No. 25-672

IN THE
Supreme Court of the United States

KATE ADAMS,
Petitioner,
v.

SACRAMENTO COUNTY, CALIFORNIA, ET AL.,
Respondents.

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

BRIEF OF LAW ENFORCEMENT LEGAL DEFENSE FUND AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[*]

Amicus Law Enforcement Legal Defense Fund ("LELDF") is a national, non-profit organization that supports law enforcement officers through financial assistance and by promoting public awareness of, and respect for, police. LELDF has helped more than 100 officers unfairly prosecuted or sued for actions taken in the line of duty. LELDF submits *amicus curiae* briefs on issues important to the law enforcement community.

LELDF has a strong interest in this case, which presents the pressing question whether a public employee's speech, made as a private citizen and about a controversial (yet evergreen) subject, loses all First Amendment protection unless the speech was intended to ignite public debate. That question is of paramount importance to the more than 900,000 law enforcement officers nationwide. Those officers need clear rules for when the First Amendment covers speech outside the workplace. Yet the courts of appeals have adopted divergent approaches to determine whether off-duty speech qualifies as speech on a matter of public concern entitled to First Amendment protection. This confusion stifles officers' speech, thwarting robust discussion on issues of public importance.

This case is an excellent opportunity to clear up the confusion over the public-concern test. LELDF takes

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[*] Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2(a), counsel for *amicus* also represent that all parties were provided notice of *amicus*'s intention to file this brief at least 10 days before it was due.

no position on when the government may discipline an officer for their off-duty speech in any given case based on the factually intensive balancing inquiry required under *Pickering v. Board of Education*, 391 U.S. 563 (1968). But LELDF submits that the Court should clarify that off-duty speech with no workplace nexus on controversial political or social subjects qualifies as speech on a matter of public concern. In other words, the public-concern test does not hinge on judicial evaluations of the speaker's motives. Such a holding will ensure that officers nationwide receive consistent constitutional protection for their off-duty speech.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a question with sweeping consequences for law enforcement officers nationwide: whether a public employee's off-duty speech on controversial topics qualifies as speech on a matter of public concern only if the speaker meant to spark public debate. The answer to that question can be outcome-determinative to an officer's claim for First Amendment retaliation. If the officer's speech is not a matter of public concern, their claim fails. If it is, the court must proceed to weigh the public employer's interest "in promoting the efficiency of the public services it performs through its employees" against the officer's interest "in commenting upon matters of public concern." *Pickering*, 391 U.S. at 568.

Fixating on motive, the Ninth Circuit held that petitioner Kate Adams's text messages to friends criticizing racist images did not address matters of public concern—and therefore received no First Amendment protection—because she "only meant to convey a personal grievance . . . to her friends" rather than "intended to make a public comment." App. 16a.

That decision wades into a square circuit conflict over how courts determine whether speech addresses a matter of public concern. It is also irreconcilable with this Court's precedent, which requires courts to determine whether speech addresses a matter of public concern by focusing on what was said, where it was said, and in what context—not based on the speaker's motives or intended audience. And the decision departs from this Court's repeated recognition that speech about race qualifies for First Amendment protection. The Court should accordingly grant certiorari and make clear that the Constitution covers off-duty speech on political and social subjects like race.

ARGUMENT

I. The Circuits Are Split

This Court has recognized that "'the boundaries of the public concern test are not well defined.'" *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *City of San Diego v. Roe*, 543 U.S. 77, 83 (2004) (per curiam)). To help the lower courts discern those boundaries and "ensure that [they] themselves do not become inadvertent censors," this Court has provided "guiding principles." *Id.* Despite that guidance, the courts of appeals have fractured over what weight to give the speaker's motives when deciding whether speech addresses a matter of public concern.

The Ninth Circuit and four other circuits hold that speech implicates a matter of public concern only when it is sufficiently outward-facing or advocacy-oriented, requiring that the speaker's "purpose," "intent," or "framing" be to inform the public. *See* Pet. 18-22. Applying this motive test, the decision below held that Adams's text messages criticizing racist images did not address a matter of public concern because she "intended for the messages to remain

private" rather than "to make a public comment." App. 16a. In contrast, seven courts of appeals principally focus on the speech's content and hold that speech on controversial political or social topics necessarily is of public concern. *See* Pet. 12-18. This stark conflict calls out for this Court's review. *See* Sup. Ct. R. 10(a).

As the petition demonstrates, the sharp disagreement among the circuits over the public-concern test means that law enforcement officers' First Amendment right to participate in private discussions about controversial subjects turns on geographic happenstance. But the cases cited in the petition just scratch the surface. Decisions addressing whether a law enforcement officer's private speech qualifies as speech on a matter of public concern are legion. Surveying these cases confirms that the circuits' conflicting approaches to the public-concern test are outcome-determinative and produce divergent results in like cases.

1. Consider off-duty speech sharing and commenting on the news. In *Hussey v. City of Cambridge*, 149 F.4th 57 (1st Cir. 2025), a police officer "shared to his personal Facebook page an article titled 'House Democrats Reintroduce Police Reform Bill in Honor of George Floyd'" and posted that the proposed legislation was "'honoring' a career criminal, a thief and druggie" and that "the future of this county is bleak at best." *Id.* at 63. After the officer was suspended without pay, he sued, alleging First Amendment retaliation. *Id.* at 64. The First Circuit "agree[d]" with the parties that the officer "spoke as a citizen on a matter of public concern." *Id.* at 66. That was so even though the officer's post "did not generate much conversation" because the officer had "deleted the post

a few hours after he shared it" and had "restricted" access to his Facebook page to people who he had accepted as "friends." *Id.* at 63.

Similar speech receives no First Amendment protection in the circuits that require speech to be intended as advocacy. *Blan v. Correct Care Solutions, LLC*, 2017 WL 8640634 (D.N.M. Dec. 11, 2017), is instructive. In that case, a correctional nurse brought a retaliation claim after she was fired for posting a comment on the Albuquerque Journal's website "criticizing the Journal's coverage of corrections officers." *Id.* at *1. To determine whether the plaintiff's speech was on a matter of public concern, the district court examined her "motive" for speaking, asking whether her speech was "calculated to disclose misconduct or merely deals with personal disputes and grievances." *Id.* at *7. According to the court, the plaintiff's speech "consisted of a personal grievance about the Albuquerque Journal and public perception about MDC corrections officers" because it "did not attempt to expose improper conduct by the County." *Id.* The court thus ruled that her "speech was not a matter of public concern." *Id.*

2. Speech about law enforcement activities also receives disparate First Amendment protection. Courts in the circuits that focus on the speech's content recognize such speech addresses matters of public concern. In *Liverman v. City of Petersburg*, 844 F.3d 400 (4th Cir. 2016), for example, two former officers brought retaliation claims against their department after they were disciplined for a Facebook conversation about "rookie cops becoming instructors." *Id.* at 405. The district court dismissed the officers' claims, finding their "speech was purely personal and thus not protected by the First Amendment." *Id.* at 406.

The Fourth Circuit reversed. Speech addresses a matter of public concern, the court explained, "'when it involves an issue of social, political, or other interest to a community.'" *Id.* at 409 (quoting *Kirby v. City of Elizabeth City*, 388 F.3d 440, 446 (4th Cir. 2004)). The court had "no trouble" holding the officers' Facebook posts fit that bill because they "addressed risks posed by the Department's inexperienced supervisors," a matter of "more than personal import." *Id.* at 410; *see also*, *e.g.*, *Venable v. Metropolitan Gov't of Nashville*, 430 F. Supp. 3d 350, 358-59 (M.D. Tenn. 2019) (finding "no doubt" that officer's statements about officer-involved shootings "are a matter of public concern and the subject of nationwide debate").

Courts that employ the Ninth Circuit's motive-dispositive approach have reached the opposite conclusion. In *Signore v. City of Montgomery*, 354 F. Supp. 2d 1290 (M.D. Ala.), *aff'd*, 136 F. App'x 336 (11th Cir. 2005) (per curiam), an off-duty police department employee asked a reporter whether she knew that a detective's vehicle had been stolen. *Id.* at 1292. The district court recognized that "the matter of a stolen public vehicle . . . can be a matter of public concern." *Id.* at 1295. But the court found the employee "was not speaking on a matter of public concern" because he "was motivated by a desire to gain information for himself." *Id.* at 1294-95.

3. The courts of appeals further disagree over whether private speech addressing race and racism is speech on a matter of public concern. The Tenth Circuit's decision in *Lamb v. Montrose County Sheriff's Office*, 2022 WL 487105 (10th Cir. Feb. 17, 2022), shows that the decision below is not unique. There, a sheriff texted a "close friend" who was the police chief of a nearby department: "Just wanted to stay in

touch. REALLY big mistake coming to work here. Racism, good Ole boy, no professionalism. Let me know if you and Angie are still up for poker." *Id.* at *1. The sheriff's text message made its way to his superiors, who terminated him, and he sued. *Id.* at *2.

The Tenth Circuit affirmed the dismissal of the officer's retaliation claim, holding the text message "did not involve a matter of public concern," a concept the court construed "very narrowly." *Id.* at *6. According to the Tenth Circuit, "the content of the [sheriff's] text message" "convey[ed] [his] dissatisfaction with his employment and d[id] not suggest that his 'primary purpose was to raise a matter of public concern.'" *Id.* at *7 (quoting *Singh v. Cordle*, 936 F.3d 1022, 1035 (10th Cir. 2019)). Turning to form and context, the Tenth Circuit examined the sheriff's "'subjective intention' to determine whether his motive . . . 'was calculated to redress personal grievances or whether it had a broader public purpose.'" *Id.* (quoting *Lee v. Nicholl*, 197 F.3d 1291, 1295 (10th Cir. 1999)). The "form of the speech"—a "'private' text message to a close friend"—cut against finding it involved a matter of public concern because it was not "intended for public dissemination." *Id.* So too did the "broader context," the court said, because the sheriff did "not seek to 'vindicate the public interest.'" *Id.* at *8 (quoting *Baca v. Sklar*, 398 F.3d 1210, 1219 (10th Cir. 2005)).

Moore v. City of Roswell, 682 F. Supp. 3d 1287 (N.D. Ga. 2023), is more of the same. The police officer in that case was terminated for posting two images on her Facebook page. *See id.* at 1292-95. The first post juxtaposed the Confederate flag with the logos of the NAACP and other prominent Black organizations with the caption, "If this symbol represents racism in

America . . . SO DO THESE." *Id.* at 1292. The second post contained the caption: "ONLY IN AMERICA CAN AN ETHNIC GROUP HAVE BLACK AWARENESS MONTH, A BLACK HOLIDAY, BLACK ONLY COLLEGES, BLACK ONLY DATING SITES, BLACK ONLY BARS AND CLUBS . . . AND TURN AROUND AND CALL EVERYONE ELSE RACIST." *Id.* (ellipses in original).

The district court acknowledged that "the issue of affirmative action [c]ould be a matter of public concern." *Id.* at 1298. But it ruled the posts did not address matters of public concern, reasoning the posts reflected the officer's "own personal grievance about the manner in which American society allows Black Americans to promote their heritage." *Id.* at 1299.

Moore and *Lamb* would have come out differently in those circuits that holistically focus on the speech's content, form, and context rather than treating the speaker's motive as dispositive. *Fenico v. City of Philadelphia*, 755 F. Supp. 3d 602 (E.D. Pa. 2024), proves the point. That case addressed retaliation claims brought by 20 Philadelphia police officers who had been disciplined for Facebook posts. The posts covered a range of topics: "race and ethnicity; religion and religiously motivated terrorism; immigration, refugees, and cultural assimilation; sex, gender, and sexuality; local and national news stories and political figures; protests and protestors; and policing, crime, and punishment, whether meted out by the justice system or by vigilantes." *Id.* at 623-24 (footnotes omitted). The court ruled that "every post speaks about a matter of public concern" because "[a]ll of these are topics" that implicate "'political, social or other concern[s] to the community.'" *Id.* (quoting *Connick v. Myers*, 461 U.S. 138, 146 (1983)).

To be clear, LELDF takes no position on the ultimate outcome of any of the cases above. Given the "need for discipline[,] esprit de corps, and uniformity" "within the police force" to ensure "the promotion of safety of persons and property," *Kelley v. Johnson*, 425 U.S. 238, 246-48 (1976), there are cases in which a law enforcement department's administrative interests outweigh the officer's First Amendment rights under *Pickering* balancing, in which case the officer's discharge or discipline does not offend the First Amendment. But that is different than the threshold question whether the officer's speech addresses a matter of public concern such that the court must engage in *Pickering* balancing. As the decisions above make clear, the circuits have split over the public-concern test, meaning that officers' First Amendment rights differ depending on where they reside. That is the kind of unfairness and inconsistency the Court should grant certiorari to correct.

II. The Decision Below Warrants Review

While off duty, Adams sent text messages criticizing racist images to friends. Those messages, between two members of the public and having nothing to do with Adams's governmental employer, constituted speech on a matter of public concern. The Ninth Circuit, however, held that Adams's speech was of "personal interest, not public interest," App. 9a, because it was "only meant to convey a personal grievance . . . to her friends" rather than "intended to make a public comment," App. 16a. That reasoning is irreconcilable with how this Court has applied the public-concern test.

1. It is well-settled that "public employees do not surrender all their First Amendment rights by reason of their employment." *Garcetti v. Ceballas*, 547 U.S.

410, 417 (2006). Rather, when "employees are speaking as citizens about matters of public concern, they must face *only* those speech restrictions that are necessary for their employers to operate efficiently and effectively." *Id.* at 419 (emphasis added). Crucially, then, the Court has defined what speech constitutes "matters of public concern" with an eye to avoiding the government dysfunction that could occur "if every employment decision became a constitutional matter." *Connick*, 461 U.S. at 143.

Speech addresses "matters of public concern" if it "'relat[es] to any matter of political, social, or other concern to the community.'" *Snyder*, 562 U.S. at 453 (quoting *Connick*, 461 U.S. at 146). That "inquiry turns on the 'content, form, and context' of the speech." *Lane v. Franks*, 573 U.S. 228, 241 (2014) (quoting *Connick*, 461 U.S. at 147-48). Courts must consider "'the whole record,'" as "no factor is dispositive." *Synder*, 562 U.S. at 453-54 (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 761 (1985)).

The criteria for determining whether speech is on a matter of public concern—"what was said, where it was said, and how it was said," *id.* at 454—are objective. Focusing on objective criteria makes sense because the public-concern test is meant to distinguish between two categories of speech based on their subject matter: speech made "as a citizen upon *matters* of public concern," which receives constitutional protection, and speech made "as an employee upon *matters* only of personal interest," which does not. *Connick*, 461 U.S. at 147 (emphases added).

The Court has referenced a speaker's motive as evidence confirming their speech was of public concern. *See Synder*, 562 U.S. at 455 (observing "no

pre-existing relationship or conflict between Westboro and Snyder that might suggest Westboro's speech on public matters was intended to mask an attack on Snyder over a private matter"). But the Court has never suggested, much less held, that speech implicates matters of public concern only when intended as advocacy. Doing so would create administrability headaches because public employees who speak as private citizens often have multiple reasons for speaking. *See Deutsch v. Jordan*, 618 F.3d 1093, 1100 (10th Cir. 2010) (noting "[w]histle blowers may often bear personal grudges"); *Marshall v. Porter Cnty. Plan Comm'n*, 32 F.3d 1215, 1219 (7th Cir. 1994) ("those who speak out" may also be "involved in personal disputes with employers and other employees"). Motive also has no bearing on whether the speech is "'of general interest and of value and concern *to the public*.'" *Snyder*, 562 U.S. at 453 (quoting *Roe*, 543 U.S. at 83-84) (emphasis added); *cf. Garcetti,* 547 U.S. at 421 (speaker's "personal gratification" was "immaterial" to whether employee spoke as a citizen); *Reuland v. Hynes*, 460 F.3d 409, 416 (2d Cir. 2006) ("motive is not dispositive as to whether an employee's speech is a matter of public concern").

2. A trio of this Court's decisions expose the Ninth Circuit's error and establish that Adams's text messages constitute speech on a matter of public concern.

Begin with *Connick*, which involved an assistant district attorney who was discharged for circulating to her co-workers a questionnaire on office policy, morale, confidence in supervisors, and "whether employees felt pressured to work in political campaigns." 461 U.S. at 141. Although she circulated the questionnaire "to gather ammunition for another round of controversy with her superiors," the Court held that one question

about whether attorneys felt pressured to work on political campaigns "touch[ed] upon a matter of public concern." *Id.* at 148-49. If the public employee's motive for circulating the questionnaire had mattered, the Court would not have proceeded to *Pickering*'s interest-balancing step as it did. *See id.* at 150. Indeed, the single question's content *itself* was sufficient to make it "apparent" that the speech was "a matter of interest to the community," regardless of whether the employee "s[ought] to inform the public" about her coworkers' answers. *Id.* at 148-49.

Rankin v. McPherson, 483 U.S. 378 (1987), confirms that the public-concern test does not hinge on whether the speaker intended to convey a message to the public. There, a clerical employee in a county constable's office was fired after she remarked to a co-worker after hearing of an assassination attempt against President Reagan that, "[i]f they go for him again, I hope they get him." *Id.* at 379-81. The Court held the employee's speech "plainly dealt with a matter of public concern" because it was made during a conversation about "the policies of the President's administration" and because the assassination attempt was "a matter of heightened public attention." *Id.* at 386. In reaching that conclusion, the Court made clear that the "private nature of the statement d[id] not . . . vitiate the status of the statement as addressing a matter of public concern." *Id.* at 386 n.11; *see also Roe*, 543 U.S. at 84 (noting that "certain private remarks," like the one at issue in *Rankin*, "touch on matters of public concern").

Finally, *United States v. National Treasury Employees Union*, 513 U.S. 454 (1995) ("*NTEU*"), underscores that a public employee's speech made outside the workplace about matters having nothing to do

with her public employment is protected by the First Amendment. In that case, two unions and several public employees mounted a constitutional challenge to a law banning federal employees from accepting honorariums. *Id.* at 457. The Court concluded that the off-duty speech at issue—which included "lectures on the Quaker religion" and "black history," among other things—constituted speech on matters of public concern because they "were addressed to a public audience, were made outside the workplace, and involved content largely unrelated to [the plaintiffs'] government employment." *Id.* at 461, 466. The public employees' personal reasons for speaking—"compensation for their expressive activities"—did not transform speech on topics of interest to the public into speech of private concern. *Id.* at 465.

3. *Connick*, *Rankin*, and *NTEU* decide this case. The content of Adams's text messages—sharing and commenting on racist images—relates to "matter[s] of political, social, or other concern to the community." *Connick*, 461 U.S. at 146. Indeed, *Connick* recognized that speech touching on racial discrimination is "inherently of public concern." *Id.* at 148 n.8; *accord Locurto v. Giuliani*, 447 F.3d 159, 183 (2d Cir. 2006) ("[C]ommentary on race is, beyond peradventure, within the core protections of the First Amendment."); App. 28a n.3 (Callahan, J., dissenting) (speech about racism "is unquestionably a matter of public import").

Form and context reinforce the conclusion that Adams's speech addressed a matter of public concern. Adams's text messages to her co-workers complaining about racist images "were addressed to a public audience, were made outside the workplace, and involved content . . . unrelated to [her] government employment." *NTEU*, 513 U.S. at 466; *see also* App. 19a (Callahan,

J., dissenting) (noting that the text messages "were wholly unrelated to her job or her employer"). Her speech therefore cannot be "characterized as an employee grievance" or "personal employment dispute." *Connick*, 461 U.S. at 148 n.8, 154. It follows that, considering the content, form, and context of Adams's speech, it dealt with matters of public concern.

The Ninth Circuit's decision is impossible to reconcile with this Court's precedent. The Ninth Circuit held that Adams's "speech was one of personal interest" based on the "private nature of the speech" and "the speaker's motive." App. 9a, 14a. But Adams's text messages were no more "private" than the discreet remark about the assassination attempt on President Reagan at issue in *Rankin*. So the "private" nature of her text messages "does not . . . vitiate the status of [her] statement[s] as addressing a matter of public concern." *Rankin*, 483 U.S. at 386 n.11; *see also Givhan v. Western Line Consol. Sch. Dist.*, 439 U.S. 410, 414-16 (1979) (teacher's "private" conversations with principal protesting racially discriminatory policies addressed matters of public concern). The "right to protest racial discrimination"—or, here, to comment on racist imagery—"is not forfeited by [the] choice of a private forum." *Connick*, 461 U.S. at 148 n.8.

Nor do Adams's reasons for speaking change the public-concern analysis. The Ninth Circuit concluded that her text messages "were only meant to convey a personal grievance about receiving offensive private texts to her friends." App. 16a. That is an unreasonable inference to draw *against* Adams at the motion-to-dismiss stage. But, more importantly, her motives for speaking are irrelevant to whether her speech "relates to broad issues of interest to society at large,"

an inquiry that must focus on the subject matter of the speech and its "'value and concern to the public.'" *Snyder*, 562 U.S. at 453-54 (quoting *Roe*, 543 U.S. at 83-84). As in *Connick*, the speech's content itself is sufficient to make it "apparent" that the speech is "a matter of interest to the community." 461 U.S. at 149.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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