No. 24-965

In the Supreme Court of the United States

JUDICIAL WATCH, INC.,

Petitioner,

v.

SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the facts alleged in petitioner's complaint state a plausible claim that respondent unlawfully retaliated against petitioner for engaging in protected speech.

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STATEMENT

1. YouTube is a company that enables users to post videos online. *See* Pet. App. 41a. It maintains its own set of policies governing what users may post on its platform. *See id.* at 46a. Petitioner Judicial Watch has posted over 4,200 videos on YouTube. *Id.* at 41a.

On September 22, 2020, petitioner posted a video titled "**ELECTION INTEGRITY CRISIS** Dirty Voter Rolls, Ballot Harvesting & Mail-In Voting Risks!" Pet. App. 42a. The video featured petitioner's president, Tom Fitton, who stated that mail-in voting "almost guarantees voter fraud and ballot and voter intimidation." C.A. S.E.R. 8. He claimed that States were "mailing ballots to lists that you know are dirty," and that "[t]hey don't have security measures in place to make sure that people who are voting by mail are actually . . . eligible to vote." *Id.* at 6, 9; *see id.* at 8 (naming California). He suggested that mail-in voting could be used to "steal elections" by having "political operatives gin up 2,000 ballots" because "there's really no effective way to challenge those ballots." *Id.* at 7. Fitton anticipated that the video might be taken down by YouTube for its content and told viewers to go to petitioner's website to find petitioner's content if YouTube removed it. *Id.* at 9, 11.

Respondent Shirley Weber is California's Secretary of State. She is responsible for administering free and fair elections. Cal. Elec. Code § 10. The Office of Elections Cybersecurity (OEC) reports to Secretary Weber. *Id.* § 10.5(a). The state Elections Code charges OEC with several responsibilities, including coordinating with local officials "to reduce the likelihood and severity of cyber incidents," *id.* § 10.5(b)(1); "monitor[ing] and counteract[ing] false or misleading information regarding the electoral process," *id.*

§ 10.5(b)(2); and educating voters with valid information about the electoral process, *id.* § 10.5(c)(8). The Election Code does not vest OEC with any regulatory or enforcement authority. *See id.* § 10.5.

On September 24, 2020, an OEC employee emailed YouTube about the video that petitioner had posted on September 22. Pet. App. 45a. The message stated:

> Hi YouTube Reporting Team,
>
> I am reporting the following video because it misleads community members about elections or other civic processes and misrepresents the safety and security of mail-in ballots. Thank you for your time and attention to this matter.

Id. YouTube responded that it would review the video. *Id.* at 46a. On September 27, it followed up to explain that the video "has been removed from the platform for violating our policies." *Id.*

2. Petitioner filed this lawsuit against the Secretary in September 2022. Pet. App. 39a-52a. Petitioner advanced a First Amendment claim alleging that the Secretary had unlawfully retaliated against it by "monitoring" the video, "erroneous[ly]" assessing it to be misleading, and "reporting" it to YouTube. *Id.* at 49a-50a. The complaint sought declaratory relief and an injunction barring the Secretary "from violating Plaintiff's constitutional rights." *Id.* at 51a.[1]

a. The district court dismissed petitioner's complaint with prejudice. Pet. App. 35a. It concluded that this case was controlled by a recent appellate decision, *O'Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2023),

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[1] Petitioner's other claims were dismissed by the district court and are not at issue here. *See* Pet. App. 50a-51a; Pet. i.

which had affirmed the dismissal of a "nearly identical" First Amendment retaliation claim against the Secretary for monitoring and reporting misleading election-related content to Twitter, Pet. App. 31a; *see id.* at 28a-32a.

In *O'Handley*, the court of appeals held that those allegations failed to plead a First Amendment violation. 62 F.4th at 1163-1164. The court recognized that the First Amendment prohibits the government from coercing third parties to censor speech, but it concluded that OEC's email reporting the plaintiff's post to Twitter was permissible, non-coercive government speech. *Id.* at 1163. The message contained no threat; it merely "flagged" the tweet and, "at most, requested that Twitter remove the post." *Id.* at 1157-1158. Twitter was "free to ignore" the request because "OEC's mandate gives it no enforcement power over Twitter." *Id.* at 1158, 1163. And Twitter made an "independent judgment" to restrict the tweet based on "its own content-moderation policy." *Id.* at 1158, 1163.

O'Handley next rejected the plaintiff's retaliation claim. 62 F.4th at 1163-1164. The court of appeals explained that retaliation requires an "adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity." *Id.* at 1163. It held that the plaintiff failed to meet this adverse action requirement. *Id.* The court noted that the "most familiar" adverse actions are typically "regulatory, proscriptive, or compulsory in nature and have the effect of punishing someone for his or her speech." *Id.* It reasoned that OEC's non-coercive message to Twitter did not rise to the level of an adverse action. *Id.*

In this case, the district court considered the "sum total" of the challenged actions and held that they were "nearly identical" to those in *O'Handley*. Pet. App. 30a-31a. As in *O'Handley*, OEC had communicated its opinion about petitioner's video without threats or coercion, leaving YouTube to decide what to do. *Id.* at 25a, 27a. YouTube chose to remove the video after concluding that it violated YouTube's policies. *Id.* The court concluded that OEC's actions were permissible, non-coercive government speech, which "d[id] not punish Judicial Watch for its speech" and did not constitute an adverse action. *Id.* at 29a.

b. Petitioner appealed and, while that appeal was pending, this Court denied the petition for a writ of certiorari filed by the plaintiffs in *O'Handley*. 144 S. Ct. 2715 (2024) (No. 22-1199).

The court of appeals then affirmed the dismissal of petitioner's complaint in this case in a memorandum opinion. Pet. App. 5a-9a. The court recognized that a plaintiff advancing a retaliation claim must plead that it "was subjected to adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity." *Id.* at 7a. It held that petitioner failed to satisfy that requirement because the action alleged here was permissible, non-coercive government speech akin to the action at issue in *O'Handley*. *Id.* at 7a-8a. The court rejected petitioner's attempt to distinguish the facts in *O'Handley*. *Id.* at 8a. It also rejected petitioner's argument that the district court below erred by not discussing the purported chilling effect. *Id.* at 7a-8a.

ARGUMENT

Petitioner acknowledges that there is "uniformity" in published precedent from "all the regional circuits" about how to assess whether a plaintiff has alleged an adverse action for purposes of a First Amendment retaliation claim. Pet. 10. The unpublished decision below did not depart from that consensus: the court of appeals applied the consensus approach to the facts of this case and concluded that petitioner failed to state a plausible First Amendment claim. That holding follows directly from *O'Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2023), which this Court recently declined to review, *see* 144 S. Ct. 2715 (2024) (No. 22-1199). And it is correct: a message alerting YouTube to a video that violates YouTube's own policies—and leaving YouTube to decide independently what action (if any) to take—does not amount to retaliation in violation of the First Amendment.

1. At bottom, petitioner disagrees with the court of appeals' application of a long-settled legal standard to the particular facts of this case. But petitioner's merits arguments are unpersuasive and do not provide any basis for further review by this Court.

a. As petitioner recognizes, the circuits have "uniform[ly]" required plaintiffs advancing a First Amendment retaliation claim to plead an adverse action that would "have a chilling effect on a person of ordinary firmness from continuing to engage in protected speech." Pet. 10; *see id.* at 10-11 (collecting cases). That includes the Ninth Circuit, which adopted the same standard long ago. *See, e.g., Mendocino Env't Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999); *see also Bennett v. Hendrix*, 423 F.3d 1247, 1251 (11th Cir. 2005) (citing *Mendocino* and other circuit decisions and observing that "every other Circuit has

adopted" the standard), *abrogated on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009).

This consensus standard requires a "fact intensive" and "context-specific" inquiry, Pet. 12, considering factors such as "the status of the speaker, the status of the retaliator, the relationship between the speaker and the retaliator, and the nature of the retaliatory acts." *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2000); *see also Thaddeus-X v. Blatter*, 175 F.3d 378, 398 (6th Cir. 1999) (application of standard "is not static across contexts"). When the alleged retaliatory act is a government communication, the inquiry "must account for" the fact that the challenged act "is itself a form of speech." *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 478 (2022). That counsels in favor of a "cautious approach," *Goldstein v. Galvin*, 719 F.3d 16, 30 (1st Cir. 2013), in part because "it is not easy to imagine how government could function" if it could not "speak for itself," *Pleasant Grove City v. Summum*, 555 U.S. 460, 467-468 (2009).

The main scenario in which courts have recognized that government speech can constitute a materially adverse action is where it amounts to "a threat, coercion, or intimidation intimating that punishment, sanction, or adverse regulatory action will imminently follow." *Suarez*, 202 F.3d at 687; *see, e.g.*, *Blankenship v. Manchin*, 471 F.3d 523, 529-530 (4th Cir. 2006); *X-Men Sec. v. Pataki*, 196 F.3d 56, 70-71 (2d Cir. 1999). Courts sometimes also treat government speech as an adverse action when it is harassing or otherwise "sufficiently embarrassing, humiliating, or emotionally distressful," such as when a government official discloses damaging personal information about the plaintiff. *Suarez*, 202 F.3d at 688; *see, e.g.*, *Hutchins v. Clarke*, 661 F.3d 947, 956-957 (7th Cir. 2011); *Bloch v.*

Ribar, 156 F.3d 673, 681 (6th Cir. 1998). But mere criticism by a government official is not by itself an adverse action, even where it "possibly influenced a third party's business decision." *VDARE Foundation v. City of Colorado Springs*, 11 F.4th 1151, 1174 (10th Cir. 2021) (emphasis omitted); *see also X-Men*, 196 F.3d at 70-71; *Shutt v. Miller*, 724 F. App'x 112, 114 (3d Cir. 2018).

b. The decision below accords with this consensus approach to analyzing First Amendment retaliation claims. The court of appeals recognized that, "[t]o plead a First Amendment retaliation claim, a plaintiff must establish that 'he was subjected to adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity[.]'" Pet. App. 7a (quoting *O'Handley*, 62 F.4th at 1163). And it properly concluded that the allegations advanced here cannot satisfy that standard. *See id.* at 7a-8a.

Petitioner challenges respondent's monitoring of election-related misinformation and message to YouTube about petitioner's video. Pet. App. 49a-50a.[2] But petitioner does not allege that the message was harassing or that it disclosed "embarrassing, humiliating, or emotionally distressful" information. *Suarez*, 202 F.3d at 688. And petitioner concedes that the message was not coercive. Pet. 17 ("this is not a coercion case"). The message merely informed YouTube of respondent's view that the video "misleads community members about elections or other civic processes and

[2] Petitioner does not assert a retaliation claim based on the removal of its video, and it does not allege that the Secretary coerced YouTube to remove the video. Pet. 17-18.

misrepresents the safety and security of mail-in ballots." Pet. App. 45a. It contained no threat, *see id.*; it did not ask YouTube to take any specific action, *see id.*; YouTube was "free to ignore" the email, *O'Handley*, 62 F.4th at 1158; and OEC lacked any "enforcement power" in the event that YouTube took no action, *id.* at 1163; *see also* Pet. App. 46a (subsequent YouTube message making clear that its decision to remove the video was based on its own policies).[3]

Respondent's ability to communicate that kind of message is important because a State "has a strong interest in expressing its views on the integrity of its electoral process." *O'Handley*, 62 F.4th at 1164. Such non-coercive government speech is permissible not only when officials communicate publicly "through the media," but also when they express their views "directly" to a private party, as respondent did here. *See, e.g.*, *Hammerhead Enter. v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983) (official "wrote the department stores directly" urging them not to distribute plaintiff's game); *O'Handley*, 62 F.4th at 1163-1164 (respondent messaged Twitter directly).

And it is not remotely plausible that conveying this message to YouTube would chill a person of ordinary

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[3] The allegations here are thus a far cry from the kind of government threats this Court has held to be coercive. *See, e.g.*, *Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175, 192 (2024) (official with "direct regulatory and enforcement authority" notified regulated entities about potential violations and suggested those violations would not be prosecuted if the entities disassociated from pro-gun groups); *Bantam Books v. Sullivan*, 372 U.S. 58, 68 (1963) ("thinly veiled threats to institute criminal proceedings," which were "phrased virtually as orders" and "invariably followed up by police visitations").

firmness from continuing to post videos on that platform. Users who post on online platforms agree to abide by content-moderation policies and know that platforms suppress content that violates those policies. *See Murthy v. Missouri*, 603 U.S. 43, 50 (2024). "For years, the platforms have targeted speech they judge to be false or misleading," *id.*—including about elections, *id.* at 51. The prospect that a user might be held to policies that she already agreed to follow would not chill an ordinary person from continuing to use a platform. Indeed, that is exactly what any such person would expect.

Here, for example, Fitton stated in the video (before respondent's message) that he anticipated the video would be removed by YouTube. C.A. S.E.R. 9, 11. Petitioner later alleged it would continue to post videos criticizing election procedures even after the video's removal. Pet. App. 49a. While courts "must measure the adverse impact against an objectively reasonable plaintiff[,] . . . 'the plaintiff's actual response to the retaliatory conduct provides some evidence of the tendency of that conduct to chill First Amendment activity.'" *Balt. Sun v. Elrich*, 437 F.3d 410, 419 (4th Cir. 2006); *see Wilson*, 595 U.S. at 479 (plaintiff's "behavior and concessions seem telling"). The challenged actions here would be inconsequential to a person of ordinary firmness, as they apparently were to Fitton and Judicial Watch.

c. Petitioner contends that the court of appeals "[d]epart[ed] from the universally accepted test" and adopted a "novel standard" under which consideration of chilling effect is "irrelevant" to the adverse action analysis. Pet. 11. It did no such thing. As discussed, it expressly recognized that plaintiffs must establish

an adverse action "that would chill a person of ordinary firmness." Pet. App. 7a. Petitioner's contrary argument hinges on its misunderstanding of a single sentence in the decision below, which responded to petitioner's argument that the district court erred by failing to examine the alleged chilling effect. The sentence observed that "[a]ny potential chilling effect is relevant to whether an adverse action is 'materially' adverse, not whether the government action was adverse in the first place." *Id.* at 7a-8a. That does not mean that any potential chilling effect is "irrelevant." *Contra* Pet. 11. It instead clarifies that the proper role of the chilling effect inquiry is "[t]o distinguish material from immaterial adverse actions." *Wilson*, 595 U.S. at 477; *see also Garcia v. City of Trenton*, 348 F.3d 726, 728 (8th Cir. 2003) ("designed to weed out trivial matters").

Nor did the court of appeals establish an "exhaustive list" of adverse actions or adopt a new standard "akin to the 'clearly established' standard in qualified immunity cases." *Contra* Pet. 15. Nothing in the decision below supports that reading. And while *O'Handley* referred to "familiar adverse actions" for guidance, it never held or suggested that those examples were exhaustive. 62 F.4th at 1163; *cf. Wilson*, 595 U.S. at 477 (considering examples of adverse actions including "an arrest, a prosecution, or a dismissal from governmental employment" to guide the analysis).

Petitioner also asserts that, under the standard purportedly applied below, "there is no consideration of the factual context in determining whether an action is adverse." Pet. 12. But the court of appeals expressly considered the facts alleged in the complaint—including the full "course of action" taken by respondent—and held that the allegations failed to plead an

adverse action because they were materially indistinguishable from the facts alleged in *O'Handley*. Pet. App. 8a. The *O'Handley* court likewise based its holding on the facts before it, including the "private company's content moderation policy" and the State's "strong interest in expressing its views on the integrity of its electoral process." 62 F.4th at 1163.

And petitioner's contention that the lower courts "ignor[ed] critical facts" (Pet. 16) cannot be squared with what actually happened below. The district court considered each of petitioner's allegations about respondent purportedly "(1) monitoring Judicial Watch's speech; (2) making a 'false assessment' that the September 22 video was misleading; (3) failing to make a finding required by law; and (4) using a 'close working relationship' and 'dedicated pathways' to cause YouTube to remove the September 22 video." Pet. App. 28a-29a (citations omitted). For its part, the court of appeals considered petitioner's argument that "the Secretary engaged in a broader 'course of action' that cannot be reduced to mere 'government speech.'" *Id.* at 8a. As both courts recognized, none of the ancillary actions alleged by petitioner provides a basis for First Amendment liability. *Id.* at 8a, 29a-30a. They merely facilitated respondent's communication with YouTube: the "sum total of the behavior" was to enable California to "form[] views and then express[] those views in a permissible way." *Id.* at 30a.

Finally, petitioner contends that the facts here are not "analogous to those presented in *O'Handley*." Pet. 16 n.3. Both courts correctly rejected that argument because "*O'Handley* involved nearly identical allegations made in different words." Pet. App. 31a; *see id.* at 8a. As here, the plaintiff in *O'Handley* alleged that OEC had (1) monitored election-related speech, C.A.

S.E.R. 26, 31; (2) wrongly deemed his post misleading, *id.* at 30-31; (3) failed to meet statutory requirements, *id.* at 24-26; and (4) used "dedicated reporting pathways" with platforms to flag misinformation, *id.* at 21.

2. This case does not implicate any genuine conflict of authority.

a. As discussed above, the Ninth Circuit and "every other Circuit has adopted the 'ordinary firmness' test" for First Amendment retaliation claims. *Bennett*, 423 F.3d at 1251 (collecting cases). Petitioner argues that the unpublished disposition below creates a conflict because it "[d]epart[s] from the universally accepted test." Pet. 11. That is incorrect, *see supra* pp. 9-11, but even assuming otherwise, it would not provide a persuasive reason for further review. The published precedent of the Ninth Circuit tracks the consensus approach and will control the analysis "if a plaintiff brings a claim in the Ninth Circuit." Pet. 13; *see, e.g.*, *Mulligan v. Nichols*, 835 F.3d 983, 990 (9th Cir. 2016) (Ninth Circuit's approach is "consistent with the views of other circuits"); *Savage v. Segura*, 2025 WL 900433, at *2 (9th Cir. Mar. 25, 2025) (recent decision applying precedent requiring "adverse action by the defendant that would chill a person of ordinary firmness").

Nor does the analysis in the cases petitioner cites (Pet. 10-13) conflict with the decision below. Most of those cases are inapposite because they addressed conduct of a different nature from the government speech at issue here. For example, many involved searches, seizures, or other law enforcement actions that "engaged the punitive machinery of government in order to punish." *Garcia*, 348 F.3d at 729 (repeated parking tickets); *see Keenan v. Tejeda*, 290 F.3d 252,

259 (5th Cir. 2002) (detention at gunpoint).[4] Other cases are similarly far afield.[5] Still others held that the conduct at issue did *not* amount to an adverse action.[6]

In the few cited cases where government speech was held to be an actionable adverse action, the speech was part of a course of harassment. *See generally supra* pp. 6-7. In *Bart v. Telford*, for example, the mayor retaliated against a city employee by orchestrating a "campaign of harassment," including "baseless reprimands," "ridicule," and "selective enforcement of work rules." 677 F.2d 622, 624-625 (7th Cir. 1982); *see also Bennett*, 423 F.3d at 1254-1255 (police mailed "flyers depicting the plaintiffs as criminals" as part of a "prolonged and organized campaign of harassment" that

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[4] *See, e.g.*, *Reguli v. Russ*, 109 F.4th 874, 876 (6th Cir. 2024) (search of Facebook records); *Bennett*, 423 F.3d at 1249, 1254-1255 (surveillance, traffic citations, and unjustified warrants); *Williams v. Mitchell*, 122 F.4th 85, 88 (4th Cir. 2024) (falsified information in accident report).

[5] *See, e.g.*, *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500-501 (4th Cir. 2005) (university gave student three days' notice for exam, predetermined to fail her, and denied hearing to challenge grade); *Thaddeus-X*, 175 F.3d at 398-399 (correctional officers transferred prisoner to ward for mentally disturbed inmates); *Crawford-El v. Britton*, 93 F.3d 813, 825-826 (D.C. Cir. 1996) (correctional officer misdelivered prisoner's belongings), *vacated on other grounds*, 523 U.S. 574 (1998).

[6] *See, e.g.*, *Cox v. Warwick Valley Ctr. Sch. Dist.*, 654 F.3d 267, 274-275 (2d Cir. 2011) (school placed student in suspension room and reported parents for neglect); *Eaton v. Menely*, 379 F.3d 949, 956 (10th Cir. 2004) (sheriff used police computer to run unauthorized background check); *Connelly v. Cnty. of Rockland*, 61 F.4th 322, 326-327 (2d Cir. 2023) (employer reprimanded employees); *cf. Barton v. Clancy*, 632 F.3d 9, 30 (1st Cir. 2011) (official who harassed plaintiff by criticizing decision to hire him and investigating his taxes was entitled to qualified immunity).

also included baseless stops and searches). Petitioner does not present any allegations of harassment here.

And the lone case cited by petitioner involving non-coercive, non-harassing government speech held that the speech alone did *not* amount to an adverse action. *See Mirabella v. Villard*, 853 F.3d 641, 651 (3d Cir. 2007) (where town told plaintiffs it would seek sanctions for frivolous litigation if they sued, "quantum of governmental authority brought to bear" was too "minimal" to establish First Amendment liability).

b. When other courts have considered circumstances analogous to those here, they have held that the First Amendment is not violated when officials criticized the plaintiffs' speech and urged—but did not coerce—third parties to take independent action against the speaker.

For example, the Fourth Circuit held that a plaintiff failed to plead a retaliation claim where a public university dean submitted a "Concern Card" notifying the university's academic standards committee of the plaintiff's unprofessional conduct. *Bhattacharya v. Murray*, 93 F.4th 675, 683, 689 (4th Cir. 2024). The court explained that the card was merely "a referral for another party to consider discipline" and had "no punitive effect on its own, independent of the [committee's] review." *Id.* at 689. Similarly, the Eleventh Circuit held that a plaintiff failed to state a claim against a city for denouncing the plaintiff's hate speech and declining to support the plaintiff's upcoming event. *VDARE*, 11 F.4th at 1157, 1172-1175. The venue for that event later canceled its contract and refused to host the event. *Id.* at 1174. But that fact did not change the court's conclusion because the venue was not "compelled to do so at the City's behest," and a retaliation claim requires more than an allegation that

the city's speech "possibly *influenced* a third party's business decision." *Id.* Similar cases abound.[7]

3. Finally, this case is hardly an "ideal vehicle." *Contra* Pet. 17.

Before this Court could reach the First Amendment question petitioner seeks to present, it would have to resolve thorny questions of standing. *Cf. Murthy*, 603 U.S. at 56. Although respondent recognized below that the lower courts were bound by prior *circuit* precedent supporting petitioner's theory of standing, C.A. E.R. 14-16, this Court would have an "independent obligation to assure [itself] that jurisdiction is proper," *Plains Com. Bank v. Long Family Land & Cattle*, 554 U.S. 316, 324 (2008). And petitioner's standing theory rests on a "speculative chain of possibilities." *Murthy*, 603 U.S. at 70. Specifically, petitioner claims it intends to continue posting videos "criticiz[ing] election procedures," Pet. App. 49a, but it is speculative that (1) respondent will consider a future video misleading; (2) respondent will express that view to YouTube; and (3) YouTube will remove the video under its content-moderation policies. *See Murthy*, 603 U.S. at 70. Even if YouTube were likely to remove such a video, moreover, any injury to petitioner would "result[] from the independent action of some third party not before the court." *Id.* at 57.

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[7] *See, e.g.*, *Suarez*, 202 F.3d at 690-691 (no retaliation where officials questioned Better Business Bureau's integrity for granting plaintiff membership and refused to help Bureau expand, leading Bureau to expel plaintiff); *X-Men*, 196 F.3d at 68-72 (no retaliation where legislators asked agencies to terminate contracts with plaintiffs); *Novoselsky v. Brown*, 822 F.3d 342, 347-348, 356-357 (7th Cir. 2016) (no retaliation where defendant filed complaint with disciplinary committee and sent letters to private watchdog group about plaintiff's meritless lawsuits).

Apart from Article III problems, there is a significant practical mismatch between the lawsuit petitioner filed and the relief petitioner appears to want. The gravamen of petitioner's complaint is that it suffered "harm to [its] ability to carry out its public education mission" because its video was censored by YouTube. Pet. App. 50a. Petitioner apparently wants to be exempt from YouTube's content-moderation policies. But petitioner has not sued YouTube. Its lawsuit against respondent—even if successful—would not make a real-world difference in its ability to post its videos online. YouTube can continue to suppress petitioner's content if it violates YouTube's policies—with or without communications from respondent.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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