No. 25-672

IN THE

Supreme Court of the United States

KATE ADAMS,
Petitioner,

v.

COUNTY OF SACRAMENTO;
SCOTT JONES, Sheriff,
Respondents.

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

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly applied this Court's well-settled "content, form, and context" test under *Connick v. Myers*, 461 U.S. 138 (1983), and *City of San Diego v. Roe*, 543 U.S. 77 (2004), in holding that petitioner's nearly decade-old, private, one-to-one text messages forwarding racist memes during a casual New Year's Eve conversation with a colleague did not constitute speech on a matter of public concern.

2. Whether this case presents any conflict among the courts of appeals or otherwise warrants this Court's review.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Consititional and Statutory Provisions

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 143 F.4th 1027 and is reproduced in the appendix to the petition.

The order of the United States District Court for the Eastern District of California dismissing petitioner's First Amendment retaliation and related conspiracy claims under Rule 12(b)(6) and certifying its order for interlocutory appeal under 28 U.S.C. § 1292(b), is unreported and is reproduced in the appendix to the petition.

The order of the court of appeals denying panel rehearing and rehearing *en banc*, and issuing an amended opinion, is likewise reproduced in the appendix to the petition.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its judgment on September 9, 2024. The court of appeals denied petitioner's petition for panel rehearing and rehearing *en banc* and issued an amended decision on July 9, 2025.

Petitioner filed a timely petition for a writ of certiorari on December 5, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

STATEMENT OF THE CASE

Petitioner Kate Adams joined the Sacramento County Sheriff's Department in 1994 and later became Chief of Police for the City of Rancho Cordova. While off duty on New Year's Eve 2013, petitioner engaged in what she describes as a "friendly, casual text message conversation" with a fellow Department employee. During that exchange, petitioner forwarded two racist images (memes) that she says had been sent to her by an unidentified third party, accompanied by a brief expression of exasperation.

One image depicted a white man spraying a Black child with a hose alongside the caption "Go be a n***** somewhere else." The other featured a photograph of actor Will Ferrell with the caption "Black people started wearing their pants low, white people called it 'saggin.' Spell saggin backwards … Those sneaky white people." According to the complaint, petitioner's colleague responded, "That's not right." Petitioner then texted, "Oh, and just in case u think I encourage this . . ." Petitioner alleges that she no longer has the full conversation and does not recall the identity of the original sender of the memes.

Petitioner's allegations make clear that this exchange was private. The messages were sent as

part of a one-to-one conversation between two friends, outside of work, and were not shared publicly at the time. By petitioner's account, no one reported the messages for approximately seven years.

In 2020–2021, after petitioner reported another employee's alleged misconduct, that employee disclosed partial screenshots of the 2013 text exchange during an internal investigation. The Sheriff's Department initiated disciplinary proceedings based on the content of petitioner's private messages. Petitioner alleges she was given the choice either to resign quietly or face public termination and chose to resign.

Petitioner filed this action in the Eastern District of California against the County, Sheriff Jones, and others. Among various claims, she alleged that respondents retaliated against her in violation of the First Amendment and conspired to do so, in violation of 42 U.S.C. § 1983, based on her private text messages.

Respondents moved to dismiss the First Amendment retaliation and conspiracy claims under Federal Rule of Civil Procedure 12(b)(6). The district court concluded that her private text messages did not address a matter of public concern under *Connick v. Myers* and related precedent and therefore were not protected by the First Amendment. The court dismissed the First Amendment retaliation and conspiracy claims and certified its order for interlocutory appeal under 28 U.S.C. § 1292(b). Other claims remain pending in the district court.

The Ninth Circuit granted permission to appeal and affirmed the district court's order. The panel applied this Court's two-step framework for public-employee speech: whether the employee spoke as a citizen on a matter of public concern and, if so, whether the government's interests outweigh the employee's speech interests under *Pickering v. Board of Education*, 391 U.S. 563 (1968). The panel assumed that she spoke as a private citizen. It then applied *Connick's* "content, form, and context" test and held that, in the circumstances alleged, petitioner's private messages did not "constitute a matter of legitimate public concern" and thus did not qualify as protected speech at all.

In reaching that conclusion, the panel emphasized that the text messages were sent privately, to a single colleague, in a casual New Year's Eve conversation; that they involved forwarding racist images petitioner had received; and that petitioner's accompanying comments reflected personal exasperation rather than any effort to comment publicly on law-enforcement practices, racial justice, or public policy. Under *Connick* and *Roe*, the panel held, such purely private remarks did not satisfy the "public concern" threshold.

Petitioner sought panel rehearing and rehearing *en banc*, arguing that the panel's decision conflicted with Ninth Circuit precedent, particularly *Hernandez v. City of Phoenix*, 43 F.4th 966 (9th Cir. 2022), and deepened an alleged split among the circuits over how to define "public concern." Respondents opposed rehearing, explaining that the panel had faithfully applied *Connick*, correctly

distinguished *Hernandez*, and did not adopt the categorical rule petitioner attributed to it.

The court of appeals denied rehearing and issued an amended opinion. Petitioner then filed this petition for a writ of certiorari.

THE PETITION SHOULD BE DENIED

I. The decision below is a routine application of *Connick* and does not create the sweeping circuit split petitioner alleges.

1. The Ninth Circuit applied the settled content–form–context framework.

This Court has long held that a public employee's speech is constitutionally protected only if the employee (1) speaks as a citizen rather than pursuant to official duties, and (2) addresses a matter of public concern. If those conditions are satisfied, the court then balances the employee's interests against the government employer's interests under *Pickering*. See *Connick*, 461 U.S. at 146–48; *Garcetti v. Ceballos*, 547 U.S. 410, 418–20 (2006).

To determine whether speech is on a matter of public concern, courts must consider "the content, form, and context of a given statement, as revealed by the whole record." *Connick*, 461 U.S. at 147–48. This Court has emphasized that speech does not become a matter of public concern "because its subject matter could, in different circumstances, have been the topic

of a communication to the public that might be of general interest." *Id.* at 148 n.8.

Here, the court of appeals faithfully applied that framework. It assumed that petitioner spoke as a private citizen and then examined the following:

- Content: An off-hand expression of frustration about racist memes she received from a third party, in the course of a casual exchange with a co-worker about personal matters.

- Form: One-to-one, private text messages, not public-facing social media posts, workplace grievances, or public advocacy. These private text messages were *intended* to be private when they were sent and to remain private forever. The text messages were not revealed by petitioner, but by a third-party whistleblower.

- Context: A private New Year's Eve conversation between friends, years before any employment dispute and wholly unrelated to any ongoing public controversy or policy debate.

As required by well-established caselaw, including Supreme Court precedent, the Ninth Circuit weighed those factors and concluded that petitioner's private text messages expressing personal grievances over the general topic of "racism" did not constitute a matter of public concern.

Petitioner now grossly mischaracterizes the Ninth Circuit as having adopted a novel test which is in conflict with other circuits. The Ninth Circuit adopted no such novel test, and there is no conflict. The panel did not hold that speech must be "intended to ignite public interest" to be protected; it held that, considering content, form, and context together, these particular private messages did not address any broader public issue at all.

2. The claimed 7–5 "circuit split" is overstated and does not warrant review.

Petitioner argues that the decision below deepens a so-called "entrenched" 7–5 split over whether "controversial subject matter" alone is sufficient to establish public-concern status. There is no conflict, nor do any of the cases she cites rely on "subject matter" only. Instead, petitioner misconstrues the holdings of the existing circuit case law in order to manufacture a circuit split that does not exist.

Indeed, in the cases she characterizes as adopting a "subject-matter only" rule, the courts did what *Connick* requires: they evaluated content, form, and context and found that the speech at issue plainly related to matters of political, social, or community concern, often because it took place in public fora, explicitly addressed government policies or misconduct, or was closely tied to contemporaneous public controversies. It is unsurprising that those courts concluded the "public concern" threshold was satisfied under those circumstances.

Similarly, the decisions petitioner groups on the other side of her supposed split – some from the Fifth, Sixth, Tenth, and Eleventh Circuits – do not hold that controversial subject matter can *never* be a matter of public concern. They simply recognize, consistent with *Connick*, that the label "race" or "crime" does not *automatically* transform every private remark into public-concern speech, particularly where the speech is directed solely at a private audience and pertains only to personal grievances or individual interactions.

Indeed, *none* of the circuits hold that *only* subject matter counts. To the contrary, they all recite and apply this Court's *Connick* framework, which requires courts to consider the content, form, and context of the speech "as revealed by the whole record" in deciding whether it involves a matter of public concern. *Connick*, 461 U.S. at 147–48.

In fact, the so-called (and mischaracterized) "subject-matter" circuits also apply the same content–form–context test set forth by the panel in this case.

Take the Eighth Circuit decisions petitioner highlights. In *Bresnahan v. City of St. Peters*, the court held that a police officer's "Paradise PD" video criticizing Black Lives Matter and media coverage of police shootings plausibly involved a matter of public concern. However, it did so only after expressly evaluating the content, form, and context of the speech. The court began with content, noting that the video referenced a black man being shot by a cop and thus implicated BLM and media treatment of police

shootings. It then addressed form, recognizing that the video was shared in a private group text, and explaining that speech shared only with co-workers "generally … weighs against" public-concern status, but is "not a bright-line rule." *Bresnahan v. City of St. Peters*, 58 F.4th 381, 385 (8th Cir. 2023). In this particular factual scenario, the topic of the text messages was Black Live Matter protests, of which the participants of the group text (police officers) were at the center. Finally, it considered context, emphasizing that the messages circulated during ongoing Black Lives Matter protests that were the subject of legitimate public debate.

At no point in the *Bresnahan* opinion did the court highlight any sort of circuit split or emphasize that the content of the speech mattered more in the Eighth Circuit than it does in other circuits. Instead, the court merely applied the public concern test outlined in *Connick* to the specific facts before it and determined that, under those circumstances, the speech constituted a matter of public concern. Importantly, the Eighth Circuit did not apply a different test, nor did it hold that the subject matter of the text was the only relevant inquiry. It merely applied the public concern test and reached a different conclusion than the panel did here based on a different set of facts.

The same is true of *Melton v. City of Forrest City*. The Eighth Circuit there framed the first step of the inquiry as whether the firefighter "was speaking 'as a citizen on a matter of public concern,'" and cited its prior cases applying *Connick*'s content–form–context test. *Melton v. City of Forrest, City, Arkansas*, 147 F.4th 896, 902 (8th Cir. 2025).

Melton is not a "public concern" case. The court hardly addressed the issue at all. Its conclusion that "there could be 'no dispute'" the speech involved a matter of public concern was not because subject matter is the only factor, but because content (race and abortion), form (a public Facebook post), and context (in the wake of George Floyd's killing and public protests) all pointed in the same direction.

Again, the fact that a different circuit reached a different conclusion under a different set of facts does not mean a circuit split exists. The circuits all apply the same test. The mere fact that they sometimes reach different conclusions is not indicative of a circuit split; rather, it demonstrates the highly fact specific inquiry required in the public concern test analysis under *Connick*.

The so-called "subject-matter" circuits petitioner cites outside the Eighth Circuit are no different. In *Reuland v. Hynes*, the Second Circuit explicitly held that whether speech is on a matter of public concern must be assessed under *Connick* by looking to the "content, form, and context of a given statement, as revealed by the whole record." *Reuland v. Hynes*, 460 F.3d 409, 418 (2d Cir. 2006).

In *Pappas v. Giuliani*, which petitioner invokes through a dissent's statement that "issues of race relations are inherently of public concern," the panel majority assumed without deciding that the racist mailings were on a matter of public concern and resolved the case at the *Pickering*-balancing stage—again following *Connick* rather than adopting a subject-matter-only rule.

On the other side of petitioner's ledger, the so-called "minority" circuits she criticizes—the Fifth, Sixth, Tenth, Eleventh, and now the Ninth—also invoke *Connick* and explicitly apply the content–form–context test. None of these courts, including the panel in this particular case, set forth any such "motive" test. Instead, these courts simply reached different conclusions based on a different set of facts.

This case illustrates the point. The Ninth Circuit did exactly what *Connick* requires: it looked at the content (petitioner's forwarding of racist memes), the form (a one-to-one private text thread), and the context (a casual New Year's Eve exchange between friends, undisclosed for several years) and concluded that, taken together, her speech did not amount to commentary on a broader public issue. That is entirely consistent with the way the other circuits decide close public-concern questions.

None of the circuits identify a rigid test or a bright line rule on whether the content of speech should be the only factor to consider. Indeed, it is petitioner who asks this Court to adopt such a new bright-line rule that controversial subject matter alone is always dispositive. Because the courts of appeals all employ *Connick's* test and any perceived differences arise at the margins on distinct facts, the petition does not present an important or recurring legal question justifying review.

II. The decision below is correct.

Even apart from the absence of a genuine conflict, the Ninth Circuit reached the right result on the facts alleged.

1. Petitioner's alleged speech is paradigmatically private and personal.

Under *Connick*, the public-concern inquiry turns on whether the speech can fairly be viewed as relating to "any matter of political, social, or other concern to the community," as opposed to matters of purely "personal interest." *Connick*, 461 U.S. at 146–47.

Petitioner's own pleadings characterize the 2013 text exchange as a private, casual conversation between friends. There is no allegation that she intended to comment on the Sheriff's Department's policies, on law-enforcement racism generally, or on any publicly debated incident. Nor is there any allegation that she sought to reach a broader audience or engage the public.

The messages were sent privately, to a single colleague, and remained undisclosed for years. Only when another employee produced partial screenshots years later, in the context of an internal employment dispute, did the Department learn of them. This type of private and informal context is a far cry from the public-facing speech this Court and the courts of appeals have recognized as addressing matters of public concern.

If speech about internal office morale, transfer policies, and confidence in supervisors can fail the public-concern test, as in *Connick*, then so too can nearly a decade-old private exchange of racist memes between co-workers that is never presented to the public as commentary on a broader social issue.

2. Petitioner's categorical "racism is always public concern" rule is incompatible with *Connick*.

Petitioner's primary merits argument is that any speech that mentions racism is automatically a matter of public concern, regardless of how, to whom, or in what context it is communicated. That argument cannot be reconciled with *Connick's* insistence that courts look at "the whole record" and consider content, form, and context together. Nor does that argument find any support in any of the other circuits. As discussed above, even in the mischaracterized "subject matter" circuits, the courts analyze form and context as required under *Connick*.

Under petitioner's rule, any private remark touching on controversial subjects—whether it be race, abortion, immigration, policing, or countless others—would automatically clear the public-concern threshold, even if uttered casually to a spouse, friend, or co-worker in a purely private setting. That is not the law. *Connick* explicitly rejected the view that subject matter alone is dispositive, instead requiring courts to assess how the speech is made, to whom, and for what purpose.

The Ninth Circuit correctly refused to adopt petitioner's categorical approach. Instead, it did what this Court has directed: it examined what petitioner actually said, how she said it, and the circumstances in which she said it. That straightforward application of settled doctrine does not warrant this Court's review.

CONCLUSION

The petition seeks review of a narrow, fact-specific application of settled First Amendment doctrine and attempts to manufacture a broad circuit split where none exists. The decision below correctly applies *Connick* to petitioner's pled facts and presents no important legal question warranting this Court's intervention. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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