

Original

25-6801

No. ___

In the

SUPREME COURT OF THE UNITED STATES

DR. EMIR JAMES PHILLIPS,

Petitioner,

v.

BOARD OF CURATORS OF LINCOLN UNIVERSITY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

Petitioner is an individual, and Respondent Board of Curators of Lincoln University is a public body. No corporate disclosure statement is required under Rule 29.6.

(On Petition from the United States Court of Appeals for the Eighth Circuit)

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ORIGINAL

QUESTIONS PRESENTED

1. Whether *Garcetti v. Ceballos*, 547 U.S. 410 (2006), applies to a public-university professor's faculty-governance speech—including objections to an administrator's override of a faculty search committee's unanimous hiring recommendation and related governance and grading issues—or whether such speech is protected under *Pickering v. Board of Education*, 391 U.S. 563 (1968).
2. Whether, consistent with *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), and *Muldrow v. City of St. Louis*, 144 S. Ct. 967 (2024), removing a tenure-track professor from mandated governance roles and faculty committees, placing him on involuntary administrative leave, and issuing a retaliatory non-renewal can constitute actionable adverse actions for Title VII and First Amendment retaliation claims.
3. Whether state statutes and binding university policies that assign faculty a defined role in academic governance and hiring at a public university can create protected liberty or property interests under the Fourteenth Amendment, such that arbitrary and retaliatory removal from those roles without notice or hearing states a claim under 42 U.S.C. § 1983.

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OPINIONS BELOW

The opinion and order of the United States District Court for the Western District of Missouri granting Respondents' motion to dismiss and denying post-judgment relief are unreported and appear in the appendix (App. A).

The judgment of the United States Court of Appeals for the Eighth Circuit summarily affirming the district court's judgment was entered on November 7, 2025, in *Phillips v. Board of Curators of Lincoln University*, No. 25-2169. The judgment is unpublished and appears in the appendix (App. B).

The court of appeals denied a timely petition for rehearing and rehearing en banc on [date], reproduced at App. B-1.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3). The court of appeals had jurisdiction under 28 U.S.C. § 1291.

The Eighth Circuit entered judgment on November 7, 2025, in No. 25-2169. This petition is timely under Supreme Court Rule 13.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

Petitioner filed a timely petition for rehearing and rehearing en banc, which the court of appeals denied on 12/5/25. This petition is filed within 90 days of that order and is therefore timely under Supreme Court Rule 13.3.

RELATED PROCEEDINGS

Petitioner is Dr. Emir James Phillips, a tenure-track faculty member at Lincoln University at the time of the events giving rise to this case.

Respondents are the Board of Curators of Lincoln University and the following individual officials named in their official capacities in the district court:

– [Full list of each named defendant, with their titles at the time, e.g., “Dr. Stevie Lawrence, then–Provost and Vice President for Academic Affairs of Lincoln University”; “Dr. Deneia Thomas, then–Dean of the School of Business,” etc.]

No additional parties appeared in the court of appeals.

Phillips v. Board of Curators of Lincoln University, No. 2:25-cv-04024-BP (W.D. Mo.) — Final judgment entered (governance/search-committee case; this petition).

Phillips v. Board of Curators of Lincoln University, No. 2:25-cv-04025-BP (W.D. Mo.) — Final judgment entered (grade-override/academic-dishonesty case; subject of companion appeal No. 25-2051 and a separate petition for a writ of certiorari).

Phillips v. Board of Curators of Lincoln University, No. 25-2169 (8th Cir.) — Judgment entered November 7, 2025 (this case).

Phillips v. Board of Curators of Lincoln University, No. 25-2051 (8th Cir.) — Judgment entered November 7, 2025 (companion grade-override case; subject of Petition A).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and Title VII of the Civil Rights Act of 1964, including 42 U.S.C. § 2000e-3(a). Pertinent provisions are reproduced in Appendix C.

STATEMENT

A. Lincoln University and its faculty-governance structure

Lincoln University is a public land-grant institution created by the State of Missouri, with a historic mission to serve Black students and other underserved populations. State law establishes Lincoln’s governing board and charges the university with maintaining academic standards consistent with regional accreditation and federal funding requirements.

Lincoln’s charter, bylaws, and faculty policies assign faculty a defined role in academic governance: faculty senates and committees have primary responsibility for curriculum, grading policies, and academic hiring, including service on search committees for faculty and instructional positions. Those arrangements mirror accreditation standards that treat “shared governance” and meaningful faculty participation as core criteria for institutional integrity.

As a tenure-track faculty member in business and finance, Petitioner was required and expected to participate in this governance system. He served on departmental and university committees and, as relevant here, was appointed to a faculty search committee charged with identifying and recommending candidates for an online-program instructional position. Under Lincoln's policies and practice, the search committee's evaluation and recommendation constitute the primary academic judgment on candidate merit and carry substantial weight in the hiring decision.

B. The search-committee override and Petitioner's governance speech

In late 2024, Lincoln convened a faculty search committee—including Petitioner—to recommend a candidate for an online-program position. After reviewing applications, interviewing candidates, and applying published criteria, the committee unanimously recommended one candidate as best qualified. Petitioner supported the unanimous recommendation.

Shortly thereafter, an administrator intervened and set aside the committee's recommendation to install a different candidate favored by the administration. Petitioner understood this override to be inconsistent with Lincoln's policies, with basic norms of faculty governance, and with the university's obligations under state law and accreditation standards. He also believed the override reflected discriminatory considerations and a broader pattern of administrative encroachment on faculty control over grading and academic standards.

On or about January 26, 2025, Petitioner sent a detailed written complaint to the university president and other senior officials. He objected to the override and explained how it violated faculty governance, equal-employment obligations, and the integrity of grades and governance.

He followed up in meetings and additional communications, raising systemic concerns about governance and the risks to students, accreditation, and public trust in a public land-grant HBCU.

This was faculty-governance speech about discrimination, academic integrity, and institutional structure—precisely the kind of speech the Fourth and Ninth Circuits treat as protected and analyze under *Pickering*, not barred under *Garcetti*.

C. Retaliation: governance stripping, exclusion, leave, and non-renewal

Rather than investigate or remedy the concerns Petitioner raised, administrators moved to marginalize him within the governance system he had invoked. Petitioner was removed from governance roles, excluded from ordinary committee work, and effectively frozen out of faculty decision-making. These steps targeted the very channels through which he had raised discrimination and governance complaints.

The retaliation escalated. On June 3, 2025—shortly after the district court dismissed his core First Amendment and due-process claims—Defendant Dr. Stevie Lawrence placed Petitioner on involuntary “administrative leave” by unilateral memorandum, without charges, without a hearing, without Board approval, and without any legitimate justification other than Petitioner’s protected activity, including filing and prosecuting this federal lawsuit and objecting to grading and governance irregularities. In the same time frame, Lincoln issued a non-renewal notice making clear that the decision not to renew his tenure-track appointment was tied to the same grading and governance disputes.

Governance stripping, committee exclusion, administrative leave, and non-renewal sent a clear message—both to Petitioner and to other faculty—that speaking up about discrimination and governance abuses would be punished.

D. District-court proceedings

Petitioner filed this action in the United States District Court for the Western District of Missouri under 42 U.S.C. § 1983 and Title VII. He named institutional officials in their official capacities and sought prospective relief under *Ex parte Young*, 209 U.S. 123 (1908): declaratory relief that the governance overrides, retaliation, and grading practices violated the First and Fourteenth Amendments and federal employment law, and injunctive relief restoring lawful governance and protecting him from ongoing retaliation.

He asserted three principal federal claims:

1. **First Amendment.** His written and oral objections to the search-committee override, grading changes, and governance abuses were speech on matters of public concern—academic integrity, discrimination, and governance at a public land-grant HBCU. Under *Demers* and *Adams*, that academic/governance speech should be analyzed under *Pickering*, not barred by *Garcetti*. The subsequent governance stripping, committee exclusion, administrative leave, and non-renewal were retaliatory.
2. **Title VII retaliation.** His discrimination complaints and participation in internal processes were protected activity, and the loss of governance roles, committee exclusion, administrative leave, and non-renewal were materially adverse actions that would dissuade a reasonable professor from making such complaints.

3. **Due process.** Missouri law, Lincoln's governing documents, and accreditor-driven policies created state-law entitlements and liberty interests in meaningful participation in faculty governance and search committees. His arbitrary and retaliatory removal from those roles without notice or hearing, and the use of governance actions as a punishment tool, violated procedural due process.

The district court granted Respondents' motion to dismiss and dismissed all federal claims with prejudice. It held that Petitioner's governance speech was made in his capacity as an employee pursuant to his official duties and therefore not protected under *Garcetti*, without grappling with this Court's academic-freedom cases or the *Demers/Adams* line. It held that governance roles and search-committee service could not constitute liberty or property interests under *Roth* and *Sindermann*. And it concluded that removal from governance roles, committee exclusion, administrative leave, and non-renewal tied to governance disputes were not "adverse employment actions" for Title VII or First Amendment retaliation purposes. The court declined to exercise supplemental jurisdiction over state-law claims.

After Lincoln placed him on administrative leave and issued the non-renewal letter explicitly tying that decision to the same grading and governance disputes, Petitioner sought Rule 60(b) relief. He explained that this post-judgment retaliation was not a new, unrelated episode but an intensification of the same pattern, underscoring the need for forward-looking relief. The district court treated the new evidence as legally irrelevant and denied relief, indicating that any such retaliation would have to be litigated in a separate suit.

E. Eighth Circuit proceedings

On appeal, Petitioner argued that:

- Extending *Garcetti* to faculty-governance speech squarely conflicts with *Demers* and *Adams* and ignores *Garcetti*'s explicit reservation and this Court's academic-freedom precedents;
- The district court's test for "adverse action" contradicts *Burlington Northern's* "dissuasion" standard and *Muldrow's* "some harm" test; and
- The court erred in holding, at the pleadings stage, that state-created faculty-governance roles can never constitute protectable interests under *Roth* and *Sindermann*.

He further explained that the post-judgment administrative leave and non-renewal letter were concrete manifestations of the same discrimination and governance abuses alleged from the outset and confirmed the need for injunctive relief.

Respondents' brief largely repeated the district court's reasoning and did not meaningfully engage *Demers*, *Adams*, *Burlington Northern*, *Muldrow*, *Roth*, or *Sindermann*. The Eighth Circuit denied oral argument and, on November 7, 2025, issued a one-paragraph per curiam order summarily affirming under a local summary-affirmance rule. The panel's order did not discuss *Garcetti*, *Pickering*, *Burlington Northern*, *Muldrow*, *Roth*, or *Sindermann*, and did not identify any alternative ground for affirmance.

This petition for a writ of certiorari follows.

SUMMARY OF THE ARGUMENT

First, under Rule 10(a), this case cleanly presents a mature and acknowledged split over *Garcetti*'s application to academic and governance speech. *Garcetti* expressly reserved whether its "official-duties" rule applies to scholarship and teaching. 547 U.S. at 425. The Fourth and Ninth Circuits answer "no," holding that professorial academic and governance speech must be analyzed under *Pickering*. *Adams*, 640 F.3d 550; *Demers*, 746 F.3d 402. Other circuits, including the Eighth, extend *Garcetti* to internal faculty speech about governance and standards and treat it as unprotected whenever it is intertwined with job duties. Petitioner's speech as a search-committee member objecting to a unilateral override of a unanimous recommendation and related governance abuses lies at the center of that conflict.

Second, under Rule 10(c), the decision below cannot be reconciled with *Burlington Northern* and *Muldrow*. *Burlington Northern* holds that Title VII retaliation covers actions that "well might have dissuaded a reasonable worker" from protected activity. 548 U.S. at 68. *Muldrow* confirms that discrimination claims require only "some harm" to a term, condition, or privilege of employment. 144 S. Ct. at 977–79. Removing a tenure-track professor from mandated governance roles, excluding him from faculty committees, and placing him on administrative leave and non-renewal because he complained about discrimination and governance abuses easily meet those standards. The courts below nonetheless held that these acts were not sufficiently "adverse," effectively reviving the "ultimate decision" and "significant harm" thresholds this Court has rejected.

Third, also under Rule 10(c), the decision below conflicts with *Roth* and *Sindermann* and leaves the rapidly evolving institution of "shared governance" without any constitutional status. States,

governing boards, and accreditors have embedded faculty governance into public higher-education structures and rely on those structures to justify public funding. Petitioner alleged that Missouri law, Lincoln's governing documents, and accretor-driven policies create protectable interests in meaningful participation in governance and search committees, and that his arbitrary and retaliatory removal from those roles without notice or hearing violated due process. The courts below held that faculty-governance roles can never constitute constitutional interests, even when used as vehicles for targeted retaliation.

Fourth, this case is a clean vehicle and complements Petitioner's companion petition in No. 25-2051. This petition presents the *Garcetti/Pickering*, *Burlington/Muldrow*, and shared-governance due-process questions on a focused governance record. The companion petition presents the grade-override/*Accardi*/accreditation issues arising from the same institutional pattern at the same public land-grant HBCU. Together, the cases give the Court a coherent pair of vehicles for clarifying the constitutional rules governing academic freedom, shared governance, and retaliation in public higher education.

REASONS FOR GRANTING THE PETITION

I. Garcetti and faculty-governance speech: a mature, outcome-determinative split (Rule 10(a)).

Garcetti held that speech made "pursuant to official duties" is not protected as citizen speech, but expressly reserved whether that rule applies "in the same manner to a case involving speech related to scholarship or teaching." 547 U.S. at 421, 425. That reservation reflects this Court's

recognition that academic freedom is a “special concern of the First Amendment.” *Keyishian*, 385 U.S. at 603.

A. The Fourth and Ninth Circuits protect academic/governance speech under *Pickering*.

In *Demers v. Austin*, the Ninth Circuit held that “*Garcetti* does not—indeed, consistent with the First Amendment, cannot—apply to teaching and academic writing,” and applied *Pickering* to a professor’s criticism of university policies and governance. 746 F.3d at 411–15. It grounded that holding in this Court’s academic-freedom precedents.

In *Adams v. Trustees of the University of North Carolina–Wilmington*, the Fourth Circuit likewise held that a professor’s columns and commentary on public issues, even when related to his academic position, could not be dismissed as unprotected “employee speech” and must be analyzed under *Pickering*. 640 F.3d at 563–65.

Under those approaches, professorial speech about academic standards, governance, and institutional integrity—even when intertwined with official responsibilities—is treated as speech on matters of public concern subject to *Pickering* balancing.

B. Other circuits, including the Eighth, extend *Garcetti* to faculty-governance speech.

Other circuits apply *Garcetti* broadly to internal faculty speech, including communications about governance, grading, curriculum, and institutional decision-making. In those jurisdictions, a professor’s speech about search-committee procedures or governance abuses is treated no differently from any other internal memorandum and is deemed unprotected if it can be characterized as part of “official duties.”

That is what happened here. The district court treated Petitioner's faculty-governance communications as within his job duties and invoked *Garcetti* to bar his First Amendment claim. The Eighth Circuit summarily affirmed without analysis, leaving in place a rule under which public-university faculty may be disciplined for speaking about core governance issues with no First Amendment review.

C. This case presents the split cleanly on a concrete governance record.

Petitioner served on a statutory and institutionally mandated faculty search committee. In that governance role, he objected—to the university president and other senior officials—to administrative override of the committee's unanimous recommendation and to related grading and governance abuses at a public land-grant HBCU. His speech addressed discrimination, academic integrity, and the governance of a publicly funded institution.

Under *Demers* and *Adams*, such speech is paradigmatic academic/governance speech analyzed under *Pickering*. Under the approach embraced below, it is unprotected employee speech because it arose within an official assignment. That difference is outcome-determinative: in some circuits, Petitioner's claim proceeds; in others, including the Eighth, it is dismissed on the pleadings.

Respondents did not meaningfully address *Demers* or *Adams* in their appellate briefing, and the Eighth Circuit's unpublished order did not mention those cases, *Garcetti*'s reservation, or *Pickering*. The conflict is not speculative; it is openly acknowledged in the case law and outcome-determinative here. This petition therefore satisfies Rule 10(a).

II. Burlington Northern, Muldrow, and adverse actions: the decision below revives thresholds this Court rejected (Rule 10(c)).

Title VII and the First Amendment protect not only the right to speak and complain, but also the right to be free from retaliation that would deter a reasonable person from doing so.

In *Burlington Northern*, the Court held that Title VII's anti-retaliation provision "covers those (and only those) employer actions that would have been materially adverse to a reasonable employee or job applicant," meaning actions that "could well dissuade a reasonable worker from making or supporting a charge of discrimination." 548 U.S. at 57, 68. The Court explicitly rejected tests limiting retaliation to "ultimate employment decisions." *Id.* at 64-67.

In *Muldrow*, the Court unanimously rejected an even more restrictive "significant harm" requirement for discrimination claims and held that a plaintiff need show only "some harm" to a term, condition, or privilege of employment. 144 S. Ct. at 977-79.

Petitioner's allegations easily satisfy those standards:

- After he complained about discrimination and procedural irregularities in a faculty search and grading process, the university **removed him from governance roles and committees** that state law and institutional rules treat as core duties of tenure-track faculty.
- The administration **excluded him from ordinary channels of faculty participation**, undermining his professional standing and voice.
- It then **placed him on involuntary administrative leave** and issued a **non-renewal letter** explicitly tied to the same grading and governance disputes he had raised.

For a tenure-track professor, those actions cause obvious and substantial harm to the terms and conditions of employment and would clearly dissuade a reasonable faculty member from raising similar complaints. They directly affect core aspects of academic work: participation in governance, committee service, professional reputation, and continued appointment.

Yet the district court held, and the Eighth Circuit summarily affirmed, that these measures were not sufficiently “adverse” to support Title VII or First Amendment retaliation claims. In substance, the courts below revived the very “ultimate-decision” and “significant harm” thresholds this Court rejected in *Burlington Northern* and *Muldrow*, by treating governance stripping, committee exclusion, administrative leave, and non-renewal as legally trivial.

If allowed to stand, that reasoning will give public universities a template for retaliation insulated from review: keep the professor formally on the payroll while stripping governance roles, excluding from committees, and deploying “administrative leave” and non-renewal against those who complain about discrimination or governance abuses.

This Court should grant review to reaffirm that *Burlington Northern*’s deterrence test and *Muldrow*’s “some harm” standard apply fully in the public-university setting, and that governance-based retaliation of the sort alleged here is actionable. The decision below is in clear tension with those precedents and warrants correction under Rule 10(c).

III. State-created faculty-governance rights and the constitutional status of shared governance (Rule 10(c)).

This Court's state-created-entitlements doctrine holds that state rules, policies, and mutually explicit understandings can give rise to liberty and property interests protected by the Fourteenth Amendment. *Roth*, 408 U.S. at 577; *Sindermann*, 408 U.S. at 601–02.

For decades, public higher education has relied on “shared governance” to justify academic freedom and public funding. Legislatures and boards have embedded faculty roles in statutes, charters, bylaws, and handbooks; accreditors have required proof of meaningful faculty participation as a condition of recognition and eligibility for federal funds; and public institutions have repeatedly invoked those governance structures in communications with students, parents, employers, and governments.

Missouri law establishes Lincoln University as a land-grant institution with a defined governance structure. Lincoln's governing documents and faculty policies assign faculty primary responsibility for curriculum, grading standards, and academic hiring through search committees and other faculty bodies. Accrediting agencies, in turn, treat the health of faculty governance as a key indicator of institutional integrity.

Petitioner alleged that:

- These statutes, policies, and practices create concrete reliance interests in faculty participation in governance and search committees, and
- Administrators exploited the governance structure—overriding a search committee's unanimous recommendation, then excluding Petitioner from governance and placing him

on leave and non-renewal when he protested—to punish protected speech and evade the very checks shared governance is supposed to provide.

The courts below nevertheless held that faculty-governance roles and search-committee service are categorically incapable of giving rise to protectable liberty or property interests, and that a tenure-track professor can be stripped of those roles and sidelined from governance with no process, even when the removal is retaliatory.

That holding has broad implications. It effectively declares that legislatively mandated and accreditor-driven governance structures are constitutionally weightless, even when weaponized against individual faculty members. It conflicts with *Roth* and *Sindermann*, which recognize that state-created rules and understandings can create protectable interests in academic employment and related expectations.

At a time when many public systems are centralizing authority over grading, hiring, and curriculum, and when performance-based funding regimes emphasize academic metrics, faculty governance is being invoked to reassure the public even as it is curtailed in practice. If shared governance has no constitutional status even when used as a direct vehicle for retaliation, then states and institutions can simultaneously rely on it to secure funds and accreditation and disregard it when faculty use it to challenge discrimination and governance abuses.

This case, with its clear governance framework and focused allegations, provides an appropriate vehicle to clarify the constitutional status of state-created faculty-governance roles and to ensure that the entitlements doctrine applies in the very environment where it is most often invoked—public higher education.

IV. Vehicle and relationship to the companion petition.

This petition arises from the governance/search-committee case (*Phillips v. Board of Curators of Lincoln University*, W.D. Mo. No. 2:25-cv-04024-BP; 8th Cir. No. 25-2169). The issues are purely legal: whether *Garcetti* applies to faculty-governance speech, how *Burlington Northern* and *Muldrow* apply to retaliation via governance stripping and administrative leave, and whether state-created faculty-governance roles can give rise to protected interests under the Fourteenth Amendment.

The posture is Rule 12(b)(6) dismissal plus denial of Rule 60(b) relief. The Eighth Circuit's one-paragraph unpublished order summarily affirmed under a local rule and identified no alternative ground for decision. There are no jury issues, no qualified-immunity complications, and no unresolved state-law questions that must be decided first. The federal questions were pressed, passed upon, and preserved.

At the same time, this petition forms part of a coordinated pair. Petitioner's separate Petition A, arising from No. 25-2051, challenges Lincoln's compelled alteration and administrative nullification of professors' final academic-dishonesty grades and the institution's disregard of its own codified delegation of final dishonesty-grading authority to faculty. Petition A presents the grade-override/*Accardi*/accreditation issues; this Petition B presents the *Garcetti*-governance/*Burlington*-*Muldrow*/shared-governance due-process issues.

Together, the two petitions depict a single, systemic pattern at a public land-grant HBCU: administrators overriding both faculty grading and faculty governance, and punishing those who object. They offer the Court several options:

- grant this petition and hold Petition A,
- grant Petition A and hold this petition, or
- grant both petitions and consolidate them for briefing and argument.

Whichever course the Court chooses, it will have clean records on which to clarify the constitutional rules governing academic freedom, shared governance, and retaliation in public higher education.

RELIEF SOUGHT

The Court should grant the petition and hold that:

1. *Garcetti's* "official-duties" rule does not apply to public-university professors' academic and governance speech, including search-committee and governance objections to administrative overrides of faculty recommendations, and that such speech is analyzed under *Pickering* as speech by a citizen on matters of public concern;
2. Under *Burlington Northern* and *Muldrow*, the removal of a professor from mandated governance roles, exclusion from faculty committees, and retaliatory placement on administrative leave and non-renewal after protected complaints about discrimination and

governance abuses can constitute adverse actions sufficient to support Title VII and First Amendment retaliation claims; and

3. State statutes and binding institutional policies that assign faculty a defined role in academic governance and hiring in public universities can give rise to protected liberty and property interests under the Fourteenth Amendment, such that arbitrary and retaliatory removal from those roles without notice or hearing states a claim for relief under 42 U.S.C. § 1983.

In the alternative, the Court should grant, vacate, and remand for further consideration in light of:

- the entrenched split over *Garcetti*'s application to academic and governance speech;
- this Court's decisions in *Burlington Northern* and *Muldrow* on adverse actions in retaliation and discrimination claims; and
- the state-created-entitlements doctrine of *Roth* and *Sindermann* as applied to faculty-governance structures in public higher education.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should grant, vacate, and remand for further consideration consistent with this Court's precedents on academic freedom, retaliation, and due process in public higher education.

Respectfully submitted,

12/8/25

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