plaintiff was "guilty of a sexual offense," which resulted in his expulsion from the Navy ROTC program and prevented him from pursuing a naval career, stated an occupational-liberty claim. *Doe v. Purdue Univ.*, 928 F.3d 652, 661-663 (7th Cir. 2019).

Thus, Martin's cases show that, consistent with *Roth*, lower courts have universally found that a government contractor stated an occupational-liberty

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[5] The Seventh Circuit subsequently confronted a case with similar facts and approvingly cited *Valmonte* to reach the same result. See *Dupuy v. Samuels*, 397 F.3d 493, 503 (7th Cir. 2005).

claim if the contractor alleged it was foreclosed from pursuing its chosen field.

2. By contrast, in the cases that Martin cites where there was no liberty deprivation, contractors lost some business but remained "as free as before" to work in their chosen occupations. See *Roth*, 408 U.S. at 575. As one example, in *Blantz v. California Department of Corrections and Rehabilitation*, the plaintiff was still able to work as a nurse, including with other state agencies, though she could no longer work for the state department of corrections. 727 F.3d 917, 926 (9th Cir. 2013).[6] And in *Martin Marietta Materials, Inc. v. Kansas Department of Transportation*, a limestone supplier was not deprived of occupational liberty when some of its quarries were disqualified from supplying certain government projects because the supplier could continue to sell to "contractors engaged in private projects" and "also supply other types of rock" to the government. 810 F.3d 1161, 1186 (10th Cir. 2016).

The Seventh Circuit cases Martin cites similarly involve plaintiffs who lost some business but were not broadly precluded from their occupations. In *Biggs v. Chicago Board of Education*, the plaintiff did not show

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[6] Although Martin also cites *Engquist v. Oregon Department of Agriculture*, that case considered whether the plaintiff could maintain a claim under substantive due process or equal protection, theories Martin did not raise here. 478 F.3d 985, 992-999 & n.6 (9th Cir. 2007), *aff'd*, 553 U.S. 591 (2008). Moreover, in *Engquist*, there was no evidence that the defendants "reduced [the plaintiff's] employment options"; rather, the plaintiff worked in a "highly specialized field, and there simply [we]re not many jobs available in that field in Oregon." *Id.* at 999.

that she was foreclosed from working as a school administrator: although she had not found another position, she (1) applied in the summer after most positions were filled, (2) only applied for principal openings rather than other administrator positions, and (3) limited her search to one municipal area. 82 F.4th at 563. And in *Townsend v. Vallas*, the plaintiff was prevented from working as a school swimming coach in a public school system but found another job as a swimming instructor at a local college. 256 F.3d 661, 671-672 (7th Cir. 2001).[7]

Even those circuits that Martin claims diverge from the Seventh Circuit found that contractors were not deprived of a liberty interest when they were not precluded from obtaining business with other clients. For example, Martin describes both the D.C. and Sixth Circuits as having adopted a different rule from the Seventh. Pet. 12-15, 17. But decisions from both circuits show that they agree that when a contractor is able to find other clients and continue operating its business, there is no deprivation of occupational liberty.

In *Trifax Corp. v. District of Columbia*, the District of Columbia Office of the Inspector General released a widely publicized report accusing Trifax of "underpaying its employees and overcharging the District," and declined to renew at least two contracts with Trifax. 314 F.3d 641, 642, 645 (D.C. Cir. 2003). But the D.C.

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[7] In *Colaizzi v. Walker*, which Martin also cites, the Seventh Circuit did not reach the merits of the plaintiff's due process claim, but rather held that the defendant was immune from suit because he had justifiably relied on an earlier case that had authorized a similar firing, but without any majority opinion. 812 F.2d 304, 309-310 (7th Cir. 1987).

Circuit held that Trifax was not deprived of occupational liberty because the District had since awarded Trifax other contracts, with the result that Trifax was not "broadly precluded from government contracting," even though it lost some business. *Id.* at 645. Likewise, in *Med Corp. v. City of Lima*, the Sixth Circuit held that a private ambulance company that was suspended from responding to 911 calls for one week was not deprived of occupational liberty because there was no evidence that the ambulance company would lose business from other clients. 296 F.3d 404, 414 (6th Cir. 2002).

The Eleventh Circuit case that Martin cites, *Bank of Jackson County v. Cherry*, likewise involved a contractor that lost some business but was not precluded from its field. 980 F.2d 1362, 1368 (11th Cir. 1993). The defendant had debarred a bank from future business with it, and the bank relied on decisions of the D.C., Sixth, and Federal Circuits (in *Old Dominion*, *Transco*, and *ATL*, respectively) to support its argument that the debarment deprived it of liberty. *Id.* at 1364-1365, 1368. But the Eleventh Circuit disagreed, explaining that in those cases, the plaintiffs were far more "dependent upon the foreclosed government program," while the bank, in contrast, lost only "one particular kind of government loan guaranty in a limited geographical area." *Id.* at 1368-1369. The bank's injury, therefore, "pale[d] in comparison" to the foreclosed work in *Old Dominion*, *Transco*, and *ATL*, *id.* at 1368, and so the government's action did not "impose so severe a constraint on the bank's freedom that it may be called a deprivation of liberty," *id.* at 1369 (citing *Roth*, 408 U.S. at 573-574).

At bottom, all the circuits Martin invokes adhere to the same rule: Government contractors can state an occupational-liberty claim only if they are "foreclosed" from "tak[ing] advantage of other employment opportunities," not merely if they lose a quantum of business. See *Roth*, 408 U.S. at 573. The divergent outcomes in Martin's cases reflect this factual difference, not a different legal rule. Indeed, when courts that Martin claims diverge from the Seventh Circuit encountered facts that hew closely to those here, they reached the same result as the Seventh Circuit. And when the Seventh Circuit considered allegations that the plaintiff was foreclosed from other employment, the court held that the plaintiff stated a due process claim.

3. Finally, Martin asserts that the Seventh Circuit has "expressly acknowledged" the circuit split she claims is implicated here, Pet. 18 (citing *Chi. United Indus., Ltd. v. City of Chicago*, 669 F.3d 847, 850 (7th Cir. 2012)), but this is wrong. In *Chicago United*, the Seventh Circuit recognized that it had not decided whether "a corporation can have a profession, vocation, or calling," such that a contractor company could bring an occupational-liberty claim, though the court recognized that the D.C. Circuit had resolved that question in the affirmative. 669 F.3d 847, 850 (7th Cir. 2012) (citing *Trifax*, 314 F.3d at 643-645, and *Old Dominion Dairy Prods.*, 631 F.2d at 961-962). But the Seventh Circuit still has not resolved this question, see *Blackout Sealcoating, Inc. v. Peterson*, 733 F.3d 688, 691 (7th Cir. 2013) ("Corporations do not have occupations; they are legal constructs."), and, in any event, it is not presented here, because Martin brought this claim on her own behalf. Thus, the question the Seventh Circuit

left open in *Chicago United* is no reason to grant certiorari in this case.

Ultimately, as Martin's cases and others show, when confronted with similar facts, the lower courts reach consistent results on occupational-liberty claims. As a result, the Seventh Circuit's decision below does not implicate a split in authority, and certiorari should be denied. See S. Ct. R. 10.

II. The Seventh Circuit's Decision Is Correct.

Because this case presents no question on which the circuits are split, Martin's request for certiorari is, at most, a disfavored request for error correction. See *Dobbs v. Zant*, 506 U.S. 357, 360 (1993) (Scalia, J., concurring in the judgment) ("'[I]t is not appropriate for this Court to expend its scarce resources crafting opinions that correct technical errors in cases of only local importance where the correction in no way promotes the development of the law.'") (citation omitted); *Boag v. MacDougall*, 454 U.S. 364, 366 (1982) (O'Connor, J., concurring) ("[T]his Court is not equipped to correct every perceived error coming from the lower federal courts."). But the Seventh Circuit did not err.

1. To start, the Seventh Circuit's opinion easily comports with *Roth*. There, this Court distinguished between the refusal to hire a person for a specific job — which would not give rise to an occupational-liberty claim — and government action that "foreclosed" a person from "tak[ing] advantage of other employment opportunities" — which would state such a claim. *Roth*, 408 U.S. at 573-575.

Here, the OEIG report did not "foreclose[ ]" Martin from "tak[ing] advantage of other employment opportunities." *See ibid.* Martin alleged that, at most, some state and municipal agencies had declined to do business with her, but as the Seventh Circuit noted, (1) the federal government continued to award her contracts, (2) she continued to provide services to private entities, and (3) she could provide services to other local governments. Pet. App. 8a-9a. Martin's allegations thus demonstrated that any repercussions she experienced as a result the OEIG report were akin losing a specific job, while she remained "as free as before to seek another." See *Roth*, 408 U.S. at 575. Under *Roth*, this is insufficient to state an occupational-liberty claim.

And the Seventh Circuit's decision is consistent with the decisions on which *Roth* relied, confirming that the court below correctly understood this Court's precedents. See *Roth* 408 U.S. at 574-575 (citing *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895-896 (1961), and *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 185 (1951) (Jackson. J., concurring)).

In *Cafeteria Workers*, a short-order cook at a military facility brought a due process claim after the military determined that she did not meet security requirements and barred her from the facility. 367 U.S. 886, 887-889, 894 (1961). This Court explained that no occupational-liberty interest was implicated because although the cook lost "the opportunity to work at one isolated and specific military installation," she "remained entirely free to obtain employment as a short-order cook." *Id.* at 896. Her "right to follow a chosen trade or profession," therefore, was not infringed. *Id.* at 895-896. Likewise, in *Joint Anti-Fascist Refugee*

Committee, Justice Jackson observed that occupational-liberty interests might be implicated in circumstances where "government employment so dominates the field of opportunity" and the plaintiff lost "future opportunity" for employment. 341 U.S. at 185 (Jackson. J., concurring).

Cafeteria Workers and *Joint Anti-Fascist Refugee Committee* thus underscore that the right to occupational liberty is "the right to follow a chosen trade or profession," not the right to hold a particular job. *Cafeteria Workers*, 367 U.S. at 896. Here, like the plaintiff in *Cafeteria Workers*, Martin continues to work in the profession of providing elevator maintenance and repair services. See Pet. App. 8a-9a. And unlike in *Joint Anti-Fascist Refugee Committee*, elevator services is not a field dominated by government agencies, and certainly not by the handful of Chicago-area agencies that stopped working with Martin. See *id.* at 6a-7a.

2. Martin levels several challenges to the Seventh Circuit's opinion, but all lack merit.

First, Martin argues that debarring a government contractor alters that contractor's legal status, satisfying the "plus" element of stigma-plus claims. Pet. 23-25. Even if this were true, it is not sufficient, because Martin did not lose the opportunity to work in her chosen occupation, which is a separate and independent requirement for a stigma-plus claim. *See supra* pp. 20-21.

Martin relies on *Paul v. Davis*, where this Court clarified the "plus" element of stigma-plus claims, explaining that plaintiffs bringing occupational-liberty claims must establish that the defendant altered their status under state law. 424 U.S. at 711. But nothing

in *Paul* called *Roth*'s separate requirement — that the defendant's conduct have foreclosed other employment — into question. To the contrary, *Paul* approvingly discussed this aspect of *Roth*. *Paul*, 424 U.S. at 709-710; see also *id.* at 708-709 (due process required when altered legal status is "combined with" injury from the government's stigma). For the same reason, the other cases that Martin cites for the proposition that being fired from a government job satisfies the "plus" element, see Pet. 23, do not cast doubt on Martin's inability to satisfy *Roth*'s separate requirement, which is the only element of a stigma-plus claim at issue here.

Second, Martin maintains that her ability to find work has indeed been foreclosed because government work "'dominates the field of opportunity'" in her occupation. See Pet. 24 (quoting *Joint Ant-Fascist Refugee Comm.*, 341 U.S. at 184-185 (Jackson, J., concurring)). But this is not so. Contrary to Martin's argument, government contractors are not inherently "largely dependent on government work" in every industry, and certainly not in the elevator services industry. See *ibid.* (citing *Gonzalez v. Freeman*, 334 F.2d 570, 574 (D.C. Cir. 1964) (Burger, J.)). Martin's cited authority accordingly reflects that whether a loss of government business forecloses other employment will vary "depending upon multiple factors: the size and prominence of the contractor; the ratio of his government business to non-government business; the length of his contractual relationship with government; his dependence on that business; [and] his ability to secure other business as a substitute for government business." *Gonzalez v. Freeman*, 334 F.2d 570, 574 (D.C. Cir. 1964) (Burger, J.). And in this case, as explained, the Seventh Circuit properly concluded that Martin

could continue working in her profession of providing elevator services — including for government clients — and thus was not deprived of occupational liberty. *Supra* pp. 20-21; Pet. App. 8a-9a.

Third, Martin criticizes the Seventh Circuit's "virtually impossible" formulation of *Roth*. She incorrectly contends that the Seventh Circuit harbors skepticism about occupational-liberty claims. See Pet. 17. But the Seventh Circuit has simply, and correctly, noted that the core concern animating this Court's occupational-liberty cases is "neither reputation nor government employment at will," but rather "liberty of occupation." *Colaizzi*, 812 F.2d at 307; see *Townsend*, 256 F.3d at 670 (whether a person is foreclosed from comparable jobs is "at the heart of every claim that an employer has infringed an employee's liberty of occupation"). This conclusion, the Seventh Circuit rightly explained, flows directly from this Court's cases. See *Townsend*, 256 F.3d at 670 (*Roth* "indicated that a cognizable constitutional claim required proof that an employer's actions significantly foreclosed an employee's future employment prospects to a degree amounting to a deprivation of liberty."); *Colaizzi*, 812 F.2d at 307 (explaining the "origins" of occupational-liberty claims).

There is also nothing amiss with respect to the Seventh Circuit's remark that the difference between defamation, which is not actionable under the Due Process Clause, and an infringement of occupational liberty is a matter of degree. See Pet. 26-27 (citing *Olivieri v. Rodriguez*, 122 F.3d 406, 408 (7th Cir. 1997)). *Roth* itself established this spectrum: at one end, not being hired "in one job" is not actionable, while at the other, a stigma that forecloses future employment can infringe a person's liberty. 408 U.S. at

573-575; see also *Phillips*, 711 F.2d at 1222 (distinguishing between the "innocuous" end of the "spectrum," consisting of claims that are not actionable, from the "other extreme," where a person is denied access to an entire occupation).

Lastly, Martin criticizes the Seventh Circuit's approach for requiring courts to determine a plaintiff's occupation before deciding whether the plaintiff has been foreclosed from working in it. Pet. 27-28. But assessing what "employment opportunities" a plaintiff has been "foreclosed" from is an inquiry that flows directly from this Court's decisions. *Roth*, 408 U.S. at 573; see *Cafeteria Workers*, 367 U.S. at 895-896. Accordingly, even those circuits that Martin claims are split with the Seventh Circuit determine the plaintiff's occupation on a case-by-case basis. See *Campbell*, 894 F.3d at 289 (reasonable jury could find that the only jobs plaintiff was offered were "outside her chosen field"); see also *Valmonte*, 18 F.3d at 999 (plaintiff's "chosen" profession was "child care field").

In short, the Seventh Circuit has understood and applied this Court's precedents correctly, including in this case. Martin lost some business from government clients, but she remained free to offer her services to other clients and did so successfully. Her experience mirrors that of the plaintiff in *Roth*, who lost his job but remained free to seek another. *See* 408 U.S. at 575. And thus, as in *Roth*, Martin was not deprived of occupational liberty.

III. The Question Presented Is Not Sufficiently Important To Justify This Court's Review.

The petition should be denied for the additional reason that any decision from this Court is unlikely to

yield a generally applicable rule that will guide lower courts in other cases. As a result, the case is insufficiently important to justify this Court's review. See S. Ct. R. 10(c).

As explained, occupational-liberty claims are inherently fact-dependent, see *McKnight*, 583 F.2d at 1237, and require courts to examine what opportunities plaintiffs have been foreclosed from pursuing, see *Roth*, 408 U.S. at 573. Indeed, Martin complains that the Seventh Circuit improperly relied on the fact that she was only foreclosed from "some" but not "all" government contracts, see Pet. 29, but this, at worst, merely contends that the Seventh Circuit misapplied the standard to these particular facts. Correcting a lower court's application to settled law does not warrant this Court's review. And these facts, moreover, do not occur frequently, as reflected by Martin's reliance on decades-old cases, and on cases that do not involve government contractors. See *id.* at 12-17. Any decision by this Court therefore would have little impact beyond this case.

There is also no need for this Court to weigh in on occupational-liberty claims more broadly. Cases raising these claims have percolated in the lower courts for over fifty years, yielding a settled legal standard that courts have become well versed in applying. That courts have sometimes grappled with cases that present close facts is not an "ambiguity" in the law, see Pet. 28-29, nor is it a reason to grant review.

IV. This Case Is A Poor Vehicle To Consider The Question Presented.

Even if there was a split in authority or other reason for this Court to decide the question presented, this case would present a poor vehicle for resolving it.

To start, Martin asks this Court to issue a bright-line rule that debarring a contractor impedes that contractor's liberty, see Pet. 2, but this case does not present that question. The Seventh Circuit did not render a decision about whether or when "debarment" implicates a liberty interest. Rather, it affirmed the dismissal of Martin's complaint because she did not allege that she was unable to continue working in her chosen occupation, under a line of cases that traces back to *Roth*. Nor does this case present facts that would allow the court to consider that question: As Judge Easterbrook noted in his concurrence, the OEIG report did not debar Martin from anything. Pet. App. 10a-12a. Namely, the report did not prohibit any government entity from doing business with Martin. *Id*. at 10a. This case, accordingly, is a particularly unsuitable vehicle to examine the liberty interests of debarred government contractors.

And, as Judge Easterbrook also recognized, the fact that the OEIG report did not debar Martin provides an alternative basis to affirm. See Pet. App. 10a (describing majority's analysis as correct but "unnecessary"). As Martin acknowledges, occupational-liberty plaintiffs must show that their legal status has been altered — the "plus" element of stigma-plus claims, *supra* p. 10 — in addition to showing a stigma that forecloses other employment. See Pet. 23. But because the OEIG report did not debar Martin, that requirement is not

satisfied here. See Pet. App. 10a-12a (Easterbrook, J., concurring). Although Martin seeks to distinguish *Siegert v. Gilley*, 500 U.S. 226, on this point, see Pet. 25, that case undermines her position. There, the plaintiff's former employer wrote a letter to his new employer calling the plaintiff "unethical," which impaired his employment prospects. 500 U.S. at 228-229. This Court held that the plaintiff could not show a due process violation because the letter itself did not bar the plaintiff from any employment. See *id.* at 233-234. Similarly, here, the OEIG report did not debar Martin, and so *Siegert* forecloses her claim. Thus, even if Martin had identified an important question on which there was a split of authority, resolving it would not be dispositive to this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

KWAME RAOUL
Illinois Attorney General
JANE ELINOR NOTZ*
Solicitor General
LEIGH J. JAHNIG
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5376
Jane.Notz@ilag.gov

* *Counsel of Record*

Counsel for Respondent Nathan Rice

ALEX HEMMER
Deputy Solicitor General
115 South LaSalle Street
Chicago, Illinois 60603

Counsel for Respondent Susan Haling

THOMAS A. DOYLE
1 North Dearborn Street, 9th Floor
Chicago, Illinois 60602

Counsel for Respondents Board of Education of the City of Chicago and Jonathan Maples

CYNTHIA B. HARRIS
60 East Van Buren Street, 12th Floor
Chicago, Illinois 60605

Counsel for Respondents Chicago Housing Authority, Mark Lischka and Michael Moran