

IN THE
Supreme Court of the United States

CITY OF BOSSIER CITY,
Petitioner,

v.

RICHARD HERSHEY, ET AL.,
Respondents.

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

**BRIEF OF NATIONAL ASSOCIATION OF
POLICE ORGANIZATIONS AS *AMICUS CURIAE*
IN SUPPORT OF THE PETITION**

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INTEREST OF *AMICUS CURIAE*¹

Founded in 1978, the National Association of Police Organizations (“*Amicus*” or “NAPO”) is the leading voice for law enforcement in the United States. It represents more than 1,000 police units and associations, more than 241,000 sworn officers, and more than 50,000 citizens dedicated to fair and effective law enforcement. *Amicus* has a strong interest in preserving the administrable limits this Court has long placed on municipal failure-to-train liability, and in preventing the Fifth Circuit’s departure from those limits from undermining officer training nationwide.

Amicus submits that this Court, in setting the boundaries of court-made *Monell* liability, should take heed of the practical realities of policing—a task that demands quick decision-making in high-stress, low-information environments. Preparing officers to do their job well presents unique challenges. In filing this brief, *Amicus* hopes to inform this Court of those challenges, lending the perspective of law enforcement officers and their employing agencies.

SUMMARY OF ARGUMENT

Policing is difficult work. Preparing officers for the job is a no-less-difficult task. Departments and academies must educate cadets on a variety of topics: investigations, patrol procedures, evidence gathering, forensic interviewing, report writing, weapons and defensive tactics, mental health, deescalation, and numerous aspects of law (to give just a few examples).

¹ No counsel for a party authored this brief in whole or part. No person or entity other than *Amicus* or its counsel made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties were provided notice of our intention to file an *Amicus* brief at least 10 days prior to its due date.

Along the way, those programs must equip trainees with dependable heuristics: rules-of-thumb that help officers make sound decisions in the field—frequently in the heat of the moment; usually with imperfect information; all too often with life-or-death stakes. Sometimes, well-meaning officers act quickly and err or misjudge the situation. But no amount of training could prepare officers for every possible contingency. Departments could not predict every action an officer might take that could implicate a constitutional right. And neither municipalities nor the public can afford to keep officers in basic training forever.

Requiring that departments pour their finite resources into educating officers on legal minutiae threatens public safety. It fuels the nationwide shortage of sworn officers. It distracts from other essential trainings—for example, on deescalation and safe weapons usage. It risks information overload, worsening trainees’ knowledge retention. And it causes decision paralysis and timidity in the field, leading officers to disengage where the job and the well-being of the public demand decisive action.

Given the dual risks of undertraining and overtraining, experienced police officers and educational experts spend thousands of hours developing curricula that cover the many topics cadets need to learn. Those curricula are extensive, sometimes lasting more than a year and costing up to \$100,000 per student. And they strike a careful balance between adequately preparing officers for an uncertain world (on the one hand) while providing officers with a manageable set of principles and skills (on the other).

Recognizing the difficulty of this balancing act, this Court has long kept federal courts out of the business of dictating officer training. Instead, it has held that

police departments violate the U.S. Constitution when they failed to train their officers after a pattern of similar constitutional violations. And while this Court has recognized that an especially egregious failure to train—for example, giving officers firearms without instruction—could give rise to liability, it has cautioned against federal courts transmuting every constitutional violation into a failure-to-train claim.

The Fifth Circuit’s decision throws that caution to the wind. It blesses a claim under *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978), against a department based on that department’s purported failure to train its officers on a narrow, fact-bound, and legally contentious question—one that sharply divided even the *en banc* Fifth Circuit below. According to the Fifth Circuit, the City of Bossier violated the U.S. Constitution by not teaching its officers that (1) the park and sidewalks surrounding the CenturyLink Center are public property (despite the arena’s private management); and (2) a professional leafleteer and serial litigant has a constitutional right to distribute pro-vegetarian materials during a private event without preapproval.

Bossier City’s certiorari petition ably explains why this Court should reject the Fifth Circuit’s novel rule, which would make federal judges (rather than seasoned educators) the ultimate author of municipalities’ police training programs. NAPO submits this brief to identify the threats to effective policing and public safety caused by the decision below if it is allowed to stand.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW REQUIRES UNWORKABLE POLICE TRAINING THAT THREATENS OFFICER RECRUITMENT

The Fifth Circuit’s approach asks municipalities to do the impossible. They must anticipate every potential constitutional violation—even those arising from scenarios that have not occurred in decades of policing. They must then design bespoke educational modules to address those speculative scenarios head-on. App. 48a (Ho, J., concurring); App. 51a-52a (Dennis, J., concurring in part and dissenting in part). Should they fail in those tasks, they face bruising liability in the form of *Monell* suits.

The facts here illustrate the danger of the Fifth Circuit’s approach. To avoid liability, Bossier City would have needed to anticipate the specific legal complications surrounding First Amendment protections available on publicly owned properties managed by private entities. In other words, it would have needed to train officers that (1) “the [CenturyLink] Center and its surrounding area [a]re public property”; (2) “the adjacent streets and sidewalks [a]re a traditional public forum”; and (3) citizens “[a]re entitled to” pamphlet there during private events—even if doing so disrupts the event and bothers paying customers. App. 51a-52a (Dennis, J., concurring in part and dissenting in part); *accord* App. 48a (Ho, J., concurring) (faulting Bossier City for “not train[ing] its police officers and private security personnel that the park surrounding the Bossier City Arena is public property, or that citizens are entitled to exercise their First Amendment rights there”).

These are legal determinations on which even the federal judges below diverged. Yet if the Fifth

Circuit’s decision stands, a municipality’s failure to correctly anticipate where a judge may land on each of these nuances—and to instruct officers accordingly—constitutes “deliberate indifference” to constitutional rights. This creates a one-way ratchet against municipalities. The only way to guard against liability is to teach (incorrectly) that *all speech* constitutes protected speech. Municipalities could not avoid suit through any amount of proper education, even with unlimited resources. And given the material constraints departments face, the Fifth Circuit’s approach threatens officer recruitment.

A. Municipalities Cannot Develop Sufficiently Detailed Trainings and Curricula To Satisfy the Fifth Circuit’s Rule

Even with an unlimited training budget, municipalities could not shield themselves from *Monell* liability under the Fifth Circuit’s rule. This Court has long held that plaintiffs may prevail on *Monell* failure-to-train claims only if municipalities were deliberately indifferent to “a pattern of constitutional violations,” *Board of Cnty. Comm’rs v. Brown*, 520 U.S. 397, 409 (1997), or “‘the need for more or different training is so obvious . . . that the policymakers of the city c[ould] reasonably be said to have been deliberately indifferent to the need,’” *id.* (quoting *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)) (ellipsis in *Brown*).

That rule could not be otherwise. Generally, “[t]he [S]tate can no more anticipate and control in advance the random and unauthorized intentional conduct of its employees than it can anticipate similar negligent conduct.” *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). The two scenarios in which this Court has blessed *Monell* liability are the only two exceptions to that principle. Where officers have already committed

repeated violations of the same type, a municipality could reasonably “anticipate” similar violations in the future. *Id.* And in certain egregious scenarios—such as giving officers firearms without instruction on their use—the risk of constitutional violations is so glaring that the municipality has at least constructive knowledge of the risk of failing to train. *Id.*

The Fifth Circuit’s approach breaks from that framework. It imposes liability on municipalities for failing to train officers about constitutional violations that had not occurred before and that they could not have “anticipate[d]” would occur in the future. *Id.* Here, for example, Bossier City had no reason to predict its officers would have a run-in with a professional pamphleteer promoting vegetarianism outside of a private concert at the CenturyLink Center, disrupting a private, paid event in the process. Certainly, Hershey never alleges otherwise.

Assuming, however, that Bossier City had foreseen the encounter with Hershey, it still could not have determined its officers’ conduct would present a First Amendment problem. The judges on the *en banc* Fifth Circuit themselves disagreed whether a constitutional violation occurred. And other appellate courts have diverged about whether sidewalks outside arenas qualify as traditional public fora, limited public fora, or nonpublic fora. Compare, e.g., *Ball v. City of Lincoln*, 870 F.3d 722, 736 (8th Cir. 2017) (plaza area outside publicly owned, privately operated arena was a nonpublic forum), with *Brister v. Faulkner*, 214 F.3d 675, 682-83 (5th Cir. 2000) (space between arena and city sidewalk was a traditional public forum). If even federal appellate judges cannot agree on the general law that should be applied, what exactly is a police curriculum supposed to teach?

Even if (contrary to fact) a department could guess how the law applies on these particular facts, instructing officers on this fact pattern would not help them navigate even other, closely related ones. That is because First Amendment public forum analysis ranks as among the most fact-intensive niches in constitutional law. *See, e.g., Jarrard v. Sheriff of Polk Cnty.*, 115 F.4th 1306, 1327 (11th Cir. 2024) (Rosenbaum, J., concurring in part and dissenting in part) (“First Amendment claims are usually intensely fact-specific.”), *cert. denied*, 145 S. Ct. 2702 (2025); *Gerber v. Herskovitz*, 14 F.4th 500, 508 (6th Cir. 2021) (Sutton, C.J.) (describing free-speech claims as requiring “a context-driven examination of complex constitutional doctrine”); *Verlo v. Martinez*, 820 F.3d 1113, 1132 (10th Cir. 2016) (“forum status is a fact-intensive inquiry”). As the magistrate judge below aptly put it, claims like this involve “many nuances.” App. 109a-110a. Any training adequately tailored to address this case would likely be good for one use only.

Making matters worse, the facts on the ground can change on a dime. The First Amendment character of public property may shift based on the temporary uses to which it is put. App. 71a (Richman, J., concurring in part and dissenting in part) (citing *Heffron v. International Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 650-51 (1981)). It follows that a training would not merely need to cover every possible type of conduct (expressive or otherwise) at every public site within a municipality. It would *also* need to predict the full range of functions for which those sites could be used—concerts, work events, political gatherings, protests, religious ceremonies, funeral processions, and more. Departments could not train officers on each of those scenarios—and, even if they could,

officers could not ascertain all the relevant facts in the mere minutes or seconds before they have to act. Thus, departments could guard against liability only by (mis)informing officers that they must permit any manner of speech at any of those functions. *But see, e.g., Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (permitting reasonable “time, place, or manner” restrictions).

Contrary to the Fifth Circuit majority’s conclusion below, general-purpose First Amendment instruction would have done nothing to solve the problem. After all, the Bossier City officers purportedly violated Hershey’s First Amendment rights because (according to Hershey) they failed to appreciate that the venue’s sidewalk qualified as a public forum and because they believed that the private event at the venue limited his right to pamphlet outside of it. But training could have prevented *this* alleged violation only if the department educated the officers as to each of those nuances. A general reminder that Americans have the right to free speech could not have changed the outcomes here in the least.

Nor would training officers on these nuances prove a one-time endeavor. Even confining the Fifth Circuit’s approach to the narrow context of venue-based First Amendment issues, departments would struggle to keep officers apprised of changed circumstances. Here, for example, CenturyLink Center is publicly owned but privately managed, and its outdoor areas “can be leased by [other] organizations to host events.” App. 140a. If the forum classification changes based on the event hosted, officers must be constantly informed of the events going on at that location. *See, e.g., Heffron*, 452 U.S. at 650-51; *Powell v. Noble*, 798 F.3d 690, 699 (8th Cir. 2015). That includes not

just those officers assigned to work at an event, but also officers out on patrol who may need to respond to a disturbance call anywhere in the city.

Additionally, a police department would need to provide continuing legal education to officers when the State or municipality acquires formerly private properties (or vice versa) or when a public-private partnership changes. App. 51a-52a (Dennis, J., concurring in part and dissenting in part) (“The City failed to train its officers that the Center and its surrounding area were public property[.]”); *accord* App. 48a (Ho, J., concurring) (“Bossier City did not train its police officers and private security personnel that the park surrounding the Bossier City Arena is public property”). In larger cities—with property constantly changing hands and such public-private partnerships constantly forming and ending—that task would prove effectively impossible.

The problems with the Fifth Circuit’s approach multiply when one considers its application to other areas of constitutional law. The First Amendment is not the only pocket of law with significant unanswered questions. If the Fifth Circuit’s approach stands, municipalities might soon face single-incident failure-to-train claims based on all manner of other alleged constitutional violations—for example, those involving searches, seizures, interrogations, handling of inmates, and more. One would be hard-pressed to find an attorney with full command of each of those areas of law, able to discern in advance how an appellate court will rule. If the Fifth Circuit’s standard holds, no agency in the Nation could ever comply.

B. The Fifth Circuit’s Approach Would Exacerbate the Nation’s Officer Shortage

The Nation faces an acute policing shortage. The Government Accountability Office’s “survey of law enforcement agencies nationwide” has identified “overall large decreases in officer staffing.” U.S. Gov’t Accountability Off., *Law Enforcement Officers: Observations on Recruitment and Retention at the Federal, Tribal, State, and Local Levels*, GAO-26-108495, at 1 (Feb. 2026) (“GAO Report”). Per some estimates, the total number of sworn officers declined 5.16% from the start of 2020 to the start of 2025, with “[s]taffing continu[ing] to be a top concern for many police chiefs and sheriffs.” *PERF Survey Shows Police Staffing Increased Slightly in 2024 but Still Lower Than 2019*, Police Exec. Rsch. Forum (July 5, 2025).

This shortage has had dire consequences for public safety. About “65% of agencies reported having to reduce services or eliminate specialized units because of staffing shortages,” up from “just 25% as recently as 2019.” David Baker, *The State of Recruitment and Retention: A Continuing Concern*, Lexipol (Mar. 10, 2025). With curtailed services come lost lives. One police agency, for example, temporarily “disbanded [its] Traffic Unit” to save money, only to reverse course when “traffic-related major injury/deaths became a major issue for [its] community.” *Id.* Staffing cuts also cause other enduring problems. For example, some agencies have “reduce[d] the number and/or extent of community engagement programs due to personnel shortages.” *Id.* That threatens to “degrade community relations as well as public trust” when police-community relations must be a priority. *Id.*

By expanding the amount (and type) of officer training supposedly required by the U.S. Constitution, the Fifth Circuit’s rule exacerbates the current officer shortage in several independent ways:

First, the Fifth Circuit’s rule increases the costs of getting new recruits out on patrol. Money is the first problem. Already, “it costs approximately \$20,000 to \$100,000 to train a single police officer.” Logan Seacrest & Jillian Snider, *Rebuilding the Force: Solving Policing’s Workforce Emergency*, R Street Pol’y Study No. 318, at 11 (Mar. 2025) (“Seacrest & Snider, *Rebuilding the Force*”). That is money municipalities across the nation (including those in the Fifth Circuit) do not have. Just last year, for example, New Orleans faced a \$160 million budget shortfall. *See* Louisiana Legis. Auditor, *City of New Orleans Budget Deficit Analysis*, Advisory Services Report 2-3 & n.** (Oct. 15, 2025). Some rural communities fared still worse, requiring loans to cover even basic expenses like garbage pickup. *See* Mark Ballard, *As Rural Louisiana Areas ‘Die Before Our Very Eyes,’ Here’s How It’s Impacting the Entire State Too*, *The Advocate* (Feb. 2, 2020). Adding additional police training modules on fringe legal subjects worsens training costs. And as training expenses increase, the budget for signing bonuses and other recruitment incentives dwindles. *See* Jeremy M. Wilson et al., RAND Corp., *Police Recruitment and Retention for the New Millennium* 32 (2010).

Then there is the substantial cost of extra training time. Already, “[i]n some jurisdictions, it can be a year or more from the time an individual submits an application to when a successful candidate begins police academy training.” Police Exec. Rsch. Forum, *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success*

29 (2017). Adding extra mandatory modules only increases the lag between bringing in new recruits and having trained officers patrolling the streets and protecting the public.

Second, the Fifth Circuit’s rule deters qualified candidates from entering the recruiting pipeline in the first place. Police forces compete for talent with employers that can extend offers in a matter of weeks. As participants in one recent hiring forum stressed, “[c]andidates entering the workforce” are reticent “to tolerate a police hiring process that can last months.” *Id.* at 29-30. Some departments have resorted to offering housing stipends to cover the significant costs cadets bear during the liminal period prior to starting full-time employment. *See* Police Exec. Rsch. Forum, *Responding to the Staffing Crisis: Innovations in Recruitment and Retention* 55-56 (Aug. 2023). But that only further raises the cost of bringing in additional recruits.

Third, scaling up required training increases attrition for recruits already in the pipeline. Per the Bureau of Justice Statistics (“BJS”), “[m]ore than 14% of all recruits did not complete basic training.” Emily D. Buehler, BJS, Off. of Just. Programs, U.S. Dep’t of Just., *State and Local Law Enforcement Training Academies and Recruits, 2022 – Statistical Tables 2* (Nov. 2024). A systematic review of recruit attrition across 488 academies confirmed the obvious: “longer training hours predicted increased voluntary withdrawals and total failures.” Nasser AlSabah et al., *Police Academy Attrition: A Multi-Academy Study*, 20 J. Pol’y & Prac. 25, 25 (2026). Because the process “is onerous, time-consuming, and a burden” on cadets, “[h]iring managers often find themselves extending a job offer after this lengthy process only to find the

applicant is no longer interested or has accepted another job.” Shane Burleigh, *Reimagining the Recruitment and Hiring of Police Officers During Tumultuous Times*, 2 Certified Pub. Mgr. Applied Rsch. 1, 2 (2021).

Fourth, the costs of *Monell* suits alone can break cash-strapped departments. Even before the Fifth Circuit’s decision, “the [N]ation’s [25] largest police and sheriff’s departments” paid “more than \$3.2 billion” to settle Section 1983 claims over the last decade, “repeatedly costing taxpayers” who must foot the bill. Keith L. Alexander et al., *The Hidden Billion-Dollar Cost of Repeated Police Misconduct*, Wash. Post (Mar. 9, 2022). Less-resourced departments cannot withstand those same storms. *Monell* claims drive up their “insurers’ premium[s]” and have resulted in “several” smaller “police department closings.” Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. Rev. 1144, 1190-92 (2016). By opening the door to new single-incident failure-to-train claims, the Fifth Circuit’s rule threatens dramatically to expand liability and impose unbearable costs on police departments.

II. THE DECISION BELOW WILL DEGRADE THE QUALITY OF POLICE EDUCATION AND MAKE AMERICANS LESS SAFE

Experts spend years debating and refining the optimal form (and amount) of police training. When properly implemented, that training is cost-justified, educates officers on best practices, boosts confidence, and improves public safety. When done poorly, it “rewards course hours, checklists, and isolated proficiency tests without reliably producing field-ready performance.” J. Pete Blair & Rob Gray, *The Transfer Problem in Police Training: From Training Hours to Operational Readiness*, CrimRxiv (Jan. 16, 2026)

(“Blair & Gray, *The Transfer Problem in Police Training*”). Ultimately, the best approach to training is an educational call. It is up to police departments and experts to determine what to prioritize.

Judges applying 42 U.S.C. § 1983 lack that same institutional competence. It would be easy for them to Monday-morning-quarterback officers’ policework—prescribing optimal police conduct with the benefit of hindsight and blaming their departments’ training regimens when officers fall short. But this Court has rejected that approach. *See City of Canton*, 489 U.S. at 391 (“[P]lainly, adequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the city liable.”). It has refused to equate constitutionally adequate training with overbroad, interminable instruction. *See id.* at 392 (cautioning against “an endless exercise of second-guessing municipal employee-training programs”). The “more-is-more” regimen the Fifth Circuit’s approach demands cannot square with this Court’s instruction. *See supra* pp. 5-6. And it threatens to make the public less safe, rather than more.

Police training programs already cover a vast array of legal issues. Officers “receiv[e] an average of 51 hours of instruction in criminal and constitutional law, 26 hours in traffic law, and 10 hours in juvenile justice law.” Emily D. Buehler, BJS, Off. of Just. Programs, U.S. Dep’t of Just., *State and Local Law Enforcement Training Academies’ Training Topics and Instructors, 2022 – Statistical Tables 5* (June 2025) (“Buehler, 2025 *Statistical Tables*”). That is more in-class instruction on constitutional issues than many law schools require of their graduates; the American Bar Association requires no constitutional

law instruction at all. See Am. Bar Ass’n, *Standards and Rules of Procedure for Approval of Law Schools* 22-24, 29-30 (2025) (Standards 303, 311).

Many of the hundreds of other hours of training officers receive likewise aim to prevent constitutional violations. For example, officers get an average of 22 hours of deescalation training, 64 hours on defensive tactics, 18 hours on the use of less-lethal weapons, 14 hours on proper interrogation techniques, 39 hours on proper investigations, and 15 hours on proper evidence processing and storage. See Buehler, 2025 *Statistical Tables* at 6. Those training courses have obvious relevance to the constitutional rights of the public.

Requiring further constitutional training by judicial fiat—on scenarios that have not occurred and that may never occur (either once or again)—would not improve policing outcomes or public safety. Recent studies suggest that “[t]raining duration” does “not show consistent significance,” a finding that “challenge[s] common assumptions about academy reform [that] suggest that simply increasing training hours” will yield better results. Nasser AlSabah & Kevin T. Wolff, *Police Academies and Officer Safety: Linking Training Structures and Instruction to Post-Employment Injury Outcomes in Law Enforcement*, Police Q. 21 (2025); see Blair & Gray, *The Transfer Problem in Police Training* (noting diminishing returns to additional classroom instruction).

More troublingly, excessive education on fringe legal topics can *decrease* officer readiness. People have finite working memory. When inundated with information, they can become “so overwhelmed that learning [is] impaired.” Rebecca Mugford et al., *Improving Police Training from a Cognitive Load*

Perspective, 36 Policing: Int’l J. Police Strategies & Mgmt. 312, 319 (2013). This problem is especially acute in police education, as “many [of the] lessons covered in a course teaching officers basic investigative skills,” including “how to deal with suspects,” are “very high in intrinsic complexity.” *Id.* at 328. To combat this problem, training programs seek to reduce “[e]xtraneous cognitive load” wherever possible. *Id.* at 318. That is, they try to reduce the total amount of excessive information that “directs a learner’s limited” mental resources “to activities that are unrelated to the essential learning processes.” *Id.* Adding modules covering fringe scenarios risks officers failing to internalize other, more foundational lessons.

This should come as little surprise. Attorneys spend years in law school and still graduate with—at best—an incomplete view of the intricacies of public law. It is unreasonable to expect officers to gain a *more* complete understanding of those same (often murky) topics over an abbreviated period. And just as law students may (by graduation) have forgotten the holdings of certain cases they read in their 1L year, officers risk forgetting important points if their education is stretched out too far. The goal of police training is to equip cadets with general heuristics that allow them—in the mine run of cases—to respond appropriately to uncertain and rapidly evolving situations. That goal is often better served by concision.

Overtraining officers also risks inducing unwarranted officer inaction. This Court has consistently recognized that avoiding timidity on the part of officials is an important government interest. *See Filarsky v. Delia*, 566 U.S. 377, 389-90 (2012); *Richardson v. McKnight*, 521 U.S. 399, 408-09 (1997);

see also *Forrester v. White*, 484 U.S. 219, 223 (1988) (“By its nature, . . . the threat of liability can create perverse incentives that operate to *inhibit* officials in the proper performance of their duties.”).

Officers exposed to too many cautions about the risks of intervening—especially in ambiguous scenarios—tend to intervene less than their traditionally educated peers. Experts sometimes refer to this “discretionary decision by police officers to avoid engaging” as the problem of “de-policing.” John Jarvis et al., *De-Policing: Myths, Realities, and Ethical Considerations*, FBI Law Enf’t Bull. (Apr. 9, 2025). Studies demonstrate that this trend is associated with an increase in crime rates. See generally Stephen Rushin & Griffin Edwards, *De-Policing*, 102 Cornell L. Rev. 721 (2017). One poignant illustration comes from Chicago, following entry of a 2015 consent decree requiring additional paperwork after investigatory stops. The resultant increase of de-policing was likely “the single most likely causal factor” for the spike in Chicago homicides beginning in January 2016. Paul G. Cassell & Richard Fowles, *What Caused the 2016 Chicago Homicide Spike? An Empirical Examination of the ‘ACLU Effect’ and the Role of Stop and Frisks in Preventing Gun Violence*, 2018 Univ. Ill. L. Rev. 1581, 1596-97.

De-policing represents a predictable response to overtraining on obscure legal issues. It is easy to punish individual officers for their mistakes; it is hard to measure the extent to which those officers’ actions promote public safety. Thus, when faced with a scenario that threatens their employment (and that risks causing financial strain to their employer), they tend towards overcaution. See generally Lawrence Rosenthal, *The Law and Economics of De-policing*,

33 Fed. Sentencing Rptr. 128 (2020). In that way, the Fifth Circuit’s rule deters officers from stopping crime. See Forrest Scogin & Stanley L. Brodsky, *Fear of Litigation Among Law Enforcement Officers*, 10 Am. J. Police 41 (1991); Michael T. Rossler & Charles Scheer, *Causes of Police Officer Career Apprehension Following George Floyd*, 27 Police Q. 505 (2024). When officers are led to believe constitutional monsters hide under every bed, they stop checking to see whether they are truly there.

Finally, to the extent officers require additional training, offering additional modules on fringe constitutional scenarios would seldom be the best use of that time. The same resources could instead go to (for example) firearms training, vehicle training, or crisis-intervention training—subjects on which officers’ safety, and the safety of those they serve, far more often depend. See *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 395-96 (1992) (O’Connor, J., concurring in the judgment) (“Public officials often operate within difficult fiscal constraints; every dollar spent for one purpose is a dollar that cannot be spent for something else.”); *Evanston Cnty. Consol. Sch. Dist. No. 65 v. Michael M.*, 356 F.3d 798, 805-06 (7th Cir. 2004) (Evans, J., concurring in part, dissenting in part) (similar).

III. THE GEOGRAPHIC DISUNIFORMITY CREATED BY THE DECISION BELOW IN- DEPENDENTLY JUSTIFIES CERTIORARI

Law enforcement agencies do not operate in isolation. During their careers, officers routinely transfer across agencies and state lines. Indeed, those lateral and upward moves are the leading cause of officers voluntarily resigning from their posts. See Police Exec. Rsch. Forum, *The Workforce Crisis, and What*

Police Agencies Are Doing About It 32 (Sept. 2019); see also GAO Report 8-9 (noting that 6 of 10 law enforcement associations stated that officers “often resign or retire to work for a different sized agency”).

The interstate flow of officers serves important purposes. Agencies facing the greatest staffing crises can actively recruit lateral candidates—offering signing bonuses, salary premiums, and abbreviated training programs specifically designed for experienced officers. See, e.g., Seacrest & Snider, *Rebuilding the Force* at 27 (noting Milwaukee offered \$10,000 bonuses to officers transferring from other departments). Shortened training for lateral candidates reflects that transferees already should have the basic policing skills required. See Metro. Gov’t of Nashville & Davidson Cnty., “Police Department Training Academy” (last updated Sept. 25, 2025), <https://www.nashville.gov/departments/police/administrative-services/training-academy> (last visited June 23, 2026).

This national market for policework depends on training portability—the notion that an officer certified in one State can serve effectively in another. Every State operates a Peace Officer Standards and Training board, or its equivalent, that determines minimum training requirements. See Nat’l Conf. of State Legislatures, *Database: Law Enforcement Training* (updated June 18, 2024). Where possible, those boards seek to synchronize their training standards—especially on topics like constitutional law that are set at the federal level. See Buehler, 2025 *Statistical Tables* at 5. Thus, officers trained under one State’s program can usually carry their understanding of the Constitution wherever they go.

The Fifth Circuit’s approach breaks that uniformity. Under the decision below, a municipality in Louisiana,

Mississippi, or Texas must train officers on the specific application of the First Amendment to a publicly owned, privately managed venue—even though the underlying constitutional right was not clearly established and the specifics of that training may turn on idiosyncrasies of state or local law or practice. But an identically situated municipality in Ohio (within the Sixth Circuit) or Minnesota (within the Eighth Circuit) faces no such exposure. *See Arrington-Bey v. City of Bedford Heights*, 858 F.3d 988, 995 (6th Cir. 2017); *Szabla v. City of Brooklyn Park*, 486 F.3d 385, 393-94 (8th Cir. 2007) (*en banc*). And a municipality in Florida (within the Eleventh Circuit) need only provide “some training” on the relevant constitutional right. *Lewis v. City of West Palm Beach*, 561 F.3d 1288, 1294 (11th Cir. 2009).

As a result, an officer who seeks to transfer from a department in the Sixth, Eighth, or Eleventh Circuits to a department in the Fifth Circuit may require an entirely new suite of education to protect his or her new employer from a potential *Monell* claim. This stands in the way of municipalities in the Fifth Circuit recruiting and retaining the help they need.

The harm of disuniformity extends also to national law enforcement organizations like NAPO—as well as to organizations like the International Association of Chiefs of Police, the Police Executive Research Forum, and the National Sheriffs’ Association. Those groups invest considerable resources into developing model training standards, best-practices guides, and continuing-education materials for members across all 50 States. These resources provide smaller agencies—which cannot develop sophisticated curricula in-house—with off-the-shelf training guidelines that reflect constitutional requirements. But if the present

circuit split persists, those organizations must cater either to the most demanding circuit's standard or to the jurisdictions that apply the proper rule of law.

This Court has recognized that the *Monell* framework must yield rules that can be practicably incorporated into training and supervision. *See City of Canton*, 489 U.S. at 392 (cautioning against “an endless exercise of second-guessing municipal employee-training programs”); *Connick v. Thompson*, 563 U.S. 51, 68 (2011) (same). The Fifth Circuit's decision below deals a major blow to that project. By granting certiorari and reversing the decision below, this Court can give the Nation's 18,000+ law enforcement agencies the certainty they need to build training programs that protect constitutional rights without varying by the accident of geography.

CONCLUSION

This Court should grant certiorari on the questions presented.

Respectfully submitted,

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